NH.PUC*01/08/96*[88977]*81 NH PUC 1*Merrimack County Telephone Company

[Go to End of 88977]

81 NH PUC 1

Re Merrimack County Telephone Company

DR 96-005
Order No. 21,964

New Hampshire Public Utilities Commission

January 8, 1996

ORDER approving a local exchange telephone carrier's proposed additions to its custom calling services, including such features as call forwarding, "do not disturb," selective call rejection, selective call acceptance, Caller ID, call trace, and distinctive ringing. Moreover, discounts will apply to customers subscribing to two or more special features, while rate differentials between business and residential customers will be eliminated, such that existing residential rates will be applicable to all customer classes.

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1. SERVICE, § 449

[N.H.] Telephone — Special service — Custom calling services — Various call forwarding options — "Do not disturb" features — Selective call rejection and acceptance features — Multi-ring options — Local exchange carrier. p. 1.

2. RATES, § 544

[N.H.] Telephone rate design — Business versus residential customers — Elimination of rate differentials — As to custom calling services — Discounts for subscriptions to multiple service options — Applicability of existing residential charges to all customer classes — Local exchange carrier. p. 1.

BY THE COMMISSION:

ORDER

On January 4, 1996, Merrimack County Telephone (MCT or Company) filed a petition with the New Hampshire Public Utilities Commission (Commission) seeking to revise its Custom Calling Services (CCS) by creating three types of CCS: Basic, Enhanced and Advanced. In addition, the filing introduces several features and eliminates existing rate distinctions between business and residential rates for Basic and Enhanced Services. The petition is a substitute filing for MCT's petition filed on December 1, 1995 docketed as DR 95-338 which the Company intends to withdraw.

In its transmittal letter, MCT requested that the Commission waive N.H. Admin. Rules, Puc 1601.05 (a), relative to the thirty day notice period. In addition, the Company requested that the Commission waive Puc 1601.05 (j), relative to the publication of tariff changes. In lieu of that requirement, the Company sought permission to notify its customers via a bill insert at the time the new services are introduced.

[1, 2] MCT proposes to introduce the following Basic and Enhanced features: several Call Forwarding options, a Do Not Disturb feature and MultiRing Service. In addition, MCT proposes to introduce the following Advanced Custom Calling Services: Anonymous Call Rejection, Caller ID, Call Trace, Priority Ringing, Repeat Dialing, Selective Call Acceptance, Selective Call Forwarding and Selective Call Rejection.

In addition to offering new CCS, Merrimack wishes to eliminate existing rate differences for residential and business users of its four current CCS. MCT does so by eliminating the higher business rate and making the current residential rate applicable to all classes of customers. MCT reports that 258 current customers will benefit from this reduction and anticipates new sales as a result of the price decrease. MCT also proposes to equalize the discount offered for customers who subscribe to packages of multiple Custom Calling features and believes this change will stimulate residential demand as

a result. Under the current rate structure, when subscribing to two or more features, residential subscribers receive a $0.50 discount for each feature in excess of the first, while business subscribers receive a discount of $1.00. MCT proposes to eliminate the two separate discounts and offer a uniform subscriber discount of $1.00 for each feature excluding the first feature. MCT expects 25 current residential customers to realize an immediate benefit from this change.

In support of its filing, the Company submitted information describing the expected demand for the new services, the assumptions underlying the demand forecast and an estimate of the stimulative effects resulting from the price decreases. In addition, the Company provided estimates of the incremental costs associated with providing the proposed services and

demonstrated that the proposed prices exceed their stated incremental costs. The Company also stated that, if approved, the rates would be subject to the 18.4% credit which the Company is currently required to apply to all intrastate billings.

The Economics Staff has reviewed the petition and noted that the proposed introduction of Caller ID, Line Blocking and Per Call Blocking is consistent with the guidelines established for NYNEX in DR 91-105 (Phonesmart). In addition, the Economics Staff examined the proposed rate revisions. The Economics Staff stated that it was appropriate to eliminate the existing non-cost based rate differences for existing Custom Calling Services, as proposed by the Company.

We have reviewed the Petition and the Staff's recommendation and find that the proposed filing is in the public good. In addition, we will grant the Company's request to waive N.H. Admin. Rules, Puc 1601.05 (a), relative to the thirty day notice period in light of the fact that MCT's previous filing provided constructive notice to the Commission. We also will grant the Company's request to waive Puc 1601.05 (j), relative to the publication of tariff changes and allow the Company to notify its customers via a bill insert at the time the new services are introduced. However, in order to satisfy the requirements of Puc 1601.05 (j), we will require that the bill insert plainly state the changes proposed and the effective date thereof, and be made in such a way as to be understood by the customers affected. The requirement to include a statement citing the Commission's order can be fulfilled by including the statement, "This notice is published in compliance with the tariff rules of the NHPUC and the Commission's final order in Docket No. DR 96-005."

Based on the foregoing, it is hereby

ORDERED, that the following pages of MCT's NHPUC No. 7 are approved:

Part III - Section 3

Second Revised Page 1

Second Revised Page 2

Second Revised Page 3

Fourth Revised Page 4

Fourth Revised Page 5

Original Pages 6 through 13

and it is

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

FURTHER ORDERED, that N.H. Admin. Rules Puc 1601.05 (a) and Puc 1601.05 (j) are hereby waived; and it is

FURTHER ORDERED, that publication of the above ordered tariff changes shall be made by a bill insert as detailed above; and it is

FURTHER ORDERED, that MCT file a compliance tariff with the Commission on or before

February 7, 1996, in accordance with N.H. Admin. Rules, Puc 1601.04(b).

By order of the Public Utilities Commission of New Hampshire this eighth day of January, 1996.

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NH.PUC*01/08/96*[88978]*81 NH PUC 3*New Hampshire Electric Cooperative, Inc.

[Go to End of 88978]

81 NH PUC 3

Re New Hampshire Electric Cooperative, Inc.

DR 95-327
Order No. 21,965

New Hampshire Public Utilities Commission

January 8, 1996

ORDER approving an electric cooperative's proposed special discounted rate contract with a ski resort, designed to retain load. The contract contains interruptible service provisions and rates high enough to provide a positive contribution to fixed costs but low enough to dissuade bypass.

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1. RATES, § 360

[N.H.] Electric rate design — Seasonal customers — Ski resort — Service via special rate contract — Factors — Possibility of bypass — Benefits of retaining load — Terms of contract — Periodic service interruptions — Positive contribution to cost — Electric cooperative. p. 3.

BY THE COMMISSION:

ORDER

On November 16, 1995, the Petitioner, New Hampshire Electric Cooperative, Inc. (NHEC), filed with the New Hampshire Public Utilities Commission (Commission) a special contract with one of its member ski areas: Northern Mountain Realty Trust, John T. Fichera, Trustee (Black Mountain). The special contract is essentially identical to the special contracts between NHEC and four of its other member ski areas approved by the Commission in Order No. 21,812 dated September 6, 1995 in Docket Nos. DR 94-258, DR 94-259, DR 94-260 and DR 94-261.[1(1)]

Like the special contracts approved in Order No. 21,812, the special contract between NHEC and Black Mountain is based on an Interruptible Power Supply Service Agreement (Interruptible Service Agreement) filed by Public Service Company of New Hampshire (PSNH) with the Federal Energy Regulatory Commission (FERC) on August 1, 1994. Concurrent with the Interruptible Service Agreement filing, PSNH filed with FERC amendments to its Partial Requirements Resale Service Agreement between PSNH and NHEC, providing *inter alia* reduced wholesale rates to NHEC for ski area loads for which NHEC arranges special contracts.

During the course of the hearings on the merits concerning the four previously-approved special contracts with NHEC member ski areas, NHEC's witness testified that the special contract had been offered to Black Mountain but that, due to uncertainty concerning its continued operation, Black Mountain had not responded to the offer. The NHEC witness further testified that if Black Mountain were to reorganize and desired a special contract, one would be offered subject to approval by the Commission. *See* Hearing Transcript, June 1, 1995, pp. 42-43. Black Mountain is now in a position to accept the special contract previously offered by NHEC.

NHEC's special contract with Black Mountain, like those approved in Order No. 21,812, is intended to retain ski area load. Absent the special contract, NHEC believes Black Mountain would utilize its viable self-generation option.

[1] In DR 94-258, DR 94-259, DR 94-260 and DR 94-261, the Commission reviewed the ski area special contracts, the testimony and the exhibits relating to NHEC's special contract for its member ski areas, and the effect of those contracts on the ski areas, NHEC's other members, PSNH, and other PSNH customers. After that review, the Commission concluded that the special contracts between NHEC and its member ski areas provide benefits to the ski areas, NHEC's members, and PSNH and its customers. *See* Order No. 21,812. We find no reason to conclude that the special contract between NHEC and Black Mountain, which is

essentially identical to those we have previously reviewed, is any less beneficial to the ski area, NHEC's other members, PSNH and its customers than to the special contracts approved in Order No. 21,812.

Based upon the foregoing, it is hereby

ORDERED, that the special contract between New Hampshire Electric Cooperative, Inc. and Northern Mountain Realty Trust, John T.M. Fichera, Trustee, is approved as filed, effective on the date of this Order; and it is

FURTHER ORDERED, that NHEC file on June 1st of each year a report on the number of times the ski areas, including Black Mountain, were asked to interrupt service under the contracts, their compliance level, and the level of savings NHEC is receiving from the special contracts, including Black Mountain, based upon actual ski area load data.

By order of the Public Utilities Commission of New Hampshire this eighth day of January,

1996.

FOOTNOTES

[1]In Order No. 21,812, the Commission approved special contracts between NHEC and four member ski areas: Mt. Attitash Lift Corp., Loon Mountain Recreation Corp., Mt. Cranmore, and Waterville Company.

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.

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NH.PUC*01/08/96*[88979]*81 NH PUC 4*Consumers New Hampshire Water Company, Inc.

[Go to End of 88979]

81 NH PUC 4

Re Consumers New Hampshire Water Company, Inc.

DR 95-124
Order No. 21,966

New Hampshire Public Utilities Commission

January 8, 1996

ORDER directing a water utility to comply with discovery requests made by the Office of Consumer Advocate in the course of the utility's general rate case. Although acknowledging that some of the information sought may not be admissible at hearing, the commission finds that it nonetheless could be useful in preparing testimony, given the broad range of the discovery process.

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1. PROCEDURE, § 16

[N.H.] Discovery and inspection — In course of general rate case — Broad range of discovery — For use in preparing testimony — Even if inadmissible at hearing stage. p. 5.

2. EXPENSES, § 89

[N.H.] Regulatory expense — Costs of complying with commission orders — General policy of recoverability — Reasonableness. p. 6.

APPEARANCES: Ransmeier and Spellman by Dom S. D'Ambruoso, Esq. and Harry T. Judd, Esq. for Consumers New Hampshire Water Company, Inc.; Donahue, Tucker and Ciandella by John J. Ratigan, Esq. for The Town of Hudson, New Hampshire; Leonard A. Smith, *pro se*; Representative Donald White, *pro se* (limited intervenor); Office of Consumer Advocate by Michael W. Holmes, Esq. for residential ratepayers; Amy L. Ignatius, Esq. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

Consumers New Hampshire Water Company, Inc. (Consumers) filed on June 20, 1995 a petition for an overall 23.1% rate increase. The case is now in the discovery stage and hearings are scheduled for March 14-22, 1996. This order will address issues raised pursuant to data requests served on Consumers. For a full procedural history, see Order No. 21,874 (October 23, 1995).

The Office of Consumer Advocate (OCA), the Town of Hudson (Hudson) and Commission Staff (Staff) filed on or about November 15, 1995 their second set of data requests, pursuant to a Commission ordered schedule. Consumers responded promptly and, for the most part, thoroughly. For 27 of OCA's questions, however, Consumers provided partial answers and on November 20, 1995, objected to other portions of the questions.

OCA filed a Motion to Compel (Motion) on November 29, 1995, asking the Commission to compel Consumers to respond in full to the 27 questions. OCA proposed an alternate set of questions for the sake of efficiency. Hudson and Mr. Smith concurred in the Motion. Staff on December 8, 1995 concurred in part with recommendations to limit the request in two respects. Staff supplemented this response on December 13, 1995 correcting a misstatement contained in

its December 8, 1995 filing.

Consumers objected to the Motion on December 11, 1995, to which OCA filed a reply on December 13, 1995. Consumers also objected to Staff's response on December 14, 1995.

II. POSITIONS OF THE PARTIES AND STAFF

A. *Consumers*

Consumers objected to 27 of OCA's questions on the basis that they called for information which was beyond the scope of the Commission Order Nos. 21,796 and 21,874, the information was not readily available because of the way Consumers maintains its records, the requests were extensive and would require substantial time and expense to respond and the information is in some cases irrelevant to the case as determined by prior Commission order.

Consumers asked the Commission to address OCA's claim that Consumers has failed to meet its burden of proof pursuant to RSA 378:8, that refunds from 1991 are not an issue in this case and that rate case expenses incurred in responding to these requests if so ordered should be recovered.

B. *OCA*

OCA states in its Motion that the 27 questions to which Consumers objects are necessary in order to evaluate if plant installed since 1984 is used and useful and whether refunds of amounts contained in rate base should be made. OCA argues that the information is necessary for the development of its case. It asked in an alternate question, to simplify discovery, for information regarding plant contained on any of the three lists developed by OCA, Consumers and Staff, for years 1991, 1992, 1993 and 1994.

C. *Hudson and Mr. Smith*

Hudson and Mr. Smith concurred in the OCA request but did not file pleadings.

D. *Staff*

[1] Staff responded by supporting OCA's interest in obtaining much of the information, with the understanding that discovery is broad and that material which may not be admissible at the hearing on the merits may nevertheless be of use in preparing testimony. Staff recommended two modifications to OCA's request: 1) the list of property to be addressed should be the list developed between the parties and Staff at a technical session, which is now identified as Exhibit TJR-16; 2) OCA's alternate questions should be used, which cover the period of 1991 through 1994.

III. COMMISSION ANALYSIS

We have reviewed the pleadings in this matter and have determined that OCA's requests should be supported, with some limitations. We will accept OCA's alternate question as being more concise and efficient, but will limit the request by requiring use of Exh. TJR- 16 rather than the three property lists. Further, we will limit an inquiry regarding plant which emerged from DR 89-224 to determine if it was used and useful in 1994, as opposed to whether it was used and useful from 1991 through 1994. For all plant installed since DR 89-224, however, both prudence and whether the plant is used and useful should be addressed.

We do not accept OCA's assertion that Consumers failed to meet its burden of proof pursuant to RSA 378:8. We are not yet at the point of determining whether Consumers' requested rate increase should be approved. When we reach that decision point, Consumers will bear the burden of proof pursuant to RSA 378:8. As we found in Order No. 21,796 rejecting OCA's Motion to Dismiss, we believe Consumers met its burden of production in its rate case petition and supplemental filing by providing us with the necessary documents to continue with this inquiry.

As for refunds, we do not believe there is currently a full record in this issue to address whether any form of refund would be appropriate or legally permissible, in light of the standards prohibiting retroactive ratemaking. We note that plant installed since DR 89-224 is not now in rate base so could not be the subject of refund. Whether refunds on any amount attributable to oversized mains from DR 89-224 would be appropriate (assuming we were to find any of those mains are not used and useful) should be developed on the record as part of the hearing on the merits.

[2] Finally, as to recovery of rate case expenses, we are not prepared, on the basis of this record, to make a ruling regarding recovery of rate case expenses. As a general rule, efforts to comply with a Commission order may be recovered. Our standards on reasonableness of expenses will be applied at the conclusion of the case, as they do in all cases.

Based upon the foregoing, it is hereby

ORDERED, that Consumers shall respond to OCA's alternate question as limited herein; and it is

FURTHER ORDERED, that Consumers did not fail to meet its burden of proof, pursuant to RSA 378:8; and it is

FURTHER ORDERED, that the issue of refunds from 1991 onward is deferred until a greater record is developed on the legal and factual issues in question; and it is

FURTHER ORDERED, that the issue of rate case expenses is deferred until the conclusion of this case.

By order of the Public Utilities Commission of New Hampshire this eighth day of January, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Consumers New Hampshire Water Co., Inc., DR 95-124, Order No. 21,796, 80 NH PUC 545, Aug. 28, 1995. [N.H.] Re Consumers New Hampshire Water Co., Inc., DR 95-124, Order No. 21,874, 80 NH PUC 666, Oct. 23, 1995.

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NH.PUC*01/08/96*[88980]*81 NH PUC 6*Cabletron Systems, Inc.

[Go to End of 88980]

81 NH PUC 6

Re Cabletron Systems, Inc.

Joint petitioner: Johnson Controls, Inc.

DE 95-095
Order No. 21,967

New Hampshire Public Utilities Commission

January 8, 1996

ORDER denying rehearing of Order No. 21,850 (80 NH PUC 620) in which the commission had asserted jurisdiction over retail wheeling by electric utilities. The commission again explains that the Energy Policy Act of 1992 did not divest state commissions of jurisdiction over retail wheeling. Accordingly, the commission

affirms the constitutionality and validity of RSA 362-A:2-a — a 1979 state law that allows limited electric energy producers with generating facilities that produce not more than 5

megawatts of power by means of renewable resources or cogeneration to sell power directly to not more than three end users.

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1. PROCEDURE, § 29

[N.H.] Disposal of matter — Declaratory ruling — Prerequisites — Standing — Ripeness of issue — Justiciable issue. p. 9.

2. COGENERATION, § 14

[N.H.] Wheeling — Resolution of disputes — Standing to bring matter before commission — Owner of qualifying facility, electric utility, or purchaser. p. 9.

3. STATUTES, § 5

[N.H.] Validity — Rebuttable presumption of constitutionality — Resolution of constitutional questions via declaratory ruling. p. 9.

4. ELECTRICITY, § 2

[N.H.] Commission jurisdiction — Over retail wheeling — Unbundling of rate elements notwithstanding — No preemption by the Energy Policy Act of 1992. p. 10.

5. ELECTRICITY, § 2

[N.H.] Jurisdiction — State versus federal authorities — Retail wheeling — "Bright line" test. p. 10.

6. SERVICE, § 72

[N.H.] Commission jurisdiction — Electric service — Retail wheeling — *Intrastate* transmission — No federal preemption. p. 10.

7. RATES, § 90

[N.H.] Commission jurisdiction — Electric service — Retail wheeling — *Intrastate* transmission — No federal preemption — Unbundling requirements notwithstanding. p. 10.

8. RATES, § 47

[N.H.] Commission jurisdiction — Conflicting federal authority — Retail wheeling — *Intrastate* electric transmission service — Reservation of intrastate wheeling to states. p. 10.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On April 7, 1995 Cabletron Systems, Inc. and Johnson Controls, Inc. (collectively Petitioners) jointly petitioned the New Hampshire Public Utilities Commission (Commission) for a declaratory ruling on the constitutionality of RSA 362-A:2-a. Specifically, the Petitioners sought an opinion from the Commission as to whether 362-A:2-a is preempted by federal law as asserted by Public Service Company of New Hampshire (PSNH) in response to a request from the Petitioners for the rates, terms and conditions of intrastate, retail wheeling services.

On May 3, 1995 PSNH filed a motion to dismiss the petition on procedural grounds.

Following oral argument, the Commission issued Order No. 21,850 on October 3, 1995 denying PSNH's motion to dismiss and finding RSA 362-A:2-a a constitutional exercise of the State's police powers.

On November 2, and November 3, 1995 PSNH and Connecticut Valley Electric Company (CVEC), respectively, filed motions for rehearing of Order No. 21,850 pursuant to RSA 541:3 (Supp. 1994). On November 6, 1995 the Petitioners filed objections to the motions for rehearing. The Commission denied the Motions for Rehearing at its public meeting on November 20, 1995.

II. POSITIONS OF THE PARTIES

A. *Public Service Company of New Hampshire*

Initially, PSNH challenges the Commission's jurisdiction to render a declaratory judgment on the constitutionality of RSA 362-A:2-a or the justiciability of the issue. PSNH's positions on the Commission's finding of justiciability can be succinctly summarized as follows: 1) the failure of the Commission to address ripeness of the petition independent of other justiciability issues and the Petitioners' lack of standing to bring an action for declaratory ruling; 2) the Commission's lack of jurisdiction to issue an opinion on the constitutionality of any of the Commission's enabling legislation; and 3) the Commission's failure to defer ruling on its authority over certain retail transactions until a final ruling on the issue of jurisdiction over all wheeling services by the Federal Energy Regulatory Commission (FERC) in the FERC's Notice of Proposed Rulemaking on Open Access Transmission Tariffs, the so-called "Mega-NOPR." 60 Fed. Reg. 17,662 (1995) (to be codified at 18 C.F.R. pt. 385).

Substantively, PSNH contends for a number of reasons that the comprehensive federal

regulatory scheme created under the Federal Power Act "establishes that the FERC has exclusive and plenary jurisdiction over all transactions involving the transmission of electricity over the integrated interstate transmission grid." Motion at 6 (emphasis removed).

PSNH further asserts that the Commission misapplied the United States Supreme Court's analysis in *Arkansas Electric Cooperative Corp. v. Arkansas Public Service Commission*, 461 U.S. 375 (1983) and also failed to reconcile its finding of jurisdiction with previous contrary decisions of the Supreme Court.

PSNH next asserts that the legislative history of RSA 362-A:2-a supports a finding that the statute is unconstitutional.

In conclusion, PSNH asserts that:

> [s]hould the Commission not withdraw its order and in fact seek to compel PSNH to participate in an involuntary retail wheeling transaction under LEEPA, PSNH would be required to make an appropriate filing with the FERC under protest in light of the FERC's expressed jurisdiction over such service.

Motion at 11.

B. *Connecticut Valley Electric Company*

Although CVEC initially joined in PSNH's assertions of procedural infirmities, its motion for rehearing addresses only the substantive issues addressed in Order No. 21,850.

CVEC contends that the Commission's construction of the statutory provisions of the FPA as amended by the Public Utilities Regulatory Policy Act of 1978 (PURPA) and the Energy Policy Act of 1992 (EPAct) "creates an unavoidable conflict between state and federal jurisdiction." Motion at 1. CVEC contends that it has been placed in the untenable position of having to comply with the conflicting assertions of jurisdiction by this Commission in Order No. 21,850 and the FERC's ongoing rulemaking in the "Mega-NOPR." 60 Fed. Reg. 17,662 (1995) (to be codified at 18 C.F.R. pt. 385). Ultimately, CVEC concludes that the FPA provides exclusive and plenary jurisdiction over all transmission services to the FERC and, therefore, renders RSA 362-A:2-a unconstitutional as it violates the Supremacy Clause of the United States Constitution.

CVEC further contends that 362-A:2-a "carves out an exception to federal authority over the terms, conditions, and charges relating to transmission facilities ... ," thereby resulting in "undue discrimination."[1(2)] Motion at 3.

C. *Cabletron Systems, Inc. and Johnson Controls, Inc.*

Petitioners object to PSNH's Motion for rehearing because it has not stated good reason for rehearing of Order No. 21,850. The Petitioners also raise a number of objections to certain positions taken in PSNH's motion.

Petitioners contend that PSNH's procedural arguments are without merit because the Commission, as an administrative agency, is not

held to the strict rules of procedure and evidence that prevail in court proceedings.

III. COMMISSION ANALYSIS

[1-3] In its motion for rehearing PSNH alleges that the Commission erred in finding the constitutionality of RSA 362-A:2-a justiciable because the issue is not ripe, and that the Petitioners had standing to bring the petition. PSNH argues that only a Qualifying Facility (QF) with a capacity rating of 5 MegaWatts or less would have standing to bring a petition pursuant to RSA 362-A:5 and that there must be an existing contract between the QF and an end user for the issue to be ripe for adjudication. We disagree.

The New Hampshire Supreme Court has held that "[t]he statute which creates the declaratory judgment remedy also restricts its availability" and that "[t]he evident legislative purpose must govern its construction." *Fireman's Fund American Insurance Company v. Webber*, 112 N.H. 466, 467 (1972). Thus, the issue is whether the "dispute" herein between the "parties" herein is of the nature contemplated by the legislature in enacting RSA 362-A:5. Furthermore, as we stated in Order No. 21,850, "`[p]etitions for declaratory judgment must be liberally construed so as to effectuate the purpose of the law.'" Order No. 21,850 at 8, quoting *Radkay v. Confalone*, 133 N.H. 294, 297.[2(3)]

The purpose of RSA Chapter 362-A is to encourage "small scale and diversified sources of supplemental electrical power ... ." RSA 362-A:1. Towards that end, the legislature enacted RSA 362-A:5 to alleviate uncertainties that might discourage the construction of such facilities.

If we were to adopt PSNH's assertion that a dispute under RSA 362- A:2-a is not ripe until the parties to the transaction reach an agreement and memorialize that agreement in writing we would frustrate the legislature's stated purpose. The rates, terms and conditions of utility wheeling services are essential to the parties' negotiations over the terms of an agreement and, therefore, the financial viability of the project. Thus, it would be virtually impossible to finance and construct a small power production facility with the intent to wheel the power to end users under RSA 362-A:2-a under this scenario.

With regard to the Petitioners' standing, the legislative history of RSA 362-A:2-a illustrates that the legislature intended that "any party involved at all, either the purchaser, the owner of the small [power producer] or the electric company, any party can call a hearing before the PUC in relation to the terms of the wheeling agreement and have it resolved." Senate Journal, June 6, 1979 at 1420 (statement of Senator Brown).[3(4)]

Thus, we must conclude that the legislature believed purchasers, not just small power producers or electric utilities, could bring their disputes over wheeling services with the

franchised utility to the Commission for resolution. Because the legislature defines the parameters of a declaratory judgment ruling, the Petitioners, as potential purchasers, have standing to bring a petition under RSA 362-A:5.

PSNH further asserts that the law of this jurisdiction is that the acts of the General Court are presumed constitutional and therefore, Order No. 21,850 merely restates the presumption of constitutionality and can only be considered advisory in nature. Thus, any ruling on the constitutionality of RSA 362-A:5 is beyond the jurisdiction of the Commission. We cannot agree with this.

While there is a presumption that the acts of the legislature are constitutional, the presumption may be overcome. *See*, Order No. 21,850 at 9, citing *Wright v. Clarke Equipment Co.*, 125 N.H. 299 (1984). The presumption simply establishes that the party that contends an act of the legislature is unconstitutional bears the burden of demonstrating its unconstitutionality. Order No. 21,850 at 9. This presumption, therefore, does not mandate a finding of constitutionality.

As the New Hampshire Supreme Court stated in *Boehner v. State*, 122 N.H. 79 (1982) "a petition for declaratory judgment is particularly appropriate to determine the constitutionality of a statute ... ." *Boehner v. State*, 122 N.H. at 83 (quotations and ellipses omitted). If all adjudicative bodies in the State were bound to find all of the acts of the legislature constitutional, the Court could not have reached this

conclusion. Thus, Order No. 21,850 did not constitute an "advisory opinion."

[4-8] Given that Order No. 21,850 concludes that RSA 362-A:2-a is a proper exercise of the state's police powers, we do not believe that it is necessary or appropriate to defer ruling on this issue until the FERC has concluded its proceedings on Open Access Transmission Tariffs. In contrast, in *In Re Freedom Electric Company*, Order No. 21,683 at pp. 31-32 (June 6, 1995) this Commission specifically deferred to the FERC for an interpretation of what constitutes a "sham transaction" under section 212 of the FPA, as amended by EPAct, because Congress had delegated the authority to order electric utilities to provide wholesale transmission services to the FERC.

With regard to the substantive issue of jurisdiction over transmission services, neither PSNH nor CVEC has raised any issues which we did not consider and reject in Order No. 21,850.

To the extent both utilities raise their inability to comply with the findings of this Commission in Order No. 21,850 with the initial jurisdictional assertions of the FERC in the Mega-NOPR, we do not believe it is this Commission that has placed them in this untenable position. We believe it is the well settled law of this nation that sales of electric services at retail are subject to the jurisdiction of the states. The fact that some of these services are to be provided on an "unbundled" basis to retail customers does not automatically divest states of their jurisdiction. *See*, *In Re Retail Competition Pilot Program*, Report Addressing Comments on

Preliminary Guidelines, at pp. 7-12 (November 20, 1995).

With regard to PSNH's assertion that it "would be required to make an appropriate filing with the FERC" should the Commission require it to provide retail wheeling services, we question the FERC's jurisdiction to review our decisions in this proceeding. *See*, *New Orleans Public Service, Inc. v. Council of City of New Orleans*, 491 U.S. 350 (1989) (federal doctrine of judicial abstention precludes the enjoining of the adjudicative rulings of state agencies); *See also*, U.S. *Const.* amend. XI.

Based upon the foregoing, it is hereby

ORDERED, that Public Service Company of New Hampshire's and Connecticut Valley Electric Company's Motions for Rehearing are denied.

By order of the Public Utilities Commission of New Hampshire this eighth day of January, 1996.

FOOTNOTES

[1]CVEC does not cite to federal or State law relative to "undue discrimination." Given the conclusions it reaches relative to federal jurisdiction over all transmission services we will assume the reference is to §206 of the FPA. *Cf*. RSA 378:10.

[2]PSNH asserts that the Commission's reliance on *Radkay v Confalone* is inappropriate because the facts of the case are distinguishable from the case at hand. We do not agree with such a narrow analysis of the applicable law set forth in the case. The Court in *Radkay v Confalone* specifically stated that in order to render its decision on the discrete issue in that case it was necessary to understand the "character and purpose of declaratory judgments ... ." *Radkay v Confalone*, 133 N.H. at 296. The Court then went on to expound upon the general principles of law underlying declaratory judgments. Thus, to the extent we relied on the Court's statements of general principles underlying the analyses of declaratory judgments our reliance on those general principles is, and was, appropriate.

[3]Senator Brown also indicated from the Senate floor that there were

> extensive hearings on this bill. The committee room was overloaded with people. The Governor's Office was represented, Public Utilities Commission, the people that own small hydro plants and others and the sponsors. We had all kinds of amendments, many amendments submitted to us. The Governor's Office came down and supported the bill. The Public Utilities Commission were down and were very much against the bill, all three commissioners but there was one intent which seemed to be among everybody, that something should be done to help the small energy producers. So we all got our heads together, the Governor's Office, the PUC, *the electric companies*, the sponsor, and the committee and we came up with this amendment that apparently pleases everybody and the amendment is the total bill. (emphasis added).

Senate Journal, June 6, 1979 at 1419 (statement of Senator Brown)

Given this statement on the Senate Floor, we find the electric utilities' current position on the constitutionality of the law rather perplexing.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Cabletron Systems, Inc., DR 95-095, Order No. 21,850, 80 NH PUC 620, 164 PUR4th 205, Oct. 3, 1995. [N.H.] Re Freedom Electric Co., DE 94-163, Order No. 21,683, 80 NH PUC 314, 161 PUR4th 491, June 6, 1995. [U.S.Sup.Ct.] Arkansas Electric Co-op. Corp. v. Arkansas Pub. Service Commission, 461 U.S. 375, 52 PUR4th 514, 76 L.Ed.2d 1, 103 S.Ct. 1905, May 16, 1983. [U.S.Sup.Ct.] New Orleans Pub. Service, Inc. v. Council of the City of New Orleans, 491 U.S. 350, 103 PUR4th 49, 105 L.Ed.2d 298, 109 S.Ct. 2506, June 19, 1989.

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NH.PUC*01/09/96*[88981]*81 NH PUC 11*Granite State Electric Company

[Go to End of 88981]

81 NH PUC 11

Re Granite State Electric Company

DR 95-276
Order No. 21,968

New Hampshire Public Utilities Commission

January 9, 1996

ORDER adopting settlement as to an electric utility's 1996-97 conservation and load management programs.

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1. CONSERVATION, § 1

[N.H.] Annual conservation and load management program filing — Electric utility — Commercial versus residential initiatives — High-efficiency fluorescent lighting as a component — Rebates versus alternative financing options — Settlement. p. 11.

APPEARANCES: Peter J. Dill, Esq. for Granite State Electric Company; Ann Brewster Weeks, Esq. for the Conservation Law Foundation; E. Barclay Jackson, Esq. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On October 2, 1995, Granite State Electric Company (GSEC) filed with the New Hampshire Public Utilities Commission (Commission) testimony and schedules in support of its 1996-1997 conservation and load management (C&LM) programs and C&LM adjustment factors. GSEC filed amended testimony and schedules on December 8, 1995.

A duly noticed prehearing conference was held on November 2, 1995 at which time intervention by the Conservation Law Foundation (CLF) was approved and a procedural schedule was agreed upon by the Commission Staff (Staff), CLF and GSEC. The procedural schedule was approved by the Commission in its Order No. 21,920, dated November 27, 1995.

At a technical session on November 21, 1995, Staff and GSEC addressed data requests issued by Staff and, on December 8, 1995, GSEC provided revised testimony and exhibits. GSEC and CLF (hereinafter, the Parties) and Staff reached a settlement resolving all issues. The Settlement Agreement was presented to the Commission on December 21, 1995.

The Office of Consumer Advocate (OCA), a statutory party to this docket, received all filings and notice of the hearings, technical session and settlement discussions. However, the OCA chose not to participate actively in this proceeding.

II. SETTLEMENT AGREEMENT

[1] The Parties and Staff agreed that GSEC's 1996 and 1997 C&LM programs, as revised during the course of this proceeding and subject to certain modifications contained in the

Settlement Agreement, shall be effective January 1, 1996. Revised C&LM adjustment factors and any appropriate program design and budget revisions for the 1997 program year shall be filed with the Commission on October 1, 1996.

Staff and the Parties agreed that GSEC's 1996 C&LM budget shall be $2.26 million, of which $1.91 million is for new business; and the 1997 C&LM shall be $2.01 million, of which $1.91 million is for new business.

Staff and the Parties agreed that GSEC shall continue both the Design 2000 and Energy Initiative programs, seeking ways to achieve the program's goals more effectively and efficiently during 1996 and 1997. For instance, among other efforts, GSEC will work toward enhancing its capability to develop particular Design 2000 markets in order to capture lost-opportunity resources. GSEC will also explore new rebate structures geared towards medium-sized customers and continue to maximize financing availability to assist the medium-sized customers to meet co-payment requirements.

Staff and the Parties agreed that GSEC will continue to offer rebates on high-efficiency T-8 fluorescent fixtures to customers with demand over 500 kW and to national accounts who participate in Design 2000. However, to eliminate free-riders, rebates will be discontinued for standard T-8 fixtures.

Staff and the Parties agreed that GSEC shall continue the alternative rebate criteria, established in 1995 in DR 94-235, resulting in increasing rebates to customers who have internal payback criteria for capital investments of one to two years.

In order to increase participation in Demand-Side Management programs, Staff and the Parties agreed that GSEC will increase the eligibility threshold for Small Commercial and Industrial (C&I) customers with loads of between 50 and 100 kW.

The Parties and Staff also agreed that GSEC will continue to vigorously market its five residential programs.

Although GSEC believes that rebates, not financing options, are the critical factor in marketing C&LM programs, Staff and the Parties agreed that GSEC will continue its C&LM financing services options.

The Settlement Agreement sets the 1996 residential C&LM adjustment factor for 1996 at $0.00203 per kWh and the 1996 Commercial and Industrial C&LM adjustment factor at $0.00252 per kWh, effective January 1, 1996. Also by agreement, the 1997 C&LM adjustment factors will be filed with the Commission on October 1, 1996.

III. COMMISSION ANALYSIS

After careful review of the Settlement Agreement, testimony and exhibits, we find that the GSEC C&LM programs proposed, as modified by the Settlement Agreement, are reasonable and

in the public good. The filing is consistent with the requirements and standards of RSA 378:38 *et seq*. We note that this case has been resolved on a fairly expedited basis. We appreciate the efforts of the Parties and Staff in meeting an accelerated schedule.

Based upon the foregoing, it is hereby

ORDERED, that the proposed C&LM programs, as amended by the Settlement Agreement, are hereby approved.

By order of the Public Utilities Commission of New Hampshire this ninth day of January, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Granite State Electric Co., DR 95-276, Order No. 21,920, 80 NH PUC 760, Nov. 27, 1995.

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NH.PUC*01/09/96*[88982]*81 NH PUC 13*AT&T Communications of New Hampshire, Inc.

[Go to End of 88982]

81 NH PUC 13

Re AT&T Communications of New Hampshire, Inc.

DE 95-344
Order No. 21,969

New Hampshire Public Utilities Commission

January 9, 1996

ORDER authorizing an interexchange telephone carrier to revise its inward 800 service plan K, to bill all prospective customers on a per-minute basis. The carrier's existing offer to bill in 30-minute blocks of time will apply only to existing, grandfathered subscribers.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll services — Inward 800 service plan — Elimination of billings based on 30-minute blocks of time — Institution of per-minute billings on prospective basis — Interexchange carrier. p. 13.

BY THE COMMISSION:

ORDER

[1] On December 12, 1995, the New Hampshire Public Utilities Commission (Commission) received a petition from AT&T Communications Company of New Hampshire, Inc., (AT&T) requesting authority to grandfather existing customers with AT&T 800 Plan K - Option B for effect January 11, 1996.

AT&T 800 Plan K is an inward 800 service which terminates to a telephone number associated with a local exchange service access line. Option B is a rate option in which the customer could elect to pay for a 30 minute block of time. This option is being eliminated except for those customers who have elected this option prior to January 11, 1996. All other 800 Plan K customers will be billed on a per minute basis.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by Interexchange Carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize AT&T to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of AT&T's tariff, NHPUC No. 1 are approved for effect as filed:

Section 10

1st Revised Page 2;

and it is

FURTHER ORDERED, that AT&T file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this ninth day of January, 1996.

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NH.PUC*01/09/96*[88983]*81 NH PUC 13*LCI International Telecom Corporation

[Go to End of 88983]

81 NH PUC 13

Re LCI International Telecom Corporation

DR 95-329
Order No. 21,970

New Hampshire Public Utilities Commission

January 9, 1996

ORDER authorizing an interexchange telephone carrier to introduce two new calling card service plans as well as virtual network service.

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1. SERVICE, § 468

[N.H.] Telephone — Toll service —

Page 13

Calling card plans — Targeting of new audiences — Introduction of virtual network service — Interexchange carrier. p. 14.

2. RATES, § 238

[N.H.] Schedules and procedure — Filing of tariffs — Necessity of new filing — When proposed revisions change more than 50% of a tariff. p. 14.

BY THE COMMISSION:

ORDER

On November 20, 1995, the New Hampshire Public Utilities Commission (Commission) received a petition from LCI International Telecom Corp., (LCI) requesting authority to substantially revise its tariff.

[1] The proposed revisions include the introduction of three new services: EarthTalk Calling Card, Military Calling Card, and Virtual Network Service (VNS). Major revisions are proposed

for the entire Rules and Regulations section of the tariff in addition to other minor revisions.

The proposal received on November 20, 1995, contained certain terms and conditions that did not comply with the Commission's Administrative rules. LCI worked with the Commission staff to redraft these sections in order to comply with the rules. Revised pages were received on December 19, 1995 and January 3, 1996 but did not contain new revision numbers. Therefore, the revision numbers on the corrected pages are identical to those filed on November 20.

[2] In total, the proposed revisions require a change to more than 50 percent of the existing tariff. NH Admin. Rules, Puc 1601.05(b) (2), require "when more than 50% of the pages of a complete tariff are effected in a single filing a complete new tariff shall be filed." Therefore, LCI will be required to file a completely new tariff.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by Interexchange Carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize LCI to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of LCI's tariff NHPUC No. 2 are approved for effect on the date of this order:

5th Revised Page 1

4th Revised Page 2

4th Revised Page 3

Original Page 3.1

3rd Revised Page 5

Section 1

2nd Revised Page 8

Section 2

2nd Revised Page 17

Original Page 23

Original Page 24

Original Page 25

Section 3

1st Revised Page 1

1st Revised Page 2

1st Revised Page 3

1st Revised Page 4 (corrected)
Original Page 4.1 (corrected)
Original Page 4.2 (corrected)
Original Page 4.3
Original Page 4.4
3rd Revised Page 5
1st Revised Page 6
Original Page 6.1
Original Page 6.2
Original Page 6.3 (corrected)
1st Revised Page 7
1st Revised Page 8
Original Page 8.1
Original Page 8.2 (corrected)
1st Revised Page 9
1st Revised Page 10
1st Revised Page 11
1st Revised Page 12

Page 14

1st Revised Page 13
1st Revised Page 14
1st Revised Page 15
1st Revised Page 16
1st Revised Page 17
1st Revised Page 18
Original Page 22
Original Page 23
Original Page 24 (corrected)
Original Page 25
Original Page 26

Original Page 27
Original Page 28
Original Page 29
Original Page 30
Original Page 31
Original Page 32
Original Page 33
Original Page 34
Original Page 35
Original Page 36
Original Page 37
Original Page 38
Original Page 39
Original Page 40

Section 4
2nd Revised Page 5
3rd Revised Page 21
1st Revised Page 23
Original Page 25
Original Page 26
Original Page 27;

and it is

FURTHER ORDERED, that LCI file a complete new tariff, LCI NHPUC No. 3, incorporating the changes approved above with the existing approved pages in LCI's NHPUC No. 2, in compliance with Puc 1601.05(b) (2), and properly annotated as required by N.H. Admin. Rules, Puc 1601.05 (k), no later than 30 days from the issuance date of this order.

By order of the Public Utilities Commission of New Hampshire this ninth day of January, 1996.

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NH.PUC*01/09/96*[88984]*81 NH PUC 15*Consolidated Water Company, Inc.

[Go to End of 88984]

81 NH PUC 15

Re Consolidated Water Company, Inc.

Additional applicant: Carleton Water Company Trust

DE 95-331
Order No. 21,971

New Hampshire Public Utilities Commission

January 9, 1996

ORDER granting intervention and adopting a procedural schedule for considering a merger and franchise transfer proposal as between two water utilities, under which Carleton Water Company Trust would be sold to Consolidated Water Company, Inc.

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1. CONSOLIDATION, MERGER, AND SALE, § 61

[N.H.] Procedure — Adoption of procedural schedule — Relative to merger and franchise transfer proposal — Water utilities. p. 16.

BY THE COMMISSION:

ORDER

On November 27, 1995 Consolidated Water Company, Inc. (Consolidated) filed with the New Hampshire Public Utilities Commission (Commission) a Joint Petition with Carleton Water Company Trust (Carleton) requesting the Commission's approval of the sale of the assets and franchise rights of Carleton to Consolidated. On December 11, 1995 the Commission issued an Order of Notice setting a prehearing conference for December 28, 1995, setting forth a proposed procedural schedule and requesting the initial positions of the Parties and Commission Staff (Staff).

On December 28, 1995 the Commission held the duly noticed prehearing conference. At the hearing the Locke Lake Colony Association requested intervention pursuant to N.H. Admin. R.,

Puc 203.02. Locke Lake Colony Association is an association comprised of all of the customers currently served by Consolidated's affiliate, Integrated Water Company, Inc., located in that portion of the Town of Barnstead known as Locke Lake Colony. The request for intervention was orally granted at the prehearing conference without objection.

[1] The Parties and Staff concurred in the proposed schedule to govern the Commission's investigation into the petition. The proposed schedule is as follows:

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

Responses to Data Requests    January 11, 1996
Propounded at the 1st
Technical Session

Technical Session             January 19, 1996

Testimony by Staff and        February 1, 1996
Intervenors

Data Requests by the Company February 15, 1996

Data Responses by Staff and  February 22, 1996
Intervenors

Settlement Conference        February 26, 1996

Hearing                      February 28, 1996
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Consolidated indicated that it had the requisite expertise to operate the proposed water utility as recognized by the Commission in its grant of a franchise to its affiliate. Locke Lake Colony Association took no position on the petition. The Staff indicated that it had concerns relative to Consolidated's ability to operate the proposed water utility.

We duly note the positions of the Parties and Staff, and we will adopt the proposed procedural schedule to govern the Commission's investigation into the petition.

We await further recommendations of the Parties and Staff as to whether evidence and proceedings in this docket can be coordinated and/or consolidated with that of DE 95-300.

Based upon the foregoing, it is hereby

ORDERED, that Locke Lake Colony Association's request for intervention is granted; and it is

FURTHER ORDERED, that the proposed procedural schedule is adopted to govern the Commission's investigation into the Joint Petition.

By order of the Public Utilities Commission of New Hampshire this ninth day of January, 1996.

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NH.PUC*01/09/96*[88985]*81 NH PUC 16*Integrated Water Systems, Inc.

[Go to End of 88985]

81 NH PUC 16

Re Integrated Water Systems, Inc.

Additional applicant: Indian Mound Water Company

DE 95-300
Order No. 21,972

New Hampshire Public Utilities Commission

January 9, 1996

ORDER granting intervention and adopting a procedural schedule for considering a merger and franchise transfer proposal as between two water utilities, under which Indian Mound Water Company would be sold to Integrated Water Systems, Inc.

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1. CONSOLIDATION, MERGER, AND SALE, § 61

[N.H.] Procedure — Adoption of procedural schedule — Relative to merger and franchise transfer proposal — Effect of previously executed but unauthorized sale of stock — Water utilities. p. 17.

Page 16

BY THE COMMISSION:

ORDER

[1] On October 30, 1995 Integrated Water Systems, Inc. (Integrated) and Indian Mound Water Company, Inc. (Indian Mound) filed a joint petition with the New Hampshire Public Utilities Commission (Commission) requesting permission for the transfer of the assets and the franchise rights of Indian Mound to Integrated, and for Indian Mound to discontinue business as a public water utility. RSA 374:30. Integrated previously purchased the stock of Indian Mound under the mistaken belief that such a purchase and sale was not subject to the jurisdiction of the Commission.

On November 16, 1995 the Commission issued an Order of Notice setting forth issues raised by the joint petition, proposing a procedural schedule to govern the Commission's investigation into the petition and setting a prehearing conference for December 20, 1995. On December 20, 1995 the Commission held the duly noticed prehearing conference. At the prehearing conference Integrated agreed to the proposed procedural schedule and urged the Commission to approve the proposed transfer of assets and franchise rights. Commission Staff (Staff) indicated that it had concerns whether such a transfer was in the public interest. Staff specifically stated that it questioned Integrated's ability to take on the added responsibility of providing service to additional customers at a location other than its current system. Staff also noted that this concern

must be balanced against the problems associated with Indian Mound's management.

On December 28, 1995 Locke Lake Colony Association filed a petition for late intervention. The Locke Lake Colony Association is comprised of all of the customers Integrated currently serves in that portion of the Town of Barnstead known as Locke Lake Colony. Locke Lake Colony Association's request for intervention indicates that neither Integrated nor the Staff has any objection to its intervention. We will grant the request for intervention. We duly note the issues raised by Integrated and Staff.

Given there was no objection to the proposed procedural schedule we will adopt it to govern our investigation into the petition. The proposed schedule is as follows:

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

Responses to Oral Data Requests  January 11, 1996
Propounded at or before the
1st Technical Session

Technical Session                January 19, 1996

Testimony by Staff and           February 1, 1996
Intervenors

Data Requests by the Company    February 15, 1996

Data Responses by Staff and     February 22, 1996
Intervenors

Settlement Conference           February 26, 1996

Hearing                         February 29, 1996
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We await further recommendations of the Parties and Staff as to whether evidence and proceedings in this docket can be coordinated and/or consolidated with that of DE 95-331.

Based upon the foregoing, it is hereby

ORDERED, that the procedural schedule set forth in the order of notice is adopted to govern our investigation into this petition; and it is

FURTHER ORDERED, that Locke Lake Colony Association's Petition to Intervene is granted subject to the procedural schedule approved herein.

By order of the Public Utilities Commission of New Hampshire this ninth day of January, 1996.

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NH.PUC*01/09/96*[88986]*81 NH PUC 18*IdealDial Corporation

[Go to End of 88986]

81 NH PUC 18

Re IdealDial Corporation

DE 95-264

Order No. 21,973

New Hampshire Public Utilities Commission

January 9, 1996

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

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1. CERTIFICATES, § 123

[N.H.] Telephone carrier — Intrastate intraLATA long-distance services — Interim authority — Assessment of competitive impacts — Exclusion of local exchange services. p. 18.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate intraLATA toll services — Interim authority — Assessment of competitive impacts — Exclusion of local exchange services. p. 18.

BY THE COMMISSION:

ORDER

[1, 2] On September 22, 1995, IdealDial Corporation (IDEAL) petitioned the New Hampshire Public Utilities Commission (Commission) for authority to do business as a telecommunications public utility in the State of New Hampshire (petition) pursuant to, *inter alia*, RSA 374:22 and RSA 374:26. IDEAL has demonstrated the financial, managerial and technical ability to offer service as conditioned by this order. The Commission previously approved numerous, similar petitions filed during the Trial Period, pursuant to the Modified Stipulation Agreement (Stipulation) in Docket No. DE 90-002, approved by Order No. 20,916 (August 2, 1993). Our orders in those numerous dockets granted the petitioner(s) interim authority to offer intraLATA toll service, specifically excluding local exchange service, for the service territory of the entire State of New Hampshire, during the Trial Period, in order to allow the Commission to analyze competition during the two-year Trial Period.

Because the Trial Period identified by the Stipulation expired on September 30, 1995, we have explicitly clarified that the authority we had granted remains in effect until we specifically modify or revoke that authority, after analysis of the Trial Period. *See* Order No. 21,851 (October 3, 1995). Likewise, our grant of authority ordered herein remains in effect until we specifically modify or revoke that authority.

The public good is served by permitting such competition by telecommunications companies. The Commission permits competitive entry in order to foster competition in the New Hampshire intrastate toll market and to allow the Commission to analyze the effects of such competition.

The public should be provided an opportunity to respond in support of, or in opposition to this petition.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that IDEAL is granted interim authority to offer as a telecommunications public utility intraLATA toll service, specifically excluding local exchange service, for the service territory of the entire State of New Hampshire, subject to the following conditions:

1. The services shall be offered by approved tariffs.

2. The services shall be offered until the Commission orders otherwise.

3. IDEAL shall file tariffs for new services and changes in approved services (other than rate changes), with effective dates of no less than 30 days after the date the tariffs are filed with the Commission.

4. Within one business day of offering an approved service to the public at a rate different from its rates on file with the Commission, IDEAL shall notify the Commission of the change.

Page 18

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5. IDEAL is exempted from NH Admin. Rules, Puc 406.03 Accounting Records; Puc 407 Forms Required of All Telephone Utilities; and Puc 409 Uniform System of Accounts for Telecommunications Companies.

6. IDEAL shall maintain its book and records in accordance with Generally Accepted Accounting Principles.

7. IDEAL 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. IDEAL 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. IDEAL shall compensate the appropriate Local Exchange Company for all originating and terminating access used by IDEAL pursuant to NET Tariff N.H.P.U.C. 79, Switched Access Service Rate or its sucessors or its relevant equivalent contained in the tariffs of the Independent Local Exchange Companies.

10. New Service offerings filed for approval with the Commission shall be accompanied by tariff pages describing the service, rates and effective dates.

FURTHER ORDERED, that the authority granted herein remains in full force and effect until the Commission orders otherwise; and it is

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

FURTHER ORDERED, that IDEAL shall publish a copy of the Notice of Conditional Approval attached to this Order once in a statewide newspaper of general circulation. Said publication shall occur no later than January 16, 1996, and an affidavit proving publication shall be filed with the Commission on or before January 23, 1996; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, et seq. IDEAL shall pay all assessments levied upon it by the Commission based on the amount of gross revenues received as a result of doing business in New Hampshire; and it is

FURTHER ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or file a written request for a hearing on this matter before the Commission no later than January 30, 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 February 6, 1996; and it is

FURTHER ORDERED, this Order *Nisi* shall be effective February 9, 1996, unless the Commission provides otherwise in a supplemental order issued prior to the effective date and it is

FURTHER ORDERED, that IDEAL shall file a compliance tariff with the Commission on or before February 9, 1996, in accordance with NH Admin. Rules, Puc 1601.01 (b).

By order of the Public Utilities Commission of New Hampshire this ninth day of January, 1996.

Notice of Conditional Approval of
IDEALDIAL CORPORATION

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

On September 22, 1995, IdealDial Corporation (IDEAL) filed with the New Hampshire Public Utilities Commission (Commission) a petition to do business as a telecommunications public utility in the State of New Hampshire, specifically to provide intrastate long distance telecommunications services.

In Order No. 21,973, issued in Docket No. DE 95-264, the Commission granted IDEAL conditional approval to operate as of February 9, 1996, subject to the right of the public and interested parties to comment on IDEAL 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 IDEAL's petition to do business in the State must be submitted in writing no later than January 30, 1996, and reply comments no later than February 6, 1996, to:

Dr. Sarah P. Voll
Executive Director and Secretary
Public Utilities Commission
8 Old Suncook Road
Concord, New Hampshire 03301-7319

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Generic Investigation into IntraLATA Toll Competition Access Rates, DE 90-002, Order No. 20,916, 78 NH PUC 365, Aug. 2, 1993. [N.H.] Re Long Distance North of New Hampshire, Inc., et al., DE 87-249, Order No. 21,851, 80 NH PUC 628, Oct. 3, 1995.

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NH.PUC*01/10/96*[88987]*81 NH PUC 20*North American InTeleCom, Inc.

[Go to End of 88987]

81 NH PUC 20

Re North American InTeleCom, Inc.

DE 95-273
Order No. 21,974

New Hampshire Public Utilities Commission

January 10, 1996

ORDER authorizing a telecommunications carrier to provide service in penal institutions, limited to coinless, collect-only calls.

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1. RATES, § 565

[N.H.] Telephone rate design — Pay station service — In correctional institutions — Limited to coinless, collect-only calling capabilities. p. 20.

2. SERVICE, § 456

[N.H.] Telephone — Pay station service — In penal institutions — Limitations — Coinless, collect-only calling capabilities. p. 20.

BY THE COMMISSION:

ORDER

[1, 2] On October 5, 1995, North American InTeleCom, Inc. (NAITC), a Delaware corporation and wholly-owned subsidiary of Diamond Shamrock, Inc., filed with the New Hampshire Public Utilities Commission (Commission) an Application for Authority to Provide Intrastate Telecommunications Services, including alternative operator services and inmate phone services (Petition) and a Petition for Waiver of Rules (Petition for Waiver) seeking waivers of certain administrative rules, specifically: N.H. Admin. Rule Puc: 408.07(a) Dial tone, 408.07(c) Municipal Access, 408.08(a) Rates, 408.08(c) Access, 408.09 Call Receiving, 408.10 Identification, 408.11 Directory Assistance, and 408.12, (a) Coin Return, and (b) Coin Acceptance. NAITC proposes to utilize coinless telephones in correctional institutions.

Limiting service to collect-only calling provides correctional facilities with the control they require over inmate calling, which is in the public good. In lieu of markings, NAITC proposes to utilize oral branding so that both the caller and the called party accepting the charges will know the identity of the carrier. The staff of correctional facilities is responsible for administrative matters as well as reporting pay telephone service troubles.

NAITC bills for its timed services in full-minute increments, as is common in the telecommunications industry; however New England Telephone and Telegraph (NYNEX) bills for its timed services, such as collect calling, in single-second increments. In order to effectively comply with the intent of Puc 408.08(a) *Rates* NAITC proposes, therefore, to reduce its per-minute charges by $.01 from NYNEX's

Page 20

timed rates as ordered by the Commission for other companies offering similar services. [Addendum to Application (December 14, 1995)]. *See* Tele-Matic of New Hampshire, Corp., DE 94-079, Order No. 21,256 (June 7, 1994). NYNEX's toll timed rates can be referenced at NHPUC No. 75 Part A - Section 9, Page 7, Thirteenth Revision and its successors.

This Petition is essentially a hybrid of Customer Owned Coin Operated Telephone (COCOT) and intraLATA toll service. The Commission previously approved numerous, similar petitions (for toll service) filed during the Trial Period, pursuant to the Modified Stipulation Agreement (Stipulation) in Docket No. DE 90-002, approved by Order No. 20,916 (August 2, 1993). Our orders in those numerous dockets granted the petitioner interim authority to offer intraLATA toll service, specifically excluding local exchange service, for the service territory of the entire State of New Hampshire, during the Trial Period, in order to allow the Commission to analyze competition during the two-year Trial Period.

Because the Trial Period identified by the Stipulation expired on September 30, 1995, we have explicitly clarified that the authority we had granted remains in effect until we specifically modify or revoke that authority, after analysis of the Trial Period. *See* Order No. 21,851 (October 3, 1995). Likewise, our grant of authority ordered herein remains in effect until we specifically modify or revoke that authority.

The public good is served by permitting competition by telecommunications companies. The Commission permits competitive entry in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition.

Our Staff has reviewed the petition and concludes that the waivers requested are reasonable in consideration of the circumstances. In particular, they noted that the adoption of a full-minute rate, decreased by $.01 per minute, was found in DE 94-079 to yield the same effective rate on average as NET's single-second billing. Our limited waiver of Puc 408.08(a) is intended to remove NAITC's ability to charge the "approved surcharge." It is not intended to allow effective rates above the NYNEX tariff; the more restrictive operation of the waiver is a countermeasure necessary to balance other waivers, such as removing the caller's right to access competing carriers.

After reviewing the Petition and the Petition for Waiver, we find the waivers and increased

competition in the provision of telecommunication services to correctional facilities to be in the public good.

Based on the foregoing, it is hereby

ORDERED, that NAITC's Application for Waiver of Rules is approved for the limited purposes of pay telephones installed within correctional facilities; and it is

FURTHER ORDERED, that our Waiver of N.H. Admin Rule Puc 408.08(a) is limited to the elimination of NAITC's right to charge "the approved surcharge"; and it is

FURTHER ORDERED, that NAITC's timed rates for services originated from pay telephones installed within correctional facilities shall be capped at $.01 cent below the tariffed timed rates of NYNEX until NAITC bills its timed services in single-second increments, and shall be capped at the NYNEX timed rates after NAITC establishes single-second billing; and it is

FURTHER ORDERED, that NAITC is subject to all other Statutes, Rules and Orders of the Commission, including specifically N.H. Admin. Rule Puc 408.15 Application (Form E-29); and it is

FURTHER ORDERED, that NAITC is granted authority to offer as a telecommunications public utility intraLATA toll service, specifically excluding local exchange service, for the service territory of the entire State of New Hampshire, subject to the following conditions:

1. The services shall be offered by approved tariffs.

2. The services shall be offered until the Commission orders otherwise.

3. NAITC shall file tariffs for new services and changes in approved services (other than rate changes), with effective dates of no less than 30 days after the date the tariffs are filed

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with the Commission.

4. Within one business day of offering an approved service to the public (other than calls originated from inmate phones) at a rate different from its rates on file with the Commission, NAITC shall notify the Commission of the change.

5. NAITC is exempted from NH Admin Rules, Puc 406.03 Accounting Records; Puc 407 Forms Required of All Telephone Utilities; and Puc 409 Uniform System of Accounts for Telecommunications Companies.

6. NAITC shall maintain its books and records in accordance with Generally Accepted Accounting Principles.

7. NAITC 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. NAITC 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. NAITC shall compensate the appropriate Local Exchange Company for all originating and terminating access used by NAITC pursuant to NET Tariff N.H.P.U.C. 79, Switched Access Service Rate or its relevant equivalent contained in the tariffs of the Independent Local Exchange Companies.

10. New Service offerings filed for approval with the Commission shall be accompanied by tariff pages describing the service, rates and effective dates; and it is

FURTHER ORDERED, that the authority granted herein remains in full force and effect until the commission ordered otherwise; and it is

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

FURTHER ORDERED, that pursuant to RSA 363-A:1, et seq. NAITC 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 NAITC shall file a compliance tariff with the Commission on or before February 9, 1996, in accordance with NH Admin. Rules, Puc 1601.01 (b); and it is

By order of the New Hampshire Public Utilities Commission this tenth day of January, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Generic Investigation into IntraLATA Toll Competition Access Rates, DE 90-002, Order No. 20,916, 78 NH PUC 365, Aug. 2, 1993. [N.H.] Re Long Distance North of New Hampshire, Inc., et al., DE 87-249, Order No. 21,851, 80 NH PUC 628, Oct. 3, 1995. [N.H.] Re Tele-Matic of New Hampshire, Corp., DE 94-079, Order No. 21,256, 79 NH PUC 327, June 7, 1994.

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NH.PUC*01/15/96*[88988]*81 NH PUC 22*LDDS Communications, Inc.

[Go to End of 88988]

81 NH PUC 22

Re LDDS Communications, Inc.

DR 95-348
Order No. 21,975

New Hampshire Public Utilities Commission

January 15, 1996

ORDER approving an interexchange telephone carrier's plan to introduce new promotional

offerings as part of its "WorldOne Association" service. The new options provide for additional discounts for those subscribers with minimum monthly usage levels that sign long-term WorldOne service agreements.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll

Page 22

service — Introduction of new "WorldOne Association" promotional offerings — Additional discounts — For minimum monthly volume of calls — For subscribers signing long-term service agreements — Interexchange carrier. p. 23.

BY THE COMMISSION:

ORDER

[1] On December 15, 1995, the New Hampshire Public Utilities Commission (Commission) received a petition from LDDS Communications, Inc., (LDDS) requesting authority to introduce WorldOne Association and various promotional offerings, and to revise terms of the WorldOne Extended Service Plan for effect January 25, 1996.

WorldOne Association is a benefit package offered in conjunction with WorldOne service, which allows the individual users who are members or employees of the participating organization to receive additional product discounts.

Three promotional offerings are being introduced. The Home Advantage Promotion will waiver the monthly recurring charges for new customers. The WorldOne Switched Advantage Promotion will offer a discounted rate to new customers who sign a minimum term agreement of 1 year. The WorldOne Ultimate Advantage Promotion will offer customers who have received a competitive proposal from another carrier a discounted flat rate for peak and off-peak WorldOne dedicated and switched services. The customer must commit to a 1 year term agreement with a minimum monthly usage of $1,000 or $3,000 for switched or dedicated usage respectively.

The proposed revision to the WorldOne Extended Service Plan requires customers who terminate service prior to the end of the term commitment to pay a cancellation penalty.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize LDDS to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of LDDS' tariff, NHPUC No. 2 are approved for effect as filed:

4th Revised Page 1

3rd Revised Page 1.1

2nd Revised Page 1.2

1st Revised Page 3

2nd Revised Page 4

Original Page 4.1

1st Revised Page 74.2

1st Revised Page 74.3

Original Page 74.4

Original Page 105.8

Original Page 109.1

Original Page 109.2;

and it is

FURTHER ORDERED, that LDDS file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this fifteenth day of January, 1996.

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NH.PUC*01/15/96*[88989]*81 NH PUC 23*MFS Intelenet of New Hampshire, Inc.

[Go to End of 88989]

81 NH PUC 23

Re MFS Intelenet of New Hampshire, Inc.

DR 95-350
Order No. 21,976

New Hampshire Public Utilities Commission

January 15, 1996

ORDER approving an interexchange telephone carrier's proposals for implementing a "casual

calling" option and for placing a credit limit of $25 per month on new calling card customers.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Tariff revisions — Introduction of "casual calling" option — No presubscription necessary — "10XXX" access dialing — Interexchange carrier. p. 24.

2. RATES, § 582

[N.H.] Telephone rate design — Toll service — Tariff revisions — Calling card service — Monthly credit limits on new customers — Interexchange carrier. p. 24.

BY THE COMMISSION:

ORDER

[1, 2] On December 15, 1995, the New Hampshire Public Utilities Commission (Commission) received a petition from MFS Intelenet of New Hampshire, Inc., (MFS) requesting authority to introduce Casual Calling service and an initial credit limit on calling cards, for effect January 15, 1996.

Casual Calling service is an outbound toll service to which subscription is not necessary. Customers access the service by dialing the MFS 10XXX or 101XXXX access code and the ten digit terminating phone number.

The proposed revision to MFS Intelenet Calling Card Service limits credit on calling cards to $25.00 per month for new customers. Customers may call MFS to increase the monthly limit.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize MFS to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of MFS' tariff, NHPUC No. 1 are approved for effect as filed:

7th Revised Page 1

Original Page 24.12

3rd Revised Page 25.1

1st Revised Page 27.3;

and it is

FURTHER ORDERED, that MFS file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this fifteenth day of January, 1996.

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[Go to End of 88990]

81 NH PUC 24

Re Cable and Wireless, Inc.

DR 95-340
Order No. 21,977

New Hampshire Public Utilities Commission

January 15, 1996

ORDER approving an interexchange telephone carrier's proposed tariff revisions, which, among other things, introduce new promotional offerings, a prepaid calling card service, and a "Business First Basics" service.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll services — Business customers — Tariff revisions — New promotional offerings — New prepaid calling card service — Interexchange carrier. p. 25.

BY THE COMMISSION:

ORDER

[1] On December 4, 1995, the New Hampshire Public Utilities Commission (Commission) received a petition from Cable & Wireless, Inc. (CWI) requesting authority to restructure its tariff and introduce Tariff No. 3.

In its filing, CWI stated that the new tariff has been restructured to make it uniform with other CWI tariffs. In addition, the new tariff updates CWI rates and introduces Business First Basics, Prepaid Calling Card service, Promotional Offerings on seven days notice, and various additional discount plans.

The proposal received on December 4, 1995, contained certain terms and conditions that did not comply with the Commission's administrative rules. CWI worked with the Commission staff to redraft these sections in order to comply with the rules. Revised pages were received on January 5, 1996, but did not contain new revision numbers. Therefore, the corrected pages 11, 13, 15 and 44 are identified as Original pages as were those filed on December 4.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize CWI to introduce its tariff NHPUC No. 3.

Based upon the foregoing, it is hereby

ORDERED, that CWI's tariff NHPUC No. 3, including corrected pages 11, 13, 15 and 44, is approved for effect on the date of this order; and it is

FURTHER ORDERED, that CWI file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities

Commission of New Hampshire this fifteenth day of January, 1996.

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NH.PUC*01/15/96*[88991]*81 NH PUC 25*Innovative Telecom Corporation

[Go to End of 88991]

81 NH PUC 25

Re Innovative Telecom Corporation

DE 95-347
Order No. 21,978

New Hampshire Public Utilities Commission

January 15, 1996

ORDER approving an interexchange telephone carrier's proposals for various tariff revisions which modify service rules and regulations but change no rates or charges.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Tariff revisions — Applicability to rules and regulations — But no actual change in rates — Interexchange carrier. p. 25.

BY THE COMMISSION:

ORDER

[1] On December 15, 1995, the New Hampshire Public Utilities Commission received a petition from Innovative Telecom Corporation (ITC) requesting authority to introduce a new

tariff, ITC NHPUC No. 3, replacing the ITC NHPUC No. 2 tariff in its entirety.

The proposed tariff primarily modifies the Rules and Regulations section and reformats the tariff. No rates have been changed as a result of this filing. Because the revisions modified more than 50 percent of the existing pages, ITC filed a complete new tariff. The Company revised some of the proposed changes that did not comply with the

Page 25

Commission's Administrative Rules.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize ITC to introduce its tariff, ITC NHPUC No. 2.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of ITC's tariff, NHPUC No. 3 are approved for effect on the date of this order:

Original Title Page

1st Revised Page 1 in lieu of Original

Original Pages 2-26

1st Revised Page 27 in lieu of Original

1st Revised Page 28 in lieu of Original

Original Page 29

1st Revised Page 30 in lieu of Original

Original Page 31;

and it is

FURTHER ORDERED, that ITC file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this fifteenth day of January, 1996.

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NH.PUC*01/15/96*[88992]*81 NH PUC 26*Northern Utilities, Inc.

[Go to End of 88992]

81 NH PUC 26

Re Northern Utilities, Inc.

DE 95-341
Order No. 21,979

New Hampshire Public Utilities Commission

January 15, 1996

ORDER authorizing a natural gas local distribution company to extend its service area to include the towns of Durham and Madbury.

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1. SERVICE, § 199

[N.H.] Extensions — By gas utility — Factors affecting approval — Contiguity of service areas — Additional energy resources for consumers — Support of local municipal agencies. p. 26.

BY THE COMMISSION:

ORDER

[1] The Petitioner, Northern Utilities Inc. (Northern), on December 5, 1995, filed a petition for authority under RSA 374:22 and RSA 374:26 to provide natural gas service within the towns of Durham and Madbury, New Hampshire.

On January 9, 1996, Staff, with concurrence from the Office of Consumer Advocate, recommended that the petition be granted. In its memorandum, Staff cited the following arguments in support of its recommendation: 1) the communities to be served are contiguous with existing service territories; 2) the towns of Durham and Madbury support the petition; 3) expansion of the franchise territory will not adversely affect existing gas supply resources; 4) consumers in the region will be provided an additional energy resource from which to choose; and 5) the utilization of natural gas is consistent with the National Energy Policy Act.

After reviewing the merits of the arguments set forth above, and in accordance with RSA 374:26, we find that the granting of the petition is in the public good and will grant approval.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that the petition of Northern for authority to provide natural gas service within the towns of Durham and Madbury, New Hampshire is granted; and it is

FURTHER ORDERED, that Northern shall serve a copy of this Order *Nisi* on the Durham Town Clerk, the Madbury Town Clerk, Public Service Company of New Hampshire, and EnergyNorth Natural Gas Inc. by first class

mail and, pursuant to N.H. Admin. Rules, Puc 1601.05, Northern shall cause an attested copy of this Order *Nisi* to be published once in a statewide newspaper of general circulation, such

service and publication to be no later than January 22, 1996 and to be documented by affidavit filed with this office on or before January 29, 1996; and it is

FURTHER ORDERED, that all persons interested in responding to this petition may submit their comments or file a written request for a hearing on this matter before the Commission no later than February 5, 1996; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective February 14, 1996, 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 January, 1996.

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NH.PUC*01/15/96*[88993]*81 NH PUC 27*Great Bay Power Corporation

[Go to End of 88993]

81 NH PUC 27

Re Great Bay Power Corporation

DF 95-332
Order No. 21,980

New Hampshire Public Utilities Commission

January 15, 1996

ORDER authorizing a part owner of the Seabrook nuclear power plant to issue additional shares of capital stock for use in (1) a stock option plan available to employees, officers, and advisors, and (2) a warrant purchase agreement with a marketing agent.

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1. SECURITY ISSUES, § 119.2

[N.H.] Additional shares of stock — Financing methods — Stock option plans — Available to employees, officers, and advisors — As incentive compensation — Exempt wholesale generator. p. 27.

2. SECURITY ISSUES, § 119.1

[N.H.] Additional shares of stock — Financing methods — Warrant purchase agreement — Available to power marketing agent — As equity investment — Exempt wholesale generator. p. 27.

BY THE COMMISSION:

ORDER

[1, 2] The Petitioner, Great Bay Power Corporation (Great Bay) filed with the New Hampshire Public Utilities Commission (the Commission) on November 28, 1995, a petition for authorization for Great Bay (a) to amend its Articles of Incorporation in order to increase the number of authorized shares of its capital stock, (b) grant incentive stock options (Options) to certain employees, officers, directors and advisors of Great Bay, (c) to issue a warrant (Warrant) for purchase of shares, and (d) to issues shares pursuant to the Warrant and the Options, to the extent that such authorization is required under RSA 369:1 and 369:14.

Great Bay, an exempt wholesale generator, is a New Hampshire corporation formed in 1985 and authorized by the Commission pursuant to New Hampshire RSA §§ 374:22 and 374:26 to engage in business in New Hampshire as a public utility solely for the purpose of participating as a joint owner in the construction of the Seabrook Nuclear Power Project (Seabrook Station) and upon completion of construction, for the purpose of selling its share of the output of Seabrook for resale. Great Bay's principal asset is an undivided 12.1324% interest in the Seabrook facility.

Great Bay has entered into a long term marketing agreement with PECO Energy Company (PECO), under which PECO will act as Great Bay's exclusive marketing agent for the uncommitted portion of Great Bay's Seabrook entitlement. PECO is a Pennsylvania corporation providing retail electrical service in Southeastern Pennsylvania.

Page 27

Great Bay is authorized under its Restated Articles of Incorporation to issue 8,000,000 shares of $.01 par value common stock of which 7,999,998 shares are currently issued and outstanding.

In its filing, Great Bay seeks authority to amend its Articles of Incorporation in order to increase the number of authorized shares of its capital stock from 8,000,000 shares to 20,000,000 shares of $.01 par value common stock; and to authorize a new class of undesignated Preferred Stock, consisting of 5,000,000 shares of $.01 par value per share, the terms and rights of which may be designated by the Board of Directors. The approval of the requested increase in the capital stock of Great Bay will enable the Company to have available shares for issuance pursuant to Great Bay's Stock Option Plan, and to fulfill the terms of a Warrant Purchase Agreement with PECO.

Great Bay is requesting approval for the Great Bay Power Corporation 1995 Stock Option Plan (the Plan) under which Options to purchase 600,000 shares of the Company's $.01 par value per share Common Stock may be granted. On April 24, 1995, the Board of Directors approved the Plan which provides Options to purchase up to 60,000 shares of Common Stock, per individual, that may be granted as incentive compensation to individuals who are at the time of the grant, employees, officers or directors of, or consultants or advisors to, Great Bay. Options may be exercised prior to the seventh anniversary of the date of the grant and the exercise price will be the fair market value on the date of grant.

To enhance its financial strength and reinforce its marketing relationship with PECO through a substantial equity investment with PECO, Great Bay proposes to enter into a Warrant Purchase Agreement, as amended, with PECO pursuant to which it will sell to PECO, for $1,000,000, a Common Stock Purchase Warrant which entitles PECO to purchase from Great Bay 420,000 shares of Great Bay common stock, $.01 par value per share (the Warrant Shares) at a price per

share equal to the greater of:

a. $9.75 per share; or,

b. the highest price at which a share of Great Bay's common stock has traded on the National Association of Securities Dealers National Market from the date on which an amendment to Great Bay's Certificate of Incorporation is filed with the New Hampshire Secretary of State increasing the number of its authorized shares of Common Stock to a number sufficient to permit it to reserve shares for issuance pursuant to the Warrant through the date on which PECO exercises the warrant.

If PECO purchases the Warrant Shares, the $1,000,000 purchase price for the Warrant will be credited toward the purchase price of the Warrant Shares. The Warrant expires on the earliest of the following:

(1) September 30, 1996, if the Seabrook capacity factor for the period from the date PECO begins to provide services under the marketing agreement referred to in Paragraph 3 above (the Service Commencement Date) through September 15, 1996 is equal to or greater than 60%;

(2) December 31, 1996, if the Seabrook capacity factor for the period from the Service Commencement Date through December 15, 1996 is equal to or greater than 60%;

(3) two business days following the first date after December 31, 1996 that the Seabrook capacity factor for the immediately preceding twelve months is equal to or greater than 60%; or

(4) December 31, 1997.

We have reviewed Great Bay's petition for authorization to amend its Articles of Incorporation in order to increase its number of authorized shares of capital stock, issue warrants and options, and issue new stock pursuant to the exercise of the warrants and options, and the Great Bay and PECO Warrant Purchase Agreement. Given the terms of the Warrant Purchase Agreement and the Great Bay Power Corporation 1995 Stock Option Plan, we find the petition to be consistent with the public good pursuant to RSA 369:1 and 369:14.

Based upon the foregoing, it is hereby

ORDERED, that the petition by Great Bay filed November 28, 1995 is consistent with the public good pursuant to RSA 369:1 and 369:14

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and is therefore APPROVED; and it is

FURTHER ORDERED, that the Commission hereby grants to Great Bay the authority and approval to amend its Articles of Incorporation in order to increase its capital stock from eight million (8,000,000) shares to twenty million (20,000,000) shares of $.01 par value common stock; and to create a new class of undesignated Preferred Stock, $.01 par value per share, consisting of five million (5,000,000) shares; and it is

FURTHER ORDERED, that the Commission hereby grants Great Bay its authorization and approval to issue Options under the 1995 Stock Option Plan, which Options to purchase 600,000 shares of the Company's $.01 par value per share Common Stock may be granted to key personnel upon the terms set forth in the Plan; and it is

FURTHER ORDERED, that the Commission hereby grants Great Bay the authority and approval of the sale and issuance of a Common Stock Purchases Warrant to PECO, upon the terms set forth in the Warrant Purchase Agreement; and it is

FURTHER ORDERED, that Great Bay is authorized to apply the proceeds of the Warrant and any shares sold pursuant thereto to Great Bay's general corporate purposes; and it is

FURTHER ORDERED, that after executing all documents necessary to complete this transaction, Great Bay shall file copies of the same with the Commission.

By order of the Public Utilities Commission of New Hampshire this fifteenth day of January, 1996.

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NH.PUC*01/15/96*[88994]*81 NH PUC 29*New Hampshire Electric Cooperative, Inc.

[Go to End of 88994]

81 NH PUC 29

Re New Hampshire Electric Cooperative, Inc.

DE 95-363
Order No. 21,981

New Hampshire Public Utilities Commission

January 15, 1996

ORDER authorizing an electric cooperative to construct and maintain submarine power cables under Squam Lake for providing service to a customer on an island.

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1. ELECTRICITY, § 6

[N.H.] Wires and cables — Power cables — Crossing of public waters as a factor — Underwater installation — For meeting island customer's service request — Electric cooperative. p. 29.

2. CONSTRUCTION AND EQUIPMENT, § 5

[N.H.] Cable lines — Underwater conduits — Crossing of public waters as a factor — For meeting island customer's service request — Electric cooperative. p. 29.

BY THE COMMISSION:

ORDER

[1, 2] On December 26, 1995, New Hampshire Electric Cooperative, Inc. (NHEC) filed with the New Hampshire Public Utilities Commission (Commission) a petition pursuant to RSA 371:17 to install and maintain a submarine power cable under the public waters of Squam Lake in the Town of Center Harbor, New Hampshire. The cable will supply electric power as requested by Austin Furst, owner of, and sole customer of the service to be provided on, Mouse Island on Squam Lake.

Electric service will consist of a radial supply circuit extending one span from an existing overhead service pole and then crossing to Mouse Island at subsurface depths averaging 20 feet. The 1/0, 15 KV submarine electric cable will extend approximately 1,350 feet and will be operated at 7,200 volts.

In order to provide this service, NHEC must maintain this submarine cable through public waters, which are defined by RSA 371:17 as "all ponds of more than ten acres,

Page 30

tidewater bodies, and such streams or portions thereof as the Commission may prescribe." NHEC's crossing of a portion of Squam Lake therefore involves crossing of public waters.

NHEC has obtained and filed with the Commission copies of all applicable permits, licenses, easements and right-of-ways including Permit No. 95-01870, issued by the Wetlands Board, Department of Environmental Services. NHEC has attested, and Staff agrees, that the construction of the crossing must meet or exceed the requirements of the 1993 National Electric Safety Code as well as all other applicable safety standards.

The Commission finds such a crossing necessary for NHEC to meet its obligation to provide electric service within its authorized franchise area, thus being in the public good.

The public should be offered the opportunity to respond in support of, or in opposition to, said petition.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that NHEC is authorized, pursuant to RSA 371:17, *et seq.*, to install and operate a submarine electric cable beneath Squam Lake as well as associated plant depicted on NHEC Staking Sheets for Work Order No. 527171 and other documentation on file with this Commission unless the Commission otherwise directs prior to the proposed effective date; and it is

FURTHER ORDERED, that all reconstruction hereafter performed shall conform to the requirements of the National Electrical Safety Code and all other applicable safety standards in existence at that time; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 1601.05, NHEC shall cause a copy of this Order *Nisi* to be published once in a newspaper of general circulation in the area of Center Harbor, such publication to be no later than January 22, 1996 and to be documented by

affidavit filed with this office on or before January 29, 1996; and it is

FURTHER ORDERED, that NHEC notify the Town of Center Harbor of this matter by serving a copy of this order on the Town Clerk by first-class mail postmarked no later than January 22, 1996, with said notification to be verified by affidavit filed on or before January 29, 1996; and it is

FURTHER ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or file a written request for a hearing on this matter before the Commission no later than February 5, 1996; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective February 14, 1996, 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 January, 1996.

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NH.PUC*01/15/96*[88995]*81 NH PUC 30*Union Telephone Company

[Go to End of 88995]

81 NH PUC 30

Re Union Telephone Company

DR 95-311
Order No. 21,982

New Hampshire Public Utilities Commission

January 15, 1996

ORDER adopting a procedural schedule for an investigatory proceeding relating to alleged excess earnings by a local exchange telephone carrier.

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1. RETURN, § 43

[N.H.] Factors affecting reasonableness — Past earnings or losses — Allegations of excess earnings — Investigatory proceeding — Procedural schedule — Local exchange telephone carrier. p. 30.

BY THE COMMISSION:

ORDER

[1] On November 7, 1995 the New Hampshire Public Utilities Commission

(Commission) issued an Order of Notice pursuant to RSA 365:5 and 378:7 opening an investigation into the level of earnings of Union Telephone Company (Union). The Order of Notice scheduled a prehearing conference for December 19, 1995 to address the issue of temporary rates and motions to intervene, and to establish a procedural schedule to govern the Commission's investigation into the reasonableness of Union's earnings.

At the prehearing conference Union, the Office of the Consumer Advocate (OCA), and the Commission Staff (Staff) presented a stipulated procedural schedule and a settlement agreement on the issue of temporary rates and set forth their initial positions in the case.

The stipulated procedural schedule is as follows:

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

Company Filing	April 15, 1996
Staff Audit	April 1 - 26, 1996
1st Staff Data Requests	May 15, 1996
Company Data Responses	May 19, 1996
1st Technical Session	June 12, 1996
2nd Staff Data Requests	June 19, 1996
2nd Data Responses	July 3, 1996
Staff Testimony	August 7, 1996
1st Company Data Requests	August 21, 1996
Staff Data Responses	September 4, 1996
Settlement Discussions	September 11, 1996
2nd Company Data Requests	September 25, 1996
Settlement Discussions	October 2, 1996
Stipulation, if any, to Commissioners	October 9, 1996
Hearings	October 16 and 17, 1996

The stipulated procedural schedule anticipates an analysis of earnings during a 1995 test year, which necessitates a delay in the investigation until Union has closed its 1995 books. Thus, the procedural schedule commences on April 15, 1996.

The agreement on temporary rates provides, in relevant part, that "[a]ll Union's approved tariffed rates that are in effect during the duration of this rate case shall be temporary rates pursuant to RSA 378:27." Agreement at ¶ 2. At the hearing, the parties and Staff noted that this agreement would protect both Union and its customers from under-collections or over-collections during the pendency of the Commission's investigation. RSA 378:29 and 30.

Union stated that it had no position relative to its earnings until a review of its 1995 earnings and costs is completed. Staff stated that based on its analysis of currently available data it believes Union has been earning an excessive rate of return on its investments. The OCA took no

position.

We will accept the stipulated procedural schedule to govern our investigation into this matter. We note that the schedule includes a second set of data requests addressed to Staff, with no date for responses. We will consider a minor adjustment to the schedule if necessary. While we are concerned about the delay in bringing this matter to closure, we believe the use of 1995 data will provide a more accurate analysis of Union's earnings. Furthermore, the delay will not prejudice either ratepayers or Union because we will accept the stipulation and set Union's approved rates as temporary rates during our investigation. Thus, any services Union currently offers or may offer its customers prior to a decision in this case shall be subject to reconciliation with that decision.

Based upon the foregoing, it is hereby

ORDERED, that the procedural schedule stipulated to by the parties and Staff is adopted to govern our investigation in this proceeding; and it is

FURTHER ORDERED, that all of Union Telephone Company's approved tariffed rates

that are in effect during the duration of this rate case shall be temporary rates pursuant to RSA 378:27.

By order of the Public Utilities Commission of New Hampshire this fifteenth day of January, 1996.

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NH.PUC*01/17/96*[88996]*81 NH PUC 32*New England Telephone and Telegraph Company

[Go to End of 88996]

81 NH PUC 32

Re New England Telephone and Telegraph Company

DE 95-352
Order No. 21,983

New Hampshire Public Utilities Commission

January 17, 1996

ORDER approving a local exchange telephone carrier's proposed reformatting of certain existing tariffs.

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1. RATES, § 234

[N.H.] Schedules and procedure — Revisions to existing tariffs — Form versus substance — Incorporation of format changes in complete new tariff filing — Local exchange telephone

carrier. p. 32.

BY THE COMMISSION:

ORDER

[1] On December 19, 1995, New England Telephone and Telegraph Company (NYNEX) filed with the New Hampshire Public Utilities Commission (Commission) an administrative tariff filing which reformatted the existing and effective NHPUC No. 75 tariff. The Company is requesting an effective date of January 18, 1996. Staff has reviewed the tariff and noted a number of omissions that NYNEX has corrected.

The new format primarily changes the layout of the existing tariff. However, the revised format also deleted the annotations that exist in all previously revised pages of NYNEX's current tariff, which is contrary to NH Admin. Rules Puc 1601.05(k). In order to comply with the administrative rules, NYNEX can file a complete new tariff of which only the title page will require annotation.

Based upon the foregoing, it is hereby

ORDERED, that the proposed format changes to NYNEX's Tariff NHPUC No. 75 are approved; and

FURTHER ORDERED, that the Company file a complete new tariff, incorporating the approved changes and annotated as required.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of January, 1996.

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NH.PUC*01/18/96*[88997]*81 NH PUC 32*Consumers New Hampshire Water Company, Inc.

[Go to End of 88997]

81 NH PUC 32

Re Consumers New Hampshire Water Company, Inc.

DR 95-124
Order No. 21,984

New Hampshire Public Utilities Commission

January 18, 1996

PETITION by water utility for approval of its proposal for implementing a rate increase under bond, pending commission resolution of its general rate increase request; granted.

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1. RATES, § 656

[N.H.] Procedure — Rates pending investigation — Implementation of rate increase under bond — Refunding provisions as to possible overcollections — No recoupment of undercollections — Water utility. p. 34.

2. RATES, § 39

[N.H.] Commission jurisdiction —

Page 32

Procedural matters — Bonded rates — No authority to prohibit — Review authority limited to form of the bond. p. 34.

APPEARANCES: As previously noted.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

Consumers New Hampshire Water Company, Inc. (Consumers) filed on June 20, 1995 a petition with the New Hampshire Public Utilities Commission (Commission) for an overall 23.1 % rate increase. Consumers did not seek temporary rates. The case is now in the discovery stage and hearings are scheduled for March 14-22, 1996. A full procedural history is set forth in Order No. 21,874 (October 23, 1995). This order will address Consumers' Motion on Bonded Rates.

On December 22, 1995, Consumers filed a Motion on Bonded Rates to put the proposed increase into effect January 20, 1996, which is six months from the proposed effective date of Consumers' rate increase request. The bond requires Consumers to pay the difference, if any, between the amounts collected under its proposed rate schedules and the schedule of rates finally determined by the Commission to be the permanent rates. Consumers stated it would propose deferring the collection of 50% of the increase pending final approval of the Commission, but would not pursue this deferral approach if a challenge were filed with the Commission.

On December 27, 1995, the Office of the Consumer Advocate (OCA) filed its Response to Consumers' Motion on Bonded Rates, in which it opposed the use of bonded rates and stated it would further litigate the issue. On January 4, 1996, the Town of Hudson (Hudson) also filed an Objection to Consumers' Motion on Bonded Rates.

On January 3, 1996, Consumers notified the Commission that because of OCA's objection, it was withdrawing its proposal to defer recovery of 50% of rates under bond and instead would proceed with the full bonded rates for service rendered on and after January 20, 1996, once the Commission approved the bond. Consumers also stated that it is prepared to make refunds with interest at the prime interest rate as of the date of the final order, from the time each customer makes a payment under bonded rates.

II. POSITIONS OF THE PARTIES

A. *Consumers*

Consumers argues it is entitled to place the proposed increase under bond pursuant to RSA 378:6,III provided the terms of the bond are acceptable to the Commission. In light of OCA's intention to litigate the issue of deferring collection of 50% of the amount pending final Commission approval, Consumers withdrew its alternate proposal. Consumers will track payments by each customer to enable customer specific refunds, if any, and will make its best efforts to acquire a forwarding address for each customer who leaves the system in order to send refunds, if owing.

B. *OCA*

OCA opposes placing all or part of the proposed rates under bond, under any circumstances, based on the arguments presented to the New Hampshire Supreme Court in Docket No. 95-799. In that appeal, OCA argued that Consumers' petition was insufficient and should have been dismissed or, in the alternative, the period for review and placing of rates under bond should be extended.

C. *Hudson*

Hudson objects to any increase in rates affecting Hudson's ratepayers and therefore opposes any increase being placed under bond. It asks that the Commission defer ruling on Consumers' Motion on Bonded Rates until it

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has reviewed Hudson's direct testimony.

III. COMMISSION ANALYSIS

[1, 2] RSA 378:6 (III) provides:

> If for any reason the commission is unable to make its determination prior to the expiration of 6 months from the originally proposed effective date of a rate schedule the public utility affected may place the filed schedule of rates in effect ... upon furnishing the commission a bond in such form and with such sureties, if any, as the commission may determine. The bond and sureties, if any, shall secure the repayment to the customers of the public utility of the difference, if any, between the amounts collected under said schedule of rates and the schedule of rates determined by the commission to be just and reasonable.

The foregoing statute does not give the Commission the authority to determine if bonded rates are in the public interest or otherwise rule on the appropriateness of placing rates under bond. The Commission's authority, pursuant to this statute, is limited to a determination of whether the form of the bond is satisfactory. *See Nelson v. Public Service Co. of N.H.*, 119 NH 327, 330 (1979)

We stated in Order No. 21,874 (October 23, 1995) that we hoped Consumers would not place the proposed increase under bond, but as we noted in that order, and will reiterate herein, we do not have the authority to prohibit Consumers from doing so. We cannot approve or reject the implementation of rates under bond if the form of the bond is satisfactory. It is with that extremely limited role, therefore, that we address Consumers' Motion on Bonded Rates and

responses thereto.

The parties are proceeding in the docket in accordance with a Commission approved procedural schedule. Because the Parties and Staff are still in the discovery phase of the case, with hearings scheduled for March 14-22, 1996, the case will not have concluded by January 20, 1996, which is six months from the proposed effective date of Consumers' rate increase request. Therefore, Consumers is free to place the proposed rates under bond if the form of the bond is acceptable to the Commission.

Consumers has proposed a bond to pay, with interest, any difference between the amounts collected under its proposed rate schedules and the schedule of rates finally determined by the Commission to be just and reasonable. We note that, unlike temporary rates, the bonded rates are only reconcilable downward; Consumers is not entitled to recover any under-collection if the rates ultimately approved are above Consumers' proposed rates. The form of the bond closely follows that used by Hampton Water Works in DR 91-023, the most recent case involving rates under bond.

We find the form of the bond to be acceptable with the following modifications. The bond should be worded as a pledge to the Commission on behalf of Consumers' customers and not to the individual Commissioners. The phrase, "after rehearing and judicial review, if the final rate order is challenged by any party," should be removed. Our preliminary view of RSA 378:6, III is that it does not appear to permit the continuation of bonded rates beyond the time at which the Commission establishes rates it finds just and reasonable.

Hudson's request that we evaluate its testimony before ruling on Consumers' Motion on Bonded Rates is not consistent with the law and is therefore denied.

The Commission has already ruled on and rejected OCA's request that the rate case petition should have been dismissed or in the alternative, the schedule significantly extended. *See*, Order No. 21,796 (August 28, 1996). It is that order that OCA appealed to the New Hampshire Supreme Court. On January 3, 1996 the Court issued a ruling declining to accept the appeal, without prejudice. Having denied this request previously, we see no reason to further address OCA's arguments.

Based upon the foregoing, it is hereby

ORDERED, that the form of Consumers' proposed bond as amended is approved, pursuant to RSA 378:6,III; and it is

FURTHER ORDERED, that Consumers file an executed bond with the Commission; and it is

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FURTHER ORDERED, that the filed schedule of rates, Tariff Supplement No. 5 to NHPUC No. 9 - Water Consumers New Hampshire Water Company, Inc., are approved for service rendered on and after January 20, 1996 pending final determination; and it is

FURTHER ORDERED, that at the close of the docket, Consumers will refund the amount of any over-collection with interest at the prime rate; and it is

FURTHER ORDERED, that while providing service under the tariff, Consumers will track payments on a customer specific basis so that any refunds would be made on a customer specific basis. Consumers will use its best efforts to acquire a forwarding address for each customer who leaves the system while bonded rates are in effect and to send that customer the appropriate portion of any refund ordered by the Commission, based on the actual usage of that customer.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of January, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Consumers New Hampshire Water Co., DR 95-124, Order No. 21,796, 80 NH PUC 545, Aug. 28, 1995. [N.H.] Re Consumers New Hampshire Water Co., DR 95-124, Order No. 21,874, 80 NH PUC 666, Oct. 23, 1995.

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NH.PUC*01/18/96*[88998]*81 NH PUC 35*UNITIL Service Corporation

[Go to End of 88998]

81 NH PUC 35

Re UNITIL Service Corporation

Additional applicants: Concord Electric Company; Exeter and Hampton Electric Company

DR 95-176
Order No. 21,985

New Hampshire Public Utilities Commission

January 18, 1996

ORDER approving rates proposed by three electric utilities for a new "energy bank" service applicable to new or expanding industrial customers who have incremental loads of 100 kilowatts or greater and who agree to a minimum service term of two years.

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1. RATES, § 322

[N.H.] Electric rate design — Load factors — New "energy bank" service — Available to industrial and large power customers — Eligibility criteria — Minimum incremental load requirement of 100 kilowatts — Minimum service term of two years. p. 37.

2. RATES, § 345

[N.H.] Electric rate design — Industrial and large power customers — Special "energy bank" service — Based on average cost pricing rather than discounting — Separate customer, demand,

energy, and market supply charges. p. 37.

APPEARANCES: LeBoeuf, Lamb, Greene and MacRae by Scott J. Mueller, Esq. for Concord Electric Company and Exeter & Hampton Electric Company; Gerald M. Eaton, Esq. for Public Service Company of New Hampshire; Jacqueline Lake Killgore, Esq. for Public Utility Policy Institute; Henry G. Veilleux for Business and Industry Association of New Hampshire; Brown, Olson and Wilson by Paul A. Savage, Esq. for New England Cogeneration Association; Office of Consumer Advocate by Kenneth E. Traum for residential ratepayers; E. Barclay Jackson, Esq. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

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I. PROCEDURAL HISTORY

On June 15, 1995, Concord Electric Company (CECo) and Exeter & Hampton Electric Company (E&H) (collectively, the Companies) filed with the New Hampshire Public Utilities Commission (Commission) its Energy Bank Service Rates (Energy Bank), a form of economic development and business retention rate. The Commission, on July 14, 1995, in Order No. 21,744, suspended the filing pending development of Guidelines for Economic Development and Business Retention Filings (Guidelines), pursuant to 1995 N.H. Laws Chapter 272, commonly referred to as Senate Bill 168, and codified in pertinent part as RSA 378:11-a (SB 168).

The Commission granted intervention on July 14, 1995 by Order No. 21,744 to the Public Utility Policy Institute (PUPI), and on August 29, 1995 by letter of Dr. Sarah P. Voll, Executive Director and Secretary of the Commission, to Public Service Company of New Hampshire (PSNH), the Business and Industry Association (BIA), and the New England Cogeneration Association (NECA). The Office of Consumer Advocate (OCA) is a statutorily recognized intervenor pursuant to RSA 363:28.

The Commission adopted Guidelines for this type of tariff on November 6, 1995, (Order No. 21,895) and notified the Companies that after review of the Guidelines they should notify the Commission if they intended to amend the Energy Bank filing in any way. The Companies responded on November 13, 1995, with testimony, proposed amendments to the initial filing and a proposed procedural schedule in conformance with Order No. 21,895.

OCA filed the testimony of Kenneth E. Traum on December 13, 1995. Also on that date, BIA filed a statement of support for the Energy Bank proposal. The Commission heard evidence on the filing on December 22, 1995.

II. SUMMARY OF FILING

The Companies declare that the Energy Bank rates for incremental load of 100 kW or greater have been priced competitively with average national rates for industrial customers and will therefore provide an incentive for economic growth in New Hampshire. For example, they posit

that a customer with an 80% load factor, under current market conditions, would pay $0.05 per kWh as opposed to approximately $0.07 under standard CECo or E&H rates. The Companies noted as well that the New England average rate is in the neighborhood of $0.075 and that the PSNH rate is higher.

The Companies point out in testimony that Energy Bank pricing is fundamentally different from traditional electric pricing in that it employs a market-based, marginal cost component rather than relying entirely on pricing derived from average cost principles. The Energy Bank rates have four components, namely, a Customer Charge, a Demand Charge, an Energy Charge, and an Energy Bank Market Supply Cost Adjustment. Company witness Frederick J. Stewart, UNITIL Service Corp. Assistant Vice President for Market Planning and Pricing, explains that the

> Customer, Demand and Energy Charges reflect the non-power-supply charges for Energy Bank Service, and are designed to provide CECo and E&H with revenues to cover the incremental costs of Energy Bank Service, a contribution to the fixed costs of local transmission, distribution and other services, and an opportunity for the Companies to issue Power Dividend certificates to all customers .... The Customer charge is simply the Demand Charge rate applied to the first 200 KVA of demand, and the Demand Charge only applies to loads in excess of 200 KVA. The Energy Charge is set at a nominal level to reflect local energy losses and to allow rounding of the Demand Charge. Power Supply Charges for Energy Bank service are provided for in the EBMSCA [the Energy Bank Market Supply Cost Adjustment], which provides for an energy charge priced at the hourly system marginal cost for Energy Bank Service, and a demand charge priced on the basis of the sum of a fixed demand cost factor, a variable demand cost factor, and a delivery cost factor.

(Testimony, p. 5, November 13, 1995)

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In order to implement the power supply component of Energy Bank Service, the Companies propose a separate agreement between them and UNITIL Power Corp. As explained by Paul Weiss, UNITIL Service Corp. Assistant Vice President of Resource Planning and Procurement, the additional Power Supply Agreement is necessary because the existing System Agreement will not accommodate the delivery of Energy Bank service since it is based on average cost pricing and, moreover, there is no excess generation available under the existing arrangement. Correspondingly, the Companies assert that this is not a discounted rate situation since there is no product to discount but there is instead a new form of service with its own cost basis. The Companies provided a draft of the proposed Power Supply Agreement in the June 15, 1995 filing and intend to file it with the Federal Energy Regulatory Commission after this Commission grants its so called "*Sinclair* approval" of the agreement. *Appeal of Sinclair Machine Products*, Inc., 126 NH 822 (1985).

With respect to the terms and conditions of the retail Energy Bank, the Companies amended the service to make the rate available to new customers with electrical loads of at least 100 kW or existing customers that increase their electrical load by at least 100 kW. Customers must also

be classified as manufacturers having a Standard Industrial Code of 20 through 39. The minimum term of service under this rate is two years and service cannot extend beyond December 31, 2002. Furthermore, prospective customers must satisfy requirements of the New Hampshire Commercial Energy Code and are eligible for participation in the Companies' Demand Side Management programs.

Finally, the Companies attest that this new class of service will "provide substantial benefits to new industrial loads in the form of very competitive and responsive pricing, but will also provide significant benefits to all of CECo's and E&H's customers in the form of greater local economic activity, reduced power costs, investments in the Companies' transmission and distribution system and direct cash benefits in the form of Power Dividend certificates." (Stewart Testimony, pp. 3 and 4) Noteworthy benefits include the reduction of power supply costs and cash benefits through Power Dividend certificates. The Companies' proposal has been structured to achieve a rate that is ultimately competitive with national averages and which incorporates mechanisms that can produce benefits for other customers. For example, total Energy Bank revenues are expected to be greater than total Energy Bank costs and that difference will be available to all other customers in the form of redeemable Power Dividend certificates.

III. HEARING

Direct Testimony was prefiled in this proceeding, as noted above, by Messrs. Stewart and Weiss for the Companies and Mr. Traum for the OCA. The Companies' testimony has been summarized generally above. OCA testimony highlighted concerns with poaching by the Companies of the existing customers of other New Hampshire utilities and the interpretation of statutory language in SB 168 pertaining to the imputation to the revenue requirement of the difference between regular tariffed rates and an economic development rate. In addition, at the December 22, 1995 hearing, questioning of the witnesses was conducted by PUPI, PSNH, OCA, Staff and the Commission.

Among the issues pursued on questioning of the Companies' witnesses were (1) the treatment of Power Dividend certificates, (2) the necessity of the 100 kW minimum load eligibility requirement, (3) the meaning of the revenue imputation language in SB 168, (4) the proper accounting of revenues and costs, (5) the tracking of variable energy costs for customer information, and (6) other New Hampshire utilities' loss of customers to the Companies. Moreover, questions were raised about the applicability of the rate to competitors, the possible implication of antitrust laws, consequences of early termination of the rate by the customer and the possibility of the new rate imposing costs on existing customers.

IV. COMMISSION ANALYSIS

[1, 2] The eligibility requirements established by the Companies are consistent with our

Guidelines set forth in Order No. 21,895. We make specific note that the 100 kW minimum load requirement is reasonable inasmuch as it provides a measure of administrative ease in reviewing potential candidates for the rate and, at the same time, assures that real growth is accommodated. In addition, we find that the two year minimum term balances the considerations of being long enough to provide customers with the certainty they seek while short enough that

is will not deter development in the face of a changing competitive environment. Finally, as expressed in our Guidelines and consistent with SB 168, we reaffirm that a customer that leaves another New Hampshire utility may, as a last step in keeping the customer in New Hampshire, be eligible for the Energy Bank. We will not require, therefore, that a utility that loses a customer to the Energy Bank make a statement relating to the customer's situation, as urged by OCA.

As for the rate the Companies seek to offer and the innovative structure of that rate, we find both to be reasonable and to serve the public interest. By introducing a market-based element to rates the Companies offer Energy Bank customers an attractive choice and a manageable risk in the uncertain transitional period to competition while protecting the interests of other customers.

With regard to the transfer of benefits to other customers via the Power Dividend certificates, we fully support the prospect but require that the Companies take the steps necessary to insure that the failure of customers to redeem certificates does not result in funds escheating to the State. Therefore, pursuant to NH RSA 471- C:9, we will order that unclaimed funds shall be preserved for distribution in the succeeding year thereby retaining benefits for Energy Bank customers. Furthermore, the Companies should institute a mechanism for monitoring the variable cost component of its rate and making that information readily available for tracking by customers.

Associated issues raised at the hearing concern the interpretation of the revenue imputation language in SB 168 and the adoption of accounting procedures relative to Energy Bank revenues and costs. Regarding revenue imputation, we note that the issue is currently under examination in Docket No. DR 95-180 concerning PSNH's Economic Development and Business Retention Rates. We will defer consideration of the issue to that proceeding. However, we will consider arguments raised in this docket on this issue when we deliberate this matter in docket DR 95-180. To the extent that any party wishes to supplement their arguments, they may file them in DR 95-180. Regarding accounting procedures, we direct the Companies to meet with the Commission's Finance Department and resolve any outstanding accounting and tax issues within sixty days of issuance of this order.

Finally, while we approve the Companies' filing and commend their efforts in furthering the statutory goal of encouraging economic development, our approval extends only insofar as it relates to the Energy Bank Service Rates. Our approval does not extend to the draft Power Supply Agreement between the Companies and Unitil Power Corp. Rather, we direct the Companies to file with us for our consideration the completed agreement as soon as it is available.

Based upon the foregoing, it is hereby

ORDERED, that the Companies' Energy Bank Service rates are approved except as modified as being consistent with our Guidelines; and it is

FURTHER ORDERED, that the Companies shall meet with the Commission's Finance Department within 60 days of the date of this order to resolve accounting and tax issues; and it is

FURTHER ORDERED, that unclaimed funds in the form of unredeemed Power Dividends shall not escheat to the State of New Hampshire but rather shall be retained by the Companies and added to any amount available for Power Dividends in the succeeding year; and it is

FURTHER ORDERED, that the Companies shall file with the Commission as soon as practicable their completed Power Supply Agreement to accomplish Energy Bank Service; and it is

FURTHER ORDERED, that the issue of revenue imputation is deferred pending resolution of PSNH's parallel economic development

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rate docket, DR 95-180.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of January, 1996.

EDITOR'S APPENDIX

Citations in Text

[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 UNITIL Service Corp., DR 95-176, Order No. 21,744, 80 NH PUC 461, July 14, 1995.

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NH.PUC*01/18/96*[88999]*81 NH PUC 39*Public Service Company of New Hampshire

[Go to End of 88999]

81 NH PUC 39

Re Public Service Company of New Hampshire

DR 95-205
Order No. 21,986

New Hampshire Public Utilities Commission

January 18, 1996

ORDER approving an electric utility's resubmitted proposal for a special rate contract with an industrial customer, Teradyne, Inc. The revised contract removes provisions which the commission previously had deemed anticompetitive, but still offers the customer a discounted rate in exchange for a long-term service commitment. For the earlier order rejecting the contract as originally filed, see Order No. 21,953, 80 NH PUC 796 (1995).

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1. RATES, § 166

[N.H.] Factors affecting reasonableness — Solicitation or retention of business — Economic development incentives for industrial load — Special rate contracts — Electric utility. p. 40.

2. MONOPOLY AND COMPETITION, § 21

[N.H.] Restraint of trade and anticompetitive practices — Special contracts — Prohibitions on third-party power supplier bids — Determination of anticompetitive effects — Removal of offensive terms as condition of approval — Electric utility. p. 40.

3. RATES, § 339

[N.H.] Electric rate design — Industrial customer — Special discounted rate contract — Designed to retain load — Long-term service commitment by customer as a factor. p. 40.

4. RATES, § 49

[N.H.] Commission jurisdiction — As to special rate contracts — No unlawful infringement on traditional rate-making practices — Commission authority to review and approve, modify, reject, or remand. p. 41.

5. MONOPOLY AND COMPETITION, § 21

[N.H.] Restraint of trade and anticompetitive practices — Special discounted rate contracts — As load-retention devices — Effect of terms encumbering customer's property or rights — Acquiescence by customer as a factor — Electric service — Separate commissioner opinion. p. 41.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY AND
DESCRIPTION OF THE FILINGS

Public Service Company of New Hampshire (PSNH), filed on July 28, 1995, a ten-year special contract, Special Contract No. NHPUC-118 (NHPUC-118 or contract), between PSNH and Teradyne, Inc. (Teradyne), a Massachusetts corporation with two of its manufacturing facilities located in Nashua, New

Hampshire. NHPUC-118 would allow Teradyne to receive electricity service from PSNH for each facility at prices lower than those otherwise available under applicable standard tariff rates. At that time, the Commission listed the filing on its public electronic bulletin board.

On December 20, 1995, the Commission issued Order No. 21,953 in which, among other things, the majority denied approval of the contract without prejudice. This decision was based on the majority's view that Article 8 of NHPUC-118, which contained a one cent premium per kWh provision described below, created a "potentially chilling effect on future competitive suppliers."

Campaign for Ratepayers Rights (CRR) on December 11, 1995 requested intervention, and filed a Motion to Bar Jurisdiction, both of which the Commission denied in Order No. 21,953 (December 20, 1995). On December 21, 1995 CRR filed a Motion for Reconsideration of the

Commission's decision in these two actions.

In response to Order No. 21,953, PSNH filed a revised NHPUC-118 (first revised contract) on January 2, 1996.

Under the terms of the January 2, 1996 filing, Article 8 stated that Teradyne could seek an alternative supplier of electricity after five years of the contract, but Teradyne had to share any offer from another supplier with PSNH and PSNH had the option of matching the price of Teradyne's alternative within 60 days. The first revised contract removed a one cent premium per kWh provision, contained in the original contract, under which the customer was then obligated to pay PSNH one cent more per kWh than the best offer the customer received if PSNH chose to provide electricity at the alternative supplier's price.

II. COMMISSION ANALYSIS

A. The Filing

[1-3] On January 8, 1996, the Commission deliberated the revised contract and determined that, while the revised contract was better than the premium provision in the original contract, it would still have had a chilling effect on future competitive suppliers. It is not true competition if the current supplier, a monopoly provider of electricity, has the opportunity to match any offer from another supplier and then to compel the customer to take electricity from that provider. Under the terms of the first revised Article 8, an alternative supplier's hands would have been tied because it could only make an offer which PSNH could later match; it could not negotiate further for the customer's business on an equal level with PSNH and any other suppliers, and there was no fair and equitable competitive bidding process. Under the first revised contract, the alternative supplier had to first lay his cards on the table; no matter what the alternative supplier offered to the customer PSNH was able to match the offer and then require the customer to take service from PSNH at the matched price.

If we were already in a fully competitive market and a customer wanted to enter into this kind of agreement we would see no reason to interfere. We are clearly not, however, in a fully competitive environment at this point in time. Our Legislature and our Governor have indicated their desire that we move toward competition and we have in fact taken steps in that direction. But we are not there yet and therefore we must be vigilant to insure that existing monopoly providers do not take advantage of their current status in such a way that it will significantly affect our ability to make the transition to a free market. We believe that Article 8, even as redrafted in the January 2, 1996 version, would have put PSNH at an unfair advantage and as filed would not have been in the public interest.

While we assume that PSNH was trying to protect its stockholders and secure its business for as long into the future as possible, we believe our role as utility regulators requires us to carefully review any such proposal and the impact it would have on a free market. The majority, therefore, again denied approval of NHPUC-118 until the anti-competitive provisions of Article 8 were removed.

On January 12, 1996, in response to the Commission deliberations concerning Teradyne on January 8, 1996, PSNH filed another revised version of Special Contract No. NHPUC-118 which deleted Articles 8 and 9 of the January 2,

1996 filing and substituted a new Article 8. Our review of the January 12, 1996 filing has quelled our concerns. Either party may now terminate NHPUC-118 after sixty months without penalty upon six months written notice to the other in accordance with the notice provisions of Article 16. All other terms, conditions and pricing of the original filing have remained unchanged. We will, therefore, approve this contract today as being in the public interest.

B. CRR Motion for Reconsideration

[4] We must also address CRR's Motion for Reconsideration of our decision to deny its Motion to Bar Jurisdiction and Motion to Intervene. As we stated in Order No. 21,953, we find CRR's argument that the Commission lacks jurisdiction to be without merit. CRR has demonstrated no new evidence or argument which warrants rehearing or reconsideration of this issue.

Though we denied the Petition to Intervene in Order No. 21,953, we have reconsidered this issue and will allow CRR to intervene. CRR is free to file comments during the *nisi* period, as can any interested party. CRR may also seek reconsideration of this order under RSA 541:3.

Based upon the foregoing, it is hereby

ORDERED *Nisi*, that Special Contract No. NHPUC-118 between PSNH and Teradyne filed on January 12, 1996, is APPROVED for effect on that date unless ordered otherwise; and it is

FURTHER ORDERED, that during any rate case or rate redesign filed by PSNH during the life of Special Contract No. NHPUC-118, 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 Teradyne by our approval today of this special contract; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules, Puc 1601.05, the Petitioner shall cause an attested copy of this Order *Nisi* to be published once in a statewide newspaper of general circulation, such publication to be no later than January 25, 1996, and to be documented by affidavit filed with this office on or before February 1, 1996; and it is

FURTHER ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or file a written request for a hearing on this matter before the Commission no later than February 8, 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 February 15, 1996; and it is

FURTHER ORDERED, that CRR's Motion for Reconsideration is GRANTED insofar as it requests that its Petition to Intervene be granted; and it is

FURTHER ORDERED, that CRR's Motion for Reconsideration regarding the Motion to Bar Jurisdiction is DENIED; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective February 17, 1996, 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

January, 1996.

Concurring Opinion of
Commissioner Bruce B. Ellsworth

[5] I was prepared to approve NHPUC-118 as filed on July 28, 1995. I am prepared to sign it as modified and currently filed.

My colleagues and I agree on the need to move forward quickly and aggressively into the exploration of a competitive environment. We agree that customers should be given a choice in the terms and conditions under which they obtain electric utility service. We do not agree on the constraints which should remain in place during this period of transition, or in the amount of regulatory control which should be imposed during this period.

So long as the contract purchaser is satisfied with the provisions of the contract, and so long as the contract does not impose any financial, operational or safety burdens on other customers, then I am prepared to support a contract between the parties. I will not substitute my judgment for the judgment of either of two

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willing parties in determining whether or not a contract is in their best interests.

I am also less critical of a utility's attempts to secure and maintain its customer base than are my colleagues. I find it understandable and proper that PSNH take reasonable steps to minimize the amount of stranded investment that may result as a consequence of competition by attempting to include provisions in their contracts which commit their customers for extended periods of time. While each of those provisions will be subject to a test of fairness and necessity, I would be at least as critical of their failure to attempt to mitigate stranded costs as I would be of their attempts to retain their customers.

Accordingly, I was prepared to sign an approving order for the contract as originally submitted or as revised with the modifications to Article 8. I now join the majority in signing it as presently filed. I also join them in all other aspects of the order.

Bruce B. Ellsworth
Commissioner

January 18, 1996

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 95-205, Order No. 21,953, 80 NH PUC 796, Dec. 20, 1995.

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NH.PUC*01/18/96*[89000]*81 NH PUC 42*Public Service Company of New Hampshire

[Go to End of 89000]

81 NH PUC 42

Re Public Service Company of New Hampshire

DR 95-230
Order No. 21,987

New Hampshire Public Utilities Commission

January 18, 1996

ORDER rejecting an electric utility's proposed special rate contract with Miniature Precision Bearings Corporation as filed, but directing the parties to modify and resubmit the contract consistent with the concerns expressed by the commission. The commission finds possibly anticompetitive those provisions in the contract that prevent the customer from contacting any other power supplier for at least a five-year period. The commission also is troubled by those terms that prohibit the customer from establishing generation facilities of its own, although such concerns are mitigated by the fact that the customer's property is not conducive to self-generation at the present time.

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1. MONOPOLY AND COMPETITION, § 21

[N.H.] Restraint of trade and anticompetitive practices — Special contracts — Terms encumbering customer's property — Anti-self-generation provisions — Mitigating factors — Property not suitable for self-generation — Electric utility — Necessity of modification and resubmission of contract. p. 45.

2. MONOPOLY AND COMPETITION, § 21

[N.H.] Restraint of trade and anticompetitive practices — Special contracts — Terms encumbering customer's property or rights — Prohibitions on third-party power supplier bids — Determination of anticompetitive effects — Electric utility — Necessity of modification and resubmission of contract. p. 45.

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3. RATES, § 166

[N.H.] Factors affecting reasonableness — Solicitation of business — Economic development incentives for retaining industrial load — Special rate contracts — Electric utility — Necessity of modification and resubmission. p. 45.

4. RATES, § 49

[N.H.] Commission jurisdiction — As to special rate contracts — No unlawful infringement on traditional rate-making practices — Commission authority to review and approve, modify, reject, or remand. p. 45.

5. MONOPOLY AND COMPETITION, § 21

[N.H.] Restraint of trade and anticompetitive practices — Special contracts — Effect of terms prohibiting competing third-party power supplier bids — Acquiescence by customer as a factor — Meeting of the minds — Electric service — Dissenting opinion. p. 46.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY AND
DESCRIPTION OF THE FILING

On August 18, 1995, Public Service Company of New Hampshire (PSNH) filed a request with the New Hampshire Public Utilities Commission (Commission) for approval of a ten-year special contract, Special Contract No. NHPUC-120 (NHPUC-120), between PSNH and Miniature Precision Bearings Corporation (MPB). MPB, a wholly owned subsidiary of Timken Company, is a manufacturer of ball and roller bearings and power transmission pulleys. At that time, the Commission posted the filing on its list of new cases under consideration on its public electronic bulletin board.

MPB has three manufacturing divisions located in Lebanon, New Hampshire and served by Granite State Electric Company and a fourth operation in Keene, New Hampshire, which in turn has three manufacturing facilities, all of which are served by PSNH. The Keene facilities employ 833. MPB also operates facilities in The Netherlands and recently began operations in Singapore.

PSNH's filing 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-120 is proposed to be effective for a period of ten years commencing August, 1, 1995 subject to Commission approval. PSNH's filing included the special contract, testimony, and a technical statement supporting the discounted rate for MPB in both redacted and unredacted form. A statement from MPB supporting NHPUC-120 was attached as an exhibit.

Contemporaneous with its filing, PSNH requested protective treatment for certain customer specific information considered confidential in the special contract, testimony and technical statement. As with other requests of this type, we find the information to be protected falls within the exceptions to RSA 91- A:5 and meets the terms of N.H. Admin. Rules, Puc 204.08. Accordingly, the request for protective treatment will be granted.

On December 11, 1995, Campaign for Ratepayers Rights (CRR) filed a Motion to Bar Jurisdiction and also filed for intervention in this Docket. On December 21, 1995, CRR filed a Motion for Reconsideration.

PSNH asserts and the statement of Don Sporborg, MPB's Purchasing Manager, affirms that MPB faces increasing competitive pressure as it seeks to increase operations in the competitive commercial and international markets and while it tries to maintain its market share of the defense and aerospace portion of its business. According to Mr. Sporborg, MPB has been and continues to reduce its operating costs, including becoming more energy efficient, to remain competitive in existing markets and expand into new markets. PSNH and Mr. Sporberg attest

that electricity costs represent a significant portion of MPB's total operating costs. Moreover, PSNH points out that MPB competes directly for a substantial amount of its business with

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New Hampshire Ball Bearings (NHBB), a PSNH customer served under Special Contract No. NHPUC-108 (NHPUC-108). NHPUC-120 is designed to retain MPB's business, offer an incentive for expansion and offer savings equivalent to those NHBB receives under NHPUC-108.

The pricing contained in NHPUC-120 consists of rates of electric service for each facility lower than those otherwise available under applicable tariff rates. The rates include a Customer Charge, a Base Demand Charge, Excess Demand Charge, Base Energy Charge and an Excess Energy Charge. The Excess Demand Charge will apply to all monthly Billing Demand above the Base Demand levels specified in NHPUC-120. The Base Demand Charge is $10.25 per kW or kVA-month until June 1, 1996 at which time it increases approximately 2.5% and continues to escalate 2.5%, approximately, on the first day of June each year thereafter. The Excess Demand Charge starts at $7.69 per kW or KVA-month and also escalates at approximately 2.5% on June 1 of each year.

The Base Energy Charge, which applies to all monthly consumption up to the Base Energy level specified in NHPUC-120, is the total of the Base Amount (BA) in the Fuel and Purchased Power Adjustment Clause (FPPAC), the FPPAC rate, the full level of the Nuclear Decommissioning Charge (NDC) and an Energy Charge Adder of $0.011 per kWh until June 1, 1996. Thereafter, the Energy Charge Adder will be $0.015 per kWh. The Excess Energy Charge applies for all monthly consumption in excess of the Base Energy level and is the Base Energy Charge minus $0.0025 per kWh. The maximum amount that MPB will be billed for service will be the amount that MPB would have been billed during the year under the applicable standard tariff rate. The minimum for any month is 103% of PSNH's short-term avoided cost. MPB's three facilities are currently billed under two accounts and will continue to be billed as two separate accounts. PSNH asserts that the facilities exceed the thresholds contained in the Commission's Checklist.

PSNH states that NHPUC-120 will benefit PSNH, MPB and PSNH's other customers. As a condition of service under NHPUC-120, MPB accepts a number of provisions. Article 6, PSNH as Sole Supplier, states MPB agrees to utilize PSNH as its sole supplier of electricity at its Keene facilities during the term of NHPUC-120. Article 6 also states that MPB shall not operate a generating facility nor allow a third party to own or operate a generating facility on property MPB owns, acquires or controls within New Hampshire, for the purposes of displacing retail sales of Northeast Utilities subsidiaries or retail sales of Northeast Utilities' wholesale customers.(5)

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Article 8, Future Electric Supply Options, contains terms under which MPB may seek an alternative supply of electricity for either a portion or all of MPB's requirements. In particular, Article 8 states that MPB may not seek an alternative supplier sooner than sixty (60) months

after the effective date of NHPUC-120. After 60 months, if MPB receives a bona fide offer from a third party supplier, MPB must submit the terms of the offer to PSNH. If PSNH matches the third party supply offer within 60 days, MPB is required to accept PSNH's proposal plus pay an additional one cent per kWh premium.

II. COMMISSION ANALYSIS

A. The Filing

The Commission has reviewed NHPUC-120, the supporting materials, and the information on the land affected by NHPUC-120. We have conducted our review pursuant to RSA 378:18 and our intention to process the special contracts that were filed with the Commission before November 6, 1995, as we had stated in Nashua Foundries, Inc. (Order No. 21,929, December 4, 1995).

In our initial deliberations on this contract at our December 11, 1995 public meeting we indicated that we would approve NHPUC-120 if PSNH modified the length of the contract so that it was similar to that provided to NHBB. Since then we have denied approval of the Teradyne contract, as noted in more detail below, based on the alternative supplier provision that

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appears in this contract as well. To the extent that PSNH now modifies this contract in a manner similar to what it did with Teradyne, our concern about the differences in length will also probably be addressed. Our main concern in this area is that the two contracts, for MPB and NHBB, be similar in as many provisions as possible given the fact that they are competitors.

[1-3] We remain concerned as a matter of policy about the potential anti-competitive effects of Article 6 of NHPUC-120. However, in this instance although PSNH represents that two of the three locations have land available to install generation, we believe the representation that lack of gas availability and thermal load, as well as the noise concerns associated with installing generation adjacent to a residential zoned area, suggest these are unlikely sites for development of generation. Thus, we do not believe that this provision of NHPUC-120 will have a negative impact on competition nor do we believe that the mere potential usage of this particular site for generation should prevent the benefits of business retention and potential future expansion that we expect will occur upon our approval of NHPUC-120. In addition, as we noted in Order No. 21,929, if MPB's property were indeed suitable for generation and its use became necessary, condemnation rights under RSA 371:1 would be available to the appropriate entity.

The benefits of business retention discussed by Mr. Sporborg of MPB and Mr. Hall of PSNH might warrant our outright approval of NHPUC-120 if not for the troubling provisions of Article 8 coupled with our concern about the potential negative competitive effects on MPB of the special contract between PSNH and NHBB. We are concerned, as we stated on December 20, 1995, in Order No. 21,953 (Teradyne) and in Order No. 21,959 (Textron) that Article 8 "would have a potentially chilling effect on future competitive suppliers." Order No. 21,953 at 5. In both Teradyne and Textron we recommended that PSNH refile the special contracts absent the anti-competitive aspects of Article 8. On January 2, 1996, PSNH did refile the Teradyne special contract, NHPUC-118, with a change to Article 8 to allow PSNH to match the price of a future supplier within 60 days. In response to the Commission's deliberations expressing the same

concern about the new article 8, PSNH refiled the Teradyne contract on January 12, 1996 and removed all of the old Article 8 provisions.

We will direct PSNH to refile NHPUC-120 to eliminate the anti- competitive provisions of Article 8 as it did in the Teradyne situation. We can not accept a provision that allows PSNH, the current supplier and monopolist, to match any offer from another supplier with or without a premium and compel the customer to take electricity service from PSNH without further choice. We must also point out that NHPUC-108 between PSNH and NHBB does not contain the anti-competitive Article 8 language found in NHPUC-120 although NHPUC-108 does allow either party to terminate after 60 months contingent upon payment of an early termination fee.

B. Motions

[4] We must also address CRR's Motion to Bar Jurisdiction and its Motion for Intervention. At our Commission meeting on December 11, 1995, we denied CRR's request to be heard on these two motions. This is consistent with our longstanding practice that the weekly Commission meeting is a forum in which we announce orders and deliberate on pending matters. It is not an opportunity for public input or discussion. At that meeting we deliberated on a number of special contracts, including MPB, and announced our decision regarding the contract terms.

As we stated in Order No. 21,953 addressing the special contract between PSNH and Teradyne, Inc., we reject CRR's argument that we lack jurisdiction to consider special contracts involving PSNH. CRR's assertion that such special contracts are a violation of the Rate Agreement between Northeast Utilities and the State of New Hampshire is without merit. The Rate Agreement is silent on special contracts. The prohibition against change in rates pursuant to RSA 362-C:6 does not serve to prohibit special contracts authorized in RSA 378:18. The Motion to Bar Jurisdiction is, therefore, denied.

Our denial of the Motion to Bar is consistent with a ruling from Merrimack County Superior Court (McGuire, J.) on December 11, 1995 in *NH Office of Consumer Advocate et al. v. Public Utilities Commission*, Docket No. 95-E-331. In denying a Petition filed by OCA and CRR seeking to enjoin our deliberations of Teradyne, MPB and other special contracts, the Court found that in approving the Rate Agreement the legislature did not vacate or alter our authority under RSA 378:18 to approve special contracts "and has not done so since the passage of the rate agreement." We will deny CRR's motion to Bar Jurisdiction in the MPB docket as we did in Teradyne, and will do so in the other dockets in which it was filed, that is, DR 95-214 (Kollsman), DR 95-270 (Textron), DR 95- 303 (Wyman-Gordon) and DR 95-320 (Hitchiner).

CRR also moved to intervene on December 11, 1995 in MPB and other special contracts. Because we did not set a formal deadline for intervention, we will grant CRR's request. CRR may seek reconsideration of this order under RSA 541:3, and may participate as can any intervenor, including the Office of Consumer Advocate, in a special contract docket.

It should be noted that we previously denied CRR's request to intervene in the special contract between PSNH and Teradyne, Inc., DR 95-205. We have reconsidered that decision and believe it is wiser to grant CRR's intervention request in the Teradyne case as well as the other special contracts for which it sought intervention, that is, DR 95-214 (Kollsman), DR 95-270

(Textron), DR 95-303 (Wyman-Gordon) and DR 95-320 (Hitchiner).

As is our usual practice, a determination of the Commission is not final until a written order is issued. For that reason, CRR's request for reconsideration of the Motion to Bar Jurisdiction is premature, prior to the issuance of the order. Pursuant to RSA 541:3, CRR has thirty days in which to file for reconsideration of this order, if it so chooses.

Based upon the foregoing, it is hereby

ORDERED, that Special Contract No NHPUC-120 is DENIED without prejudice; and it is

FURTHER ORDERED, that PSNH may refile NHPUC-120 amended in accordance with the terms of this order; and it is

FURTHER ORDERED, that PSNH's request for protective treatment is GRANTED pursuant to RSA 91-A:5,IV and N.H. Admin. Rules, Puc 204.08, subject to reconsideration in the event that the Commission Staff or any party raises concerns, after review of the redacted materials, as well as the on-going rights of the Commission to reconsider this order in light of RSA 91-A, should circumstances so warrant; and it is

FURTHER ORDERED, that CRR's Motion to Bar Jurisdiction is DENIED; and it is

FURTHER ORDERED, that CRR's Petition for Intervention is GRANTED.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of January, 1996.

Concurring Opinion of
Commissioner Bruce B. Ellsworth

[5] I would approve NHPUC-120 as filed.

While I agree with my colleagues that Article 8 poses issues which some might consider anti-competitive, I cannot find that it is not in the public interest. There is, here, a contract of two willing parties. If each is satisfied as to the terms and conditions of NHPUC-120, I cannot find it in the public interest to deny them the right to execute it.

Accordingly, I was, and am, prepared to sign an approving order for the contract as submitted. However, the majority returns the contract for reconsideration of Article 8. If the parties agree to the majority's remedy to Article 8, and if the majority approves the remedied contract, I will join them in approving it.

Bruce B. Ellsworth
Commissioner

January 18, 1996

FOOTNOTES

[1]By letter of the Executive Director of the

Commission, dated November 9, 1995, PSNH was directed to file supplemental information

on the MPB special contract. Specifically, the Commission requested information on the land affected by NHPUC-120, including whether the land affected had generation potential. On November 29, 1995, PSNH filed a one-page summary of the information requested. PSNH stated that two of the three MPB locations in Keene would have generation potential, but concluded that generation is not likely because the facilities are not located near a gas line and because the two facilities lack the thermal load to support cogeneration. PSNH states the third site has insufficient land for installing generation. The location of all three facilities near residential zones presents concerns about noise that would have to addressed if generation were installed.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 95-149, Order No. 21,929, 80 NH PUC 770, Dec. 4, 1995. [N.H.] Re Public Service Co. of New Hampshire, DR 95-205, Order No. 21,953, 80 NH PUC 796, Dec. 20, 1995. [N.H.] Re Public Service Co. of New Hampshire, DR 95-270, Order No. 21,959, 80 NH PUC 812, Dec. 28, 1995.

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NH.PUC*01/18/96*[89001]*81 NH PUC 47*Public Service Company of New Hampshire

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81 NH PUC 47

Re Public Service Company of New Hampshire

DR 95-303
Order No. 21,988

New Hampshire Public Utilities Commission

January 18, 1996

ORDER approving an electric utility's proposed special rate contract with an industrial customer, Wyman-Gordon Investment Castings, Inc., subject to certain modifications. The contract is found to meet the criteria for economic development, as it is designed as an incentive for the customer to relocate facilities into the state and thus create new jobs. However, the terms governing minimum charges are required to be revised, to assure that all nuclear decommissioning and fuel and purchased power adjustment clause costs are covered.

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1. RATES, § 166

[N.H.] Factors affecting reasonableness — Solicitation of business — Economic development initiatives — Incentives for the relocation of industrial load — Via special rate contracts — Electric utility — Anti-self-generation terms notwithstanding. p. 48.

2. RATES, § 336

[N.H.] Electric rate design — Minimum charges — For industrial customer — Under a special discounted rate contract — Necessity of revision — To assure coverage of certain expense items. p. 49.

3. RATES, § 49

[N.H.] Commission jurisdiction — As to special rate contracts — No unlawful infringement on traditional rate-making practices — Commission authority to review and approve, modify, reject, or remand. p. 49.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY AND
DESCRIPTION OF THE FILING

Public Service Company of New Hampshire (PSNH), filed with the New Hampshire Public Utilities Commission (Commission) on October 26, 1995, a seven-year special contract, Special Contract No. NHPUC-122 (NHPUC-122), between PSNH and Wyman-Gordon Investment Castings, Inc.

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(Wyman-Gordon), a wholly owned subsidiary of Wyman-Gordon Company. Wyman-Gordon, headquartered in Massachusetts, is a leading manufacturer of advanced metal components for the commercial and defense aerospace industry, and the power generation industry. At that time, the Commission posted the filing on its list of new cases under consideration on its public electronic bulletin board.

PSNH filed the contract pursuant to RSA 378:18 and the Checklist for Economic Development and Business Retention Special Contracts as outlined in DR 91-172. NHPUC-122 is proposed to take effect on the Commencement Date as defined in NHPUC-122 and remain in effect through December 31, 2002, pending Commission approval. PSNH's filing included the special contract, testimony, and a technical statement supporting the discounted rates for Wyman-Gordon in both redacted and unredacted form. A one-page statement from Wyman-Gordon supporting NHPUC-122 was attached to the PSNH technical statement.

Contemporaneous with its filing, PSNH requested protective treatment for certain customer specific information considered confidential in the special contract, testimony and technical statement. As with other requests of this type, we find the information to be protected falls within the exceptions to RSA 91-A:5 and meets the terms of N.H. Admin. Rules, Puc 204.08. Accordingly, the request for protective treatment will be granted.

On December 11, 1995, Campaign for Ratepayers Rights (CRR) filed a Motion to Bar Jurisdiction and also requested intervention in this docket.

PSNH considers NHPUC-122 an economic development special contract designed to allow Wyman-Gordon to locate a new state-of-the-art furnace for titanium investment casting at its

facility in Franklin, New Hampshire. Wyman-Gordon closed its Franklin facility in 1993 as part of a cost reduction program. PSNH asserts in its filing that electricity represents a significant cost of production for the new titanium casting operation. Absent approval of NHPUC-122, Wyman-Gordon will not locate the new titanium casting operation at its Franklin facility. Fred W. Smith, Vice President of

Non-Ferrous Operations at Wyman-Gordon, states the discounted rates contained in NHPUC-122 are necessary to offset the enticements by the State of Connecticut for Wyman-Gordon to expand its titanium plant in Groton, Connecticut. PSNH states NHPUC-122 will benefit PSNH, Wyman-Gordon, and PSNH's other customers.

The pricing of NHPUC-122 consists of applying a percent discount to Wyman-Gordon's total electric bill based on service provided under PSNH's applicable standard tariff rate. The discount is 30 percent from the Effective Date through the year 2000, 20 percent in 2001 and 10 percent for the final year, 2002.

As a condition of service under NHPUC-122, Wyman-Gordon accepts a number of provisions. Article 6, PSNH as Sole Supplier, states Wyman-Gordon agrees to utilize PSNH as its sole supplier of electricity at its Franklin facility during the term of NHPUC-122. Article 6 also states that Wyman-Gordon shall not operate a generating facility nor allow a third party to own or operate a generating facility on property Wyman-Gordon owns, acquires or controls within New Hampshire for the purpose of displacing sales to retail customers of Northeast Utilities' subsidiaries or sales to retail customers of Northeast Utilities' wholesale customers during the term of NHPUC-122.[1(6)]

Article 8, Service under Economic Development Tariff Rates, provides that NHPUC-122 will terminate and Wyman-Gordon will receive service from PSNH under economic development tariff rates if economic development rates for PSNH are approved by the Commission during the term of NHPUC-122 and if the savings of the economic development tariff rates provide Wyman-Gordon with similar prices, terms, and conditions as contained in NHPUC-122.[2(7)]

II. COMMISSION ANALYSIS

A. The Filing

[1] The Commission has reviewed NHPUC-122, the supporting materials, and the information on the land affected by NHPUC-122. We have conducted our review pursuant to

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RSA 378:18 and our intention to process the special contracts that were filed with the Commission before November 6, 1995, as we had stated in Nashua Foundries, Inc. (Order No. 21,929, December 4, 1995). We remain concerned about the potential anti-competitive effects of Article 6 of NHPUC-122 as the Franklin facility has land, natural gas availability and a potential thermal load that could be used for generation. Nonetheless, we do not think the potential usage of this particular site for generation should prevent the benefits that will occur by approving

NHPUC-122 and the subsequent location of a state-of-the-art titanium casting operation in Franklin which will create 75 new jobs. Based on the representations of Mr. Smith of Wyman-Gordon and Mr. Hall of PSNH and the fact that Wyman-Gordon chose not to locate the titanium casting operation initially in Franklin and instead closed the Franklin facility, we believe NHPUC-122 is a necessary part of Wyman-Gordon's decision to expand at its Franklin, New Hampshire facility.

[2] Article 4 of NHPUC-122 regarding the Minimum Charge for Electric Service needs to be modified by PSNH. It concerns the percent discount off the total bill. We want to ensure that the pricing provisions will cover certain costs, such as the full nuclear decommissioning and the base amount and rate of the Fuel and Purchased Power Adjustment Clause. We understand PSNH changed a provision in Rate ED in DR 95-180 for purposes of calculating the minimum monthly bill. We would expect a similar revision in Article 4 of NHPUC-122.

If the Commission approves some form of economic development and business retention rates in DR 95-180, we will direct PSNH to file a letter within 30 days with the Commission stating whether Wyman-Gordon will receive service under the Commission approved economic development rate and when it will commence.

B. Motions

[3] We must also address CRR's Motion to Bar Jurisdiction. At our Commission meeting on December 11, 1995, we refused to grant CRR's request to be heard. This is consistent with our longstanding practice that this weekly Commission meeting is a forum in which we announce orders and deliberate on pending matters. It is not an opportunity for public input or discussion. At that meeting we deliberated on a number of special contracts, including Wyman-Gordon, and announced our decision regarding the contract terms.

As we stated in Order No. 21,953 addressing the special contract between PSNH and Teradyne, Inc., we reject CRR's argument that we lack jurisdiction to consider special contracts involving PSNH. CRR's assertion that such special contracts are a violation of the Rate Agreement between Northeast Utilities and the State of New Hampshire is without merit. The Rate Agreement is silent on special contracts. The prohibition against rate changes pursuant to RSA 362-C:6 does not serve to prohibit special contracts authorized in RSA 378:18. The Motion to Bar Jurisdiction is, therefore, denied.

Our denial of the Motion to Bar is consistent with a ruling from Merrimack County Superior Court (McGuire, J.) on December 11, 1995 in *NH Office of Consumer Advocate et al. v. Public Utilities Commission*, Docket No. 95-E-331. In denying a Petition filed by OCA and CRR seeking to enjoin our deliberations of Teradyne, MPB and other special contracts, the Court found that in approving the Rate Agreement the legislature did not vacate or alter our authority under RSA 378:18 to approve special contracts "and has not done so since the passage of the rate agreement." We will deny CRR's motion to Bar Jurisdiction in the Wyman-Gordon docket as we did in Teradyne, and will do so in the other dockets in which it was filed, that is, DR 95-214 (Kollsman), DR 95-230 (Miniature Precision Bearings), DR 95-270 (Textron) and DR 95-320 (Hitchiner).

A determination of the Commission is not final until a written order is issued. For that reason, CRR's request for reconsideration of the Motion to Bar Jurisdiction is premature, prior to

the issuance of the order. Pursuant to RSA 541:3, CRR has thirty days in which to file for reconsideration of this order, if it so chooses.

CRR also moved to intervene on December 11, 1995 in Wyman-Gordon and other

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special contracts. Because we did not set a formal deadline for intervention, we will grant CRR's request. CRR is free to participate as any intervenor, including the Office of Consumer Advocate, in a special contract case. It may also seek, pursuant to RSA 541:3, reconsideration of this order.

It should be noted that we previously denied CRR's request to intervene in one of the special contracts with PSNH, DR 95-205 between PSNH and Teradyne, Inc. We have reconsidered that decision and believe it is wiser to grant CRR's intervention request in the Teradyne case as well as in cases involving the other special contracts for which it sought intervention, that is, DR 95-214 (Kollsman), DR 95-230 (Miniature Precision Bearings), DR 95-270 (Textron) and DR 95-320 (Hitchiner).

Based upon the foregoing, it is hereby

ORDERED *Nisi*, that Special Contract No. NHPUC-122 between PSNH and Wyman-Gordon is Approved pending revision of Article 4 - Minimum Charges for Electric Service as specified in this Order; and it is

FURTHER ORDERED, that during any rate case or rate redesign filed by PSNH during the life of Special Contract No. NHPUC-122, 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 Wyman-Gordon by our approval today of this special contract; and it is

FURTHER ORDERED, CRR's Petition to Intervene is GRANTED; and it is

FURTHER ORDERED, that CRR's Motion to Bar Jurisdiction is DENIED; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules, Puc 1601.05, the Petitioner shall cause an attested copy of this Order *Nisi* to be published once in a statewide newspaper of general circulation, such publication to be no later than January 25, 1996 and to be documented by affidavit filed with this office on or before February 1, 1996; and it is

FURTHER ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or file a written request for a hearing on this matter before the Commission no later than February 8, 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 February 15, 1996; and it is

FURTHER ORDERED, that PSNH file with the Commission once each year on July 1 the benefits PSNH and Wyman-Gordon are receiving from Special Contract No. NHPUC-122; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective February 17, 1996, 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 January, 1996.

FOOTNOTES

[1]By letter of the Executive Director of the Commission, dated November 9, 1995, PSNH was directed to file supplemental information on the Wyman-Gordon special contract, NHPUC-122. Specifically, the Commission requested information on the land affected by NHPUC-122, including whether the land affected had generation potential. On December 1, 1995, PSNH filed a two-page summary of the information requested. PSNH stated the Franklin facility is located on 12.37 acres in an industrial park. The site does not have existing generation, but is serviced by a natural gas line with a propane tank in reserve. PSNH concludes that generation could be installed at the Franklin facility, but that it is unlikely as Wyman-Gordon has no interest in installing generation and would prefer to use the land for expansion. PSNH also evaluated the generation potential at Wyman-Gordon's Northfield facility which is served by PSNH under special contract NHPUC-94. The Northfield facility occupies most of the 6.72 acre site and though PSNH believes generation is possible, it is unlikely.

[2]PSNH has filed rates for economic development and business retention which are currently under review by the Commission in docket number DR 95-180.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR

95-149, Order No. 21,929, 80 NH PUC 770, Dec. 4, 1995. [N.H.] Re Public Service Co. of New Hampshire, DR 95-205, Order No. 21,953, 80 NH PUC 796, Dec. 20, 1995.

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NH.PUC*01/22/96*[89002]*81 NH PUC 51*Innovative Telecom Corporation

[Go to End of 89002]

81 NH PUC 51

Re Innovative Telecom Corporation

Additional applicant: Innovative Holding Corporation dba Innovative Telecom Corporation

DE 95-306
Order No. 21,989

New Hampshire Public Utilities Commission

January 22, 1996

ORDER approving an interexchange telephone carrier's plan for an intracorporate reorganization, culminating in the formation of a parent holding company as a foreign corporation.

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1. COMMISSIONS, § 40

[N.H.] Scope of jurisdiction and regulation — Over foreign corporations — As part of holding company transactions. p. 52.

2. INTERCORPORATE RELATIONS, § 13

[N.H.] Holding companies — Formation of — As a foreign corporation — Associated stock transfers — Internal intracorporate reorganization — Interexchange telephone carrier — Extent of commission jurisdiction. p. 52.

BY THE COMMISSION:

ORDER

On November 2, 1995, Innovative Telecom Corp., formerly a New Hampshire corporation now succeeded by Innovative Holding Corp. d/b/a Innovative Telecom Corp. (Innovative), a Delaware corporation, pursuant to *inter alia*, 374:33, filed a petition with the New Hampshire Public Utilities Commission (Commission). Innovative is authorized to transact business as a telecommunications public utility pursuant to Commission Order No. 20,769, issued in DE 92-225 (February 23, 1993). Innovative:

(1) requests authority for the merger transaction whereby it executed an Intra-corporate reorganization which effected a change in the company's state of incorporation from New Hampshire to Delaware;

(2) asserts that pursuant to Commission precedent, once Innovative has completed the transfer of control and migratory merger becoming a foreign corporation, that it is no longer required to seek prior Commission approval for the issuance of stock. *See WilTel of New Hampshire, Inc.*, 79 NH PUC 671 (December 6, 1994). In the alternative, to the extent the Commission finds that New Hampshire law requires it, Innovative seeks authority to issue shares representing approximately twenty-five percent (25%) of the company's shares to the "Investors" identified at page five of its Petition;

(3) asserts that although the above proposed stock issuance would, if purchased by a public utility or public utility holding company (as defined by RSA 362:2) require prior Commission approval pursuant to RSA 374:22, since Innovative is issuing the stock to two non-utility entities, prior Commission approval is not required. In the alternative, to the extent the Commission finds that New Hampshire law requires it, Innovative seeks authority to issue the shares to the "Investors" identified at page five of its Petition; and

(4) seeks explicit authority to establish a holding-company/operating-subsidiary structure, wherein the authority granted by the Commission to transact business as a telecommunications

public utility in the State of New Hampshire will be held by the operating subsidiary, a Delaware corporation.

Information evidencing Innovative's

Page 51

financial, technical, and managerial competence is contained in the record of DE 92-225. The Staff has reviewed the updated financial data filed with the petition and reaffirms Innovative's financial competence. Innovative is in good standing as there are no outstanding consumer complaints against or current investigations of the applicant. Innovative attests it will continue to serve its customers and the public pursuant to its current tariff on file with the Commission.

The Petition outlines the following multi-step transaction. Authority was initially issued to Innovative Telecom Corp. (ITC- NH), a New Hampshire corporation.

Step 1: Innovative Telecom Corp. (ITC-DEL), a Delaware corporation, will be established. A Delaware corporation named Innovative Holding Corporation (IHC) has been established. IHC is equivalent to ITC-DEL and is used hereafter. Innovative seeks authority to fold ITC-NH into IHC, including transferring the Commission authority to transact business as a telecommunications public utility in the State of New Hampshire. IHC will be the surviving entity. Innovative seeks authority for IHC to issue Series A Preferred Stock approximately equal to twenty-five (25%) of the company.

Step 2: Innovative will create a holding company structure as outlined in steps 2 through 6 that will occur virtually simultaneously. IHC creates a wholly-owned subsidiary, (paradoxically called) "Parent," a Delaware corporation of which IHC holds the single outstanding share. Likewise a wholly-owned subsidiary of Parent, "Sub Co." will be established, also as a Delaware corporation.

Step 3: IHC and Sub Co. will merge and IHC will be the surviving entity. By virtue of the merger, and by operation of Delaware General Corporation Law, all stock of IHC is converted to identical stock of Parent. All former shareholders of IHC now own identical stock in Parent.

Step 4: IHC now is a subsidiary of Parent and, from Step 2, IHC holds one share (of many shares) of common stock of Parent.

Step 5: The one share of common stock of Parent held by IHC is redeemed and surrendered.

Step 6: IHC will change its corporate name to "Innovative Telecom Corp.," and Parent will simultaneously change its corporate name to "Innovative Holding Corp."

[1, 2] The above is Innovative's good faith belief of the probable sequence and structure of the transaction. Due to the complexity of the transaction, it is possible that variations may occur in the actual transaction and ultimate structure. Notwithstanding the preceding, from the Commission's perspective, the Authority to transact business as a telecommunications public utility in the State of New Hampshire will ultimately reside with Innovative Telecom Corp., the wholly-owned Delaware subsidiary of Innovative Holding Corp, a Delaware Corp.

Innovative asserts that significant financial and competitive benefits would be made available to the company by reorganizing as a Delaware company, creating a holding company

structure, issuing the Series A preferred Stock, and transferring the minority shares to the Investors. Innovative asserts they will continue to offer uninterrupted, high-quality, affordable services under the Innovative Telecom Corp. name and pursuant to their current authorized Commission tariff.

We have reviewed Innovative's filing and the recommendations of the Staff. We are concerned that Innovative has evidently failed to notify the Commission of the minor change in the composition of its New Hampshire corporate structure. However, we view this petition as an effective remedy to cure the technical defect.

Staff stated it had no objection to the issuance of additional shares of common or preferred stock. Staff stated that a detailed review and analysis of the Petition exhibits had not been performed in this regard because Innovative is now a foreign corporation pursuant to RSA 374:25 and operates in a competitive interexchange resale carrier market in which traditional rate of return regulation does not apply. Because there are no monopoly customers at risk of cross-subsidization, the failure of an interexchange resale carrier as a result of inappropriate financing arrangements will be the burden of the company's stockholders and will not harm the public interest.

Staff further noted that pursuant to RSA

369:8 *Foreign Business*, the Applicant is not subject to the provisions of RSA 369:1-7.

We find the proposed changes to be in the public good. The Commission permits flexibility by interexchange carriers in order to foster competition in the New Hampshire intrastate toll market and to allow the Commission to analyze the effects of such competition. Therefore, the Commission will approve the Petition as filed.

Based on the foregoing, it is hereby

ORDERED, that Innovative's Application for Intra-corporate Reorganization, Stock Issuance and Transfer of Control is approved.

By order of the Public Utilities Commission of New Hampshire this twenty-second day of January, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Innovative Telecom Corp., DE 92-225, Order No. 20,769, 78 NH PUC 108, Feb. 23, 1993.

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NH.PUC*01/22/96*[89003]*81 NH PUC 53*New England Telephone and Telegraph Company

[Go to End of 89003]

81 NH PUC 53

Re New England Telephone and Telegraph Company

DR 96-017
Order No. 21,990

New Hampshire Public Utilities Commission

January 22, 1996

ORDER agreeing that certain parts of a special rate contract executed by a local exchange telephone carrier and Sprint Communications for the provision of Centrex service should be subject to protective treatment in that disclosure of such information could place both the carrier and the customer at a competitive disadvantage.

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1. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective treatment — Relative to special rate contract — Customer-specific operational and usage data — Competitive disadvantages of disclosure — Benefits of nondisclosure outweighing those of disclosure — Telecommunications services. p. 54.

BY THE COMMISSION:

ORDER

On January 15, 1996, New England Telephone and Telegraph Company (NYNEX) filed with the New Hampshire Public Utilities Commission (Commission), pursuant to RSA 378:18, special contract with Sprint Communications, Inc. (Sprint) for the provision of centrex service. Concurrent with the special contract, NYNEX filed a Motion for Proprietary Treatment of portions of the contract and supporting materials (hereinafter collectively the Information). According to NYNEX, the Commission Staff takes no position regarding the motion and the Office of Consumer Advocate also takes no position.

In its motion NYNEX argues that the Information should be afforded protective treatment because, using our analysis in *Re NET*, Order No. 21,731, 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, NYNEX states that it provided the documents required in Puc 204.08(b)(1) and cited the statutory support required by Puc 204.08(b)(2). NYNEX states that the Information consists of details of a special contract relating to pricing and incremental cost information for competitive services not reflected in tariffs of general application, thus meeting the requirements of Puc 204.08(b)(4). NYNEX provides facts describing the benefits of non-disclosure, thus meeting the requirements of Puc 204.08(b)(3). NYNEX finally asserts that

the benefits of non-disclosure outweigh the benefits of disclosure.

[1] We recognize that the detailed customer specific information regarding customer usage, costs and terms of service contained in the Information is critical to review of the special contract by the Commission and Commission Staff, as required by RSA 378:18.

We also recognize that businesses engaged in discussions with regulated utilities are reluctant to disclose sensitive commercial and financial information if it is to become part of the public record.

NYNEX has alleged that disclosure of the information would result in harm to both itself, its customers, and Sprint. The harm to NYNEX would occur because the pricing and costing data contained in the Information will apply to other, future network designs. Therefore, in future negotiations NYNEX will be placed at a disadvantage. Harm to Sprint would occur because valuable marketing information could be obtained by competitors providing alternatives to the services Sprint provides. In addition, Sprint's Customer Proprietary Network Information, which the FCC has determined is protectible, would be released.

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. Thus, 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 NYNEX's Motion for Confidential Treatment of portions of its special contract for the provision of centrex service to Sprint, and the supporting materials thereto, is GRANTED; and it is

FURTHER ORDERED, that this order is subject to reconsideration in the event that the Commission Staff or any party raised concerns, after review of the redacted materials, as well as the on-going rights of the Commission to reconsider this order in light of RSA 91-A, should circumstances so warrant.

By order of the Public Utilities Commission of New Hampshire this twenty-second day of January, 1996.

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*01/22/96*[89004]*81 NH PUC 54*Sprint Communications Company of New Hampshire, Inc.

[Go to End of 89004]

81 NH PUC 54

Re Sprint Communications Company of New Hampshire, Inc.

DR 95-356
Order No. 21,991

New Hampshire Public Utilities Commission

January 22, 1996

ORDER authorizing an interexchange telephone carrier to introduce a toll-free number by which a customer can access the carrier for making collect calls, subject to per-minute usage rates and a per-call charge of 79 cents for station-to-station calls and of $3.24 for person-to-person calls.

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1. RATES, § 589

[N.H.] Telephone rate design — Toll service — Person-to-person and station-to-station calls — Collect calls — Access to carrier via special toll-free number — Per-call charges — Interexchange telephone carrier. p. 54.

BY THE COMMISSION:

ORDER

[1] On December 22, 1995, the New Hampshire Public Utilities Commission

Page 54

(Commission) received a petition from Sprint Communications Company of New Hampshire, Inc. (Sprint), requesting authority to introduce Toll Free Access Collect, for effect January 25, 1996.

Toll Free Access Collect offers customers an opportunity to place collect calls using a Sprint-provided toll free access number. The per minute usage rates are $.26 daytime, $.15 evening, and $.10 night/weekend. There is a per call charge of $.79 for station-to-station calls and a per call charge of $3.24 for person-to-person calls.

We find the proposed changes to be in the public good. New services expand the choice of telephone services and foster competition in the New Hampshire intrastate toll market which allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize the introduction of Toll Free Access Collect.

Based upon the foregoing, it is hereby

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

Original Page 61.1

Original 89.2;

and it is

FURTHER ORDERED, that Sprint file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rule Puc 1601.05(k).

By order of the Public Utilities Commission of New Hampshire this twenty-second day of January, 1996.

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NH.PUC*01/22/96*[89005]*81 NH PUC 55*AT&T Communications of New Hampshire, Inc.

[Go to End of 89005]

81 NH PUC 55

Re AT&T Communications of New Hampshire, Inc.

DR 95-357
Order No. 21,992

New Hampshire Public Utilities Commission

January 22, 1996

ORDER authorizing an interexchange telephone carrier to use special pricing arrangements for its "MEGACOM 800" service.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — "MEGACOM 800" service — Special pricing arrangements — Interexchange telephone carrier. p. 55.

BY THE COMMISSION:

ORDER

[1] On December 22, 1995, the New Hampshire Public Utilities Commission (Commission) received a petition from AT&T Communications of New Hampshire, Inc. (AT&T), requesting approval of a Special Pricing Arrangement, pursuant to its tariff, for effect January 22, 1996.

The rate and term of the Special Pricing Arrangement for MEGACOM 800 Service are specified on the proposed tariff page pursuant to Section 1, paragraph 1.13 of AT&T's effective tariff.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire

intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize AT&T to revise its tariff as outlined above.

Page 55

Based upon the foregoing, it is hereby

ORDERED, that the following pages of AT&T's tariff, NHPUC No. 1 are approved for effect as filed:

Master Table of Contents

2nd Revised Page 1.1

Table of Contents

Original Page 27

Section 25

Original Page 1

Original Page 2;

and it is

FURTHER ORDERED, that AT&T file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rule Puc 1601.05(k).

By order of the Public Utilities Commission of New Hampshire this twenty-second day of January, 1996.

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NH.PUC*01/22/96*[89006]*81 NH PUC 56*Great Bay Water Company, Inc.

[Go to End of 89006]

81 NH PUC 56

Re Great Bay Water Company, Inc.

DR 94-185
Order No. 21,993

New Hampshire Public Utilities Commission

January 22, 1996

APPLICATION by water utility for approval of its quarterly customer surcharge for the recovery of rate case expenses; granted.

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1. EXPENSES, § 89

[N.H.] Rate case expense — Actual billings as basis — Recovery via quarterly surcharge — Updates — Water utility. p. 56.

BY THE COMMISSION:

ORDER

[1] On May 23, 1995 Great Bay Water Co., Inc. (Great Bay) filed with the New Hampshire Public Utilities Commission (Commission) a Summary of Rate Case Expenses and supporting documentation in the amount of $8,075.46 incurred in this permanent rate decrease docket. Commission Staff has reviewed this documentation and recommended approval. Consistent with a written Stipulation with Great Bay, the requested amount will be recovered from the 87 customers in a surcharge to be applied over a 48-month period, at a quarterly amount of $5.81.

We find the quarterly recoupment of rate case expenses in the amount of $8,075.46 to be consistent with the public good.

Based upon the foregoing, it is hereby

ORDERED, that the rate case expenses for Great Bay be approved effective the date of this order; and it is

FURTHER ORDERED, that Great Bay shall submit a revised tariff page reflecting the rate case recoupment amount, annotated with this Commission order number effective the date of this order; and it is

FURTHER ORDERED, that prior to the end of the recoupment period, Great Bay shall file a revised rate for the balance of the rate case expenses to be recovered in the last billing period to assure an accurate recovery.

By order of the Public Utilities Commission of New Hampshire this twenty-second day of January, 1996.

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NH.PUC*01/23/96*[89007]*81 NH PUC 57*Connecticut Valley Electric Company, Inc.

[Go to End of 89007]

81 NH PUC 57

Re Connecticut Valley Electric Company, Inc.

DR 95-307
Order No. 21,994

New Hampshire Public Utilities Commission

January 23, 1996

ORDER adopting a procedural schedule for addressing an electric utility's proposed 1996

conservation and load management programs.

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1. CONSERVATION, § 1

[N.H.] Annual conservation and load management program filing — Electric utility — Procedural schedule — Issues to be addressed — Streamlining of programs — Direct billing of participants. p. 57.

BY THE COMMISSION:

ORDER

[1] On November 3, 1995, Connecticut Valley Electric Company, Inc. (CVEC) filed with the New Hampshire Public Utilities Commission (Commission) a Conservation & Load Management Programs (C&LM) proposal and supporting testimony and exhibits.

By Order of Notice dated November 22, 1995, the Commission set a prehearing conference for December 20, 1995, set a deadline for intervention requests, proposed a procedural schedule and called for initial positions of the Parties and Commission Staff (Staff).

At the prehearing conference CVEC, the Office of Consumer Advocate (OCA), which is a statutorily recognized intervenor, and Staff agreed to the following procedural schedule:

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

Data Requests from Staff and
  OCA                              December 22, 1995
Data Responses from CVEC             January 5, 1996
Technical Session at 10 a.m.         January 9, 1996
Testimony by Staff and OCA          January 23, 1996
Data Requests by CVEC               January 26, 1996
Data Responses by Staff and OCA     February 1, 1996
Settlement Conference, 10 a.m.      February 5, 1996
File Settlement Agreement, if any February 12, 1996
Hearing on merits, 10 a.m.         February 16, 1996
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Also at the prehearing conference, in accordance with the Order of Notice, CVEC stated that it believed the significant issue to be addressed in this proceeding is its plan to streamline the C&LM program, eliminating several programs and reducing others to direct billing status. CVEC based its plans on its C&LM experience and its wish to reduce embedded costs because of emerging competition.

OCA stated that its concerns are focused on CVEC's overspending of its residential C&LM program budget in 1995.

Staff stated it particularly intended to examine CVEC's continued reduction in budget levels and program offerings.

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 twenty-third day of January, 1996.

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NH.PUC*01/25/96*[89008]*81 NH PUC 58*Public Service Company of New Hampshire

[Go to End of 89008]

81 NH PUC 58

Re Public Service Company of New Hampshire

DR 95-270
Order No. 21,995

New Hampshire Public Utilities Commission

January 25, 1996

ORDER approving an electric utility's resubmitted proposal for a special rate contract with an industrial customer, Textron Automotive Interiors, Inc. The revised contract removes provisions which the commission previously had deemed anticompetitive, but still offers the customer a discounted rate in exchange for a long-term service commitment. For the earlier order rejecting the contract as originally filed, see Order No. 21,959, 80 NH PUC 812 (1995).

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1. RATES, § 166

[N.H.] Factors affecting reasonableness — Solicitation or retention of business — Economic development incentives for industrial load — Special rate contracts — Electric utility. p. 59.

2. MONOPOLY AND COMPETITION, § 21

[N.H.] Restraint of trade and anticompetitive practices — Special contracts — Prohibitions on third-party power supplier bids — Determination of anticompetitive effects — Removal of offensive terms as condition of approval — Electric utility. p. 59.

3. RATES, § 339

[N.H.] Electric rate design — Industrial customer — Special discounted rate contract — Designed to retain load — Long-term service commitment by customer as a factor. p. 59.

4. RATES, § 49

[N.H.] Commission jurisdiction — As to special rate contracts — No unlawful infringement on traditional rate-making practices — Commission authority to review and approve, modify, reject, or remand. p. 59.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

Public Service Company of New Hampshire (PSNH), filed on September 25, 1995, a ten-year special contract, Special Contract No. NHPUC-121 (NHPUC-121), between PSNH and Textron Automotive Interiors, Inc. (Textron). Textron manufactures instrument panels, door panels, armrests, airbags, center consoles and headliners to totally integrated vehicle interiors in Dover and Farmington, New Hampshire.

On December 28, 1995, the Commission issued Order No. 21,959 in which, among other things, the majority denied approval of the contract without prejudice. This decision was based on the majority's view that Article 8 of NHPUC-121, which contained a one cent premium per kWh provision described below, created a "potentially chilling effect on future competitive suppliers."

Campaign for Ratepayers Rights (CRR) on December 11, 1995 requested intervention, and filed a Motion to Bar Jurisdiction, both of which the Commission denied in Order No. 21,959 (December 28, 1995). On December 21, 1995 CRR filed a Motion for Reconsideration of the Commission's decision in these two actions.

On January 17, 1996, in response to Order No. 21,959 and the Commission's deliberations and Order No. 21,953 and No. 21,986 in DR 95-205, PSNH Special Contract No. NHPUC-118, PSNH filed a revised NHPUC-121 (revised contract).

II. COMMISSION ANALYSIS

Page 58

A. Revised Filing

[1-3] The original Article 8, Future Electric Supply Options, contained the terms under which Textron could seek an alternative supply of electricity for either a portion or all of Textron's requirements. In particular, Article 8 stated that Textron could not seek any alternative supplier sooner than sixty (60) months after the effective date of NHPUC-121. After 60 months, if Textron received a bona fide offer from a third party supplier, Textron had to submit the terms of the offer to PSNH in accordance with Article 8. If PSNH matched the third party supply offer within 60 days, Textron was required to accept PSNH's proposal plus pay an additional one cent premium per kWh.

In Order No. 21,959, the majority described this provision as posing serious anti-competitive aspects that are not in the public interest. It stated that they would approve NHPUC-121 absent the anti-competitive aspects contained in Article 8 and recommended that PSNH refile NHPUC-121 for immediate reconsideration as soon as a remedy to Article 8 was completed, signed by PSNH and Textron and filed with the Commission.

Our review of the January 17, 1996 filing has quelled our concerns regarding anti-competitive consequences of this contract. Either party may now terminate NHPUC-121 after sixty months without penalty upon six months written notice to the other in accordance

with the notice provisions of Article 16. All other terms, conditions and pricing of the original filing have remained unchanged. We will, therefore, approve this contract today as being in the public interest.

B. CRR Motion for Reconsideration

[4] We must also address CRR's Motion for Reconsideration of our decision to deny its Motion to Bar Jurisdiction and Motion to Intervene. As we stated in Order No. 21,959, we find CRR's argument that the Commission lacks jurisdiction to be without merit. CRR has demonstrated no new evidence or argument which warrants rehearing or reconsideration of this issue.

Though we denied the Petition to Intervene in Order No. 21,959, we have reconsidered this issue and will allow CRR to intervene. CRR is free to file comments during the *nisi* period, as can any interested party. CRR may also seek reconsideration of this order under RSA 541:3.

Based upon the foregoing, it is hereby

ORDERED *Nisi*, that Special Contract No. NHPUC-121 between PSNH and Textron as revised and filed on January 17, 1996, is APPROVED for effect on that date unless ordered otherwise; and it is

FURTHER ORDERED, that during any rate case or rate redesign filed by PSNH during the life of Special Contract No. NHPUC-121, 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 Textron by our approval today of this special contract; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules, Puc 1601.05, the Petitioner shall cause an attested copy of this Order *Nisi* to be published once in a statewide newspaper of general circulation, such publication to be no later than February 1, 1996, and to be documented by affidavit filed with this office on or before February 8, 1996; and it is

FURTHER ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or file a written request for a hearing on this matter before the Commission no later than February 15, 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 February 22, 1996; and it is

FURTHER ORDERED, that CRR's Motion for Reconsideration is GRANTED insofar as it requests that its Petition to Intervene be granted; and it is

FURTHER ORDERED, that CRR's Motion for Reconsideration regarding the Motion to Bar Jurisdiction is DENIED; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective February 24, 1996, unless the Commission provides otherwise in a supplemental order issued prior to the effective date.

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By order of the Public Utilities Commission of New Hampshire this twenty-fifth day of January, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 95-205, Order No. 21,953, 80 NH PUC 796, Dec. 20, 1995. [N.H.] Re Public Service Co. of New Hampshire, DR 95-270, Order No. 21,959, 80 NH PUC 812, Dec. 28, 1995. [N.H.] Re Public Service Co. of New Hampshire, DR 95-205, Order No. 21,986, 81 NH PUC 39, Jan. 18, 1996.

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NH.PUC*01/29/96*[89009]*81 NH PUC 60*Public Service Company of New Hampshire

[Go to End of 89009]

81 NH PUC 60

Re Public Service Company of New Hampshire

DR 95-230
Order No. 21,996

New Hampshire Public Utilities Commission

January 29, 1996

ORDER approving an electric utility's resubmitted proposal for a special rate contract with an industrial customer, Miniature Precision Bearings Corporation. The revised contract removes provisions which the commission previously had deemed anticompetitive, but still offers the customer a discounted rate in exchange for a long-term service commitment. For the earlier order rejecting the contract as originally filed, see Order No. 21,987, 81 NH PUC 42, *supra* (1996).

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1. RATES, § 166

[N.H.] Factors affecting reasonableness — Solicitation or retention of business — Economic development incentives for industrial load — Special rate contracts — Electric utility. p. 61.

2. MONOPOLY AND COMPETITION, § 21

[N.H.] Restraint of trade and anticompetitive practices — Special contracts — Prohibitions on third-party power supplier bids — Determination of anticompetitive effects — Removal of offensive terms as condition of approval — Electric utility. p. 61.

3. RATES, § 339

[N.H.] Electric rate design — Industrial customer — Special discounted rate contract — Designed to retain load — Long-term service commitment by customer as a factor. p. 61.

4. RATES, § 49

[N.H.] Commission jurisdiction — As to special rate contracts — No unlawful infringement

on traditional rate-making practices — Commission authority to review and approve, modify, reject, or remand. p. 61.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

Public Service Company of New Hampshire (PSNH), filed on August 18, 1995, a ten-year special contract, Special Contract No. NHPUC- 120 (NHPUC-120), between PSNH and Miniature Precision Bearings Corporation (MPB). MPB, a wholly owned subsidiary of Timken Company, manufactures ball and roller bearings and power transmission pulleys in three manufacturing operations in Keene, New Hampshire, employing 833 people.

On January 18, 1996, the Commission issued Order No. 21,987 in which, among other things, the majority denied approval of the contract without prejudice. This decision was based on the majority's view that Article 8 of NHPUC-120, which contained a one cent premium per kWh provision described below,

created a "potentially chilling effect on future competitive suppliers." Order No. 21,953 at 7.

Campaign for Ratepayers Rights (CRR) on December 11, 1995, prior to the issuance of our written order, requested intervention and filed a Motion to Bar Jurisdiction. In Order No. 21,987, the Commission denied the Motion to Bar Jurisdiction and granted the request to intervene. (January 18, 1996). On December 21, 1995 CRR filed a Motion for Reconsideration of the Commission's decision in these two actions.

On January 24, 1996, in response to Order No. 21,987 and the Commission's deliberations and Order No. 21,953 and No. 21,986 in DR 95-205, PSNH Special Contract No. NHPUC-118, PSNH filed a revised NHPUC-120 (revised contract).

II. COMMISSION ANALYSIS

A. Revised Filing

[1-3] The original Article 8, Future Electric Supply Options, contained the terms under which MPB could seek an alternative supply of electricity for either a portion or all of MPB's requirements. In particular, Article 8 stated that MPB could not seek any alternative supplier sooner than 60 months after the effective date of NHPUC-120. After 60 months, if MPB received a bona fide offer from a third party supplier, MPB had to submit the terms of the offer to PSNH in accordance with Article 8. If PSNH matched the third party supply offer within 60 days, MPB was required to accept PSNH's proposal plus pay an additional one cent premium per kWh.

In Order No. 21,987, the majority described this provision as posing serious anti-competitive aspects that are not in the public interest. It found the inclusion of Article 8 in NHPUC-120 especially disturbing as it was not contained in NHPUC-108, PSNH's contract with New

Hampshire Ball Bearing, Inc., a competitor of MPB. The majority stated that they would approve NHPUC-120 absent the anti-competitive aspects contained in Article 8 and recommended that PSNH refile NHPUC-120 for immediate reconsideration as soon as a remedy to Article 8 was completed, signed by PSNH and MPB and filed with the Commission.

Our review of the January 24, 1996 filing indicates that PSNH has removed our concerns regarding anti-competitive consequences of this contract. Either party may now terminate NHPUC-120 after 60 months without penalty upon two months written notice to the other in accordance with the notice provisions of Article 15 - Notice of Termination. All other terms, conditions and pricing of the original filing have remained unchanged. We will, therefore, approve this contract today as being in the public interest.

B. CRR Motion for Reconsideration

[4] We must also address CRR's Motion for Reconsideration of our decision to deny its Motion to Bar Jurisdiction and Motion to Intervene. As we stated in Order No. 21,987, we find CRR's argument that the Commission lacks jurisdiction to be without merit. CRR has demonstrated no new evidence or argument which warrants rehearing or reconsideration of this issue.

Though we denied the request to intervene in our oral deliberations on December 11, 1995, we reconsidered this issue in Order No. 21,987 and have allowed CRR to intervene. Thus, CRR's Motion for Reconsideration in this regard has been rendered moot.

CRR is free to file comments during the *Nisi* period, as can any interested party. CRR may also seek reconsideration of this order under RSA 541:3.

Based upon the foregoing, it is hereby

ORDERED *Nisi*, that Special Contract No. NHPUC-120 between PSNH and MPB as revised and filed on January 24, 1996, is APPROVED for effect on that date unless ordered otherwise; and it is

FURTHER ORDERED, that during any rate case or rate redesign filed by PSNH during the life of Special Contract No. NHPUC-120, 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 MPB by our approval

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today of this special contract; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules, Puc 1601.05, the Petitioner shall cause an attested copy of this Order *Nisi* to be published once in a statewide newspaper of general circulation, such publication to be no later than February 5, 1996, and to be documented by affidavit filed with this office on or before February 12, 1996; and it is

FURTHER ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or file a written request for a hearing on this matter before the Commission no later than February 20, 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 February 26, 1996; and it is

FURTHER ORDERED, that CRR's Motion for Reconsideration insofar as it requests that its Petition to Intervene is moot; and it is

FURTHER ORDERED, that CRR's Motion for Reconsideration regarding the Motion to Bar Jurisdiction is DENIED; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective February 28, 1996, 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 January, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 95-205, Order No. 21,953, 80 NH PUC 796, Dec. 20, 1995. [N.H.] Re Public Service Co. of New Hampshire, DR 95-205, Order No. 21,986, 81 NH PUC 39, Jan. 18, 1996. [N.H.] Re Public Service Co. of New Hampshire, DR 95-230, Order No. 21,987, 81 NH PUC 42, Jan. 18, 1996.

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NH.PUC*01/29/96*[89010]*81 NH PUC 62*Public Service Company of New Hampshire

[Go to End of 89010]

81 NH PUC 62

Re Public Service Company of New Hampshire

DR 95-214
Order No. 21,997

New Hampshire Public Utilities Commission

January 29, 1996

ORDER approving an electric utility's resubmitted proposal for a special rate contract with an industrial customer, Kollsman, a Division of Sequa Corporation. The revised contract removes provisions which the commission previously had deemed anticompetitive, but still offers the customer a discounted rate in exchange for a long-term service commitment. For the earlier order rejecting the contract as originally filed, see Order No. 21,957, 80 NH PUC 806 (1995).

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1. RATES, § 166

[N.H.] Factors affecting reasonableness — Solicitation or retention of business — Economic development incentives for industrial load — Special rate contracts — Electric utility. p. 63.

2. MONOPOLY AND COMPETITION, § 21

[N.H.] Restraint of trade and anticompetitive practices — Special contracts — Prohibitions on third-party power supplier bids — Determination of anticompetitive effects — Removal of offensive terms as condition of approval — Electric utility. p. 63.

3. RATES, § 339

[N.H.] Electric rate design — Industrial customer — Special discounted rate contract — Designed to retain load — Long-term service commitment by customer as a factor. p. 63.

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4. RATES, § 49

[N.H.] Commission jurisdiction — As to special rate contracts — No unlawful infringement on traditional rate-making practices — Commission authority to review and approve, modify, reject, or remand. p. 63.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

Public Service Company of New Hampshire (PSNH), filed on July 28, 1995, a ten-year special contract, Special Contract No. NHPUC-119 (NHPUC-119), between PSNH and Kollsman, Division of Sequa Corporation (Kollsman), a New Hampshire corporation with two manufacturing facilities located in Merrimack and Nashua, New Hampshire. Kollsman manufactures instrumentation and equipment for military and commercial aircraft, electro-optics for weapons systems, weapons training systems and medical diagnostic equipment.

On December 28, 1995, the Commission issued Order No. 21,957 in which, among other things, the majority denied approval of the contract without prejudice. This decision was based on the majority's view that Article 8 of NHPUC-119, which contained a 5% premium per kWh provision described below, created a "potentially chilling effect on future competitive suppliers." Order No. 21,957 at 6.

Campaign for Ratepayers Rights (CRR) on December 11, 1995 requested intervention, and filed a Motion to Bar Jurisdiction, both of which the Commission denied in Order No. 21,957 (December 28, 1995). On December 21, 1995, prior to the issuance of our written order, CRR filed a Motion for Reconsideration of the Commission's decision in these two actions.

On January 19, 1996, in response to Order No. 21,957 and the Commission's deliberations (January 8, 1996) and Order No. 21,953 and No. 21,986 in DR 95-205, PSNH Special Contract No. NHPUC-118 (Teradyne), PSNH filed a revised NHPUC-119.

II. COMMISSION ANALYSIS

A. Revised Filing

[1-3] The original Article 8, Future Electric Supply Options, contained the terms under which Kollsman could seek an alternative supply of electricity for either a portion or all of Kollsman's requirements. In particular, Article 8 stated that Kollsman could not seek any alternative supplier sooner than seven years after the effective date of NHPUC-119. After seven years, if Kollsman received a bona fide offer from a third party supplier, Kollsman had to submit the terms of the offer to PSNH in accordance with Article 8. If PSNH matched the third party supply offer within 60 days, Kollsman was required to accept PSNH's proposal plus pay a 5% premium per kWh.

In Order No. 21,957, the majority described this provision as presenting serious anti-competitive aspects that are not in the public interest. The majority stated that they would approve NHPUC-119 absent the anti-competitive aspects contained in Article 8 and recommended that PSNH refile NHPUC-119 for immediate reconsideration as soon as a remedy to Article 8 was completed, signed by PSNH and Kollsman and filed with the Commission.

Our review of the January 19, 1996 filing indicates that PSNH has removed our concerns regarding anti-competitive consequences of this contract. Either party may now terminate NHPUC-119 after seven years without penalty upon six months written notice to the other in accordance with the notice provisions of Article 13 - Notice of Termination. All other terms, conditions and pricing of the original filing have remained unchanged. We will, therefore, approve this contract today as being in the public interest.

B. CRR Motion for Reconsideration

[4] We must also address CRR's Motion for Reconsideration of our decision to deny its Motion to Bar Jurisdiction and Motion to

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Intervene. As we stated in Order No. 21,957, we find CRR's argument that the Commission lacks jurisdiction to be without merit. CRR has demonstrated no new evidence or argument which warrants rehearing or reconsideration of this issue.

Though we denied the Petition to Intervene in Order No. 21,957, we have reconsidered this issue and will allow CRR to intervene. CRR is free to file comments during the *Nisi* period, as can any interested party. CRR may also seek reconsideration of this order under RSA 541:3.

Based upon the foregoing, it is hereby

ORDERED *Nisi*, that Special Contract No. NHPUC-119 between PSNH and Kollsman as revised and filed on January 19, 1996, is APPROVED for effect on that date unless ordered otherwise; and it is

FURTHER ORDERED, that during any rate case or rate redesign filed by PSNH during the life of Special Contract No. NHPUC-119, 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 Kollsman by our approval today of this special contract; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules, Puc 1601.05, the Petitioner shall cause an attested copy of this Order *Nisi* to be published once in a statewide newspaper of

general circulation, such publication to be no later than February 5, 1996, and to be documented by affidavit filed with this office on or before February 12, 1996; and it is

FURTHER ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or file a written request for a hearing on this matter before the Commission no later than February 20, 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 February 26, 1996; and it is

FURTHER ORDERED, that CRR's Motion for Reconsideration insofar as it requests that its Petition to Intervene is GRANTED; and it is

FURTHER ORDERED, that CRR's Motion for Reconsideration regarding the Motion to Bar Jurisdiction is DENIED; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective February 28, 1996, 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 January, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 95-205, Order No. 21,953, 80 NH PUC 796, Dec. 20, 1995. [N.H.] Re Public Service Co. of New Hampshire, DR 95-214, Order No. 21,957, 80 NH PUC 806, Dec. 28, 1995. [N.H.] Re Public Service Co. of New Hampshire, DR 95-205, Order No. 21,986, 81 NH PUC 39, Jan. 18, 1996.

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NH.PUC*01/29/96*[89011]*81 NH PUC 64*Public Service Company of New Hampshire

[Go to End of 89011]

81 NH PUC 64

Re Public Service Company of New Hampshire

DR 95-295
Order No. 21,998

New Hampshire Public Utilities Commission

January 29, 1996

ORDER adopting a settlement agreement with respect to an electric utility's 1996 conservation and load management (C&LM) program, approving a basic budget of $2.811 million. Although the utility is authorized to discontinue its residential home energy conservation loan program (due to oversubscription in the previous year), the commission notes that such oversubscription indicates a great deal of consumer interest in the program, such that reintroduction of the plan is

not precluded by its elimination in the current C&LM budget year.

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1. CONSERVATION, § 1

[N.H.] Conservation and load management programs — Electric utility — Settlement agreement — 1996 budget — Continuation of most residential and educational projects — But elimination of residential home energy conservation loan program — Due to prior oversubscription — Possible reintroduction at later time. p. 66.

2. ELECTRICITY, § 4

[N.H.] Operating practices — Conservation and load management programs — Settlement terms — New annual budget — Continuation of most residential and educational projects — Necessity of discontinuing certain home conservation loan plans — Because of oversubscription in prior year. p. 66.

APPEARANCES: Catherine E. Shively, Esq. for Public Service Company of New Hampshire, Kenneth E. Traum for the Office of the Consumer Advocate, and E. Barclay Jackson Esq. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On October 20, 1995, the Public Service Company of New Hampshire (PSNH) filed its 1996 Conservation and Load Management (C&LM) program with the New Hampshire Public Utilities Commission (Commission), for effect on January 1, 1996.

At a duly noticed Pre-hearing Conference on November 22, 1995, the Commission approved a procedural schedule. There were no intervenors other than the Office of Consumer Advocate (OCA) which is a statutorily recognized intervenor. After a discovery period during which data requests and responses were filed, Commission Staff (Staff) filed testimony. On December 19, 1995, PSNH, Staff and the OCA conducted settlement discussions which resulted in a Settlement Agreement on all issues. The Settlement Agreement was filed with the Commission on January 3, 1996 and presented at a final hearing on January 4, 1996.

II. THE SETTLEMENT AGREEMENT

The C&LM program proposed by PSNH basically continues the 1995 programs, with some modifications. The 1996 program differed from the 1995 program in that it would discontinue the Residential Home Energy Conservation Loan Program and allocate $51,000 for a pilot Operation and Maintenance (O&M) program for C&I customers.

As a result of settlement discussions the Parties and Staff agreed that PSNH will not

implement the pilot O&M program in 1996 and will transfer the $51,000 budgeted for the O&M program into the continuation of the Energy Check program.

The Parties and Staff agreed that on or before April 1, 1996, PSNH will file actual 1995 C&LM expenditures including final Lost Fixed Cost Revenue (LFCR), specifying amounts attributable to both vulnerable and non-vulnerable customers. The Parties and Staff also agreed that non-vulnerable customer LFCR is recoverable, subject to reconciliation. No agreement was reached as to whether vulnerable customer LFCR may be recoverable. As there is no vulnerable customer LFCR anticipated, that issue need not be resolved in this docket.

The Parties and Staff agreed that PSNH shall amend all of its outstanding C&LM contracts which contain exclusivity clauses by inserting a buy-out provision. The buy-out provisions will be included in all future contracts which contain exclusivity clauses; no exclusivity clause shall be for periods of more than five years. The buy-out provisions for contracts with exclusivity periods of less than three years will provide for a buy-out price of the total cost of installed C&LM measures. Contracts with exclusivity periods of three to five years will provide a prorated buy-out price, i.e.,

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a five year exclusivity period would result in a buy-out price of 1/60 of the total cost of installed C&LM measures times the number of months remaining in the exclusivity period.

The Parties and Staff agreed that the funding for the Residential Home Energy Conservation Loan Program are unavailable due to over- subscription. Therefore, PSNH will not offer the Residential Home Energy Conservation Loan Program in 1996, but PSNH will inform participants in residential C&LM programs of available energy efficiency related loan programs of which PSNH is aware.

The Parties and Staff agreed upon a C&LM budget of $2,811,000 in program costs, plus the LFCR amounts to be reconciled, for a total of $4,255,000.

III. COMMISSION ANALYSIS

[1, 2] After careful review of the original filing, the Settlement Agreement, testimony and exhibits, we find that, as modified by the Settlement Agreement, the PSNH C&LM programs proposed are reasonable and in the public good. The filing is consistent with the requirements of RSA 378:38 *et seq.* We remark, however, that the oversubscription of the Residential Home Energy Conservation Loan Program indicates to us that such a program is popular and would help achieve conservation goals for New Hampshire. Our approval of the elimination of the program should not be construed to preclude its reintroduction.

Based upon the foregoing, it is hereby

ORDERED, that the proposed C&LM programs, as amended by the Settlement Agreement, are hereby approved.

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of January, 1996.

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[Go to End of 89012]

81 NH PUC 66

Re Connecticut Valley Electric Company, Inc.

DR 94-315
Order No. 21,999

New Hampshire Public Utilities Commission

January 29, 1996

ORDER granting temporary protective treatment of a status report on negotiations between an electric utility and a Canadian hydropower facility.

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1. ELECTRICITY, § 5

[N.H.] Hydropower — Negotiation of power purchase agreement — Canadian source of supply as a factor — Status report on negotiations — Protective treatment. p. 66.

2. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective treatment — On temporary basis — Of status report on negotiation of power purchase agreement — Electric utility and Canadian hydropower facility. p. 66.

BY THE COMMISSION:

ORDER

[1, 2] On January 11, 1996, Connecticut Valley Electric Company (CVEC) filed with the New Hampshire Public Utilities Commission (Commission) a report entitled "Central Vermont Public Service Corporation Confidential Status Report on Current Hydro-Quebec Negotiation" (Report) as an attachment to the Testimony of Bruce W. Bentley. Concurrent with the Report, CVEC filed a Motion for Proprietary Treatment of the Report. 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 argues that the Report should be afforded protective treatment because, using our analysis in *Re NET*, Order No. 21,731, 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, CVEC states that it provided the documents required in Puc 204.08(b)(1) and cited the statutory support required by Puc 204.08(b)(2). CVEC states that the Report, which has been disseminated in the course of a Vermont rate case pursuant to a Protective Agreement, consists of sensitive material regarding current efforts by CVEC's parent company to reduce power supply costs incurred through a contract with Hydro-Quebec, thus meeting the requirements of Puc 204.08(b)(4). CVEC further provides facts describing the benefits of non-disclosure, thus meeting the requirements of Puc 204.08(b)(3).

We recognize that the detailed customer specific information regarding customer usage, costs and terms of service contained in the Report is critical to review of the Least Cost Integrated Plan by the Commission and Commission Staff.

We also recognize that businesses engaged in discussions with regulated utilities are reluctant to disclose sensitive commercial and financial information if it is to become part of the public record.

CVEC has alleged that disclosure of the information would result in harm to both itself and its customers. The harm to CVEC would occur because the parent company would be placed at a disadvantage in negotiating with Hydro-Quebec; therefore, higher costs would accrue to both Vermont and New Hampshire customers.

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 to the public. Thus, the Report 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 CVEC's Motion for Confidential Treatment of the Report is GRANTED; and it is

FURTHER ORDERED, that this order is subject to reconsideration in the event that the Commission Staff or any party raises concerns, after review of the redacted materials, as well as the on-going rights of the Commission to reconsider this order in light of RSA 91-A, should circumstances so warrant.

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of January, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New England Teleph. & Teleg. Co., DR 95-069, Order No. 21,731, 80 NH PUC 437, July 10, 1995.

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NH.PUC*01/29/96*[89013]*81 NH PUC 67*New England Telephone and Telegraph Company

[Go to End of 89013]

81 NH PUC 67

Re New England Telephone and Telegraph Company

DR 95-122
Order No. 22,000

New Hampshire Public Utilities Commission

January 29, 1996

ORDER approving a local exchange telephone carrier's proposed introduction of special access services for connecting customers to integrated services digital network (ISDN) features. However, given the increase in ISDN-related customer complaints, the carrier is directed to carefully monitor its ISDN services.

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1. RATES, § 584

[N.H.] Telephone rate design — Integrated

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services digital network (ISDN) — As a type of foreign exchange service — Special access proposal — Replacement of local calling areas with hubbing offices — Complexity of service and rate structures — Local exchange carrier. p. 69.

2. SERVICE, § 449.1

[N.H.] Telephone — Integrated services digital network (ISDN) — As a type of foreign exchange service — Special access proposal — Replacement of local calling areas with hubbing offices — Complexity of service and rate structures — Increase in ISDN-related complaints — Need for careful monitoring — Local exchange carrier. p. 69.

BY THE COMMISSION:

ORDER

On April 28, 1995, New England Telephone and Telegraph Company (NYNEX or Company) petitioned the Commission to introduce Integrated Services Digital Network (ISDN) Basic Service Virtual Serving Arrangement (VSA) which is a special arrangement to enable a customer to subscribe to ISDN Basic Service when a customer's serving central office is not equipped to provide ISDN Basic Service.

On June 1, 1995, the Commission issued Order No. 21,674 suspending the filing to allow Staff time to review the filing. NYNEX responded to Staff requests for information by providing a copy of the associated network technical plan. On August 31, 1995, Staff requested that the Commission extend the suspension period to allow additional time to review the petition. On

August 31, 1995, the Commission granted Staff's request and issued Order No. 21,809 suspending the proposed tariff pages.

NYNEX believes this filing will allow it to accommodate potential demand for emerging ISDN applications from customers served by central offices where it is not economical to deploy ISDN Basic Rate Interface (BRI). NYNEX proposes to provide the ISDN functionality to the customer by using central offices currently equipped with ISDN BRI technology as hubbing offices and extending the ISDN functionality to the customer's serving central office. NYNEX states that it has selected the hubbing switches based on the expected demand and capacity of the existing ISDN switches: customers cannot choose the hub office which will provide their ISDN functionality. In addition, basic exchange and data usage charges will be determined based on the rates and calling areas associated with the ISDN serving central office.

If an ISDN VSA customer's local central office is upgraded to ISDN, NYNEX will notify the customer and, if desired, reterminate the customer's ISDN service to their local serving central office at no additional charge. According to the petition, if this is done, the customer's telephone number will change to a number from the local serving central office and the VSA will no longer be required.

NYNEX proposes two rate elements for the VSA: a non-recurring charge of $225, designed to recover the costs of installing and disconnecting the VSA; and a recurring rate of $29 per month, designed to recover the cost of the interoffice connection between the customer's serving central office and the hubbing office. These rates are for the VSA only and are in addition to the rates for ISDN Basic Service.

Although the distances between the customers' serving central offices and the hubbing offices will vary, NYNEX proposes to introduce a single, statewide rate to recover the associated recurring costs. The statewide rate incorporates a weighted average facility mileage between serving central offices and the hubbing offices.

In support of its filing, the Company submitted detailed information describing the expected demand for the new service together with estimates of the costs associated with providing the proposed service. The Staff reviewed the proposed petition, including the supporting cost and demand information. Based on the materials submitted, Staff determined that the

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analysis showed that the proposed rates appeared to cover their incremental costs and provide a contribution towards common overheads. The analysis provided with the filing shows an estimated increase in contribution of $17,698 over the first three years of the service offering. In addition, this filing will generate revenues associated with ISDN Basic Service.

The Staff alerted the Commission that consumer complaints appear to be increasing with regard to existing ISDN service. Many of these complaints concern the time it takes to receive ISDN service after requesting it. In order for the Commission to monitor the quality of service as it relates to the timeliness of ISDN installation, Staff recommended the Commission require the Company to provide monthly reports showing the number of service orders held longer than 30 days.

In addition, Staff noted that the tariff, as filed, requires that a customer's telephone number be changed if a customer chooses to replace its ISDN VSA with ISDN BRI when the customer's serving central office is converted to provide ISDN Basic Service. Staff recommended that the Commission put the Company on notice that this requirement is an issue of number portability, a topic which the Commission will address separately.

[1, 2] We have reviewed the Petition and Staff's recommendation and find that the proposed filing is in the public good. However, since the Commission has observed a growing number of customer complaints regarding held orders for ISDN service, we will require the Company to monitor its ISDN service installation practices and report, on a monthly basis, any orders for ISDN service held more than 30 days.

We are also concerned that the service is complex and could easily result in customer confusion. Customers must understand that VSA is a foreign exchange offering that replaces the customer's existing local calling area with that of the hubbing office. Thus, customers who use the VSA line for voice as well as data could inadvertently incur toll charges from the hubbing office to their current local exchange, for a call to a neighbor. We will require NYNEX to consult with Staff to develop customer information regarding this service that clearly explains this complexity to assure that customers do not incur unintended charges.

Based upon the foregoing, it is hereby

ORDERED, that the following tariff pages of NYNEX are approved:

NHPUC No. 75
Part C, Section 10

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Original Page 15.1

FURTHER ORDERED, that the above tariff pages shall be effective as of the date of this order; and it is

FURTHER ORDERED, that NYNEX track and report to the Commission, ISDN orders held more than 30 days; and it is

FURTHER ORDERED, that NYNEX is put on notice that number portability will be addressed separately; and

FURTHER ORDERED, that NYNEX consult with Staff to develop clear and comprehensive customer information for this service; and it is

FURTHER ORDERED, that NYNEX file a compliance tariff with the Commission on or before February 28, 1996, in accordance with N.H. Admin. Rules, Puc 1601.04(b).

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of January, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New England Teleph. & Teleg. Co. dba NYNEX, DR 95-122, Order No. 21,674, 80 NH PUC 302, June 1, 1995.

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NH.PUC*01/30/96*[89014]*81 NH PUC 70*EnergyNorth Natural Gas, Inc.

[Go to End of 89014]

81 NH PUC 70

Re EnergyNorth Natural Gas, Inc.

Additional applicant: Northern Utilities, Inc.

DE 95-121
Order No. 22,001

New Hampshire Public Utilities Commission

January 30, 1996

ORDER granting confidentiality as to certain proposals related to cost-of-service studies that were ordered to be conducted by two natural gas local distribution companies for the purpose of establishing gas transportation service rates.

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1. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective treatment — Proposals related to cost-of-service studies — As required of local gas distribution companies — Sensitive, proprietary gas marketing information — Harm from disclosure. p. 70.

BY THE COMMISSION:

ORDER

As part of its on-going efforts to enable competitive supply of natural gas, the New Hampshire Public Utilities Commission (Commission) ordered the two natural gas distribution companies under its jurisdiction, EnergyNorth Natural Gas, Inc. (ENGI) and Northern Utilities, Inc. (Northern) to file cost of service studies on their natural gas transportation services. *See*, Order of Notice dated May 1, 1995. The Commission granted the full intervention requests of Anheuser-Busch, Inc., Sprague Energy Corp. and Norstar Energy, O.P. as well as the limited intervention request of AGF Gas Sales. The Office of Consumer Advocate is a statutorily recognized intervenor.

ENGI and Northern filed cost of service studies on October 23, 1995. The studies are now in the discovery phase, with hearings scheduled for May, 1996.

[1] ENGI, on January 16, 1996, filed a Motion for Protective Order and Confidential

Treatment of its response to Commission Staff (Staff) Data Request #15 which sought all Requests for Proposals and responses regarding balancing and other gas supply related services. In response to this request, ENGI provided a number of proposals (Proposals) and a request that they be provided confidential treatment and provided only to Staff and the OCA. ENGI did not seek protection of the Request for Proposal itself.

According to ENGI, none of the Parties or Staff could be reached prior to filing the Motion. Pursuant to N.H. Admin. Rules, Puc 203.04(c), Parties and Staff have 10 days to respond to motions; the ten day period has expired without response.

In its motion ENGI argues that the Proposals should be afforded protective treatment because they are within the definition of confidential, commercial information protected by RSA 91-A:5,IV and N.H. Admin. Rules, Puc 204.08(4)(a), (b) and (d)(1), as well as PUC 204.07.

ENGI provides facts describing the benefits of non-disclosure, thus meeting the requirements of Puc 204.08(b)(3). ENGI alleges that disclosure of the information would result in harm to itself, in the form of less advantageous or more expensive services from companies responding to future RFPs of this nature. A number of the intervenors are gas marketers in direct competition with ENGI and therefore, ENGI argues, disclosure would result in competitive harm.

ENGI also states that the Proposals constitute confidential commercial information of the Mansfield Consortium, of which ENGI is a member. The Mansfield Consortium does not disclose this information to anyone outside its affiliates and representatives. This representation meets the requirements of Puc 204.08(b)(4).

Finally, ENGI argues that the Proposals

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should be protected as "fuel supply contracts" pursuant to Puc 204.08(b)(4)d.1. Although these Proposals are not signed contracts and therefore not strictly within the terms of Puc 204.08(b)(4)d.1, the policy considerations which led us to protection of fuel supply contracts lead us similarly to protect proposals for fuel supply contracts.

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 to the public. The Proposals 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 ENGI's Motion for Confidential Treatment of the Proposals is GRANTED; and it is

FURTHER ORDERED, that this order is subject to reconsideration in the event that the Commission Staff or any party raised concerns, after review of the redacted materials, as well as the on-going rights of the Commission to reconsider this order in light of RSA 91-A, should circumstances so warrant.

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

1996.

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NH.PUC*01/30/96*[89015]*81 NH PUC 71*Union Telephone Company

[Go to End of 89015]

81 NH PUC 71

Re Union Telephone Company

DR 95-177
Order No. 22,002

New Hampshire Public Utilities Commission

January 30, 1996

ORDER denying rehearing of Order No. 21,913 (80 NH PUC 744), in which the commission had found that a local exchange telephone carrier had unilaterally, and unlawfully, ceased applying credits to intraLATA toll customers in violation of an approved settlement agreement. The commission affirms its authority to require restitution of such overcollections and again directs the carrier to reinstate the credit mechanism.

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1. REPARATION, § 11

[N.H.] Commission jurisdiction — To order restitution — Of overcollections — Whether received via unlawful charge or in improper manner. p. 72.

2. REPARATION, § 21

[N.H.] Grounds for allowing — Damage through overcharge — Unlawful discontinuation of mandatory credit mechanism — Noncompliance with approved settlement — Remedies — Reinstatement of credit mechanism — Restitution to customers — Local exchange telephone carrier — Credits and refunds for intraLATA toll service. p. 72.

3. FINES AND PENALTIES, § 6

[N.H.] Grounds for assessing — Violation of commission order — Noncompliance with commission-approved settlement — Unauthorized discontinuation of required credit mechanism — Charging of unlawful rates — Imposition of civil penalty — No prerequisite of willful intent for *civil* penalty. p. 72.

BY THE COMMISSION:

ORDER

The lengthy procedural history of this proceeding is recounted in Order No. 21,913 (Order). In that Order we found that Union Telephone Company (Union) violated Commission Order No.

20,328 (December 9, 1991) when it discontinued an IntraLATA toll credit in October, 1993. We ordered Union to reinstate the toll credit and to refund to its customers, with interest, the revenues which it should not have collected since October 1, 1993 when it

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eliminated the toll credit. We also fined Union $500 pursuant to our authority under RSA 365:41.

On December 19, 1995, Union filed a Motion for Rehearing of Order No. 21,913 (Motion) in which it requests reversal of the aforementioned relief. After carefully examining Union's Motion and the arguments raised therein, we deny Union's request for rehearing.

Union's Motion essentially reiterates the same argument which it has advanced throughout this proceeding. Union contends that it had no obligation to provide an IntraLATA toll credit after October 1, 1993 because at that point it became an access-only provider of such services. According to Union, its obligation to provide this credit ceased because the Commission approved its compliance filings in DE 90-002.

[1, 2] As we stated in our Order, this Commission has clear authority, by statute and judicially recognized equitable powers, to order restitution of revenues which we find to have been collected improperly. RSA 365:29; *Appeal of Granite State Electric Co.*, 120 N.H. 536 (1980). In our Order we found that Union improperly collected revenues from its customers because it was never relieved of the revenue-reducing mechanisms which we approved in Order No. 20,328. One of those mechanisms was the application of a 12.69% credit on IntraLATA toll, and Union was under a continuing obligation to apply that credit irrespective of whether it provided those services directly or as an access-only provider.

Although Union has continually stopped short of saying it directly, it seems to contend that the Commission is estopped from asserting its statutory and equitable authority to order restitution because the Commission Staff (Staff) failed to detect the omission of the toll credit when Union filed revised compliance filings in DE 90-002. The flawed assumption in this argument relates to the concept of responsibility. Order No. 20,328 placed an obligation upon Union to reduce its revenues through the application of a 12.69% IntraLATA toll credit and an equivalent percentage reduction in its basic exchange rate. It was Union's responsibility to comply with that Order. We found that it did not and that we have clear authority to fashion appropriate equitable relief. Nothing in Union's Motion convinces us otherwise.

[3] Finally, Union argues that it should not be subject to a civil penalty pursuant to RSA 365:41 because "it believed it was charging lawful rates pursuant to Commission orders, approved tariffs and the advice of counsel." Motion, p.12. Union cites *Bowdler v. Company*, 88 N.H. 331 (1937) for the proposition that Union lacked the necessary intent to impose a penalty under RSA 365:41. This argument fails because the penalty imposed in this case is civil in nature. *Bowdler* is easily distinguishable from this case because it involved an alleged criminal violation. The applicable statute in this case provides for both criminal and civil sanctions when a public utility "fails, omits or neglects to obey, observe or comply any order, direction or requirement of the commission ...." RSA 365:41. The statute does not require willful conduct as a prerequisite to imposing a civil penalty. When we elected to impose a civil penalty of $500, we

took into account Union's apparent lack of willfull intent. We found Union derelict in not providing the requisite revenue change information that would have alerted Staff to the discontinuance of the revenue-reducing mechanism ordered in Order No. 20,328. We remain convinced, therefore, that the civil penalty is appropriate and supported by the evidence.

Based upon the foregoing, it is hereby

ORDERED, that Union's Motion for Rehearing of Order No. 21,913 is DENIED.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of January, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Union Teleph. Co., DR 90-220, Order No. 20,328, 76 NH PUC 759, Dec. 9, 1991.
[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*01/30/96*[89016]*81 NH PUC 73*Sprint Communications Company of New Hampshire, Inc.

[Go to End of 89016]

81 NH PUC 73

Re Sprint Communications Company of New Hampshire, Inc.

DE 96-004
Order No. 22,003

New Hampshire Public Utilities Commission

January 30, 1996

ORDER authorizing an interexchange telephone carrier to change its per-call charges for Voice FONCARD calling card services and to offer new minimum commitment levels for its "Business Sense" offerings.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Calling card services — "FONCARD" services — Changes in per-call charges — Changes in minimum commitment levels for "Business Sense" services — Interexchange carrier. p. 73.

BY THE COMMISSION:

ORDER

[1] On January 3, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from Sprint Communications Company of New Hampshire, Inc. (Sprint) requesting authority to revise rates and make minor text revisions associated with the revised rates, for effect February 5, 1996.

Specifically, the filing proposes to change the per-call charges for Voice FONCARD, change usage rates for Business Sense at the $750 commitment level, and add two new commitment levels ($0 and $2,000) to Business Sense.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize Sprint to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

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

21st Revised Page 1

3rd Revised Page 84

2nd Revised Page 91

3rd Revised Page 93

2nd Revised Page 97

1st Revised Page 101-A

1st Revised Page 103-D-1

3rd Revised Page 103-E

3rd Revised Page 103-F

3rd Revised Page 103-G

4th Revised Page 103-H;

and it is

FURTHER ORDERED, that Sprint file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this thirtieth day of January, 1996.

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NH.PUC*01/30/96*[89017]*81 NH PUC 73*Pennichuck Water Works, Inc.

[Go to End of 89017]

81 NH PUC 73

Re Pennichuck Water Works, Inc.

DF 95-362
Order No. 22,004

New Hampshire Public Utilities Commission

January 30, 1996

ORDER authorizing a water utility to issue and sell up to $8 million in unsecured debt, so as to refinance other debt to take advantage of lower interest rates.

Page 73

1. SECURITY ISSUES, § 80

[N.H.] Purposes of capitalization — Refinancing of debt — To take advantage of lower interest rates — Savings of $100,000 per year in interest expense — Water utility. p. 74.

BY THE COMMISSION:

ORDER

[1] Pennichuck Water Works, Inc. (Pennichuck) filed with the New Hampshire Public Utilities Commission (Commission), on December 22, 1995 a petition for authority to issue and sell $8,000,000 of unsecured debt. The proceeds of the financing will be used to refinance

1. $2.67 million of short term debt consisting of inter-company borrowings with Pennichuck Corporation (the Parent Company), which has averaged 8.3% annual interest rate for the 12 month period ended November 30, 1995;

2. $1.33 million of long term indebtedness evidenced by its unsecured promissory note to Consumers NH Water Co., Inc. (Consumers) relative to Pennichuck's acquisition of Consumers' Amherst franchise and related plant, the current interest rate of which has averaged approximately 8.5% during the 12 month period ended November 30, 1995; and

3. $4.0 million of long term indebtedness with Mutual Benefit Life Insurance Company with an interest rate of 8.95% which is due November 1, 1996.

Pennichuck has obtained a loan commitment from American United Life Insurance Company for an $8,000,000 unsecured note. The term of the Note will be 25 years with a fixed interest rate priced at 105 basis points over 25 year Treasury Bonds or 7.4%.

From April 1, 1990 to November 30, 1995, Pennichuck has funded all of its operating costs, capital expenditures (with the exception of costs for the replacement of the so-called Bowers Pond Dam, the construction of the Shakespeare Tank and the acquisition of the Amherst

franchise and plant) and debt repayment, with cash from operations and from borrowings from the Parent Company. During the period, Pennichuck's investment in plant in service, including Construction Work in Progress and other operating assets has increased from $39.6 million to $53.3 million. Of the $13.7 million increase, $8.7 million was funded from operating cash flow and capital advances from the Parent Company.

As of November 30, 1995, outstanding intercompany indebtedness to the Parent Company was $1.537 million. However, it is expected to increase to $2.67 million by the time of closing as a result of the real estate taxes and debt service payments totaling $936,000 due December 1, 1995, and for issuance costs related to this note which are expected to be paid prior to the closing date.

Based on the 12 month period ended November 30, 1995, the refinancing to the lower interest rate of 7.40% in comparison with the actual interest rate of 8.95% for the Mutual Benefit note, 8.50% for Consumers note and a weighted average rate of 8.29% on intercompany short term indebtedness will save $100,000 in annual interest costs. The refinancing will reduce Pennichuck's embedded cost of debt from its current level of 8.22% to 7.64%.

We have reviewed the Loan Agreement and Pennichuck's petition in support of their approval. Given the terms of the loan agreement, the purpose of the financing and potential benefits to ratepayers, we find the petition to be in the public good pursuant to RSA 369:1.

Based upon the foregoing, it is hereby

ORDERED, that the petition of Pennichuck Water Works, Inc. for authority to issue and sell $8,000,000 of unsecured debt, consisting of a $8,000,000 unsecured note to American United Life Insurance Company is hereby approved; and it is

FURTHER ORDERED, that Pennichuck Water Works, Inc. is granted the authority to incorporate the Mutual Benefit note prepayment fee, of approximately $43,000, as a cost of issuance associated with the refinancing and it shall

be amortized over the 25 year life of the note, and it is

FURTHER ORDERED, that Pennichuck Water Works, Inc. shall file with this Commission a detailed statement of the actual issuance costs related to the issuance of the $8,000,000 unsecured note, and it is

FURTHER ORDERED, that on January first and July first of each year Pennichuck Water Works, Inc. 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; and it is

FURTHER ORDERED, that Pennichuck Water Works, Inc. shall file a copy of the note upon completion of the transaction.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of January, 1996.

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NH.PUC*01/30/96*[89018]*81 NH PUC 75*New England Hydro-Transmission Corporation

[Go to End of 89018]

81 NH PUC 75

Re New England Hydro-Transmission Corporation

DE 96-013
Order No. 22,005

New Hampshire Public Utilities Commission

January 30, 1996

ORDER granting a license to an electrical transmission company for the maintenance and operation of an existing transmission line crossing over Pond Brook in Webster, which site had not heretofore been officially authorized.

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1. ELECTRICITY, § 7

[N.H.] Wires and cables — Aerial transmission line — After-the-fact authorization of inadvertently unlicensed line — Crossing of public waters as a factor — Electrical transmission company. p. 75.

2. CONSTRUCTION AND EQUIPMENT, § 5

[N.H.] Pole lines — Aerial electric transmission line — Ex post facto authorization of inadvertently unlicensed line — Crossing of public waters as a factor. p. 75.

BY THE COMMISSION:

ORDER

[1, 2] The Petitioner, New England Hydro-Transmission Corporation (NEH), filed on January 12, 1996 a petition pursuant to RSA 371:17 for the licensing of an existing 450,000 volt DC transmission line crossing over Pond Brook in Webster, New Hampshire. This crossing, which NEH operates and maintains as part of the New England/Hydro-Quebec Phase II transmission facilities, was not included in Appendix F of NEH's application for a certificate of site and facility for the New England/Hydro-Quebec Phase II facilities. (Docket DSF 85-155). New England Power also has two existing 230,000 volt transmission lines that cross Pond Brook on the same right of way which are the subject of another docket (DE 96-018) requesting a license to cross public waters. In the course of reviewing those transmission lines, NEH discovered that the Phase II facilities at this location were also unlicensed by the Commission. The Phase II facilities at this location were not overlooked in other licensing aspects of the siting process, however.

The New England/Hydro-Quebec Phase II transmission facilities facilitate energy transfers between Hydro-Quebec and NEPOOL member utilities. This crossing over Pond Brook in

Webster is an integral part of the New England/Hydro-Quebec Phase II facilities approved by the Commission's Third Supplemental Order Number 19,272 in DSF 85-155.

RSA 371:17 defines public waters as "all ponds of more than ten acres, tidewater bodies, and such streams or portions thereof as the Commission may prescribe." The Commission prescribes this crossing to be over and across

Page 75

public waters.

NEH has stated, and Commission Staff (Staff) agrees, that the crossing meets the minimum clearances required under the 1993 Electrical Safety Code. NEH has also obtained and filed with the Commission copies of its easement rights in the area of the Pond Brook crossing.

The Commission finds this crossing necessary for NEH to facilitate energy transfers which utilize the Phase II facilities thereby enhancing system operations, thus being in the public good.

Based upon the foregoing, it is hereby

ORDERED *Nisi*, that NEH is authorized, pursuant to RSA 371:17 *et seq.*, to construct, maintain, and operate transmission lines over and across Pond Brook unless the Commission otherwise directs prior to the proposed effective date; and it is

FURTHER ORDERED, that all reconstruction hereafter performed shall conform to the requirements of the National Electrical Safety Code and all other applicable safety standards in existence at that time; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules, Puc 1601.05, the Petitioner shall cause a copy of this Order *Nisi* to be published once in a newspaper of general circulation in the area of Webster, such publication to be no later than February 6, 1996 and to be documented by affidavit filed with this office on or before February 13, 1996; and it is

FURTHER ORDERED, that NEH notify the Town of Webster of this matter by serving a copy of this order on the Town Clerk by first-class mail postmarked no later than February 6, 1996, with said notification to be verified by affidavit filed on or before February 13, 1996; and it is

FURTHER ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or file a written request for a hearing on this matter before the Commission no later than February 20, 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 February 27, 1996; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective February 29, 1996, unless the Commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of January, 1996.

EDITOR'S APPENDIX

Citations in Text
[N.H.] Re New England Hydro-Transmission Corp., DSF 85-155, Third Supplemental Order No. 19,272, 73 NH PUC 524, 99 PUR4th 260, Dec. 16, 1988.
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NH.PUC*01/30/96*[89019]*81 NH PUC 76*Northern Utilities, Inc. - New Hampshire Division

[Go to End of 89019]

81 NH PUC 76

Re Northern Utilities, Inc. - New Hampshire Division

DR 96-012
Order No. 22,006

New Hampshire Public Utilities Commission

January 30, 1996

ORDER approving a natural gas local distribution company's winter cost-of-gas adjustment (CGA) filing, resulting in a surcharge of 4.02 cents per therm, which likely will increase customer bills by an average of 13.5%.

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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 — Spot market pricing — Local distribution company. p. 78.

Page 76

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

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On January 12, 1996, Northern Utilities, Inc., (Northern), a public utility engaged in the business of distributing and transporting natural gas to select cities and towns of New Hampshire, filed with the New Hampshire Public Utilities Commission (Commission) revised tariff pages reflecting the recalculation of Northern's Cost of Gas Adjustment (CGA) for the period February 1, 1996 through April 30, 1996. The new CGA was recomputed to be a

surcharge of $0.0402 per therm, which translated into an increase of approximately 13.5% in customer bills. The mid-course increase was deemed necessary to avoid an undercollection of $1,466,228 during the current winter period.

An Order of Notice was issued setting hearings for January 24, 1996. Northern informed customers of the impending change by publishing in a local newspaper a copy of the Order of Notice on January 17, 1996 plus a quarter page display advertisement on January 19, 1996.

On January 24, 1996, Northern re-filed tariff pages for its CGA computation, revising the surcharge to $0.0172 per therm, or an increase of approximately 10% in customer bills. The revised surcharge reflected an estimated undercollection of $1,101,955 during the current winter period.

The Commission held a hearing on the merits of Northern's filing on January 24, 1996.

II. POSITIONS OF NORTHERN AND STAFF

A. *Northern*

Northern witness Ms. McDonough addressed the following issues: a) the trigger mechanism; b) factors contributing to the increased cost of gas; c) the impact on pricing; and d) the use of the commodity market to offset price fluctuations in natural gas prices.

In its January 12, 1996 filing Northern projected an undercollection of $1,466,228 on forecasted winter period gas costs totaling approximately $12 million. Since this undercollection represented 12.2% of total anticipated costs, it exceeded the 10% trigger and therefore qualified the company to seek an increase in its CGA rate. However, on January 24, 1996 Northern reduced its projected undercollection by $364,273 and its total anticipated costs by $359,747. These changes pushed the percentage undercollection to 9.4%, which is below the trigger level.

Northern argued that it filed its winter CGA in good faith based on the best information available at the time and that the Commission had set a precedent in Order No. 19,699 (February 2, 1990) which approved EnergyNorth Natural Gas, Inc.'s filing of a revised CGA triggered by a 14% projected increase that was ultimately reduced to below the 10% trigger. The currently projected $1.1 million undercollection in this case is substantial. If collection were deferred until the next winter CGA, that figure would increase an additional $60,000 due to the application of interest. Northern also asserted that ratepayers are likely to be more understanding of a rate change that immediately follows the events that caused the change, *i.e.*, higher than expected gas prices.

The projected increase in the cost of gas is due to higher than anticipated prices in November, December and January, and higher than originally projected prices for the remainder of the winter period. The current CGA rate was based on forecasted price information available to the company when it filed revised tariff pages for its winter CGA on October 18, 1995. Included in that filing were projected costs for domestic gas purchases that were based on the Natural Gas Futures prices published in the Wall Street Journal on October 17, 1995. Since that time, the actual costs for November and the preliminary actuals for December and January have resulted in

significantly greater than forecasted gas costs. Coupled with increased propane costs and a substantial increase in the Natural Gas Futures prices as reported in the January 23, 1996 Wall Street Journal for the remaining months of the winter season, Northern expects to experience a substantial undercollection unless it acts promptly to reflect the additional recoverable costs in a revised CGA rate.

Northern is also concerned with the impact a large undercollection will have on the 1996/1997 winter CGA rate. Northern's firm customers currently are being charged the lowest CGA rate in years. The current CGA includes unusually high pipeline refunds of $932,824 and a prior period (1994/1995) overcollection of $544,573. This total credit of $1,477,397 accounts for $0.0478 of the $0.0524 credit currently in effect. These credits will not be available in the 1996/1997 winter CGA. That, coupled with the projected undercollection of $1.1 million, would increase next winter's rates by $0.0835 (based on 1995/1996 projections). With the combination of the recent gas price increases and the returning of refunds and overcollections of gas costs related to previous periods, charging the current CGA rate throughout this winter period would be sending inaccurate price signals.

Natural gas is a relatively new commodity in the commodities market and is highly speculative. Contracts or options to buy contracts may be purchased through the market and used to offset price fluctuations, in essence, to "lock in" or "hedge" at a set price. If Northern purchased these contracts and the price of gas went up during the period, a savings would have resulted and the ratepayer would benefit. If gas prices were to decline, however, Northern would be losing out on the opportunity to purchase gas at the lower prices and would therefore "lose" that difference. The Commission has never established how those "losses" would be treated and Northern has not fully explored to what extent they could or should participate in these markets.

B. *Staff*

Staff indicated its support for Northern's 1995/1996 Revised Winter CGA filing.

Staff recommended, and Northern agreed, to discuss the use of the futures market and how resulting gains or losses should be treated.

III. COMMISSION ANALYSIS

[1] Commission Report and Order No. 21,882 (October 30, 1995) 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 filings of September 15, 1995 or as revised on October 18, 1995.

The Commission finds that the increase in Northern's gas costs were a direct result of an increase in the gas prices for November through January and an increase in the futures prices as reported by the Wall Street Journal for February through April. We further find merit in Northern's arguments supporting an adjustment to its winter CGA at this time, and in particular the impact that not effecting such an adjustment would have on next winter's CGA. Accordingly, we will approve the requested revised CGA rate of $0.0172 per therm as just and reasonable and in the public interest.

The Commission recognizes that fluctuations in gas prices can have a major impact on rates and encourages Northern and Staff to explore actions that could be taken to reduce price swings

while still minimizing gas costs.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of NHPUC - Northern Inc. (Northern) — New Hampshire Division, providing for a Revised CGA of $0.0172 per therm for the period of February 1, 1996 through April 30, 1996, is approved, effective for bills rendered on or after February 1, 1996:

16th Revised page 32, Sheet No. 1, and

16th Revised Page 32, Sheet No. 2; and it is

FURTHER ORDERED, that the over-/under-collection shall accrue interest at the Prime Rate reported in the Wall Street Journal. The rate is to be adjusted each quarter using the

rate reported on the first date of the month preceding the first month of the quarter; and it is

FURTHER ORDERED, that 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 thirtieth day of January, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Energy North Natural Gas, Inc., DR 89-181, Order No. 19,699, 75 NH PUC 80, Feb. 2, 1990. [N.H.] Re Northern Utilities, Inc. — New Hampshire Division, DR 95-257, Order No. 21,882, 80 NH PUC 685, Oct. 30, 1995.

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NH.PUC*01/31/96*[89020]*81 NH PUC 79*Intellicom Solutions, Inc.

[Go to End of 89020]

81 NH PUC 79

Re Intellicom Solutions, Inc.

DE 95-274
Order No. 22,007

New Hampshire Public Utilities Commission

January 31, 1996

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

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1. CERTIFICATES, § 123

[N.H.] Telephone carrier — Intrastate intraLATA long-distance services — Interim authority — Assessment of competitive impacts — Exclusion of local exchange services. p. 79.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate intraLATA toll services — Interim authority — Assessment of competitive impacts — Exclusion of local exchange services. p. 79.

BY THE COMMISSION:

ORDER

[1, 2] On September 29, 1995, Intellicom Solutions, Inc. (Intellicom), a Pennsylvania corporation, petitioned the New Hampshire Public Utilities Commission (Commission) for authority to do business as a telecommunications public utility in the State of New Hampshire (petition) pursuant to, *inter alia*, RSA 374:22 and RSA 374:26.

Intellicom has demonstrated the financial, managerial and technical ability to offer service as conditioned by this order. The Commission previously approved numerous, similar petitions filed during the Trial Period, pursuant to the Modified Stipulation Agreement (Stipulation) in Docket No. DE 90-002, approved by Order No. 20,916 (August 2, 1993). Our orders in those numerous dockets granted the petitioner(s) interim authority to offer intraLATA toll service, specifically excluding local exchange service, for the service territory of the entire State of New Hampshire, during the Trial Period, in order to allow the Commission to analyze competition during the two-year Trial Period.

Because the Trial Period identified by the Stipulation expired on September 30, 1995, we have explicitly clarified that the authority we had granted remains in effect until we specifically modify or revoke that authority, after analysis of the Trial Period. *See* Order No. 21,851 (October 3, 1995). Likewise, our grant of authority ordered herein remains in effect until we specifically modify or revoke that authority.

The public good is served by permitting such competition by telecommunications companies. The Commission permits competitive entry in order to foster competition in the New Hampshire intrastate toll market and to allow

the Commission to analyze the effects of such competition.

The public should be provided an opportunity to respond in support of, or in opposition to this petition.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that Intellicom is granted interim authority to offer as a

telecommunications public utility intraLATA toll service, specifically excluding local exchange service, for the service territory of the entire State of New Hampshire, subject to the following conditions:

1. The services shall be offered by approved tariffs.

2. The services shall be offered until the Commission orders otherwise.

3. Intellicom shall file tariffs for new services and changes in approved services (other than rate changes), with effective dates of no less than 30 days after the date the tariffs are filed with the Commission.

4. Within one business day of offering an approved service to the public at a rate different from its rates on file with the Commission, Intellicom shall notify the Commission of the change.

5. Intellicom is exempted from NH Admin. Rules, Puc 406.03 Accounting Records; Puc 407 Forms Required of All Telephone Utilities; and Puc 409 Uniform System of Accounts for Telecommunications Companies.

6. Intellicom shall maintain its book and records in accordance with Generally Accepted Accounting Principles.

7. Intellicom 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. Intellicom 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. Intellicom shall compensate the appropriate Local Exchange Company for all originating and terminating access used by Intellicom pursuant to NET Tariff N.H.P.U.C. 79, Switched Access Service Rate or its successors or its relevant equivalent contained in the tariffs of the Independent Local Exchange Companies.

10. New Service offerings filed for approval with the Commission shall be accompanied by tariff pages describing the service, rates and effective dates; and it is

FURTHER ORDERED, that the authority granted herein remains in full force and effect until the Commission orders otherwise; and it is

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

FURTHER ORDERED, that Intellicom 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 February 7, 1996, and an affidavit proving publication shall be filed with the Commission on or before February 14, 1996; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, *et seq.* Intellicom 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 February 21, 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 February 28, 1996; and it is

FURTHER ORDERED, this Order *Nisi* shall be effective March 1, 1996, unless the Commission provides otherwise in a supplemental order issued prior to the effective date and it is

FURTHER ORDERED, that Intellicom shall file a compliance tariff with the Commission on or before March 1, 1996, in accordance

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with NH Admin. Rule Puc 1601.01(b).

By order of the Public Utilities Commission of New Hampshire this thirty-first day of January, 1996.

Notice of Conditional Approval of
Intellicom Solutions, Inc.

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

On September 29, 1995, Intellicom Solutions, Inc. (Intellicom), a Pennsylvania corporation, filed with the New Hampshire Public Utilities Commission (Commission) a petition to do business as a telecommunications public utility in the State of New Hampshire, specifically to provide intrastate long distance telecommunications services.

In Order No. 22,007, issued in Docket No. DE 95-274, the Commission granted Intellicom conditional approval to operate as of March 1, 1996, subject to the right of the public and interested parties to comment on Intellicom 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 Intellicom's petition to do business in the State must be submitted in writing no later than February 21, 1996, and reply comments no later than February 28, 1996, to:

Dr. Sarah P. Voll
Executive Director and Secretary
Public Utilities Commission
8 Old Suncook Road
Concord, New Hampshire 03301-7319

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Generic Investigation into IntraLATA Toll Competition Access Rates, DE 90-002, Order No. 20,916, 78 NH PUC 365, Aug. 2, 1993. [N.H.] Re Long Distance North of New Hampshire, Inc., et al., DE 87-249, Order No. 21,851, 80 NH PUC 628, Oct. 3, 1995.

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NH.PUC*02/05/96*[89021]*81 NH PUC 81*Public Service Company of New Hampshire

[Go to End of 89021]

81 NH PUC 81

Re Public Service Company of New Hampshire

DR 95-318
Order No. 22,008

New Hampshire Public Utilities Commission

February 5, 1996

ORDER disapproving an electric utility's proposed special rate contract with an apartment complex under which the utility would provide annual estimations of each tenant's water heating usage rather than meter such usage. Although acknowledging that the cost of separately metering water heating units can be prohibitive, the commission nevertheless finds that the solution to high water heating bills is through separate meters and not special rate contracts.

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1. RATES, § 351

[N.H.] Electric rate design — Residential service — Apartment complex — Water heating component of bills — Proposal for special rate contract versus metering — Rejected as being discriminatory — Necessity of separate metering. p. 83.

2. RATES, § 337

[N.H.] Electric rate design — Submetering — Prohibitions on master metering — Necessity of separate metering — Apartment complexes — Water heating component — No special rate contracts in lieu of separate metering requirement. p. 83.

Page 81

3. SERVICE, § 170

[N.H.] Submetering — Electric service — Prohibitions on master metering — In all new construction — Necessity of separate metering — Apartment complexes — Water heating component. p. 83.

4. SERVICE, § 288

[N.H.] Connections and instruments — Meters — Apartment complexes — Duty to install — Burden of cost — Responsibility of landlord versus ratepayers — Prohibitions on master

metering — Necessity of separate metering — In all new construction — Electric service — Water heating meters. p. 83.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On November 14, 1995 Public Service Company of New Hampshire (PSNH) filed with the New Hampshire Public Utilities Commission (Commission) Special Contract No. NHPUC-123 between PSNH and Nashua-Oxford Bay Associates Limited Partnership for the benefit of tenants of Bay Ridge Apartments (Bay Ridge). The special contract is designed to enable PSNH to estimate the water heating usage of each Bay Ridge tenant for a period of ten years. The arrangement requires a special contract because usage estimation for the purposes of billings is not allowed under the tariff.

By secretarial letter dated December 20, 1995, the Commission notified PSNH that it had reviewed the filing and rejected it because it conflicted with the PURPA standard adopted in DE 80-172, the Commission rules and the New Hampshire Energy Code adopted by the Commission by NH Admin. Rule Puc 1800. These standards and requirements prohibit the master metering of electrical service in any new construction or conversion occurring after November 18, 1980.

By letter dated January 2, 1996, PSNH requested the Commission to reconsider its rejection, arguing that the arrangement was not master metering as defined in the rules.

II. POSITIONS OF THE PARTIES

A. PSNH

The existing 412 Bay Ridge units are individually metered under Residential Service Standard Rate D (Rate D) for their water heating as well as their power and light. However, Bay Ridge claims that it would be cost prohibitive to install the wiring necessary to separately meter the water heating service under the uncontrolled water heating provision of Rate D. In addition, the age of the water heaters now requires that they be replaced. In the absence of a contract with PSNH to reduce electrical costs, PSNH states that Bay Ridge will remove all the electric water heaters and replace them with gas fired water heaters.

Therefore, PSNH proposes to replace the water heaters and to use a PSNH derived formula to estimate on a monthly basis the water heating kilowatt-hour (kWh) consumption for each apartment. Tenants would be billed as if water heating kWh were individually metered and supplied under the uncontrolled water heating provision of Rate D. The remainder of the metered kWh would continue to be billed under Residential Service Standard Rate D.

B. STAFF

In response to PSNH's request for reconsideration, Staff filed a memo with the Commission on January 15, 1996. Staff opposed approval of the contract on the grounds that it violated RSA 378:21, did not comply with several Commission metering and consumer information rules, and that the proposed formula was discriminatory. Specifically, RSA 378:21 states:

No public utility shall, directly or indirectly or by any special rate, rebate, drawback or other device or method, make any deviation from the rates, fares, charges or prices for any

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service rendered by it specified in its schedules on file and in effect at the time such service was rendered.

Staff argued that regardless of whether PSNH applies the same formula (i.e., method) to all tenants, the use of estimated kWh consumption will not result in accurate bills nor will such bills be reconcilable with the kWh data printed on the bill. Given that the intent of the Puc 300 series rules is to ensure that customers receive accurate meter and billing data, Staff opposes any digression from this fundamental precept of utility regulation.

Finally, Staff contends that the proposed kWh estimation formula is discriminatory because it can not account for personal variations in hot water consumption. Depending upon the number of occupants and the mix of electrical uses contained within a structure, dwelling units exhibit different electrical usage patterns. Therefore, separately metering the water heating kWh is the appropriate legal and equitable solution for Bay Ridge tenants.

III. COMMISSION ANALYSIS

[1-4] Upon review of PSNH's filing, Staff's memo, and the applicable statutes and Commission rules, we do not find sufficient grounds to approve the proposed contract. In general, we do not believe that the Bay Ridge contract is in the best interest of PSNH ratepayers.

We agree with Staff that allowing PSNH to use a formula to estimate water heating kWh is not consistent with the intent of RSA 378:21 and Puc 303.05 (c), (d), (f), and (g). Meters are designed to provide a measurement of electrical quantities to be used as a basis for determining charges for electrical service. Tariffs are designed, among other things, to define the rates at which customers are to be charged for electrical service. Given that a formula can only estimate kWh consumption, there exists a potential for discrimination to occur not only among Bay Ridge customers but between Bay Ridge customers and all other PSNH customers receiving Standard Rate D service.

We understand Bay Ridge's desire to lower the water heating costs to its tenants and recognize that those high costs are, at least in part, due to the lack of separate metering and the consequent pricing of water heating at the middle block of Rate D rather than at the uncontrolled water heating service rate. The proper solution, however, is separate meters, not a special contract. Although we are cognizant of the expense involved in the Bay Ridge project, the costs of wiring separate meters is traditionally paid by landlords and it is not appropriate to shift that cost to the ratepayers. Nor should PSNH ratepayers bear the cost of funding water heater replacements for a specific customer.

To the extent that Bay Ridge Associates or its tenants can avail themselves of PSNH's existing conservation and load management programs, we encourage them to do so.

Based upon the foregoing, it is hereby

ORDERED, that the proposed Special Contract No. NHPUC-123 between Public Service Company of New Hampshire and Nashua-Oxford-Bay Associates Limited Partnership is hereby rejected.

By order of the Public Utilities Commission of New Hampshire this fifth day of February, 1996.

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NH.PUC*02/05/96*[89022]*81 NH PUC 83*Public Service Company of New Hampshire

[Go to End of 89022]

81 NH PUC 83

Re Public Service Company of New Hampshire

DR 95-320
Order No. 22,009

New Hampshire Public Utilities Commission

February 5, 1996

ORDER approving an electric utility's special rate contract with two industrial customers, Hitchiner Manufacturing Company and Metal Casting Technology, Inc. The contracts are deemed necessary for assuring load retention, given the credible threat of bypass the customers posed with their cogeneration capabilities.

Page 83

1. RATES, § 166

[N.H.] Factors affecting reasonableness — Solicitation of business — Economic development — Incentives for retaining industrial load — Prevention of bypass and self-generation — Means for achieving — Special rate contracts — Electric utility. p. 85.

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 — Credible threat of customer to move to cogeneration as a factor. p. 85.

3. RATES, § 345

[N.H.] Electric rate design — Large power and industrial customers — Use of special rate contracts — As incentive for load retention — Prevention of bypass — Targeting of customers with self-generation or alternate fuel capabilities. p. 85.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY AND
DESCRIPTION OF THE FILING

The Petitioner, Public Service Company of New Hampshire (PSNH or the Company), filed with the New Hampshire Public Utilities Commission (Commission), on November 15, 1995, pursuant to RSA 378:18, a request for approval of Special Contract Nos. NHPUC-124 and 125 between PSNH and, respectively, Hitchiner Manufacturing Company, Inc. (Hitchiner) and Metal Casting Technology, Inc. (MCT). Hitchiner is a manufacturer and supplier of commercial investment castings of various alloys for use in the automotive, golf, defense and aerospace industries. In New Hampshire, Hitchiner has facilities in Milford, Amherst and Littleton; NHPUC-124 applies only to the Milford site. MCT is a research and development center, located on the grounds of Hitchiner's Milford site, concentrating on new casting technology and is jointly owned by Hitchiner and General Motors Corporation. PSNH characterizes its filing as a load retention application and therefore not subject to the Commission's Checklist for Economic Development and Business Retention Discounted Rates set forth in Docket No. DR 91-172 or the Guidelines for Economic Development and Business Retention Filings established in Docket No. DR 95-216.

As part of its filing, PSNH also enclosed, pursuant to RSA 91-A and N.H. Admin. Rules Puc 204.08, a Motion for Protective Order concerning portions of its Technical Statement and supporting Testimony. The Commission granted the Motion by Order No. 21,923, issued November 28, 1995.

According to Hitchiner, it examined cogeneration in the early 1980's and found the option uneconomic. A recent study for Hitchiner by Enerdev, Inc., however, showed that Hitchiner could reduce its electrical costs by 40% through a propane-fueled facility that it could install in a neighboring 28,000 square foot vacant building it owns. Hitchiner also examined decomposed tires as a fuel source and asserts decomposed tires would be 35% less expensive than propane. Subsequently, Hitchiner began talks with Virginia Power concerning the engineering, purchase and installation of cogeneration equipment planned to be on line by March 31, 1996.

Hitchiner, moreover, represents that it faces stiff domestic and international competition and that although it has undertaken extensive cost reduction programs it is nonetheless becoming less competitive in New Hampshire under current electric rates. Hitchiner's electrical costs represent about 10% of the direct cost to manufacture. Accordingly, since 1994, Hitchiner has explored possible alternatives for lowering electrical costs, including a wheeling plan involving the Littleton Water and Light Department (Littleton) and cogeneration.

The wheeling plan was filed in Docket No. DR 95-250 and withdrawn at the request of

Hitchiner and Littleton on December 1, 1995 in light of PSNH's filing of the subject load retention special contracts. PSNH had disputed the legality of the wheeling plan and pursued with Hitchiner and MCT, as an alternative to cogeneration, special contracts that were executed

on November 9, 1995. The contracts were subsequently amended and refiled on January 19, 1996 to conform Article 7 in both contracts to the Commission's policy as expressed in its deliberations in Docket No. DR 95-205 concerning future supply options in PSNH's special contract with Teradyne, Inc. On January 29, 1996, PSNH filed revised versions of the contracts reflecting the correction of a minor cross- referencing error.

Special Contract Nos. NHPUC-124 and 125 are proposed to be effective for a period of seven years, though either party may terminate after five years upon six months notice, and are identical in all important respects. In order to retain the Hitchiner and MCT load, PSNH has agreed to depart from tariff rates and employ a rate consisting of a) a schedule of customer charges and demand charges, b) a long hours' use discount, and c) an energy charge equal to the sum of the Fuel and Purchased Power Adjustment Clause (FPPAC) Rate, the Nuclear Decommissioning Charge and a surcharge of $0.00820 per kWh. PSNH contends that the revenue it will receive under this arrangement will exceed the marginal cost of serving the load in every year of the contracts.

Based on an analysis of the cogeneration alternative, PSNH concluded that Hitchiner and MCT can realize an acceptable payback on the cost to generate compared to the cost of purchasing power from PSNH at tariff rates. As a consequence of negotiations and site visits, PSNH also became convinced that Hitchiner and MCT would indeed install generation to meet all of their electricity requirements. Thus, PSNH designed a rate, approximating a 27% discount that would be competitive with the generation alternative, and argues that retaining the load and the resulting contribution to fixed costs will assist PSNH in its efforts to improve its financial performance and keep rates down for all other customers.

Motions to Intervene were filed in this case by the Campaign for Ratepayer Rights (CRR), on December 11, 1995, and by the Public Utility Policy Institute (PUPI), on January 26, 1996. CRR also filed on December 11, 1995, a Motion to Bar Jurisdiction concerning this and several other PSNH special contract filings, namely, Docket Nos. DR 95-205, 214, 230, 270, and 303. CRR's Motions as they related to Docket No. DR 95-205 were denied in Order No. 21,953 (December 20, 1995), and it later filed a blanket Motion for Reconsideration on both counts applicable to all six proceedings. The Commission later reconsidered and granted the Motion to Intervene.

PSNH objected in this proceeding, on December 22, 1995, to both CRR's Petition for Intervention and Motion to Bar Jurisdiction. Moreover, PSNH objected on December 27, 1995, to CRR's Motion for Reconsideration as it applies to this proceeding. Finally, on February 1, 1996, PSNH objected to PUPI's Motion to Intervene.

II. COMMISSION ANALYSIS

A. The Special Contracts

[1-3] The representations of PSNH, Hitchiner and MCT constitute sufficient evidence of the customers' ability and intent to install cogeneration at the Milford site. There is more than adequate space for a cogeneration facility and the proximity of rail lines and a propane distributor favor such a facility. Moreover, the companies' experience in manufacturing and use of high load electrical equipment predispose it to an engineering solution such as installation of a cogeneration facility.

It is clear that Hitchiner has pursued aggressively options to reduce its electric costs and we

are persuaded that the cogeneration option would have been adopted had the parties not agreed to a discounted rate. Studies supplied by PSNH and Hitchiner support this conclusion and demonstrate an economic advantage for cogeneration over existing tariff rates. Thus, there is a credible threat that PSNH would lose these customers. These load retention special contracts are therefore just and consistent with the public interest inasmuch as

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benefits accrue to shareholders during the Fixed Rate Period from retained load and benefits also accrue to other PSNH customers through FPPAC. We make no commitment as to future rate treatment of the discount.

B. Procedure

Consistent with our treatment of CRR's motions in the other previously mentioned special contract cases, we grant CRR's Motion to Intervene and reiterate a denial of the Motion to Bar Jurisdiction for all of the reasons cited in DR 95-205, Order No. 21,953. Furthermore, we grant PUPI's Motion to Intervene and note that CRR and PUPI are free to file comments during the *nisi* period, as can any interested party.

Based upon the foregoing, it is hereby

ORDERED *Nisi*, that Special Contract Nos. NHPUC-124 and 125 between PSNH and, respectively, Hitchiner and MCT, as amended, are approved; and it is

FURTHER ORDERED, that during any rate case or rate redesign filed by PSNH during the life of Special Contract Nos. NHPUC-124 and 125, the Commission will consider whether any changes should be made to the revenue requirements or cost studies as a result of these discounted rates afforded Hitchiner and MCT; and it is

FURTHER ORDERED, that CRR and PUPI are granted intervention; and it is

FURTHER ORDERED, that CRR's Motion to Bar Jurisdiction, to the extent the Motion may apply to this proceeding, is denied; 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 12, 1996 and to be documented by affidavit filed with this office on or before February 19, 1996; and it is

FURTHER ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or file a written request for a hearing on this matter before the Commission no later than February 26, 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 March 4, 1996; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective March 6, 1996, 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 February, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 95-205, Order No. 21,953, 80 NH PUC 796, Dec. 20, 1995.

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NH.PUC*02/05/96*[89023]*81 NH PUC 86*New England Telephone and Telegraph Company

[Go to End of 89023]

81 NH PUC 86

Re New England Telephone and Telegraph Company

DR 96-006
Order No. 22,010

New Hampshire Public Utilities Commission

February 5, 1996

ORDER suspending a local exchange telephone carrier's proposed tariff revisions relative to the offering of enhanced "Phonesmart" features, including Caller ID with name identification, Call Waiting ID, and Call Manager.

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1. SERVICE, § 449

[N.H.] Telephone — Special service — "Phonesmart" options — Enhanced features — Caller ID with name identification — Call Waiting ID — Call Manager — Suspension of proposed tariffs. p. 87.

Page 86

2. RATES, § 248

[N.H.] Schedules and procedure — Suspension — Of proposed tariff revisions — To allow for adequate investigatory period — New "Phonesmart" features — Local exchange telephone carrier. p. 87.

BY THE COMMISSION:

ORDER

[1, 2] On January 5, 1996, New England Telephone and Telegraph Company (NYNEX or Company) petitioned to modify its Phonesmart Service to introduce new feature enhancements,

including Caller ID with Name CPE, Call Waiting ID and Call Manager.

Staff requires time to investigate the filing and material filed in support of the proposed tariffs and therefore has requested that the proposed tariff pages be suspended.

We have reviewed Staff's request and will suspend the proposed filing to allow a thorough review of the tariff filing and the accompanying supporting materials.

Based upon the foregoing, it is hereby

ORDERED, that the following tariff pages of NYNEX are suspended:

NHPUC No. 75
Part A
Section 5 - Fifth Revision of Page 14
36p'- Third Revision of Page 14.1
36p'- Fourth Revision of Page 15
36p'- Original Page 15.1
36p'- Sixth Revision of Page 16
36p'- Original Page 16.1

By order of the Public Utilities Commission of New Hampshire this fifth day of February, 1996.

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NH.PUC*02/05/96*[89024]*81 NH PUC 87*River Bend Hydro dba Forsters' Mill Hydro/Otter Lane Hydro, L.L.C.

[Go to End of 89024]

81 NH PUC 87

Re River Bend Hydro dba Forsters' Mill Hydro/Otter Lane Hydro, L.L.C.

DE 96-033
Order No. 22,011

New Hampshire Public Utilities Commission

February 5, 1996

ORDER confirming the continued validity of long-term levelized rates for the purchase by an electric utility of power produced by a cogeneration facility, in spite of a change in ownership of the cogeneration project.

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1. COGENERATION, § 20

[N.H.] Contracts — Long-term pricing provisions — Levelization of rates — Effect of change in ownership of cogeneration facility — No change in operations or reliability — Continued validity of levelized rates. p. 88.

BY THE COMMISSION:

ORDER

Otter Lane Hydro, L.L.C. (Petitioner) filed a petition on February 1, 1996 requesting Commission confirmation of the continued validity of a long-term Rate Order granted to River Bend Hydro d/b/a Forsters' Mill Hydro (River Bend) upon its transfer to the Petitioner pursuant to a foreclosure sale by the lending institution that financed the hydroelectric project.

On October 1, 1986 the Commission granted River Bend a long-term Rate Order obligating Public Service Company of New Hampshire, Inc. (PSNH) to pay a twenty year levelized rate of 6.18 cents per kWh (6.14 cents per kWh in year 20) for all energy generated at its hydro-electric facility located in Sutton

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Mills, New Hampshire. *Re River Bend Mill d/b/a Forsters' Mill Hydro*, 71 NH PUC 576 (October 1, 1986)

In December 1983 River Bend entered into an assignment agreement (Collateral Assignment) with Bank of New Hampshire (BNH), to obtain financing to construct the hydroelectric project at issue. Pursuant to the Collateral Assignment River Bend assigned to BNH all of its interest in its then existing Power Purchase Agreement with PSNH, as well as its interest in any subsequent agreements relating to the property on which the hydroelectric facility was located.[1(8)]

On December 13, 1995 BNH held a foreclosure sale of which certain real and personal property owned by Ronald and Joan Forster in Sutton Mills, including the entire rights, title and interest of River Bend in the hydroelectric project and the land upon which it sits. Edward Denney and David Hill were the successful bidders at the foreclosure sale.

[1] Mr. Denney and Mr. Hill are prepared to close on the purchase of the project but seek confirmation from the Commission of the continuing validity of the Rate Order, which they have agreed to reduce by 5%, including the right to assign the Rate Order for financing purposes. Mr. Denney and Mr. Hill further propose to purchase and operate the hydroelectric facility in the form of a New Hampshire limited liability company under the name Otter Lane Hydro, L.L.C.

Mr. Denney and Mr. Hill have provided the Commission with evidence of their financial and managerial abilities and have retained the services of an engineer with experience in hydroelectric facilities to operate this facility. They have also agreed to assume the liability of the Rate Order created by its levelized rates.

The petition is accompanied by a stipulation among Messrs. Denney and Hill, PSNH and the Staff of the Commission by which the Parties and Staff agree to seek the Commission's confirmation of the continuing validity of the rate Order because of the peculiar circumstances surrounding the ownership and assignment of the Rate Order to BNH. *See*, Footnote 1, *supra*. The agreement further provides that PSNH and the Staff believe the transfer of the Rate Order is in the public interest.

The Petition represents that the Office of the Consumer Advocate does not object to the transfer.

Mr. Denney and Mr. Hill have demonstrated that they can operate the project reliably and we can therefore confirm the continued validity of the Rate Order. This confirmation fulfills the Commission's duties under 18 C.F.R. § 292.304 (e) (ii) and *Re Small Energy Producers and Cogenerators*, 68 NH PUC 531, 544 (1983) by ensuring the continuing viability of this qualifying facility. Therefore, we approve the proposed transfer. NH RSA 374:26.

Based upon the foregoing, it is hereby

ORDERED, that the Commission approves the transfer; and it is

FURTHER ORDERED, that the Rate Order granted to River Bend Hydro d/b/a Forsters' Mill Hydro in *Re River Bend Mill d/b/a Forsters' Mill Hydro*, 71 NH PUC 576 (October 1, 1986), as amended, will remain valid upon its transfer to the Petitioners.

By order of the Public Utilities Commission of New Hampshire this fifth day of February, 1996.

FOOTNOTES

[1]In order to clarify the scope of the Collateral Assignment, River bend entered into two amendments to the Collateral Assignment. The first amendment clarified that the Collateral Assignment included River Bend's Interconnection Agreement with PSNH. The second amendment clarified that the Collateral Assignment included the Rate Order which subsequently replaced the 1983 contract. *Re River Bend Mill*, 71 NH PUC 576 (October 1, 1986)

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NH.PUC*02/09/96*[89025]*81 NH PUC 89*GE Communications Services Corporation dba GE Exchange

[Go to End of 89025]

81 NH PUC 89

Re GE Communications Services Corporation dba GE Exchange

Additional applicant: GE Communications Services Corporation dba GE Capital Exchange

DR 96-007
Order No. 22,012

New Hampshire Public Utilities Commission

February 9, 1996

ORDER approving an interexchange telephone carrier's proposals for offering new outbound toll and inbound 800 services, through either switched or dedicated access.

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1. RATES, § 592

[N.H.] Telephone rate design — Toll service — Switched or dedicated access service — For outbound toll and inbound 800 calls — New offerings — Interexchange carrier. p. 89.

BY THE COMMISSION:

ORDER

[1] On January 9, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from GE Communications Services Corporation d/b/a GE EXCHANGE and d/b/a GE Capital EXCHANGE (GE) requesting authority to introduce Plan C inbound and outbound services for effect February 10, 1996.

Plan C is GE's offering of inbound 800 and outbound toll service using either switched or dedicated access and the underlying facilities of Carrier 3.

We find the proposed changes to be in the public good. New services expand the choice of telephone services and foster competition in the New Hampshire intrastate toll market which allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize the introduction of Plan C.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of GE's tariff, NHPUC No. 1 are approved for effect as filed:

4th Revised Page 2

1st Revised Page 3

2nd Revised Page 4

3rd Revised Page 5

1st Revised Page 12

1st Revised Page 33

Original Page 49.1

Original Page 53.1

Original Page 56.1

Original Page 59.1

Original Page 63.1;

and it is

FURTHER ORDERED, that GE file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this ninth day of February, 1996.

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NH.PUC*02/13/96*[89026]*81 NH PUC 89*Gateway Technologies, Inc., dba Texas Gateway Technologies

[Go to End of 89026]

81 NH PUC 89

Re Gateway Technologies, Inc., dba Texas Gateway Technologies

DE 95-234
Order No. 22,013

New Hampshire Public Utilities Commission

February 13, 1996

ORDER authorizing a telecommunications carrier to provide service in correctional institutions, limited to coinless, collect-only calls.

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1. RATES, § 565

[N.H.] Telephone rate design — Pay

Page 89

station service — In correctional institutions — Availability of coinless, collect-only calling capabilities. p. 90.

2. SERVICE, § 456

[N.H.] Telephone — Pay station service — In correctional institutions — Limitations — Coinless, collect-only calling capabilities. p. 90.

BY THE COMMISSION:

ORDER

[1, 2] On August 23, 1995, Gateway Technologies, Inc., d/b/a Texas Gateway Technologies (TGT) a Texas corporation, filed with the New Hampshire Public Utilities Commission (Commission) for Authority to Provide Intrastate Telecommunications Services, specifically Inmate Coinless Collect Telephone Service and IntraLATA toll (Petition). TGT also requested waivers of certain administrative rules, specifically N.H. Admin. Rule Puc 408.07(a) Dial tone, 408.07(c) Municipal Calling, 408.08(a) Rates, 408.08(c) Access, 408.09 Call Receiving, 408.10 Identification, 408.11 Directory Assistance, and both 408.12(a) Coin Return, and 408.12(b) Coin

Acceptance. TGT proposes to utilize coinless telephones in correctional institutions.

Limiting service to collect-only calling provides correctional facilities with the control they require over inmate calling. In lieu of markings, TGT proposes to utilize oral identification so that both the caller and the called party accepting the charges will know the identity of the carrier. In addition, the staffs of correctional facilities are responsible for administrative matters as well as reporting pay telephone service troubles.

TGT bills for its timed services in full-minute increments, as is common in the telecommunications industry. However, New England Telephone and Telegraph (NYNEX) bills for its timed services, such as collect calling, in single-second increments. *See*, NHPUC No. 75 Part A - Section 9, Page 7, Thirteenth Revision and its successors. In order to effectively comply with the intent of Puc 408.08(a) *Rates*, Gateway has agreed to reduce its proposed rates in lieu of billing in single-second increments. Gateway's Response of 1/9/96 at 1. A similar arrangement has been previously approved for Tele-Matic of New Hampshire Corporation (Tele-Matic). *See, Re Tele-Matic of New Hampshire Corporation*, 79 NH PUC 327 (1994).

Staff has reviewed the Petition and concludes that the waivers requested are reasonable in of the circumstances. In particular, it noted that the adoption of a full-minute rate, decremented by $.01 per minute, was found in *Tele-Matic* to yield the same effective rate on average as NYNEX's single-second billing.

After reviewing the Petition and request for waivers, we find the waivers and increased competition in the provision of telecommunication services to correctional facilities to be in the public good.

Based on the foregoing, it is hereby

ORDERED, that TGT's Petition for Authority to Provide Services for Correctional Inmates is GRANTED; and it is

FURTHER ORDERED, that TGT's request waiver of certain administrative rules is approved for the limited purposes of pay telephones installed within correctional facilities; and it is

FURTHER ORDERED, that TGT's timed rates for services originated from pay telephones installed within correctional facilities shall be capped at $.01 cent below the tariffed timed rates of NYNEX until TGT bills its timed services in single-second increments, and shall be capped at the NYNEX timed rates after TGT establishes single-second billing; and it is

FURTHER ORDERED, that TGT is subject to all other Statutes, Rules and Orders of the Commission, including specifically N.H. Admin. Rule Puc 408.15 Application (Form E-29).

By order of the New Hampshire Public Utilities Commission this thirteenth day of February, 1996.

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NH.PUC*02/13/96*[89027]*81 NH PUC 91*AT&T Communications of New Hampshire, Inc.

[Go to End of 89027]

81 NH PUC 91

Re AT&T Communications of New Hampshire, Inc.

DR 96-016
Order No. 22,014

New Hampshire Public Utilities Commission

February 13, 1996

ORDER authorizing an interexchange telephone carrier to offer a new debit or prepaid calling card service to nonresidential customers.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Calling card service — Special prepaid or debit cards — Nonresidential customers — Interexchange telephone carrier. p. 91.

BY THE COMMISSION:

ORDER

[1] On January 15, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from AT&T Communications Company of New Hampshire (AT&T) requesting authority to introduce AT&T Commercial Prepaid Card Service, for effect February 15, 1996.

AT&T Commercial Prepaid Card Service is a debit card service offered to non-residential customers of the local exchange carrier. The cards are available in various denominations ranking from 10 to 200 minutes. Calls will be decremented one unit for each minute or fractional part of a minute for calls within New Hampshire.

We find the proposed changes to be in the public good. New services expand the choice of telephone services and foster competition in the New Hampshire intrastate toll market which allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize the introduction of AT&T Commercial Prepaid Card Service.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of AT&T's tariff, NHPUC No. 1 are approved for effect as filed:

Table of Contents

Original Page 28

Section 26

Original Pages 1-6;

and it is

FURTHER ORDERED, that Section 2, 2nd Revised Page 21 of AT&T's tariff, NHPUC No. 4 is approved for effect as filed; and it is

FURTHER ORDERED, that AT&T file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this thirteenth day of February, 1996.

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NH.PUC*02/13/96*[89028]*81 NH PUC 91*New England Telephone and Telegraph Company

[Go to End of 89028]

81 NH PUC 91

Re New England Telephone and Telegraph Company

DR 96-028
Order No. 22,015

New Hampshire Public Utilities Commission

February 13, 1996

ORDER agreeing that certain parts of a special rate contract executed by a local exchange telephone carrier and Sun Microsystems, Inc., for the provision of Centrex service should be subject to protective treatment in that disclosure of such information could place both the carrier and the customer at a competitive disadvantage.

Page 91

1. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective treatment — Relative to special rate contract — Customer-specific operational and usage data — Competitive disadvantages of disclosure — Benefits of nondisclosure outweighing those of disclosure — Telecommunications services. p. 92.

BY THE COMMISSION:

ORDER

On January 24, 1996, 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 Sun Microsystems, Inc. (Sun) for the provision of Centrex service.

Concurrent with the special contract, NYNEX filed a Motion for Proprietary Treatment of portions of the contract and supporting materials (hereinafter collectively the Information). According to NYNEX, the Commission Staff takes no position regarding the motion and the Office of Consumer Advocate also takes no position.

In its motion NYNEX argues that the Information should be afforded protective treatment because, using our analysis in *Re NET*, Order No. 21,731, 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, NYNEX states that it provided the documents required in Puc 204.08(b)(1) and cited the statutory support required by Puc 204.08(b)(2). NYNEX states that the Information consists of details of special contracts relating to pricing and incremental cost information for competitive services not reflected in tariffs of general application, thus meeting the requirements of Puc 204.08(b)(4). NYNEX further provides facts describing the benefits of non-disclosure, thus meeting the requirements of Puc 204.08(b)(3).

[1] We recognize that the detailed customer specific information regarding customer usage, costs and terms of service contained in the Information is critical to review of the special contract by the Commission and Commission Staff, as required by RSA 378:18.

We also recognize that businesses engaged in discussions with regulated utilities are reluctant to disclose sensitive commercial and financial information if it is to become part of the public record.

NYNEX has alleged that disclosure of the information would result in harm. The harm to NYNEX would occur because the pricing and costing data contained in the Information will apply to other, future network designs. Therefore, in future negotiations NYNEX will be placed at a disadvantage. Harm to Sun would occur because Customer Proprietary Network Information, which the FCC has determined is protectible, would be released.

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 to NYNEX and Sun appear to outweigh the benefits of disclosure to the public. Therefore, 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 NYNEX's Motion for Confidential Treatment of portions of its special contract for the provision of Centrex service to Sun, and the supporting materials thereto, is GRANTED; and it is

FURTHER ORDERED, that this order is subject to reconsideration in the event that the Commission Staff or any party raises concerns, after review of the redacted materials, and it is subject to the on-going right 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 thirteenth day of February, 1996.

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*02/13/96*[89029]*81 NH PUC 93*Connecticut Valley Electric Company, Inc.

[Go to End of 89029]

81 NH PUC 93

Re Connecticut Valley Electric Company, Inc.

DR 95-307
Order No. 22,016

New Hampshire Public Utilities Commission

February 13, 1996

ORDER granting confidentiality of a market analysis report submitted by an electric utility in the course of its 1996 conservation and load management program proceeding.

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1. PROCEDURE, § 16

[N.H.] Discovery and inspection — Confidentiality — Market research and analysis report — Factors — Competitive benefits of nondisclosure as outweighing those of disclosure — Annual conservation and load management program proceeding — Electric utility. p. 93.

BY THE COMMISSION:

ORDER

On January 5, 1996, Connecticut Valley Electric Company (CVEC) filed with the Staff (Staff) of the New Hampshire Public Utilities Commission (Commission) Data Responses to Staff's Data Requests, Set 1. Concurrent with the Data Responses, CVEC filed a letter requesting protective treatment of Data Response 5 (Response 5). The Commission treated CVEC's letter as a Motion for Protective Treatment, waiting the requisite 10 days before acting upon the request. No objections were filed.

In its motion CVEC argued that Response 5 should be afforded protective treatment because it is within the exemptions permitted by RSA 91-A:5,IV, being confidential research, financial and commercial information which is not general public knowledge or published elsewhere. At

the Commission's request, CVEC provided clarifying information regarding Response 5 and narrowed its request to confidentiality for paragraph 2 of Response 5.

Specifically, CVEC provided the documents required in Puc 204.08(b)(1) and cited the statutory support required by Puc 204.08(b)(2). CVEC stated that Response 5, which has been disseminated in the course of Vermont regulatory proceedings only pursuant to a grant of confidential treatment by the Vermont Public Service Board, consists of confidential market analysis data which would place CVEC at a competitive disadvantage if the data were made public. This claim, supported by facts averred in CVEC's clarifying information to its motion, demonstrated that competitive disadvantage is likely to occur as a result of publication. This meets the requirements of Puc 204.08(b)(4).

[1] CVEC further provided facts describing the benefits of non-disclosure, thus meeting the requirements of Puc 204.08(b)(3). CVEC alleged that disclosure of Response 5 would result in harm to CVEC's affiliate, which competes in the unregulated and highly competitive water heater market, by revealing market-penetration and market-analysis information which would otherwise remain privileged.

Based upon the above analysis, the benefits of non-disclosure to CVEC appear to outweigh the benefits of disclosure to the public. The only benefit derived from disclosure would be to the affiliate's competitors, which, as we held in *Re NET*, Order No. 21,731, dated July 10, 1995, is not a result intended by RSA 91-A. Response 5 is therefore entitled to confidential treatment pursuant to RSA 91-A:5,IV and N.H. Admin. Rules, Puc 204.08.

Page 93

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 reconsideration in the event that the Commission Staff or any party raises concerns and it is subject to the on-going right 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 thirteenth day of February, 1996.

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*02/14/96*[89030]*81 NH PUC 94*ATCALL, Inc.

[Go to End of 89030]

81 NH PUC 94

Re ATCALL, Inc.

DE 95-280
Order No. 22,017

New Hampshire Public Utilities Commission

February 14, 1996

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

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1. CERTIFICATES, § 123

[N.H.] Telephone carrier — Intrastate intraLATA long-distance services — Interim authority — Assessment of competitive impacts — Exclusion of local exchange services. p. 94.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate intraLATA toll services — Interim authority — Assessment of competitive impacts — Exclusion of local exchange services. p. 94.

BY THE COMMISSION:

ORDER

[1, 2] On October 9, 1995, ATCALL, Inc. (ATCALL), a Delaware corporation, petitioned the New Hampshire Public Utilities Commission (Commission) for authority to do business as a telecommunications public utility in the State of New Hampshire (petition) pursuant to, *inter alia*, RSA 374:22 and RSA 374:26. ATCALL has demonstrated the financial, managerial and technical ability to offer service as conditioned by this order. The Commission previously approved numerous, similar petitions filed during the Trial Period, pursuant to the Modified Stipulation Agreement (Stipulation) in Docket No. DE 90-002, approved by Order No. 20,916 (August 2, 1993). Our orders in those numerous dockets granted the petitioner interim authority to offer intraLATA toll service, specifically excluding local exchange service, for the service territory of the entire State of New Hampshire during the Trial Period in order to allow the Commission to analyze competition during the two-year Trial Period.

Because the Trial Period identified by the Stipulation expired on September 30, 1995, we have explicitly clarified that the authority we had granted remains in effect until we specifically modify or revoke that authority after analysis of the Trial Period. *See* Order No. 21,851 (October 3, 1995). Likewise, our grant of authority ordered herein remains in effect until we specifically modify or revoke that authority.

The public good is served by permitting such competition by telecommunications companies. The Commission permits competitive entry in order to foster competition in the New Hampshire intrastate toll market and to allow the Commission to analyze the effects of such competition.

The public should be provided an opportunity to respond in support of, or in opposition to this petition.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that ATCALL is granted interim authority to offer as a telecommunications public utility intraLATA toll service, specifically excluding local exchange service, for the service territory of the entire State of New Hampshire, subject to the following conditions:

1. The services shall be offered by approved tariffs.

2. The services shall be offered until the Commission orders otherwise.

3. ATCALL shall file tariffs for new services and changes in approved services (other than rate changes), with effective dates of no less than 30 days after the date the tariffs are filed with the Commission.

4. Within one business day of offering an approved service to the public at a rate different from its rates on file with the Commission, ATCALL shall notify the Commission of the change.

5. ATCALL is exempted from NH Admin. Rules, Puc 406.03 Accounting Records; Puc 407 Forms Required of All Telephone Utilities; and Puc 409 Uniform System of Accounts for Telecommunications Companies.

6. ATCALL shall maintain its books and records in accordance with Generally Accepted Accounting Principles.

7. ATCALL 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. ATCALL 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. ATCALL shall compensate the appropriate Local Exchange Company for all originating and terminating access used by ATCALL pursuant to NET Tariff N.H.P.U.C. 79, Switched Access Service Rate or its successors or its relevant equivalent contained in the tariffs of the Independent Local Exchange Companies.

10. New Service offerings filed for approval with the Commission shall be accompanied by tariff pages describing the service, rates and effective dates.

FURTHER ORDERED, that the authority granted herein remains in full force and effect until the Commission orders otherwise; and it is

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

FURTHER ORDERED, that ATCALL 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 February 21, 1996, and an affidavit proving publication shall be filed with the Commission on or before February 28, 1996; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, et seq. ATCALL 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 March 6, 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 March 13, 1996; and it is

FURTHER ORDERED, this Order *Nisi* shall be effective March 15, 1996, unless the Commission provides otherwise in a supplemental order issued prior to the effective date and it is

FURTHER ORDERED, that ATCALL shall file a compliance tariff with the Commission on or before February 28, 1996, in accordance with NH Admin. Rules, Puc 1601.01 (b).

By order of the Public Utilities

Page 95

Commission of New Hampshire this fourteenth day of February, 1996.

Notice of Conditional Approval of
ATCALL, INC.

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

On October 9, 1995, ATCALL, Inc. (ATCALL), a Delaware corporation, filed with the New Hampshire Public Utilities Commission (Commission) a petition to do business as a telecommunications public utility in the State of New Hampshire, specifically to provide intrastate long distance telecommunications services.

In Order No. 22,017, issued in Docket No. DE 95-280, the Commission granted ATCALL conditional approval to operate as of March 15, 1996, subject to the right of the public and interested parties to comment on ATCALL 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 ATCALL's petition to do business in the State must be submitted in writing no later than March 6, 1996, and reply comments no later than March 13, 1996, to:

Dr. Sarah P. Voll
Executive Director and Secretary
Public Utilities Commission

8 Old Suncook Road
Concord, New Hampshire 03301-7319

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Generic Investigation into IntraLATA Toll Competition Access Rates, DE 90-002, Order No. 20,916, 78 NH PUC 365, Aug. 2, 1993. [N.H.] Re Long Distance North of New Hampshire, Inc., et al., DE 87-249, Order No. 21,851, 80 NH PUC 628, Oct. 3, 1995.

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NH.PUC*02/20/96*[89031]*81 NH PUC 96*MFS Intelenet of New Hampshire, Inc.

[Go to End of 89031]

81 NH PUC 96

Re MFS Intelenet of New Hampshire, Inc.

DR 96-024
Order No. 22,018

New Hampshire Public Utilities Commission

February 20, 1996

ORDER authorizing an interexchange telephone carrier to offer a new outward bound toll calling plan targeted at low-volume customers. Although the customer benefits from the plan are not apparent to the commission, it approves the plan nevertheless, since so many customer choices in toll services are now available.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Special outward bound service — Low-volume users — Lack of apparent customer benefits notwithstanding — Extent of customer choice as mitigating factor — Interexchange carrier. p. 96.

BY THE COMMISSION:

ORDER

[1] On January 23, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from MFS Intelenet of New Hampshire, Inc., (MFS) requesting authority to introduce MFS Inteleplan for effect February 22, 1996.

MFS Inteleplan is an outbound toll service targeted to low volume customers. The service is available for $.32 per minute between 7 a.m. and 7 p.m. Monday through Friday and $.27 per minute in all other time periods. There is a $3.00 monthly recurring charge and customers with more than $500 per month usage pay an

Page 96

additional $.02 for each minute of use. Those rates are substantially higher than are being offered elsewhere in the market.

Although the customer benefits that result from this filing are unclear to us, we will approve it due to the fact that there are many other alternatives in this market. The Commission permits flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize MFS to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of MFS' tariff, NHPUC No. 1 are approved for effect as filed:

8th Revised Page 1

1st Revised Page 24.13 in lieu of Origi-
nal

Original Page 24.14

1st Revised Page 27.4 in lieu of Origi-
nal;

and it is

FURTHER ORDERED, that MFS file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this twentieth day of February, 1996.

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NH.PUC*02/20/96*[89032]*81 NH PUC 97*Dial and Save of New Hampshire, Inc.

[Go to End of 89032]

81 NH PUC 97

Re Dial and Save of New Hampshire, Inc.

DR 96-025
Order No. 22,019

New Hampshire Public Utilities Commission

February 20, 1996

ORDER authorizing an interexchange telephone carrier to introduce a new inward bound "800" toll service targeted at small business customers.

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1. RATES, § 592

[N.H.] Telephone rate design — Toll service — New small business "800" service — Use of switched access facilities — Monthly recurring charge — Interexchange telephone carrier. p. 97.

BY THE COMMISSION:

ORDER

[1] On January 22, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from Dial & Save of New Hampshire, Inc. (Dial & Save) requesting authority to introduce Small Business 800, delete USA Savings Plan and revise rates for Travel Card service and the Residential Calling Program, for effect February 21, 1996.

Small Business 800 is an inbound 800 service which uses switched access facilities. There is a $3.00 monthly recurring charge.

The rates for the Residential Calling Program are being increased to the level of the former USA Savings Plan. As a result, USA Savings Plan is being eliminated.

Travel Card Service rates are being restructured. The daytime rate and the per call charge are being decreased, while the evening and night/weekend rates are being increased. In addition, a Travel Card rate is being introduced for business customers.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize Dial & Save to revise its tariff as outlined above.

Page 97

Based upon the foregoing, it is hereby

ORDERED, that the following pages of Dial & Save's tariff, NHPUC No. 1 are approved for effect as filed:

1st Revised Page 2

1st Revised Page 28

1st Revised Page 33

1st Revised Page 34

1st Revised Page 37

Original Page 38;

and it is

FURTHER ORDERED, that Dial & Save file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this twentieth day of February, 1996.

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NH.PUC*02/20/96*[89033]*81 NH PUC 98*Wilton Telephone Company

[Go to End of 89033]

81 NH PUC 98

Re Wilton Telephone Company

DR 96-027
Order No. 22,020

New Hampshire Public Utilities Commission

February 20, 1996

ORDER approving a local exchange telephone carrier's proposed tariff amendments relating to nonrecurring charges for construction, so as to clarify which charges apply to work on private property versus highways.

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1. RATES, § 309

[N.H.] Installation and connection — Telephone construction — Price lists — Construction on private property versus highways — Tariff clarification — Local exchange carrier. p. 98.

BY THE COMMISSION:

ORDER

[1] On January 24, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from Wilton Telephone Company (Wilton) requesting authority to introduce a Construction Charge Price List, for effect March 1, 1996.

The Construction Charge Price List was submitted by Wilton as a result of a request from the Commission Staff (Staff) after the Staff had received a customer inquiry on this issue. Staff's investigation on the customer inquiry revealed that Wilton's tariff was not clear on which charges

applied for Private Property construction and which charges applied for Highway construction. Wilton submitted the proposed page to clarify its tariff.

Staff has reviewed the proposed tariff page and advises that it clarifies construction charges. We find the proposed tariff page to be in the public interest.

Based upon the foregoing, it is hereby

ORDERED, that the following page of Wilton's tariff, NHPUC No. 5 is approved for effect as filed:

Part VI, Section 4

Original Page 7;

and it is

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

By order of the Public Utilities Commission of New Hampshire this twentieth day of February, 1996.

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NH.PUC*02/20/96*[89034]*81 NH PUC 99*Touch 1 Communications, Inc.

[Go to End of 89034]

81 NH PUC 99

Re Touch 1 Communications, Inc.

DR 96-026
Order No. 22,021

New Hampshire Public Utilities Commission

February 20, 1996

ORDER authorizing an interexchange telephone carrier to introduce its "Simply Better" outbound toll calling plan.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — New "Simply Better" outbound toll service — Interexchange carrier. p. 99.

BY THE COMMISSION:

ORDER

[1] On January 23, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from Touch 1 Communications, Inc., (Touch 1) requesting authority to introduce Simply Better for effect February 21, 1996.

Simply Better is an outbound toll service available for $.232 per minute between 7 a.m. and 7 p.m. Monday through Friday and $.095 per minute in all other time periods.

We find the proposed changes to be in the public good. New services expand the choice of telephone services and foster competition in the New Hampshire intrastate toll market which allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize the introduction of Simply Better.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of Touch 1's tariff, NHPUC No. 1 are approved for effect as filed:

3rd Revised Page 1

1st Revised Page 6

2nd Revised Page 18

1st Revised Page 20

2nd Revised Page 23

Original Page 23.A

1st Revised Page 24;

and it is

FURTHER ORDERED, that Touch 1 file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this twentieth day of February, 1996.

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NH.PUC*02/20/96*[89035]*81 NH PUC 99*Midwest Fibernet Inc.

[Go to End of 89035]

81 NH PUC 99

Re Midwest Fibernet Inc.

Additional applicant: Consolidated Network Inc.

DE 95-289
Order No. 22,022

New Hampshire Public Utilities Commission

February 20, 1996

ORDER authorizing an intracorporate merger under which Midwest Fibernet Inc. will be transferred to Consolidated Network Inc. and thereafter operate under the name Consolidated Communications Telecom Services Inc. The transaction is purely a matter of a change in control, designed to create economies of scale without any effect on actual operations. Accordingly, the merger is found to comply with the commission's "no net harm to ratepayers" test.

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1. CONSOLIDATION, MERGER, AND SALE, § 23

[N.H.] Factors affecting approval —

Page 99

Economy and efficiency — Intracorporate merger — Change in control only — No change in actual operations — Transparency as to customers — Telecommunications carriers. p. 100.

BY THE COMMISSION:

ORDER

Midwest Fibernet Inc. (MFI), and Consolidated Network Inc. (CNI), both Illinois corporations, (Petitioners), filed with the New Hampshire Public Utilities Commission (Commission) a joint petition (Petition) for approval of an intra-corporate transfer whereby (1) MFI will merge into CNI, (2) MFI's authority to conduct business in the State of New Hampshire as a telecommunications public utility will transfer to CNI; and (3) as part of the merger, CNI will emerge as the successor corporation under the name, Consolidated Communications Telecom Services Inc. (CCTS).

MFI, an Illinois corporation, received authority to provide telecommunications service exclusive of local exchange service in DE 94-179 (October 18, 1994) Order No. 21,394. MFI is a wholly- owned subsidiary of CNI, which in turn is a wholly owned subsidiary of Consolidated Communications Inc. (CCI).

CNI has provided interstate services, pursuant to the jurisdiction of the Federal Communications Commission, since 1986. CNI has evidenced that it is fully registered with the New Hampshire Secretary of State, pursuant to RSA 374:25. CNI, by counsel, represents it has reserved the use of the name CCTS with the Secretary of State, and will make a compliance filing with the Commission submitting the authorization of the Secretary of State for the use of the CCTS name upon receipt.

Petitioners evidenced technical, managerial, and financial competence in the record of the above docket. There are no operational changes as a result of the Petition. Staff has reviewed updated financials filed with this Petition and believes Petitioners remain financially qualified to conduct business in New Hampshire. Petitioners represent that the transfer of control will be essentially transparent to the customers, as they propose to adopt the existing tariffed rates and

services currently on file with the Commission by MFI. Petitioners anticipate achieving economic efficiencies from the transfer which they believe will enhance their competitiveness.

[1] We find that the merger of MFI into CNI, the transfer of authority from MFI to CNI, and the emergence of CNI as CCTS 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). The transfer of control may in fact produce net benefits to MFI's customers and ratepayers. We will, therefore, approve the Petition.

Based upon the foregoing, it is hereby

ORDERED that the Petition for approval of the merger of MFI into CNI, the transfer of authority from MFI to CNI, and the emergence of CNI as CCTS is GRANTED subject to the condition that CNI submits to the Commission the authorization from the Secretary of State for the use of the CCTS name; and it is

FURTHER ORDERED, that CNI file a properly annotated compliance tariff page adopting the tariff of MFI on or before March 21, 1996; and it is

FURTHER ORDERED, that CNI file its Amended Certificate of Authority, or equivalent authorization to transact business under CCTS from the New Hampshire Secretary of State upon receipt, but in any event no later than April 19, 1996.

By order of the Public Utilities Commission of New Hampshire this twentieth day of February, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Midwest Fibernet, Inc., DE 94-179, Order No. 21,394, 79 NH PUC 578, Oct. 18, 1994.

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NH.PUC*02/21/96*[89036]*81 NH PUC 101*Consumers New Hampshire Water Company, Inc.

[Go to End of 89036]

81 NH PUC 101

Re Consumers New Hampshire Water Company, Inc.

DR 95-124
Order No. 22,023

New Hampshire Public Utilities Commission

February 21, 1996

ORDER denying rehearing of Order No. 21,984 (81 NH PUC 32, *supra*) and clarifying that commission acceptance of a bond for a proposed tariff change does not constitute rate making per se.

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1. PROCEDURE, § 33

[N.H.] Rehearing — Grounds for granting — Newly discovered evidence — Grounds for denying — Reassertion of previously rejected arguments. p. 103.

2. RATES, § 656

[N.H.] Procedure — Rates pending investigation — Bond requirements — Acceptance of bond by commission not tantamount to rate making — Water utility. p. 103.

3. RATES, § 39

[N.H.] Commission jurisdiction — Procedural matters — Bonded rates — No authority to prohibit — Review authority limited to form of the bond — Acceptance of bond as not constituting actual rate making. p. 103.

4. STATUTES, § 25

[N.H.] Repeal — By explicit action — Not by implication through enactment of another law — Every attempt possible to reconcile statutes that appear in conflict. p. 103.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On December 22, 1995, as part of its permanent rate case filed with the New Hampshire Public Utilities Commission (Commission), Consumers New Hampshire Water Company, Inc. (Consumers) filed a Motion on Bonded Rates, pursuant to RSA 378:6 III, to put the proposed increase into effect January 20, 1996. The Office of the Consumer Advocate (OCA) and the Town of Hudson (Hudson) filed timely responses in opposition to Consumers' Motion on Bonded Rates. By Order No. 21,984, issued on January 18, 1996, we approved the form of Consumers' proposed bond, with certain conditions including that Consumers track payments so that refunds can be made on a customer specific basis at the close of the docket.

On February 2, 1996, the OCA filed a Motion to Reconsider Order Addressing Bonded Rates (Order No. 21,984) or, in lieu of such Reconsideration, to Certify Questions of Law to the New Hampshire Supreme Court. Consumers filed its executed Bond on February 2, 1996. Responses in opposition to the OCA Motion were received from both the Staff of the Commission (Staff) and from Consumers on February 6, 1996.

II. POSITIONS OF THE PARTIES AND STAFF

A. *OCA*

The OCA argues that Order No. 21,984 must be reconsidered for three reasons: (1) because the Commission did not hold a public hearing on Consumers' Motion on Bonded Rates; (2) because the statute permitting bonded rates is an unconstitutional grant of ratemaking authority to a utility; and (3) because the statute permitting bonded rates has been repealed by the

subsequent enactment of a statute permitting the Commission to approve temporary rates.

In support of its argument that a hearing was necessary, the OCA asserts that constitutional due process requires a hearing on the

Page 101

sufficiency of Consumers' bond. RSA 378:6, III permits a bond "in such form and with such sureties if any, as the commission may determine." The OCA argues that once the Commission received an objection to the sufficiency of Consumers' bond, the Commission was bound to hold a public hearing on the issue. In addition, the OCA argues that constitutional equal protection and due process concerns require a hearing because a bonded rate decision is ratemaking and ratemaking requires the Commission to consider the interests of both utility ratepayers and utility shareholders. The OCA avers that failure to hold a hearing inadequately protected ratepayers. In support of its argument that the bonded rate statute is unconstitutional, the OCA again avers that RSA 378:3,III is ratemaking and contends that neither the Legislature nor the Commission may delegate ratemaking to a private utility company.

In support of its third argument, the OCA contends that RSA 378:28, enacted in 1941, effectively repealed the bonded rates statute which had been enacted in 1911 and therefore the Commission was required to hold a temporary rates hearing. In the alternative, the OCA argues that the Commission has the authority to, and should in the interests of fairness, now initiate a temporary rates proceeding.

In lieu of reconsideration, the OCA's motion requested that the above issues be certified to the New Hampshire Supreme Court.

B. *Consumers*

Consumers argues that RSA 378:6,III strictly limits the Commission's authority to that of insuring a bond is adequate as to form and amount. According to Consumers, in *Nelson v. PSNH*, 119 N.H. 327, 402 A2d 623 (1979), the New Hampshire Supreme Court determined that RSA 378:6,III does not rise to the level of ratemaking. Therefore, Consumers argues, the complexities of ratemaking do not arise and no hearing is required.

Consumers contends that the sufficiency of its bond was not timely questioned by the OCA. The OCA's objection to Consumers' motion on bonded rates was a general opposition to any rate increase at all. Therefore, the sufficiency of the bond cannot be raised as an issue for reconsideration.

Consumers argues that the Commission has no obligation to initiate temporary rate hearings when no party petitions for temporary rates. Given that hearings on permanent rates are scheduled in this case within five weeks, Consumers points out that temporary rate hearings would unnecessarily delay the proceeding.

Consumers objects to the transfer to the Supreme Court of any of the questions raised by the OCA. RSA 378:6,III presents no justiciable right at issue in adversary proceedings, as required for the transfer of a question of law, because the only interest at stake is assuring the refund of over-collections. Since the Commission will not consider a justiciable rate until it exercises its ratemaking authority to balance the interests of utility ratepayers and shareholders, Consumers

avers that no transfer can occur.

C. *Staff*

Staff argues against reconsideration of Order No. 21,984, stating that the OCA's timely filed Memorandum of Law in Opposition to Consumers' Motion for Bonded Rates did not include any of the arguments the OCA now raises. Staff points out that the OCA offered no explanation as to why its arguments could not have been presented in its memorandum and, citing *Appeal of Gas Service, Inc.*, 121 N.H. 797, 801, 435 A.2d 126 (1981), argues that New Hampshire case law dictates that Motion to Reconsider be denied.

Staff also argues against transfer of questions of law to the Supreme Court, stating that the transfer is unavailable pursuant to New Hampshire Supreme Court Rule 4. Rule 4 permits interlocutory transfer to administrative agencies only "without ruling." Where the Commission has already ruled, no interlocutory transfer is authorized. Staff further argues that even if Rule 4 permitted the transfer, the questions raised do not meet the requirements of Supreme Court Rule 9. When transferring a question, Rule 9 requires an administrative agency to provide the Court with "reasons why a substantial basis exists for a difference of

opinion" on the question and "why an interlocutory transfer may materially advance the termination ... of the litigation." Staff argues that none of the questions raised by the OCA contain substantial basis for a difference of opinion.

III. COMMISSION ANALYSIS

[1] We will deny the OCA's Motion to Reconsider. In the absence of newly discovered evidence, a motion for rehearing must set forth grounds upon which the order complained of is unjust, unlawful or unreasonable. RSA 541:4. However, a petition for rehearing is not merely another opportunity for a party to argue a position or to express disagreement with the Commission's decisions. *Re Consumers Power Company*, 154 PUR4th 275 (Michigan, 1994). We fully considered the sufficiency of Consumers' proposed bond in our order and the OCA has raised no new evidence on that issue. Moreover, as Consumers' Opposition to OCA's Motion to Reconsider indicates, Consumers' lines of credit with two financial institutions substantiate our decision that the bond is sufficient to protect the interests of Consumers' customers. Therefore, the sufficiency of the bond will not be reconsidered.

[2, 3] The constitutional due process and equal protection violations claimed by the OCA turn on an interpretation of bonded rates as ratemaking. The Supreme Court dealt conclusively with the bonded rates statute, RSA 378:6,III, in *Nelson v. PSNH*, 119 N.H. 327 (1979). In that case a utility had notified the Commission that it would exercise its authority under RSA 378:6 and put a tariff into effect under bond. The Commission accepted the bond, notifying the utility that "the Commission has no authority under the statute cited with respect to the company placing the rates into effect." *Nelson, supra* at 328. According to the Court, the Commission's acceptance of the bond was not an act "authoriz(ing) or issu(ing) an order concerning the rate. ... The commission's only role then (was) to set an adequate bond; it (did) not set a rate." *Nelson, supra* at 330. Thus, the Court's discussion of RSA 378:6 in *Nelson*, clearly indicates that Order

No. 21,984 does not constitute ratemaking. Therefore, the due process and equal protection claims fail with regard to the lack of a hearing.

Because RSA 378:6,III does not authorize ratemaking, we cannot declare it an unconstitutional grant of ratemaking power. In addition, it is a basic principle of statutory construction that a statute will be construed to avoid conflict with constitutional rights whenever reasonably possible. The Legislature is presumed to have "intended to confine its action within constitutional bounds." *Girard v. Town of Allenstown*, 121 N.H. 268, 428 A2d 488 (1981). Here, interpretation of RSA 378:6,III as an interim action during a rate case, safeguarded by a bond to guarantee protection against overcollection, permits a finding of constitutionality.

[4] With regard to the OCA claim that RSA 378:6,III has been repealed, we disagree. New Hampshire courts disfavor repeal by implication, *Board of Selectmen v. Planning Board*, 118 N.H. 150, 383 A2d 1122 (1978). A statute will not be found repealed by implication unless "the conflict between two statutes is irreconcilable." *Gazzola v. Clements*, 120 N.H. 25, 411 A2d 147 (1980). The two statutes here are not in conflict. One, RSA 378:6, III, permits a company to petition, at any point in a rate case, for a hearing on temporary rates. If granted, temporary rates provide for the company to collect from ratepayers the difference between the temporary and permanent rates if the eventual permanent rates are higher, and to return to ratepayers the difference if the eventual permanent rates are lower. The other, RSA 378:28, permits a company, after the expiration of six months from the originally proposed effective date of the rate filed in a rate case, to post a bond and place in effect the filed rates. The bond insures that the company will return to ratepayers the difference if the authorized rates are lower. The bond does not grant the company any right to collect from ratepayers the difference if the authorized rates are higher. Thus, the two statutes serve different purposes and provide different rights and obligations. RSA 378:6,III is not in conflict with RSA 378:28 and is not impliedly repealed.

We are of the opinion that this docket

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should proceed with alacrity. As the OCA points out, the difference between Consumers' proposed rate increase, now in effect under bond, and that proposed in Staff testimony is large. Final hearings are scheduled for mid- March. Accordingly, in all fairness, ratepayers are best served by going forward, even were the OCA's arguments persuasive. The OCA's arguments are preserved for appeal. For these reasons, as well as the procedural problems identified by Staff, we will deny the OCA's motion to certify any of the above questions to the Supreme Court.

Based upon the foregoing, it is hereby

ORDERED, that the Motion to Reconsider our Order No. 21,984, or in lieu of such reconsideration to certify and transfer questions of law to the New Hampshire Supreme Court is DENIED.

By order of the Public Utilities Commission of New Hampshire this twenty-first day of February, 1996.

EDITOR'S APPENDIX

Citations in Text
[N.H.] Re Consumers New Hampshire Water Co., Inc., DR 95-124, Order No. 21,984, 81 NH PUC 32, Jan. 18, 1996.

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NH.PUC*02/21/96*[89037]*81 NH PUC 104*Rosebrook Water Company, Inc.

[Go to End of 89037]

81 NH PUC 104

Re Rosebrook Water Company, Inc.

DR 95-304
Order No. 22,024

New Hampshire Public Utilities Commission

February 21, 1996

ORDER adopting a procedural schedule for considering a water utility's proposed rate increase. The schedule provides for expedited proceedings in exchange for the utility's willingness to forgo temporary rates.

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1. RATES, § 640

[N.H.] Procedure — Adoption of procedural schedule — Relative to water utility rate case — Expedited schedule — Factors — Forbearance from setting of temporary rates. p. 104.

BY THE COMMISSION:

ORDER

On October 26, 1995, Rosebrook Water Company, Inc. (Rosebrook) filed with the New Hampshire Public Utilities Commission (Commission) a Notice of Intent to File Rate Schedules and Request for Waiver. On December 7, 1995, Rosebrook filed Revised Tariff Pages, the Company's Report of Proposed Rate Changes and supporting testimony and exhibits as well as a petition for temporary rates.

The Commission subsequently issued Order No. 21,952 (December 20, 1995) which suspended the new tariffs and set a prehearing conference for January 23, 1996.

Bretton Woods Properties Utilities Advisory Committee (Bretton Woods) and Mount Washington Place Condominium Association (Mount Washington) filed for intervention. Mount Washington failed to appear at the prehearing conference. Both intervention requests were granted during subsequent public meetings of the Commission.

I. POSITIONS OF THE PARTIES

[1] Prior to the opening of the prehearing conference the parties met to discuss a schedule for the pendency of the case. Staff suggested that in lieu of the imposition of temporary rates that they would offer an expedited schedule and if hearings on the permanent rate case could be held on or about the early part of April, Staff would not object to recommending that a permanent order approve rates on a "bills" rendered rather than on the "service" rendered basis that is the normal practice of the Commission. This would allow the permanent rates to

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be effective as of January 1996 which was the proposed effective date of Rosebrook's temporary rate increase. Both Staff and the Petitioner agreed that rate case expenses would be kept to a minimum if the preparation of testimony, interrogatories and a hearing on temporary rates could be eliminated from the schedule. The Petitioner agreed to withdraw its request for temporary rates and the Staff offered an expedited schedule. At the prehearing conference the petitioner requested that the Commission rule on the question of "bills" rendered rather than "service" rendered basis at the time the Commission issues an order on the prehearing conference. Staff reiterated its position that it would not object to a "bills" rendered basis; however, Staff did not request a ruling on the question in the prehearing conference order but suggested that not ruling on the issue in the prehearing conference would not preclude such a ruling in the permanent rate order.

At the prehearing conference Rosebrook, Bretton Woods, and Staff agreed to the following procedural schedule:

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

Technical Session at 10 a.m.        February 6, 1996
Data Requests by Staff and          February 9, 1996
Intervenors
Data Responses by Company          February 16, 1996
Testimony by Staff & Intervenors       March 6, 1996
Settlement Conference, 10 a.m.        March 12, 1996
Hearing on merits, 10 a.m.       April 2 and 5, 1996
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II. COMMISSION ANALYSIS

We find the proposed procedural schedule to be reasonable and will approve it without modification. The Commission will not rule on the question of the "bills" rather than "service" rendered basis but will take this issue under advisement and address it in the final order.

Based upon the foregoing, it is hereby

ORDERED, that the proposed procedural schedule delineated above is approved.

By order of the Public Utilities Com-
mission of New Hampshire this twenty-first day of February, 1996.

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NH.PUC*02/21/96*[89038]*81 NH PUC 105*National Accounts, Inc.

[Go to End of 89038]

81 NH PUC 105

Re National Accounts, Inc.

DE 95-298
Order No. 22,025

New Hampshire Public Utilities Commission

February 21, 1996

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

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1. CERTIFICATES, § 123

[N.H.] Telephone carrier — Intrastate intraLATA long-distance services — Interim authority — Assessment of competitive impacts — Exclusion of local exchange services. p. 105.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate intraLATA toll services — Interim authority — Assessment of competitive impacts — Exclusion of local exchange services. p. 105.

BY THE COMMISSION:

ORDER

[1, 2] On October 25, 1995, National Accounts, Inc. (National), a New Jersey corporation, petitioned the New Hampshire Public Utilities Commission (Commission) for authority to do business as a telecommunications public utility in the State of New Hampshire (petition) pursuant to, *inter alia*, RSA 374:22 and RSA 374:26. National has demonstrated the financial, managerial and technical ability to

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offer service as conditioned by this order. The Commission previously approved numerous, similar petitions filed during the Trial Period, pursuant to the Modified Stipulation Agreement (Stipulation) in Docket No. DE 90-002, approved by Order No. 20,916 (August 2, 1993). Our orders in those numerous dockets granted the petitioner(s) interim authority to offer intraLATA toll service, specifically excluding local exchange service, for the service territory of the entire State of New Hampshire, during the Trial Period, in order to allow the Commission to analyze competition during the two-year Trial Period.

Because the Trial Period identified by the Stipulation expired on September 30, 1995, we have explicitly clarified that the authority we had granted remains in effect until we specifically

modify or revoke that authority, after analysis of the Trial Period. *See* Order No. 21,851 (October 3, 1995). Likewise, our grant of authority ordered herein remains in effect until we specifically modify or revoke that authority.

The public good is served by permitting such competition by telecommunications companies. The Commission permits competitive entry in order to foster competition in the New Hampshire intrastate toll market and to allow the Commission to analyze the effects of such competition.

The public should be provided an opportunity to respond in support of, or in opposition to this petition.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that National is granted interim authority to offer as a telecommunications public utility intraLATA toll service, specifically excluding local exchange service, for the service territory of the entire State of New Hampshire, subject to the following conditions:

1. The services shall be offered by approved tariffs.

2. The services shall be offered until the Commission orders otherwise.

3. National shall file tariffs for new services and changes in approved services (other than rate changes), with effective dates of no less than 30 days after the date the tariffs are filed with the Commission.

4. Within one business day of offering an approved service to the public at a rate different from its rates on file with the Commission, National shall notify the Commission of the change.

5. National is exempted from NH Admin. Rules, Puc 406.03 Accounting Records; Puc 407 Forms Required of All Telephone Utilities; and Puc 409 Uniform System of Accounts for Telecommunications Companies.

6. National shall maintain its book and records in accordance with Generally Accepted Accounting Principles.

7. National 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. National 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. National shall compensate the appropriate Local Exchange Company for all originating and terminating access used by National pursuant to NET Tariff N.H.P.U.C. 79, Switched Access Service Rate or its successors or its relevant equivalent contained in the tariffs of the Independent Local Exchange Companies.

10. New Service offerings filed for approval with the Commission shall be accompanied by tariff pages describing the service, rates and effective dates.

FURTHER ORDERED, that the authority granted herein remains in full force and effect until the Commission orders otherwise; and it is

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

FURTHER ORDERED, that National 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 February 28, 1996, and an affidavit proving publication shall be filed with the Commission on or before March 6, 1996; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, et seq. National 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 March 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 March 20, 1996; and it is

FURTHER ORDERED, this Order *Nisi* shall be effective March 22, 1996, unless the Commission provides otherwise in a supplemental order issued prior to the effective date and it is

FURTHER ORDERED, that National shall file a compliance tariff with the Commission on or before March 22, 1996, in accordance with NH Admin. Rules, Puc 1601.01 (b).

By order of the Public Utilities Commission of New Hampshire this twenty-first day of February, 1996.

Notice of Conditional Approval of
NATIONAL ACCOUNTS, INC.

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

On October 25, 1995, National Accounts, Inc. (National), a New Jersey corporation, filed with the New Hampshire Public Utilities Commission (Commission) a petition to do business as a telecommunications public utility in the State of New Hampshire, specifically to provide intrastate long distance telecommunications services.

In Order No. 22,025, issued in Docket No. DE 95-298, the Commission granted National conditional approval to operate as of March 22, 1996, subject to the right of the public and interested parties to comment on National 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 National's petition to do business in the State must be submitted in writing no later than March 13, 1996, and reply comments no later than March 20, 1996, to:

Dr. Sarah P. Voll
Executive Director and Secretary
Public Utilities Commission
8 Old Suncook Road
Concord, New Hampshire 03301-7319

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Generic Investigation into IntraLATA Toll Competition Access Rates, DE 90-002, Order No. 20,916, 78 NH PUC 365, Aug. 2, 1993. [N.H.] Re Long Distance North of New Hampshire, Inc., et al., DE 87-249, Order No. 21,851, 80 NH PUC 628, Oct. 3, 1995.

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NH.PUC*02/21/96*[89039]*81 NH PUC 107*New England Telephone and Telegraph Company

[Go to End of 89039]

81 NH PUC 107

Re New England Telephone and Telegraph Company

DR 95-310
Order No. 22,026

New Hampshire Public Utilities Commission

February 21, 1996

ORDER approving a local exchange telephone carrier's proposed introduction of two optional transport features for its switched access customers: Common Channel Signaling Access and Signaling System 7. The new services are in response to specific requests for service from

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two wireless communications customers.

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1. RATES, § 592

[N.H.] Telephone rate design — Toll service — Switched access — Optional transport features — Common Channel Signaling Access — Signaling System 7 — Local exchange carrier. p. 108.

2. SERVICE, § 467

[N.H.] Telephone — Switched access — Optional transport features — Common Channel Signaling Access — Signaling System 7 — Local exchange carrier — Requests from wireless

customers as a factor. p. 108.

BY THE COMMISSION:

ORDER

[1, 2] On November 3, 1995, New England Telephone and Telegraph Company (NYNEX or Company) petitioned to introduce Common Channel Signaling Access (CCSA) and Signaling System 7 (SS7) as optional features for switched access customers for effect December 3, 1995.

Staff required time to investigate the filing and material filed in support of the proposed tariff and therefore requested that the proposed tariff pages be suspended. On November 21, 1995, the Commission issued Order No. 21,918 suspending the proposed tariff pages.

With this filing, NYNEX proposes to introduce the following two optional transport features for switched access customers served under the NHPUC - No. 79 tariff: Signaling System Seven (SS7) and Common Channel Signaling Access (CCSA). These options are available for use only with Feature Group D (FGD) and Feature Group 2A (FG2A) Switched Access Services. NYNEX has offered SS7 and CCSA in the interstate market since 1991. NYNEX has not offered these services in the New Hampshire intrastate market because no interexchange carrier had requested the services with any intrastate application. However, NYNEX reports recently receiving requests for this service from wireless customers.

NYNEX proposes to offer these two optional transport features using the same structure and rate levels in effect in the interstate access tariff. In its supporting documentation, NYNEX provides demand and revenue forecasts. NYNEX estimates that two customers will order service the first year the service is offered, with an additional customer added each year through 2000. Each of these customers is expected to generate over $16,000 in annual recurring revenues.

Staff has reviewed the proposed filing and the supporting documentation and recommended the proposed tariff pages be approved.

We have reviewed Staff's recommendation and the petition filed by the Company and find that the proposed offering is the public good.

Based upon the foregoing, it is hereby

ORDERED, that the following tariff pages of NYNEX are approved:

NHPUC No. 79 Section 1 — Original of Page 10.1 First Revision of Pages 6, 8, 9, 10 and 11 Second Revision of Page 12 Section 2 — First Revision of Page 16 Section 5 — First Revision of Page 1 Section 6 — Originals of Pages 6.1, 6.2 and 13.1 Section 6 — First Revision of Pages 6, 11, 13, 14.1, 15.1, 17 and 21 Second Revision of Pages 2, 5, 15 Third Revision of Page 14 Section 30 — First Revision of Pages 7 and 7.1

FURTHER ORDERED, that the above tariff pages shall be effective as of February 21, 1996; and it is

FURTHER ORDERED, that NYNEX file a compliance tariff with the Commission on or before March 22, 1996, in accordance with N.H. Admin. Rules, Puc 1601.04(b).

By order of the Public Utilities Commission of New Hampshire this twenty-first day of February, 1996.

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NH.PUC*02/23/96*[89040]*81 NH PUC 109*Public Service Company of New Hampshire

[Go to End of 89040]

81 NH PUC 109

Re Public Service Company of New Hampshire

DR 95-180
Order No. 22,027

170 PUR4th 538

New Hampshire Public Utilities Commission

February 23, 1996

ORDER conditionally approving economic development (ED) and business retention (BR) rate tariffs filed by an electric utility pursuant to state statute RSA 378:11-a, in which the state legislature indicated a clear preference for the use of ED/BR tariffs rather than individually negotiated discounted rate contracts.

Despite some reservations, the commission approves the proposed tariffs, given the reality that the utility could withdraw the rates entirely if the commission were to mandate unacceptable changes. However, the commission does direct the utility to remove those provisions that would prohibit a customer from installing electric generating equipment on its own property, finding the prohibition to be anticompetitive and not in the public interest.

It also rejects those terms establishing a set schedule (or stream) of rates in lieu of percentage discounts. Additionally, the commission questions the effectiveness of certain tariff terms, explaining that the five-year rate option may be too long to attract or retain customers in an increasingly competitive marketplace, while the three-year option provides for such low discounts that it might fail to attract or retain customers.

Commission clarifies that the ED rate is available only to business customers that relocate into the state and is not available to a business already located in the state that merely moves into a different utility's service territory. But fuel switching by a customer is found not to violate the sole supplier provisions of the rates.

Commission declines to rule generically on the issue of the recovery of the difference in revenues between regular tariffed rates and ED/BR rates, finding it more appropriate to address such on a case-by-case basis. But the commission does interpret state law to permit it to impute the difference between regular tariff and ED rate revenues to test-year revenues, thereby assuring that ratepayers do not in any way subsidize the discount given to ED/BR customers.

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1. RATES, § 166

[N.H.] Factors affecting reasonableness — Solicitation of business — Economic development (ED) and business retention (BR) rates — Tariffed discounts — Statutory provisions — Legislative preference for ED/BR tariffs rather than individual special rate contracts — But discretionary not mandatory for utilities — Electric utility. p. 114.

2. RATES, § 149

[N.H.] Factors affecting reasonableness — Economic conditions — Economic development and business retention rates — Tariffed discounts — Statutory public interest standard — Electric utility. p. 114.

3. RATES, § 322

[N.H.] Electric rate design — Load factors — Need for load retention mechanisms — Discretionary authorization for economic development and business retention rate tariffs — To replace individually negotiated special rate contracts — Reasonableness — Statutory public interest standard. p. 114.

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4. ELECTRICITY, § 4

[N.H.] Operating practices — Load management — Means of retaining load — Discount rates — Economic development and business retention rates — Tariffed schedules as replacing individual special rate contracts. p. 114.

5. RATES, § 322

[N.H.] Electric rate design — Load factors — Means of retaining load — New economic development and business retention rate tariffs — Terms — Minimum three- or five-year duration — Utility as sole electric supplier — Liquidated damages. p. 115.

6. RATES, § 166

[N.H.] Factors affecting reasonableness — Solicitation of business — Economic development and business retention rates — Tariffed discounts — Terms — Minimum three- or five-year duration — Utility as sole electric supplier — Liquidated damages — Electric utility. p. 115.

7. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric service — New economic development and business retention rate tariffs — Anticompetitive effect of certain terms — Elimination of as condition of approval — Removal of prohibition on customer-installed generating facilities. p. 115.

8. RATES, § 166

[N.H.] Factors affecting reasonableness — Solicitation of business — Economic development and business retention rates — Tariffed discounts — Anticompetitive effect of

certain terms — Elimination of as condition of approval — Removal of prohibition on customer-installed generating facilities. p. 115.

9. RATES, § 322

[N.H.] Electric rate design — Load factors — Means of retaining load — New economic development and business retention rate tariffs — Discount terms — Expressed as percentage off existing rates rather than as separate, definitive rate schedule unto itself. p. 115.

10. RATES, § 166

[N.H.] Factors affecting reasonableness — Solicitation of business — Economic development and business retention rates — Tariffed discounts — Expressed as percentage off existing rates rather than as separate, definitive rate schedule unto itself. p. 115.

11. RATES, § 322

[N.H.] Electric rate design — Load factors — Means of retaining load — New economic development (ED) and business retention (BR) rate tariffs — Discounts — Eligibility for — Dispute resolution — Same provisions for ED customers as for BR customers — Commission involvement. p. 115.

12. RATES, § 166

[N.H.] Factors affecting reasonableness — Solicitation of business — Economic development (ED) and business retention (BR) rates — Tariffed discounts — Eligibility for — Dispute resolution — Same provisions for ED customers as for BR customers — Commission involvement. p. 115.

13. RATES, § 166

[N.H.] Factors affecting reasonableness — Solicitation of business — Economic development (ED) and business retention (BR) rates — Eligibility — Relocation into state — ED rate not available to customer moving from one utility's in-state territory to another's territory — BR rate available for interterritorial moves only if otherwise would leave state entirely. p. 116.

14. RATES, § 322

[N.H.] Electric rate design — Load factors — Means of retaining load — New economic development and business retention rate tariffs — Discounts — Fuel switching as not affecting eligibility. p. 116.

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15. MONOPOLY AND COMPETITION, § 50.1

[N.H.] Interutility competition — As affected by new economic development and business retention rate tariffs — No prohibition on fuel switching in tariffs — Electric utility. p. 116.

16. RATES, § 165

[N.H.] Factors affecting reasonableness — Reductions in revenues — Shortfalls associated with economic development- and business retention-related discounts — Case-by-case review —

Electric utility. p. 116.

17. REVENUES, § 5

[N.H.] Electric utility — Shortfalls associated with economic development- and business retention-related discounts — Case-by-case review — Avoidance of cross-subsidies — But imputation to test-year revenues. p. 116.

18. EXPENSES, § 42

[N.H.] Deficits under rate schedules — Shortfalls associated with new economic development- and business retention-related discounts — Case-by-case review — Electric utility. p. 116.

19. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric — Economic development rates — Business retention rates — Discount-related shortfalls — Rate recovery. p. 116.

20. STATUTES, § 17

[N.H.] Construction — Giving effect to all provisions — Impact of apparently incongruous parts — Compliance with specific terms — More liberal interpretation of less explicit terms. p. 118.

APPEARANCES: Gerald M. Eaton, Esq. for Public Service Company of New Hampshire; James T. Rodier, Esq. for Freedom Energy Company, Inc. and Johnson Controls, Inc., The Dupont Group by James Monahan for Cabletron Systems, Inc., Jacqueline Lake Killgore, Esq. for Public Utility Policy Institute; Henry G. Veilleux for Business and Industry Association of New Hampshire; McLane, Graf, Raulerson and Middleton by Steven E. Camerino, Esq. for EnergyNorth Natural Gas, Inc.; Dean, Rice and Howard by Mark M. Dean, for New Hampshire Electric Cooperative, Inc.; Roger A. Lindahl, *pro se*; Michael W. Holmes, Esq. for Office of Consumer Advocate; Eugene F. Sullivan, III, Esq. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On June 26, 1995 Public Service Company of New Hampshire (PSNH or the Company) filed with the New Hampshire Public Utilities Commission (Commission) a Petition for Approval of its Economic Development Energy Service Rate (Rate ED) and its Business Retention Service Rate (Rate BR). The filing was made pursuant to Senate Bill 168, now codified at RSA 378:11-a (Supp. 1995), which authorized economic development and business retention tariffs for electric utilities.

By Order No. 21,745 dated July 14, 1995 the Commission suspended the proposed rates in order to "establish procedures for the review and approval" of rates that foster economic development and business retention in the State. RSA 378:11-a. RSA 378:11-a required that

these procedures consider "eligibility criteria, the effect on the utility's fixed and variable costs, the amount of new demand and energy for electric service involved, the effect on employment within the state, material adverse competitive impact on existing in-state firms, and end-user participation in conservation programs and other state established economic development enhancement programs." RSA 378:11-a. To accomplish these objectives the Commission opened docket DR 95-216 to

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establish Guidelines for Economic Development and Business Retention Rates. On November 6, 1995 the Commission adopted its final Guidelines for Economic Development and Business Retention Rates (Guidelines). Order No. 21,895.

On November 17, 1995 PSNH filed revised tariff pages for Rates ED and BR, which were intended to comply with the Guidelines. On November 20, 1995 the Commission issued an Order of Notice setting a procedural schedule to investigate Rates ED and BR pursuant to the Guidelines and RSA 378:11-a. The Order of Notice set January 3, 1996 for a hearing on the merits of the Rates and January 15, 1996 for a final order on the Rates by the Commission. Because the hearing on the merits required an additional day of testimony, hearings were not completed until January 23, 1996, delaying the issuance of this Order.

Timely motions to intervene were filed by the Public Utility Policy Institute (PUPI), the New Hampshire Business and Industry Association of New Hampshire (BIA), Freedom Energy Company, Inc. (Freedom), Cabletron Systems, Inc. (Cabletron), and EnergyNorth Natural Gas, Inc. (ENGI). PSNH objected to the intervention requests of Cabletron and Freedom. Johnson Controls, Inc., NHEC and Roger A. Lindahl, Treasurer of Sweetheart Cup Company, Inc. requested late intervention. All requests for intervention were granted. Mr. Lindahl did not appear at the hearings.

On December 20 and 21, 1995 ENGI, Johnson Controls, OCA, BIA and Staff filed testimony. On December 27, 1995 and January 4, 1996 Jay E. Taylor, of the Manchester Economic Development Office, and George M. Bald, Director of Economic Development for the Pease Development Authority, respectively, filed letters in support of PSNH's proposal.

On January 25, 1996, PSNH submitted reserved Exhibits 11 and 20. Exhibit 20 revised the terms, definitions and conditions of Rates ED and BR. On January 26, 1996, Freedom, Cabletron and the OCA filed comments on PSNH's revised filing. Staff filed comments on January 29, 1996, NHEC on January 30th, and ENGI on January 31st.

II. POSITIONS OF THE PARTIES AND STAFF

PSNH's filing raised a number of issues among the parties and Staff. Those issues can be summarized as follows: the term period required by PSNH for customers who take service under the Rates; PSNH as sole supplier including a prohibition on cogeneration and sale of electricity on the customer's site; the liquidated damages provision; the flexibility of PSNH to offer a schedule of specific rates available to customers in lieu of percentage discounts; access to the Commission to resolve any disputes relative to the terms; conditions and availability of the Rates; the availability of Rate ED or Rate BR to customers that move to PSNH's service territory from another New Hampshire utility's service territory; the provision of the tariff binding all

"successors and assigns" to take service under the Rates; whether fuel switching would violate the tariff; the amount of information required from potential customers by PSNH and the amount of time PSNH takes to respond to such a request; and whether the difference between the normal tariffed rate and the economic development and business retention rate could be recovered from other ratepayers under RSA 378:11-a.

A. *PSNH*

PSNH initially took the position that both Rates ED and BR must be accepted as filed or it would withdraw the Rates. Subsequently, PSNH made some revisions to the Rates to attempt to accommodate some of the concerns of the parties and Staff. *See*, Exhibit 20.

PSNH argued that a five year term of service was necessary to avoid "free riders" taking advantage of the reduced Rates. That is, PSNH believes that potential Rate ED customers that are considering moving to the State but who have reservations because of PSNH's high rates, and potential Rate BR customers considering moving out of the State because of PSNH's high rates, would not only be willing, but would require a five year commitment. PSNH argues that any firm that was unwilling to make such a commitment probably planned

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on moving to, or remaining in the State, notwithstanding the high rates, and was merely taking advantage of the tariff to receive reduced rates. However, in response to criticisms of its position, PSNH filed a three year term at a substantially lesser discount. *See*, Exhibit 20.

PSNH contended that the restriction on cogeneration contained in both tariffs is part of the consideration to shareholders for the reduced rate customers would receive for taking under Rates ED and BR. Tr. at 78 and 83.

PSNH argued that the liquidated damages provision is required to ensure it is compensated for a breach of the contractual terms of the tariff.

PSNH testified that it made specific rates, in lieu of percentage discounts, available under the tariffs to provide a degree of flexibility for customers that needed certainty with regard to the cost of electric service. Thus, at PSNH's discretion, customers that felt uncomfortable agreeing to a percentage discount could instead receive a stream of fixed rates over the term of years selected based on the net present value of the percentage discount of projected rates.

PSNH asserted that those provisions of the tariff that allow PSNH sole discretion over the decision to offer the Rates, such as the availability of the Rates where the Rates would then be available to the customer's competitors, are necessary to protect its corporate interests. PSNH conceded that all other disputed terms and conditions contained in the tariffs are for Commission resolution.

PSNH testified on the first day of hearings that Rate ED would be available to a customer moving from the service territory of another New Hampshire utility. Tr. Day I at 56. On the second day of hearings, however, PSNH indicated that Rate BR, not Rate ED would be available in such a situation, and only if the customer would otherwise leave the state. Tr. Day II, at 12, 13 and 76.

PSNH stated that the tariff provision binding all successors and assigns to the Rates and their term of years is necessary to avoid sham, or less than arms length, transactions designed to circumvent the applicability of the rate for the necessary term of years.

PSNH testified that fuel switching would not result in a violation or breach of the tariff.

Finally, PSNH argued that the difference between the tariffed rate and the discounted rate may be recovered from its other customers, but that a final determination of this issue should be made in the context of a rate filing, and not at this time.

B. *Freedom, Johnson Controls, Cabletron*

All three of these parties objected to the term of years customers are required to take service from PSNH in order to obtain Rates ED and BR, and the coinciding sole supplier requirement, because they believed those provisions would impede the emerging competitive electric market. Johnson Controls and Cabletron also added that the discounts provided were insufficient to remain competitive not only with other firms but with sister plants located in other states or countries.

In response to PSNH's revised Rates, these parties stated that the discount associated with the three year term was so small it would only encourage more rather than fewer special contracts. These parties encouraged the Commission to provide maximum flexibility to customers during the current transition to a more competitive market.

C. *OCA*

The OCA expressed concerns that PSNH might offer these rates to firms located in other New Hampshire electric utilities' service territories, potentially resulting in higher rates for the existing customers of the utility from which the customer has departed ("poaching"). The OCA also expressed reservations about free riders taking advantage of these Rates, again potentially resulting in greater rates to existing customers.

The OCA took the position that rate discounts for economic development should not penalize existing ratepayers in any subsequent rate proceeding.

The OCA testified that it does not believe either Rate should be offered unless PSNH could demonstrate that the economic benefit from job retention or creation outweighed the

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rate subsidy granted to the customer.

OCA's response to PSNH's late filed revised terms and definitions supported both revisions as improvements, but did not fully endorse the proposal. Exhibit 20. The OCA continued to maintain the position that the discounts are the responsibility of stockholders not other ratepayers.

D. *NHEC*

NHEC did not file testimony but responded in opposition to both PSNH's original and revised proposals. NHEC cited the continuing opportunity for "poaching," primarily because of PSNH's failure to offer a similar wholesale tariff to NHEC which it could then pass on to its

existing and potential customers.

E. *ENGI*

ENGI objected to the sole supplier language in both Rates because it felt it could be construed by PSNH or the Commission to preclude a customer switching from an electric fueled process to a gas based process ("fuel switching"). ENGI also objected to the sole supplier language because it precluded self-generation and cogeneration of electricity.

ENGI also expressed concerns about PSNH's stated intent to continue to offer special contracts in situations that fall outside of the filed tariffs. ENGI testified that it believed RSA 378:11-a was intended to require PSNH to discontinue the practice of offering certain customers special contracts.

F. *Staff*

Staff's testimony raised a number of concerns with the Rates. Staff testified that the language in RSA 378:11-a regarding the recovery of Rate ED discounts was ambiguous. It concluded that it was necessary for the Commission to rule on this issue at this time so that both utilities and consumers understood the rate-making ramifications of the Rates.

Staff expressed concerns over the five year term as initially proposed in the Rates because they would have a dampening effect on the emergence of a competitive electric market. Staff further asserted that any amount of time a new or retained customer took service from the Company was a financial benefit to PSNH, and, thus the five year term was not necessary to bring benefits to PSNH.

Staff objected to the provision of the tariff allowing PSNH to offer fixed rates based on the net present value of projected rates. Staff believed that this provision is tantamount to approving a special contract through a tariff. Staff does not believe that it is appropriate to offer in a tariff rates that are unknown and unapproved.

Staff also expressed concerns over the information required by PSNH in the qualification process: first, the information requested is burdensome and intrusive; and, second, the analysis of the information could take so long that opportunities for new or retained businesses are lost.

Staff responded to PSNH's late filed revised terms and definitions by opposing the alternative to Percent Discounts contained on Page 78 of Rate ED and Page 81 of Rate BR as it did not contain concrete numbers that are available to all customers on a non-discriminatory basis, and that it did not cure Staff's continued concerns regarding both sole source provider and the liquidated damages clause.

Staff supported PSNH's addition of a three year term to its tariff. It concluded, however, that the discount available under the new three year option was insufficient to attract or retain customers thereby resulting in the five year option as the only *de facto* option for customers.

III. COMMISSION ANALYSIS

[1-4] The issue for our consideration is whether to approve PSNH's Rates ED and BR as filed under the overriding public interest standard as outlined in RSA 378:11-a. We believe that the public interest referenced in this statute is to develop generally available tariffed rates that attract or retain industrial firms, and the jobs created or retained with those firms, in the State of New

378:18. The specific issues we will analyze in making that determination are generally set forth above in the positions of the parties and Staff. Our analysis of these issues under this standard is constrained, however, by the reality that RSA 378:11-a does not mandate that electric utilities file economic development and business retention rates; it is within a utility's discretion whether or not to file such rates. Thus, we must balance the overriding intent of the Legislature against this reality.

Given the fact that the filing of such rates is within a utility's discretion, we commend PSNH for making such a filing. Although, as we note below, we have some concerns with PSNH's proposal, we believe such rates ultimately serve the good of both the Company and the State.

[5, 6] With regard to the three and five year terms of the rates and their respective discounts as reflected in the post-hearing filing of PSNH, we agree with some of the parties' and Staff's criticisms of those Rates and their discounts. While the discount contained in the five year Rates may be sufficient to retain and attract businesses to the State, the term of years is so long that in an emergingly competitive market we question its effectiveness in attracting or retaining industrial customers. The alternative three year Rates, while addressing the concerns of an emergingly competitive market, provide for such low discounts that, again, we question their effectiveness in attracting or retaining industrial customers.

Nevertheless, given the reality that PSNH may withdraw the Rates entirely if we mandate changes which it finds unacceptable, we will approve the three and five year terms and their respective discounts as reflected in PSNH's post-hearing filing. *See* Exhibit 20. While we question the effectiveness of the Rates, we are not prepared to reject them, and believe, on balance, the Rates are in the public interest as they may be effective in addressing the concerns of the legislature. We would, however, strongly urge PSNH to adopt the discounts recommended by Staff in response to the Company's post-hearing proposal because Staff's proposed discounts are more likely to achieve the Legislature's goals, and provide the Company a greater economic advantage in the long run in light of its excess generation capacity.[1(9)]

We believe the sole supplier provision of the Rates during the five and three year terms are appropriate. This provision is an equitable *quid pro quo* for offering a reduced rate to certain customers. Thus, we find the liquidated damages provision an appropriate means of ensuring the vitality of the sole provider provision. This provision also removes any uncertainty about the cost of a breach by the customer.

[7, 8] On the other hand, we find the prohibition against installing any electric generation equipment on a customer's premises and the sale of electricity from that equipment to other customers a direct attempt by the Company to foreclose competition in the State. As such we do not believe it has any place in an economic development/business retention tariff and therefore it must be removed. We do not believe such an anti-competitive provision is in the public interest; furthermore we believe the State's interest in fostering competitive electric alternatives outweighs the risk that PSNH might withdraw these tariffs.

[9, 10] While we appreciate the Company's attempt to provide greater flexibility to customers by offering a definite schedule of rates in lieu of percentage discounts, we cannot approve this provision. As the Company testified, such a stream of rates would be based on the net present value of future rate projections over the term of the obligation to take the Rates. It further testified that the ability to access these rates would be a matter of negotiation between the Company and the customer, and that the stream of rates would change from time to time based on changes the Company predicted in future rates. This is not appropriate in a tariff of general application. The Company does not need this alternative to negotiate unique customer issues; it continues to have the opportunity to establish contracts pursuant to RSA 378:18 if necessary.

[11, 12] We next address the issue of dispute resolution under the tariffs. Both Rate BR and ED provide the Company with the sole discretion to deny service under the Rates to a customer that otherwise qualifies for the Rate but

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has competitors in PSNH's service territory. We believe the customer should have the opportunity to present a case to the Commission demonstrating that it would be in the public interest to allow it to access the tariff. Thus, we will require PSNH to add language to the availability sections of both Rates notifying a customer that if the Rate is being denied because of the presence of other competitors in the Company's service territory, it has the right to appear before the Commission and demonstrate that it would be in the public interest to offer it such Rate.

Similarly, Rate BR provides in its section entitled "CONFIRMATION OF CUSTOMERS NEED FOR DISCOUNT" that if the Company and the customer disagree over whether the customer qualifies for Rate BR the customer "may petition the New Hampshire Public Utilities Commission for a binding resolution." Rate ED does not contain such a provision, possibly due to a drafting oversight by the Company. There is no apparent reason why an ED customer should not be afforded the same opportunity provided a BR customer to make its case before the Commission. Thus, we will require the same dispute resolution language should be added to that section of Rate ED entitled "CONFIRMATION OF CUSTOMERS NEED FOR DISCOUNT."

[13] There appears to be some confusion relative to the availability of the Rates to customers moving from one utility's service territory to another. The purpose of both of these rates is clearly expressed in RSA 378:11-a. The purpose of Rate ED is to attract new businesses to the State, not to PSNH's service territory. Similarly the purpose of Rate BR is to retain those businesses that might otherwise leave the State but for reduced electric rates.

Thus, Rate ED is not available to any business already located in the State merely because it moves from one utility's service territory to another's service territory. Rate BR is only available to a business that moves from one utility's service territory to another's territory if it can demonstrate that but for the reduction offered by the new utility the business would leave the State. PSNH must clarify the tariffs to reflect this finding.[2(10)]

We believe the provision of the tariff binding all "successors and assigns" to the terms and conditions of the Rate taken by its predecessor is overly broad. PSNH testified that the provision

was intended to prevent "sham transactions" designed to circumvent the provisions of the tariff. Tr., Day I, at 47 and 144, 145. This is a valid concern, but we believe the concern can be addressed in more narrow language and will expect the Company to re-file language that narrowly addresses the concern about which it testified.

[14, 15] ENGI raised the concern that fuel switching might constitute a breach of the tariff because it is not expressly addressed in the tariff. We believe the Company has adequately addressed this issue by stating in its "sole supplier" sections of the Rates that a customer must meet all of its "electricity requirements" from PSNH. If fuel switching were a violation of the sole supplier sections the language would read "energy requirements." Because the language reads as it does, and because Mr. Long testified that fuel switching would not result in a breach of the tariff, there is no need to expressly address the issue in the tariff. Tr., Day I, at 135, 136.

Staff raised a concern relative to the amount of information required by the Company to attempt to qualify for either Rate and the amount of time the Company could take in analyzing this data. Exhibit 19. We have similar concerns, but we believe the information required by the Company will reduce the likelihood of "free riders," and is therefore in the public interest. While we share Staff's concern over the amount of time the Company may take in analyzing a request for service under the Rates, we will not impose a time-line on the Company at this time. We will, however, monitor the process, and if this becomes a concern we may impose such a time-line. Our interest in monitoring the process is not only to ensure that PSNH is meeting the economic development and business retention needs of its customers and potential customers in a timely manner, but also as a requirement of Order No. 21,895. *See*, page 17, annual reporting requirements under 4, The Effect on Employment within the State.

[16-19] The last issue for our consideration

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is whether RSA 378:11-a allows utilities that offer economic development rates to recover the difference between the regular tariffed rate and the discount from other customers. We agree with Staff and the OCA that the issue must be addressed at this time so that all of the parties understand the rate-making ramifications of economic development rates before they are offered. We will not address the issue of recovery of the difference between regular tariffed rates and business retention rates at this time because RSA 378:11-a provides that a utility may not recover "the difference between the regular tariffed rate and the retention rate unless and only to the extent that the Commission determines that it is in the public interest and equitable to other ratepayers." We believe this language requires us to address this issue of revenue recovery, insofar as business retention rates are concerned, on a case by case basis when revenue recovery is sought.

With regard to utility recovery of the difference between the regular tariffed rate and economic development rates, RSA 378:11-a states:

> [f]or the purposes of ratemaking a utility that adopts an economic development rate shall not be allowed to recover from other ratepayers the difference between the regular tariffed rate and the economic development rate, and in any rate proceeding subsequent to approval of economic development rates the commission shall not impute to the

> utility's revenue requirement the difference between the regular tariffed rate and the economic development rate for those customers who qualify for the economic development rate.

While on their face the first and second clauses of this provision may appear contradictory, under traditional ratemaking practices the two clauses can in fact be read harmoniously.

The first clause clearly and concisely states the intent of the legislature that a utility may not recover from other ratepayers the difference between economic development rates and the regular tariffed rate. The second clause addresses the issue in the terms of art used in the regulatory arena when deriving a utility's revenue requirement using the traditional ratemaking formula. Under traditional ratemaking using the traditional ratemaking formula, the Commission determines the investment of the utility in rate base used and useful in providing service to the public, applies a fair rate of return to that investment to arrive at a rate of return allowance and adds the annual expenses incurred in operating and maintaining utility plant to determine the utility's revenue requirement. The revenue requirement is then allocated among customer classes to determine the rates the utility may charge its customers.

To determine whether a utility should be allowed to increase its current rates, the revenue requirement is compared to the actual revenues the utility earned during a specific historical period of time called a "test year." If test year revenues are lower than the utility's revenue requirement it is granted a rate increase. The Commission must then decide what portion of that revenue increase is required from each class of customers. In order to do this the Commission must determine how much revenue has been provided by each class of customers during the test year and how much more revenue must be obtained from each class of customers to reach the new revenue requirement. Under the traditional form of ratemaking described above there could not and would not be an imputation of the difference between the economic development rate and the tariffed rate to "the revenue requirement." Therefore, the Legislature's use of the phrase "shall not impute to the utility's revenue requirement" in RSA 378:11-a indicates that we not add the difference between the economic development rate and the regular tariffed rate to the revenue requirement for the utility, something which would not normally be done in traditional ratemaking.

The language of this statute does not prevent us, however, from imputing the difference between the two rates to the test year revenues, although PSNH seems to suggest otherwise. *See* prefiled Testimony of Gary A. Long, submitted on November 17, 1995, at 13. If the Legislature had intended that we interpret the second half of the sentence to prevent imputation

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of the discount to the test year revenues it would have used the words "shall not impute to test year revenues" or similar language, which would have contradicted the clear meaning of the first half of the sentence.

[20] Our interpretation is consistent with the plain language of the first half of the sentence and results in what we believe the Legislature intended, i.e. that ratepayers not in any way subsidize the discount that is being given to customers who qualify for Rate ED. One principle of statutory construction is that one portion of a statute should not be construed to annul or

destroy what has been clearly granted by another. *Cohen v. Henniker*, 134 N.H. 425, 428-429 (1991) *citing Peck v. Jenness*, 48 U.S. 612 (1849). Another principle of statutory construction of which we are mindful is that in interpreting statutes courts must try to give them harmonious and comprehensive meaning and give effect, wherever possible, to all of the provisions. *McCuin v. Secretary of Health and Human Services*, 817 F. 2d 161 (1st Cir. 1987). As noted above we believe there is a very plausible way to read these two phrases consistently, ultimately leading to the conclusion that the utility is not entitled to recover the difference between the regular tariffed rate and the economic development rate from other ratepayers.

Finally, we want to note that we have been asked in DR 95-250, the Retail Competition Pilot Program, to allow new load to participate in the pilot. We have not yet decided that issue. We want to put the Company on notice, however, that in the event we do decide to allow new load to participate in the pilot program, the Company will have an obligation to notify a potential customer under the economic development rate that it has an option of participating in the pilot as an alternative to taking service under the economic development rate.

Based upon the foregoing, it is hereby

ORDERED, that 1st Revised Pages 73 through 83 are APPROVED pending the necessary modifications as described herein; and it is

FURTHER ORDERED, that PSNH file tariff pages in conformance with this order by February 29, 1996 which will become effective after the Commission has reviewed the tariff filing for conformance and issues an order authorizing PSNH to offer Rate ED and Rate BR to eligible customers.

By order of the Public Utilities Commission of New Hampshire this twenty-third day of February, 1996.

FOOTNOTES

[1]The Rates proposed by Staff are as follows: "In the most energy intensive first tier, [customers] receive 25% for years 1996-2000, 20% in year 2001 and 15% in year 2002. For the middle tier, we would propose 20% for years 1996-2000 and for years 2000 and 2001, we would change to 15%. Finally, we would only change the third tier customer group discounts by making the discounts for years 1996-2000 ... 15% ...."

[2]The places in the proposed tariffs which need to be changed to reflect these purposes are as follows: on 1st revised page 73 under the heading "Availability" in lines 6 and 7 and again in lines 18 and 19 the phrase "in the Company's service territory" must be changed to "in the State of New Hampshire"; on 1st revised page 74 under the heading "Definitions — New Customer" in line 2 the phrase "from the Company" must be changed to "from a New Hampshire electric utility"; on 1st revised page 74 under the heading "Definitions — Expanding Customer" in line 4 the phrase "in the Company's service territory" must be changed to "in the State of New Hampshire"; on 1st revised page 77 under the heading "Confirmation of Customer's Need for Discount" in line 5 the phrase "within the Company's service territory" must be changed to "within the State of New Hampshire."

EDITOR'S APPENDIX

Citations in Text

[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 Public Service Co. of New Hampshire, DR 95-180, Order No. 21,745, 80 NH PUC 462, July 14, 1995.

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NH.PUC*02/28/96*[89041]*81 NH PUC 119*Concord Steam Corporation

[Go to End of 89041]

81 NH PUC 119

Re Concord Steam Corporation

DF 96-041
Order No. 22,028

New Hampshire Public Utilities Commission

February 28, 1996

ORDER authorizing a steam heating utility to issue up to $425,000 in long-term debt and up to $250,000 in short-term debt, the proceeds of which are to be used to refinance other higher-cost debt.

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1. SECURITY ISSUES, § 80

[N.H.] Purposes of capitalization — New long- and short-term debt — Consolidation and refinancing of other debt — To take advantage of lower interest rates — Reductions in overall cost of capital — Steam heating utility. p. 119.

BY THE COMMISSION:

ORDER

The Petitioner, Concord Steam Corporation, (the "Company"), a New Hampshire corporation with its principal place of business in Concord, New Hampshire, on February 9, 1996, filed a petition for authority under RSA 369:1, RSA 369:7 and RSA 369:2 for approval of financing for the issuance by the Company of long term debt and short term debt and the mortgaging of its property as security.

The Company is a public utility engaged in providing steam service primarily to commercial and institutional customers in the City of Concord, New Hampshire.

The proposed long term debt will be a term loan from Concord Savings Bank (the "Bank") with a principal amount of $425,000 and an amortization period of five years, with interest

payable at a variable rate equal to the Wall Street Journal Prime Rate plus 1%.

The proposed short term debt will be a line of credit from the Bank with a maximum outstanding amount of $250,000, payable on demand, with interest payable at a variable rate equal to the Wall Street Journal Prime Rate plus 1%.

The long and short term debt will be secured and cross-collateralized by the grant by the Company of a lien to the Bank on all business assets of the Company other than the lease from the State of New Hampshire of the Company's Pleasant Street facility, including equipment, fixtures, accounts receivable and inventory.

[1] The purpose of the long term debt will be to refinance the Company's existing long term debt approved in Commission Order No. 20,621 (October 8, 1992). Approximately 58% of this debt is properly allocated to the Company's non-utility cogeneration division. The purpose of the line of credit is to refinance an existing line of credit used to fund seasonal working capital needs of the Company's utility operations.

The proposed loans will have no effect on the capital structure of the Company's utility division because the loans are a refinancing of existing debt. The proposed loans will be used solely to refinance existing Company debt that has a slightly higher overall interest rate and, therefore, the financing will slightly reduce the utility's overall cost of capital.

The Company anticipates that various fees and expenses associated with obtaining this financing will approximate $7,500, consisting primarily of legal and accounting fees.

After reviewing the merits of the petition as set forth above, 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 the petition of Concord Steam Corporation for permission for expedited approval of financing for the issuance by the Company of long term debt and short term debt and the mortgaging of its property as security is consistent with the public good and is hereby approved.

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FURTHER ORDERED, that a long term note in the principal amount of $425,000 in accordance with terms and conditions generally set forth herein and to be finalized between Concord Steam Corporation and Concord Savings Bank is hereby approved pursuant to RSA 369:1; and it is

FURTHER ORDERED, that a short term line of credit note in the maximum principal amount of $250,000 in accordance with terms and conditions generally set forth herein and to be finalized between the Concord Steam Corporation and Concord Savings Bank is hereby approved pursuant to RSA 369:7; and it is

FURTHER ORDERED, that Concord Steam Corporation be, and hereby is, granted authorization, pursuant to RSA 369:2, to grant to the Bank a lien on substantially all of the assets of the Company, including but not limited to a collateral assignment of the lease from the State of New Hampshire of the Company's Pleasant Street facility, and at other specific terms to be

finalized between the Company and the Bank; and it is

FURTHER ORDERED, Concord Steam Corporation file with this Commission copies of the executed loan documents within ten (10) days of closing; and it is

FURTHER ORDERED, that Concord Steam Corporation shall cause an attested copy of this Order *Nisi* to be published once in a newspaper having general circulation in that portion of the State, such service and publication to be no later than March 1, 1996, and to be documented by affidavit filed with this office on or before March 13, 1996; and it is

FURTHER ORDERED, that all persons interested in responding to this petition may submit their comments or file a written request for a hearing on this matter before the Commission no later than March 13, 1996; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective March 15, 1996, 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 February, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Concord Steam Corp., DF 92-154, Order No. 20,621, 77 NH PUC 603, Oct. 8, 1992.

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NH.PUC*02/28/96*[89042]*81 NH PUC 120*Retail Competition Pilot Program

[Go to End of 89042]

81 NH PUC 120

Re Retail Competition Pilot Program

Applicant: Granite State Electric Company

DR 95-250
Order No. 22,029

New Hampshire Public Utilities Commission

February 28, 1996

ORDER approving an electric utility's recommended plan for implementing a pilot program for competitive electric services. Under the plan, rates will be unbundled into separate transmission and distribution charges, open-access retail transmission service will be provided both within and outside of the utility's service territory, and a 10% rate reduction or credit will be applicable to customers that participate in the pilot. To avoid customer confusion, however, the utility is directed to rename its access charge as a stranded cost charge. The utility is lauded for its decision to form a separate power marketing affiliate through which to compete in the pilot.

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1. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric service — Pilot program for retail competition — Open-access transmission — Unbundling of rates — Rate reduction of 10% as incentive for participation — Questions as to adequacy of incentive credits. p. 124.

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2. RATES, § 321

[N.H.] Electric rate design — Unbundling into separate distribution and transmission schedules — Factors — Pilot program for retail competition — Offering of open-access transmission — Use of 10% rate credit as incentive for participation — Questions as to adequacy of incentive credits. p. 124.

3. RATES, § 140

[N.H.] Factors affecting reasonableness — Competition — Pilot program for retail competition — Electric services — Pilot components — Open-access transmission — Unbundling of rates — Rate credits for customer incentive. p. 124.

4. RATES, § 332

[N.H.] Electric rate design — Special charges — Stranded cost charge as replacing access charge — As component of pilot program for retail competition — Market basis for charge — Questions as to assumptions on market prices. p. 124.

5. EXPENSES, § 120

[N.H.] Electric utility — Stranded costs — Associated with incentive customer credits — As part of pilot program for retail competition — Recovery via stranded cost charge rather than access charge. p. 124.

6. SERVICE, § 320

[N.H.] Electric — Pilot program for retail competition — Program elements — Open-access transmission — Both inside and outside utility's existing service area — Unbundling of rates — Rate credits for customer incentive. p. 124.

7. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric service — Pilot program for retail competition — Means of competing — Utility formation of separate power marketing affiliate. p. 124.

APPEARANCES: Peter Dill, Esq. on behalf of Granite State Electric Company; James Rodier, Esq. on behalf of Freedom Energy Company; Mark W. Dean, Esq. for the New Hampshire Electric Cooperative; Jacqueline Lake Killgore, Esq. on behalf of Public Utilities Policies Institute; Frank Getman, Esq. on behalf of Great Bay Power Corporation; Henry Veilleux, on behalf of Business & Industry Association of New Hampshire; Robert A. Bersack, Esq. on

behalf of Public Service Company of New Hampshire; Dickinson Henry for Resources for Solutions; Sylvester Swierzy on behalf of Enerdev; Pentti Aalto, for Northeast Energy & Commerce Association; James Monihan for Cabletron Systems Inc.; Philip Munck, on behalf of George E. Sansoucy; Paul A. Savage for Wood-Fired QFs; Robert Backus, Esq. for the Campaign for Ratepayers' Rights; Michael Holmes, Esq. for the Office of the Consumer Advocate on behalf of residential ratepayers; Robert Frank, Esq. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. INTRODUCTION

On January 18, 1996, Granite State Electric Company (Granite State), New England Power Company (NEP), and the Staff submitted in the above mentioned proceeding a Joint Recommendation (Recommendation) for the purpose of resolving certain issues raised by Granite State relative to its participation in the Pilot. On the same day, Granite State submitted under separate cover an Explanatory Statement which provides additional information in support of the Recommendation.

A technical session was held at the Commission's offices February 1, 1996, at which Granite State submitted extra information and provided clarification of the Recommendation and the Explanatory Statement.

Hearings were held February 7, 8 and 9 at which Granite State and Staff presented testimony in support of the Recommendation.

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Testimony critical of certain aspects of the Recommendation was presented by Freedom Energy Company (Freedom) and the Office of the Consumer Advocate (OCA). Finally, written comments were filed by Public Service Company of New Hampshire (PSNH), New Hampshire Electric Cooperative (NHEC), Cabletron Systems Inc. (Cabletron), Freedom, Campaign for Ratepayers' Rights (CRR), and the OCA.

On February 13, 1996, Freedom petitioned the Commission to re-open the record in this proceeding for the sole purpose of receiving wholesale power price quotes from Northeast Utilities.

II. POSITIONS OF THE PARTIES AND STAFF

A. Granite State and Staff

The Recommendation states that it is intended solely as a nonprecedential resolution of certain issues raised by Granite State relative to its participation in the Pilot. Specifically, the Recommendation claims not to create a precedent with respect to the appropriate level of stranded cost recovery or the Commission's jurisdiction over transmission and distribution services.

The key stated objectives of the Recommendation are to achieve a reasonable compromise which eliminates the issue of stranded costs from the Pilot, and for that compromise to provide

meaningful incentives for customers to participate in the Pilot. Staff and Granite State express the belief that the unbundled rates set forth in Attachment 1 to the Recommendation accomplish those objectives.

The distribution component of the unbundled rates is based on Granite State's cost of service in DR 95-169 but is subject to adjustment for the outcome of that proceeding.

Similarly, the transmission component of the unbundled rates will be adjusted for any changes made by the FERC to transmission rates during the term of the Pilot. In order to implement retail access, NEP or its transmission affiliate express the intent to execute a service agreement with Granite State under which retail transmission service will be available to Granite State who in turn would provide transmission service to its Pilot customers. Under cross examination, the witness for Granite State agreed to file retail transmission tariffs with the FERC and the Commission which would be available to all Pilot customers, not just Granite State's, provided such customers were prohibited from bypassing the distribution systems of their franchised utilities.

The third major component of the unbundled rates is the "access" charge. The stated purpose of the access charge is to recover costs that are stranded as a result of the Pilot. According to Granite State's Explanatory Statement, negotiated rate reductions agreed to by Granite State and Staff produced access charges that recover on average 73% of net lost revenues compared with the Preliminary Guidelines' 50%. For the residential class the percentage recovery is 65% assuming a retail market price of 2.9 cents/kWh, and for the large commercial and industrial class, the recovery is 78% assuming a retail market price of 2.5 cents/kWh. During the term of the Pilot, the access charge will vary only with changes in NEP's non- transmission related base rates.

Finally, Granite State and Staff assert that unless expressly provided for in the Recommendation, the Commission's Final Guidelines and Order shall control the implementation of the Pilot.

B. NHEC

NHEC believes that the Recommendation is a meaningful and substantial step forward toward implementation of the Pilot on a state-wide basis and should be approved as presented.

While NHEC shares the concerns expressed by many, that the actual market prices may be higher than those incorporated into the Recommendation, it nonetheless believes that the Staff and Granite State made a good-faith effort to reach a comprise which will yield adequate savings to encourage customer participation.

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C. PSNH

PSNH recommended that the Commission approve the Recommendation for several reasons. First, PSNH believes that the proposed unbundled rates will induce significant customer participation.

Second, PSNH asserted that the 2.5 to 2.9 cents/kWh market price range which underlies the

proposed unbundled rates is reasonable because it is above the avoided costs of both NEP and Northeast Utilities, the two largest generating companies in the region. It also believes that some suppliers may choose to sell below cost in order to make the Pilot successful and gain a presence in the "First in the Nation" retail competition experiment.

Even if market prices turn out to be higher than assumed, PSNH believes that customers will switch suppliers for as little as a 5% bill saving.

PSNH also argued that the Commission should place no restriction on the ability of franchised utilities or their marketing affiliates to compete. With respect to affiliates, PSNH believes that they should be allowed to price below cost if they so desire. Similarly, PSNH argues that franchised utilities should not be prohibited from selling to their own or other utility retail customer at subsidized prices.

D. OCA

The OCA contends that the results of Granite State's own market research support a 20% rate discount in order to ensure a representative sample of Pilot customers. According to the OCA, the proposed 10% discount is not enough to overcome the inherent unknowns and uncertainties associated with competitive markets. In particular, the OCA believes that power prices are likely to be higher than assumed in the Recommendation and therefore the realized discount will be lower than expected. The OCA suggests that the Recommendation's 2.9 cents/kWh price for the residential class be replaced with a figure of 3.5 cents/kWh. In conclusion, the OCA urges the Commission to reject the Recommendation and require Granite State to develop unbundled rates based on the fifty-fifty split of stranded costs contained in the Preliminary and Revised Guidelines.

E. CRR

CRR commends the Granite State and Staff Recommendation insofar as "it has advanced overall restructuring, promises to promote consumer education and choice, and — above all — offers substantially equivalent savings for all customer classes." CRR Final Statement of Position, February 9, 1996.

With respect to bill savings, CRR concurs with the concern expressed by others that the proposed 10% may be too small to produce the necessary customer activity. According to CRR, many customers have been led to expect larger price reductions and thus may decide not to participate in light of the effort involved in negotiating alternate supplies.

CRR is also concerned that the recommended 10% discount may be "illusory," and that the 73% overall stranded cost recovery level, on which the discount is based, will be precedential. To eliminate these concerns, CRR recommends that Granite State's unbundled rates be based on the fifty-fifty spilt of stranded costs contained in the Guidelines.

Finally, CRR believes that the access charges in Granite State's unbundled rates should be re-labelled "stranded cost recovery charge" to better reflect the purpose of those charges, namely the recovery of stranded costs.

F. Freedom

Freedom contends that the evidentiary record does not support the assertion that the

Recommendation will provide meaningful incentives for customers to participate in the Pilot. Based on Exhibits 11 and 12, it alleged that only one-half of all customers selected for participation will actually enter into competitive supply arrangements. Freedom believes that bill savings of 13% for all classes are necessary to achieve a reasonable level of participation.

Freedom also contends that the assumed market prices in the unbundled rates do not provide potential retail competitors a reasonable opportunity to compete in the Pilot. It asserts

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that the wholesale market price of power delivered to the New Hampshire border is 2.7 cents/kWh, or 2.24 cents/kWh delivered to NEP's transmission system. According to Freedom, after adjustment for distribution losses, the cost of wholesale power delivered to NEP's transmission system increases to 2.37 cents/kWh, which compares with the Recommendation's proposed 2.5 cents/kWh for large customers. This base cost, according to Freedom, provides insufficient margin for marketers to recover their non-power costs.

Finally, Freedom applauded NEP's decision to establish a power marketing affiliate for the purpose of competing in the Pilot but expressed concern about the potential for NEP to sell to its affiliate under terms and conditions not generally available to competitors. To eliminate this concern, Freedom believes that NEP must be prevented from discriminating in its wholesale power dealings with competitive suppliers.

G. Cabletron

Cabletron urged the Commission to reject the Recommendation on the grounds that its proponents failed to show that it is preferable to the existing guidelines with respect to the provision of participation incentives and as a means of bypassing the stranded cost issue.

III. COMMISSION ANALYSIS

Stranded cost recovery, federal/state jurisdiction over transmission and the unbundling of rates are some of the most complex and contentious issues facing regulators today as we grapple with electric utility restructuring. The Commission commends Granite State and Staff for their practical approach to attempt to resolve these issues in order to provide for Granite State's participation in the Pilot.

The witnesses for Staff and Granite State testified that the Guidelines created significant uncertainties and risks for all stakeholders. Granite State testified that the Recommendation eliminates the risk of litigation over stranded costs while at the same time providing customers both the physical capability and incentive to purchase from competitive suppliers. Staff testified that the Recommendation eliminates the risk that franchised utilities or their affiliates would decline to file retail transmission tariffs.

[1-7] While we agree that the Recommendation proposes a means of resolving in a nonprecedential manner the stranded cost and jurisdictional issues, we are less certain that it provides meaningful incentives for customers to participate in the Pilot. Staff testified that although the negotiated bill savings are reasonable, they are probably the minimum necessary to achieve an acceptable level of participation. Others expressed stronger concerns. Freedom and the OCA testified that the 10% rate discount is too low and will likely jeopardize the Pilot's

success. In addition, Granite State's own market research appears to support the conclusion that half of the residential customers selected for participation may choose not to participate at the 10% rate reduction level.

Although we acknowledge the validity of such concerns, they must be weighed against Granite State's already low rates, its willingness to establish affiliate companies to address concerns about anti-competitive practices, its willingness to file non-discriminatory transmission tariffs, and its agreement to set aside its alleged right to full recovery of stranded costs. After considering all of these factors, we believe that a 10% rate reduction, if attainable, will provide reasonable incentive for Granite State's customers to participate in the Pilot.

We now turn our attention to the assertion that a 10% rate reduction is unattainable because it is based on questionable market prices for retail power. We note at the outset that it is impossible to predict with any degree of certainty what the prices will be in any market, especially one with no history to guide us. In the absence of relevant market data, we believe it is appropriate to be guided by prices paid for goods or services traded in related markets.[1(11)] The market for firm, full requirements wholesale power is clearly related to the retail market that will be established by the Pilot. Indeed, it is reasonable to assume that prices realized in the wholesale power market will establish the floor for power sold at retail.

We have reviewed the record on this issue

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and find that the actual market prices over the period of the Pilot are likely to be higher than those incorporated in the Recommendation, particularly if utilities are prohibited by state or federal regulators from selling to affiliated or non-affiliated power marketers at less than market value. Although we reject Freedom's argument that higher than anticipated market prices would directly limit the ability of marketers to compete in the Pilot, we are concerned that higher prices would lessen the incentive for customers to participate.[2(12)] In light of this concern, we have decided to reserve judgement on the assumed market prices used in the access charge calculations until the completion of our inquiry into the Joint Recommendation submitted by PSNH and the Staff.

With respect to the availability of transmission service, we commend NEP for its willingness to file tariffs which provide access to all Pilot customers, inside or outside of Granite State's service area. In order to address Granite State's concern about the potential bypass of utility distribution systems, we will condition customer participation in the Pilot on the payment of approved distribution rates and access charges.

We also commend NEP for its intent to establish a power marketing affiliate to sell at retail in the Pilot. As discussed in the Final Guidelines, we believe that it is important to establish safeguards in order to minimize the possibility that ratepayers will subsidize the unregulated activities of franchised utilities.

We agree with CRR and Cabletron, however, that because the access charge in the unbundled rates serves only to recover Granite State's stranded costs, it should be labelled as such. We think customers deserve to be told, in as meaningful and direct terms as possible, what

they are paying for in their bills. Use of the term "stranded cost charge" is a more accurate description of the charge and thus should appear on the bills.

Finally, in light of our decision to defer consideration of the appropriate market price assumptions, we will deny Freedom's request to re-open the record. However, we encourage Northeast Utilities, NEP and Central Vermont Public Service to provide support for their proffered market prices by filing with the Commission relevant wholesale price data.

Based upon the foregoing, it is hereby

ORDERED, that Granite State's Recommendation is conditionally approved subject to a final determination of the appropriate assumed market prices for calculating stranded costs; and it is

FURTHER ORDERED, that the Commission will determine the appropriate assumed market prices to be used in such calculations following its consideration of PSNH's Joint Recommendation; and it is

FURTHER ORDERED, that any Granite State access charge approved by subsequent Commission shall be designated on the bills of participating customers as a "stranded cost charge"; and it is

FURTHER ORDERED, that Granite State's compliance filing shall contain the unbundled rates incorporated in the Recommendation and updated to reflect the outcome of our inquiry into assumed market prices in PSNH's Joint Recommendation in this proceeding.

By order of the New Hampshire Public Utilities Commission this twenty-eighth day of February, 1996.

FOOTNOTES

[1]We believe it would be unwise to risk the success of the Pilot on the assumption that suppliers will intentionally sell at or below cost in order to acquire market share.

[2]Changes to the market prices incorporated in the Recommendation will have no impact on actual market prices, and hence Freedom's ability to sell, since those prices will be determined by the forces of supply and demand. We do, however, share Freedom's concern that any reduction in customer bill savings makes it more difficult for competitors to enter retail electric markets.

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NH.PUC*02/28/96*[89043]*81 NH PUC 126*Public Service Company of New Hampshire

[Go to End of 89043]

81 NH PUC 126

Re Public Service Company of New Hampshire

DF 96-048
Order No. 22,030

New Hampshire Public Utilities Commission

February 28, 1996

PETITION by electric utility for authority to exceed the statutory limit on short-term debt it can issue in proportion to its net assets; granted. Where the statutory limit of 10% of net assets would allow an issuance of short-term debt of $200 million, the utility is allowed to issue up to $225 million, so as to retire first mortgage bonds, refinance a revolving credit agreement, and meet the requirements of a renegotiated wood-fired small power production rate order.

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1. SECURITY ISSUES, § 98

[N.H.] Kinds and proportions — Short-term notes — Limit on debt as percentage of net assets — Existing limit of 10% of net assets — Raising of limit — Factors — Benefits from ability to retire and/or refinance other debt — Electric utility. p. 127.

2. SECURITY ISSUES, § 80

[N.H.] Purposes of capitalization — Issuance of short-term debt — In excess of limit on debt as percentage of net assets — To retire and/or refinance other debt — To provide bridge financing for certain new rate orders — Electric utility. p. 127.

BY THE COMMISSION:

ORDER

On February 14, 1996 Public Service Company of New Hampshire (PSNH or the Company) filed with the New Hampshire Public Utilities Commission (the "Commission" or "NHPUC") requesting an order from this Commission pursuant to RSA 369:7, waiving Puc. 312.01 pursuant to Puc. 201.05, authorizing a short-term debt limit of $225 million, which is in excess of ten percent (10%) of net assets less depreciation. PSNH also is requesting authorization pursuant to RSA 369:2 to continue the second PSNH Mortgage as security for short-term debt pursuant to the terms and conditions of the proposed Amended and Restated Revolving Credit Agreement. These approvals are requested in connection with the amendment, restatement and extension of PSNH's existing $125 million Revolving Credit Agreement dated as of May 1, 1991, as amended ("Revolving Credit Agreement"; as amended and restated, the "Amended and Restated Revolving Credit Agreement") and associated second mortgage.

The Commission approved the extension of the Revolving Credit Agreement from May 14, 1994 to May 14, 1996 in Docket No. DF 94-039, Order No. 21,180 (1994).

PSNH Proposes to amend, restate and extend the Revolving Credit Agreement to :

(i) convert the borrowing under the Revolving Credit Agreement from long-term to short-term by amending the maturity of any borrowing under the agreement such that the borrowing cannot exceed 270 days,

(ii) extend the maturity of the existing $125 million Revolving Credit Agreement for

three years, until May 14, 1999,

(iii) increase the aggregate principal amount available to PSNH from $125 million to $225 million for a one year period by adding to the three year $125 million Revolving Credit Agreement an additional $100 million 364-day revolving credit facility, which will expire on May 14, 1997, and

(iv) continue the existing Collateral Agency Agreement and PSNH Mortgage as security for short-term borrowing under the Amended and Restated Revolving Credit Agreement.

The Company's proposed $225 million

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secured short-term facility has been designed to provide flexibility to:

(i) retire the $172.5 million Series A First Mortgage Bonds which will mature on May 15, 1996,

(ii) meet the requirements of renegotiated wood-fired small power producer rate orders, and

(iii) fund normal working capital requirements.

The $125 million three year and $100 million one year structure of the facility has been designed to meet the financing requirements of the Company during this period.

PSNH states that it is currently engaged in negotiations with certain banks with respect to the terms and conditions of the Amended and Restated Revolving Credit Agreement. The covenants are not expected to be materially different than those included in the current Revolving Credit Agreement and will be compatible with those currently in effect. Additional information, attached to the petition as Attachment C, to Mr McHale's testimony provides information regarding the terms, conditions and covenants anticipated in the Amended and Restated Revolving Credit Agreement. The Company states that the final form of the Amended and Restated Revolving Credit Agreement will be filed with the Commission when it is available. The current Collateral Agency Agreement and the PSNH Mortgage will remain in place without significant amendment or modification, except that Chemical Bank will be substituted as the Collateral Agent in place of the current agent, Banker's Trust Company.

Pursuant to RSA 369:7, PSNH is requesting an order from this Commission waiving Puc. 312.01, pursuant to Puc. 201.05, authorizing a short-term debt limit of $225 million, which is approximately $25 million in excess of ten percent (10%) of PSNH's net assets. Under Puc. 201.05, the Commission may waive the requirements of Puc. 312.01 if it finds that the waiver is in the public interest and that existing peculiarities or unusual circumstance warrant a departure from the rule. PSNH states that this waiver of the requirement is in the public interest since it is for a one year period only and the resulting increase in short-term debt will permit PSNH to utilize the most economic alternative for:

(i) meeting the maturity of the $172.5 million Series A First Mortgage Bonds,

(ii) meeting the requirement of renegotiated wood-fired small power producer rate orders, and

(iii) funding normal working capital requirements.

Finally PSNH also seeks authorization pursuant to RSA 369:2 to continue the existing PSNH Mortgage and associated Collateral Agency Agreement as security for short-term debt pursuant to the terms and conditions of the proposed Amended and Restated Revolving Credit Agreement.

Pursuant to RSA 369:3, estimated expenses of the proposed Amended and Restated Revolving Credit Facility are set forth in Attachment D.

COMMISSION ANALYSIS

[1, 2] We have reviewed the petition and supporting testimony of Mr. McHale. As explained by Mr McHale, PSNH must request a waiver of the 10% Short-Term Debt limit as shown in Attachment A to his testimony. PSNH does not have net assets which would allow it to stay under the 10% short term debt ceiling. As shown on Attachment A of the filing the Company has net Assets of $1,999,798,872 as of December 31, 1995 which would allow for a short term debt ceiling of $199,879,887.

We find that the use of this financing will provide the flexibility to refinance PSNH's 8 7/8 First Mortgage Bonds with a lower interest rate debt instrument, with the purported ability to repay the borrowing under the refinancing of the bonds with internally generated cash by approximately February of 1997.

The funding of the renegotiated wood-fired small power producer rate orders with this financing as either a bridge financing until long term debt can favorably be arranged or by repaying the financing for the renegotiated rate orders from internally generated cash by late

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1997, as shown in Attachment B to Mr McHale's testimony, is in the public good.

Based upon the foregoing, it is hereby

ORDERED, that the Commission pursuant to RSA 369:7, waves Puc. 312.01, pursuant to Puc.201.05; and it is

FURTHER ORDERED, that the short-term debt limit For PSNH of $225 million shall be in effect for the period May 14, 1996 to May 14, 1997; and it is

FURTHER ORDERED, that the Revolving Credit Agreement in the amount of $125 Million is extended from May 14, 1996 to May 14, 1999; and it is

FURTHER ORDERED, that the Commission finds waiving of Puc 312.01 is in the public interest since the resulting increase in short-term debt permits PSNH to utilize the most economic alternative to (i) meet the maturity of the $172.5 million Series A First Mortgage Bonds, (ii) meet the requirements of renegotiated wood-fired small power producer rate orders, and (iii) fund normal working capital requirements; and it is

FURTHER ORDERED, that PSNH may continue it's existing Collateral Agency Agreement and Second PSNH Mortgage granted by PSNH on substantially all of its present and future New

Hampshire property, to secure payment of short-term debt under the terms and conditions of the proposed Amended and Restated Revolving Credit Agreement; and it is

FURTHER ORDERED, that on January 1 and July 1 of each year, the Company shall file with this Commission a detailed statement, duly sworn by its Treasurer, showing the disposition of the proceeds of said securities, until the entire proceeds shall have been fully accounted for; 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 it serves, such publication to be no later than March 6, 1996 and to be documented by affidavit filed with this office on or before March 13, 1996; and it is

FURTHER ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or file a written request for a hearing on this matter before the Commission no later than March 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 March 20, 1996; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective March 27, 1996, 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 February, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DF 94-039, Order No. 21,180, 79 NH PUC 195, Apr. 4, 1994.

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NH.PUC*02/28/96*[89044]*81 NH PUC 128*Allnet Communications Services, Inc., dba Frontier Communications Services

[Go to End of 89044]

81 NH PUC 128

Re Allnet Communications Services, Inc., dba Frontier Communications Services

DR 96-031
Order No. 22,031

New Hampshire Public Utilities Commission

February 28, 1996

ORDER authorizing an interexchange telephone carrier to offer a new calling card service,

restructure its "Homesaver" rates to price outbound toll and inbound 800 services separately, and reduce rates for "Solution I" service.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Introduction of new calling card option — Restructuring of "Homesaver" rates —

Page 128

Separate rates for outbound toll and inbound 800 services — Reductions in "Solution I" rates — Interexchange telephone carrier. p. 129.

BY THE COMMISSION:

ORDER

[1] On January 26, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from Allnet Communications Services, Inc., d/b/a Frontier Communications Services (Allnet) requesting authority to introduce Product One Optional Calling Card service, restructure Homesaver rates and reduce Solution I rates, for effect March 1, 1996.

Product One Optional Calling Card service is a calling card option available to customers who make long distance calls through either Allnet Access or Allnet Spectrum. Per minute rates vary depending on term plan commitments between 1 and 3 years.

Allnet Homesaver rates are being restructured to provide separate rates for outbound toll and inbound 800 service. Toll rates do not change as a result of this petition. The proposed rates for 800 service are being reduced from existing rates.

Rates for Solution I are being reduced to $.1545 (peak) and $.1235 (off-peak) per minute.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize Allnet to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of Allnet's tariff, NHPUC No. 2 are approved for effect as filed:

1st Revised Page 79

1st Revised Page 80

1st Revised Page 90;

and it is

FURTHER ORDERED, that Allnet file properly annotated tariff pages in compliance with

this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of February, 1996.

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NH.PUC*02/28/96*[89045]*81 NH PUC 129*MFS Intelenet of New Hampshire, Inc.

[Go to End of 89045]

81 NH PUC 129

Re MFS Intelenet of New Hampshire, Inc.

DR 96-032
Order No. 22,032

New Hampshire Public Utilities Commission

February 28, 1996

ORDER authorizing an interexchange telephone carrier to rename its "800" service as "toll free" service.

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1. SERVICE, § 468

[N.H.] Telephone — Toll service — Service options — Administrative change in name — From "800" to "toll free" service — Interexchange carrier. p. 129.

BY THE COMMISSION:

ORDER

[1] On January 31, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from MFS Intelenet of New Hampshire, Inc., (MFS) requesting authority to change the name of 800 Service to

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Toll Free Service, for effect March 1, 1996.

This filing is administrative. No rates, terms or conditions are proposed to be changed. The name of 800 Service is being changed to Toll Free Service in preparation for toll free 888 NXX-XXXX telephone numbers.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire

intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize MFS to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of MFS' tariff, NHPUC No. 1 are approved for effect as filed:

9th Revised Page 1

3rd Revised Page 2

2nd Revised Page 19

2nd Revised Page 24

2nd Revised Page 24.1

2nd Revised Page 24.4

1st Revised Page 24.5

1st Revised Page 24.6

4th Revised Page 25.1

2nd Revised Page 27

2nd Revised Page 27.1

2nd Revised Page 27.2;

and it is

FURTHER ORDERED, that MFS file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of February, 1996.

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NH.PUC*02/28/96*[89046]*81 NH PUC 130*Retail Competition Pilot Program

[Go to End of 89046]

81 NH PUC 130

Re Retail Competition Pilot Program

DR 95-250
Order No. 22,033

167 PUR4th 193

New Hampshire Public Utilities Commission

February 28, 1996

ORDER establishing final guidelines for a pilot program of retail electric competition.

The final guidelines provide that competitive suppliers of electricity will have access to a minimum of 3% of the peak load of each franchised electric utility, for an expected statewide total of approximately 50 megawatts, which will be allocated proportionately among all customer classes based on their relative loads.

All classes of customers in all areas of the state will be eligible to seek to participate in the pilot, although only a small percentage will actually be selected. Residential and small commercial customers may participate either individually or as part of a "geographic area of choice" (GAC) — i.e., a government-nominated group of residential and small commercial customers within a defined geographic area. Individual customers and GACs participating in the pilot will be selected randomly by their franchised utilities under the oversight of the commission. After customers are selected, aggregation will be permitted so as to lower entry barriers for smaller customers.

Commission recognizes that stranded cost recovery is the most important and complex issue related to the introduction of retail electric competition. It rules that in the absence of a negotiated resolution setting the level of recovery for each utility, a 50/50 sharing of stranded costs between participating customers and investors is an equitable starting point.

Moreover, for purposes of the pilot, stranded costs are defined and calculated by

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projecting the difference between the revenue which a utility would have had an opportunity to collect at current rates (in the absence of the pilot) and the revenue which the utility expects to collect during the term of the pilot, including projected revenue from power sales at market prices and from transmission and distribution services. But a separate proceeding will be set to examine the stranded cost issue more fully as it relates both to the pilot and to industry restructuring in general. Commission maintains that it is authorized under both state and federal law to set the rates, terms, and conditions for the intrastate transmission and distribution services necessary to effectuate retail electric competition. It directs franchised utilities to file by March 15, 1996, unbundled transmission and distribution tariffs, as well as charges to recover incremental administrative costs and the recoverable portion of stranded costs. However, the commission specifically prohibits assessment of exit or re-entry fees on participants.

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1. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric service — Retail competition — Pilot program — Statutory mandates — Limits in scope, size, and duration. p. 135.

2. ELECTRICITY, § 1

[N.H.] Retail competition — Pilot program — Statutory mandates — Limits in scope, size, and duration. p. 135.

3. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric service — Retail competition pilot program — Objectives — Testing of theory of nexus between competition and lower rates — Determination of demand levels and consumer acceptance. p. 136.

4. ELECTRICITY, § 1

[N.H.] Retail competition — Pilot program — Objectives — Testing of theory of nexus between competition and lower rates — Determination of demand levels and consumer acceptance. p. 136.

5. ELECTRICITY, § 2

[N.H.] Commission jurisdiction — Retail competition — Power to order retail wheeling — No federal preemption. p. 137.

6. MONOPOLY AND COMPETITION, § 11

[N.H.] Commission jurisdiction — To authorize or compel competition — Among retail electric wheeling services — No federal preemption. p. 137.

7. SERVICE, § 72

[N.H.] Commission jurisdiction — Electric services — Authority to order retail wheeling — No federal preemption. p. 137.

8. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric service — Retail competition pilot program — Recovery of associated stranded costs — Deferral of issue to pending electric restructuring proceeding. p. 137.

9. ELECTRICITY, § 1

[N.H.] Retail competition pilot program — Recovery of associated stranded costs — Deferral of issue to pending electric restructuring proceeding. p. 137.

10. EXPENSES, § 120

[N.H.] Electric utilities — Stranded costs — Associated with retail competition pilot program — Deferral of cost recovery issue to pending electric restructuring proceeding. p. 137.

11. ELECTRICITY, § 2

[N.H.] Commission jurisdiction — Over *intrastate* transmission facilities — Used in

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serving retail customers. p. 137.

12. SERVICE, § 72

[N.H.] Commission jurisdiction — Electric services — Over *intrastate* transmission facilities — Used in serving retail customers. p. 137.

13. RATES, § 47

[N.H.] Commission jurisdiction — Limitations — Federally prescribed rates — Filed-rate doctrine — Uneconomic costs of wholesale power contracts — Discussion. p. 138.

14. EXPENSES, § 120

[N.H.] Electric utilities — Purchased power — Federally approved wholesale power purchase contracts — Uneconomic costs — But recovery under the filed-rate doctrine — Impact of transition to competition — Discussion. p. 138.

15. AUTOMATIC ADJUSTMENT CLAUSES, § 10

[N.H.] Energy cost clauses — Fuel and purchased power adjustment clauses (FPPACs) — Direct costs — Recovery limited to changes in cost of power — No recovery of changes caused by fluctuating demand — No FPPAC recovery of costs associated with retail competition pilot program — Electric utilities. p. 138.

16. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric services — Retail competition pilot — Unbundling into generation, transmission, and distribution functions — Necessity of open-access transmission — Final guidelines. p. 138.

17. SERVICE, § 320

[N.H.] Electric — Retail competition pilot — Unbundling into separate generation, transmission, and distribution services — Importance of open-access transmission — Final guidelines. p. 138.

18. RATES, § 321

[N.H.] Electric rate design — Retail competition pilot — Unbundling into separate generation, transmission, and distribution components — Necessity of open-access transmission — Filing of retail transmission tariffs — Final guidelines. p. 138.

19. ELECTRICITY, § 2

[N.H.] Commission jurisdiction — Retail competition pilot — Unbundled transmission service — Federal/state cooperation. p. 138.

20. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric service — Retail competition pilot program — Stranded costs — Definition and calculation — Difference in projected revenues under commission-set rates and market-set rates — Final guidelines. p. 139.

21. ELECTRICITY, § 1

[N.H.] Retail competition pilot program — Stranded costs — Definition and calculation — Difference in projected revenues under commission-set rates and market-set rates — Final guidelines. p. 139.

22. EXPENSES, § 120

[N.H.] Electric utilities — Stranded costs — Associated with retail competition pilot program — Definition and calculation of stranded costs — Difference in projected revenues under commission-set rates and market-set rates — Equitable sharing — Final guidelines. p. 139.

23. APPORTIONMENT, § 23

[N.H.] Electric utilities — Stranded costs — Associated with retail competition pilot program — Definition and calculation of stranded costs — Difference in projected revenues under commission-set rates and market-set rates — Sharing of costs between utility and participating customers — Via usage-based surcharge on

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distribution services — No allocation to nonparticipants — Final guidelines. p. 139.

24. RATES, § 321

[N.H.] Electric rate design — Retail competition pilot — Unbundling into separate generation, transmission, and distribution components — Continuation of embedded cost basis for customer service, transmission, and distribution functions — Factors — Natural monopoly characteristics — Disaggregation of power supply cost into separate market price and stranded cost components — Final guidelines. p. 140.

25. SERVICE, § 320

[N.H.] Electric — Retail competition pilot program — Participant responsibilities — Negotiation for power supply — Negotiation for actual delivery — No need to secure backup or emergency service — Final guidelines. p. 141.

26. SERVICE, § 320

[N.H.] Electric — Retail competition pilot program — Requirements for competitive suppliers — Membership in the New England Power Pool or contractual arrangements for backup bulk power service — Final guidelines. p. 141.

27. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric — Retail competition pilot — Design parameters — Size and duration — Two-year experimental period — Competitive access to aggregate 3% of retail utility load — Total of 50 megawatts — Proportionate class distribution — Separate access to new large commercial and industrial load — Final guidelines. p. 141.

28. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric — Retail competition pilot — Pilot design — Selection of participants — Individuals versus groups — Provision for small customers to form geographic areas of choice — Eligibility of customers of municipal utilities — Customer- initiated participation — Utility discretion as to final selection — Final guidelines. p. 142.

29. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric — Retail competition pilot — Pilot design — Competitive supplier eligibility — Qualifying facilities, exempt wholesale generators, marketers, and brokers — Jurisdictional or out-of-state bases — Membership in the New England Power Pool or contractual arrangements for backup bulk power service — Final guidelines. p. 143.

30. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric — Retail competition pilot — Pilot design — Allowances for load

aggregation — For purposes of negotiating power purchases from competitive suppliers — Final guidelines. p. 143.

31. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric — Retail competition pilot — Pilot design — Release of customer usage data — Participants versus nonparticipants — Disclosure by franchised utilities to competitive suppliers — Limits — Final guidelines. p. 143.

32. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric — Retail competition pilot — Pilot design — Billing and metering — Utilization of existing meters — Provisions for future installation of hourly meters — Billing options — Separate bills provided by competitive suppliers — Billing functions performed by franchised utilities — Final guidelines. p. 144.

33. SERVICE, § 306

[N.H.] Meters and metering — Electric — Under retail competition pilot program — Utilization of existing meters — Provisions for future installation of hourly meters. p. 144.

34. PAYMENT, § 17

[N.H.] Billing and metering — Electric

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service — Under retail competition pilot program — Utilization of existing meters — Provisions for future installation of hourly meters — Billing options — Separate bills provided by competitive suppliers — Billing functions performed by franchised utilities — Final guidelines. p. 144.

35. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric — Retail competition pilot — Pilot design — Participant responsibilities — Negotiation for power supply — Pledge of noninterference by franchised utilities — Final guidelines. p. 145.

36. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric — Retail competition pilot — Pilot design — Rates and charges — Ban on exit and re-entry fees — Final guidelines. p. 145.

37. RATES, § 332

[N.H.] Electric rate design — Retail competition pilot program — Special charges — Unbundling of transmission and distribution charges — Ban on exit and re-entry fees — Provision for administrative surcharge — Final guidelines. p. 145.

38. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric — Retail competition pilot — Pilot design — Utility affiliates as competitors — Interaffiliate transactions — Subsidy-free pricing — Final guidelines. p. 146.

39. INTERCORPORATE RELATIONS, § 14.2

[N.H.] Interaffiliate transactions — Under retail electric competition pilot program — Subsidy-free pricing requirement — Final guidelines. p. 146.

40. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric — Retail competition pilot — Pilot design — Measures for monitoring and evaluation — Necessity of quarterly reports — Compliance filings — Final guidelines. p. 146.

BY THE COMMISSION:

EXECUTIVE SUMMARY

The New Hampshire Public Utilities Commission (NHPUC) issues the following Final Guidelines (Guidelines) on the Retail Competition Pilot Program (Pilot) mandated by NH RSA 374:26-a which was enacted by the New Hampshire Legislature on June 19, 1995. The full text of the authorizing legislation is attached as Appendix A. This Report is the fourth in a series of reports beginning with Preliminary Guidelines issued October 9, 1995, followed by First Revised Guidelines issued November 20, 1995 and Second Revised Guidelines issued January 23, 1996.

As stated in the Preliminary Guidelines, the purpose of the Pilot is to create a limited experimental program to examine the implications of retail competition in the electric utility industry. The Pilot will be limited in size and duration in order to achieve the objectives of the Pilot while minimizing the potential financial impact on New Hampshire's electric utilities.

All classes of customers in all areas of the state will be eligible to be selected to participate in the Pilot, although only a small percentage of customers will actually be selected. Competitive suppliers will have access to a minimum of 3% of each electric utility's peak load, for a state-wide total of approximately 50 MW, which will be allocated proportionately among residential, commercial and industrial classes, based on the relative loads of those classes for each utility. The Pilot will commence May 28, 1996 and extend for a period of two years.

Residential and small commercial customers may participate in the Pilot either individually or as part of a "Geographic Area of Choice" (GAC). Individual customers and GACs participating in the Pilot will be selected randomly by their franchised utilities under the oversight of the NHPUC. After customers are selected, the

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aggregation of customer loads will be permitted to lower entry barriers for small customers.

In order to effectuate retail competition, franchised utilities will be required to file by March 15, 1996 unbundled transmission and distribution tariffs in compliance with these Guidelines as well as charges to recover reasonable incremental administrative costs and recoverable stranded costs. Franchised utilities will not be permitted to impose exit or re-entry fees on participants.

In these Guidelines the NHPUC maintains its position that it has the legal authority under state and federal law to set the rates, terms and conditions for the provision of intrastate transmission and distribution services. The rates for intrastate transmission and distribution services will be based upon the costs currently embedded in each utility's retail rates.

Participating Pilot customers will be responsible for negotiating the purchase of power from competing suppliers. Unless the Commission orders otherwise, franchised utilities which choose to compete in the Pilot may do so by establishing affiliated power marketing companies.

The NHPUC recognizes that stranded cost recovery is the most important and complex issue facing regulators and other policymakers as they seek to introduce competition into retail electric markets. While recognizing that issues related to stranded costs dominate the debate over retail electric competition, there are many other technical and policy issues which warrant examination prior to a transition to full retail competition. We have determined that in the absence of a negotiated resolution which sets the level of recovery for each utility, a fifty-fifty division of stranded costs between participating customers and investors is an equitable starting point. The NHPUC will initiate a separate proceeding in order to examine the stranded cost issue fully as it relates both to the Pilot and to restructuring generally.

The NHPUC will hold hearings on the compliance tariffs April 1-5, 1996. The Pilot will commence on May 28, 1996. The full schedule for the remainder of the proceeding is attached to these Guidelines as Appendix B.

ORDER

I. INTRODUCTION

[1, 2] In June 1995, the New Hampshire Legislature directed the NHPUC to establish a pilot program (Pilot) to examine the implications of retail competition in the electric industry, provided that it is found to be "fair, lawful, constitutional, consistent with RSA 378:37 and in the public good." NH RSA 374:26-a, Laws of 1995, Chapter 272, effective January 1, 1996, previously referred to as Senate Bill 168-FN-A, §12. *See* Appendix A.

In response to this mandate, the NHPUC issued Preliminary Guidelines on October 9, 1995, followed by First Revised Guidelines on November 20, 1995.[1(13)] On January 23, 1996, the NHPUC issued Second Revised Guidelines which addressed additional comments submitted by interested parties and the recommendations which emerged from an intensive series of collaborative meetings (the Collaborative) during late December 1995 and early January 1996. Hearings were held on the Second Revised Guidelines January 29, 1996. After considering all of the written comments and those offered at the recent hearings, we issue the following Final Guidelines (Guidelines) for the Pilot.

The purpose of these Guidelines is to prescribe how the Pilot will be implemented in order to accomplish the objectives set forth below. Nonetheless, the revised procedural schedule contained in Appendix B provides for a number of joint working meetings with representatives from Staff, franchised utilities and other Pilot participants to discuss technical questions raised by these Guidelines. Franchised utilities will be required to make compliance filings on or before March 15, 1996 and we will conduct hearings on those filings April 1-5, 1996. We anticipate issuing a final order on the compliance filings on April 15, 1996 and direct utilities to commence the Pilot on May 28, 1996.

As stated in our Preliminary Guidelines and reaffirmed in the Revised Guidelines, the Pilot is not necessarily a blueprint for industry restructuring; rather, it should be viewed as an

opportunity to examine the implications of and obstacles to competition in retail electric markets. Accordingly, the Pilot is limited in scope, size and duration. For instance, although performance based regulation may be an effective means to regulate certain segments of the industry which remain naturally monopolistic, it is unnecessary to initiate such regulatory reforms in order to implement the Pilot.

We issue these Guidelines with the expectation that stakeholders will take advantage of the opportunity to gain first-hand knowledge of the problems associated with introducing competition into what has previously been a thoroughly regulated industry. We continue to believe that the Pilot should be implemented in a manner which enables policymakers to gather meaningful data without causing an unreasonable financial impact on the state's electric utilities. It is not our intent or purpose to have the Pilot be the battleground for recovery of stranded costs or the future shape of the electric utility industry.

For the above reason, the Pilot can not be expected to yield empirical data which will provide easy answers to all of the complex issues associated with the establishment of full retail competition in the electric industry. While some of the information which the Pilot will generate may be anecdotal in nature, the Pilot will provide an opportunity to encounter first-hand many of the realities competitive markets. As with all NHPUC orders or directives, we reserve the right to revisit the issues discussed herein and to make modifications as appropriate during the term of the Pilot.

Finally, we affirm our belief that consensus-building and cooperative approaches should play an important role in any future restructuring of New Hampshire's electric utility industry. Based upon the success of the Pilot collaborative, we believe that such an approach should play a part in resolving the many difficult and challenging issues which could delay the introduction of meaningful competition and lower rates for New Hampshire's citizens and businesses.

II. PILOT OBJECTIVES

[3, 4] The Pilot's primary objective is to determine whether retail competition in the electric utility industry can promote lower retail rates for all customers without compromising the reliability and safety of the power supply system. Consistent with this view, we have developed these Guidelines in order to test certain fundamental assumptions which underlie the case for retail competition. For instance, the Pilot should provide information regarding the level of demand among different customer classes for competitively supplied electric services and the corresponding level of interest among competitive generators to supply those services. The Pilot should also test whether customers of all classes have sufficient bargaining power to significantly benefit from a deregulated power market. Such information potentially has great value since it may enable a competitor to determine which markets are the most profitable to serve.

Likewise, we view the Pilot as an opportunity to test certain arguments advanced by those who oppose retail competition or question whether the benefits of competition will be shared by all customer classes. Additionally, the Pilot should provide information relative to the potential financial impact of retail competition on New Hampshire's electric utilities.

Finally, the Pilot will allow the parties to gain experience in a broad range of technical and

administrative matters relating to competitive markets including the design and costing of unbundled electric services.

As we stated in our last Report, we have decided that the Pilot is not the appropriate forum to resolve all of the complex economic and legal issues associated with the restructuring of the electric utility industry. Nonetheless, a meaningful Pilot can not be implemented without specifying the initial level of stranded cost recovery. In Section V we define stranded costs and establish a preliminary level of recovery in order to move the Pilot forward. We will address the broad legal and policy arguments associated with the issue of stranded cost recovery for the Pilot and the transition to full competition in a separate proceeding.

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III. LEGAL ISSUES

A. Authority to Order Retail Wheeling

[5-7] In our previous Reports in this proceeding, we set forth the statutory basis for the establishment of a retail electric competition pilot program. The authorizing legislation requires us to establish a pilot program provided that it is found to be "fair, lawful, constitutional, consistent with RSA 378:37 and in the public good." NH RSA 374:26-a. We believe that, if properly implemented by the state's franchised utilities, these Guidelines are consistent with these conditions.

In addition to the express statutory authority to establish the Pilot, we believe that the NHPUC has the existing legal authority to introduce competition into the retail electric markets within this state if we find it to be in the public good. See, NHPUC Order No. 21,683, *Re Freedom Electric Company*, DE 94-163 (June 6, 1995). Moreover, unlike issues related to retail transmission services, it is undisputed that the FERC has no legal authority to prevent states from ordering retail wheeling. Any disagreement with our position on this issue of state law will be resolved when the New Hampshire Supreme Court issues its decision in the *Freedom Electric* appeal.

B. Stranded Cost Recovery

[8-10] In our previous Reports relative to the Pilot, we discussed the legal and policy considerations which led to our preliminary conclusion that utilities should not be entitled to 100% recovery of their stranded costs in a transition to retail competition. We continue to hold this view and believe that it is legally justified and premised upon sound public policy. Nevertheless, for the reasons set forth below, our discussions in previous Reports do not represent a final determination of this important and contentious issue.

Not surprisingly, in response to our Preliminary Guidelines relative to this issue, we received comments from stakeholders which reflected either strong opposition or abundant support for our position. Clearly, the issue of stranded cost recovery in a full transition will present significant and complex challenges for policy-makers. In light of the important interests involved in such a debate, the Pilot could be delayed indefinitely if any of the many stakeholders in this proceeding attempted to use it as the forum to set precedent for the eventual restructuring of the industry. After carefully considering our statutory mandate to establish a Pilot which examines

the "implications" of retail wheeling, we have elected to reserve our final determinations relative to stranded cost recovery until the conclusion of a separate, generic restructuring proceeding. In that proceeding, we intend to fully explore the legal and policy considerations relative to stranded cost recovery and develop principles which will guide our decisions concerning industry restructuring. For those utilities that participate in the Pilot under the fifty-fifty mechanism, that proceeding will provide an opportunity for the reconciliation of stranded costs and revenues.

C. Jurisdiction over Intrastate Transmission

[11, 12] In order for Pilot customers to benefit from competition, it is necessary for competing suppliers to have equal access to transmission services in order to deliver power supplies to the distribution systems of franchised utilities. While it is clear that states have the requisite jurisdiction to regulate the rates, terms and conditions of distribution services, the jurisdictional boundaries are less clear relative to the transmission component. As noted in our previous Reports, we continue to believe that states maintain exclusive jurisdiction over the rates, terms and conditions of the intrastate transmission, distribution and sale of electric power to retail customers — whether those services are provided in bundled or unbundled form. *See*, NHPUC Order No. 21,850, *Cabletron Systems Inc., and Johnson Controls Inc.*, DE 95-95 (October 3, 1995).

Although we maintain our position that we have exclusive jurisdiction over intrastate transmission facilities used to provide electric service to retail customers, it is not our intent to allow participants to convert this proceeding

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into the forum for resolving the national debate over the respective roles of state and federal regulatory agencies. It is unclear at this time how that debate will proceed and the forum in which it will ultimately be decided, but we do not believe that it is either necessary or in the public interest to delay the Pilot until the jurisdictional lines between state and federal regulators are more clearly delineated. This approach is consistent with the one which we have adopted for stranded costs. We intend to explore alternative solutions to this problem with the FERC in order to implement the Pilot without compelling us to assert our authority in this area. We have established voluntary filing guidelines which are designed to encourage such cooperation.

D. Filed Rate Doctrine

[13-15] Several commenters suggest that the NHPUC lacks the authority to deny utilities with FERC-approved purchase power contracts the right to full recovery of power costs shifted to non- participating customers through the application of fuel and purchase power adjustment mechanisms. According to this argument, the "filed rate doctrine" precludes the NHPUC from interfering with the application of adjustment mechanisms. We disagree.

As we stated in the First Revised Guidelines, fuel and purchased power adjustment mechanisms are designed to track variations in power costs, not to insulate utilities from the risk of financial loss resulting an inability to compete. This position is consistent with the original

NHPUC policy considerations which approved fuel adjustment mechanisms. *See, In re Public Service Company of New Hampshire*, 31 N.H.P.U.C. Rep. 83 (1949). Similarly, the New Hampshire Supreme Court has observed that the "adjustment clause is a recognized device, most commonly applied to fuel costs, which shortcuts the time lag between changes in cost and the collection of compensation during periods of rapidly changing costs." *Public Service Company of New Hampshire v State of New Hampshire*, 113 N.H. 497, 502 (1973). Thus, it is clear that fuel and purchased power adjustment clauses are intended to provide utilities with an opportunity to adjust rates for fluctuations in power and not as a means to recover revenues lost as a result of fluctuations in demand. While it has been the NHPUC's practice to adjust rates for variations in supply costs and demand, we will not permit costs to be shifted from Pilot participants to non-participants.

We are setting forth our position relative to this issue for purposes of the Pilot. It should not be viewed as our final determination as to how we will treat the uneconomic costs associated with wholesale power contracts in any transition to full competition. As with other issues related to stranded costs, we will investigate this issue fully in the context of a separate restructuring proceeding.

E. PSNH Rate Agreement

We reiterate the our belief that the Rate Agreement entered into between PSNH and the State of New Hampshire offers PSNH no greater protection from competition than exists for the state's other electric utilities. The basis for our position is set forth in the First Revised Guidelines which we incorporate herein by reference.

F. APRA

Similarly, we continue to maintain our belief that NHEC's members may participate in the Pilot without causing NHEC to violate the APRA. As we stated in the First Revised Guidelines, nothing in the APRA prohibits NHEC's members from procuring power supplies from alternative competitive sources in order to participate in the Pilot.

IV. UNBUNDLED TRANSMISSION SERVICE

[16-19] In order to introduce the beneficial forces of competitive markets into the electric utility industry, it is essential to "unbundle" retail electric services. These services consist of three main components: generation, transmission and distribution which have traditionally been provided in bundled form by one service

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provider. Generation service provides customers with reliable capacity and energy from a utility's own power plants or from generating facilities owned by other utilities. Transmission is the backbone for the delivery of capacity and energy from generation sources to main load centers and most large customers. Distribution involves the delivery of capacity and energy from the transmission network to most small and medium sized customers.

By unbundling the three components of electric service, customers gain access to alternative sources of generation at market prices. Under this scenario, competing suppliers who are located

in or outside of the state must utilize the networks of transmission-owning utilities in order to deliver power to the main load centers where transmission interconnects with distribution. Accordingly, the market price of power delivered to main load centers will probably include the costs of such transmission service.

A necessary condition for fair competition in electric generation markets is non-discriminatory transmission access and pricing. In simple terms, this means that all suppliers must have an equal right and opportunity to utilize the transmission network and pay the same rate to wheel power across it. In the absence of such a policy, or a failure by regulators to implement it, transmission-owning utilities would adopt restrictive transmission practices which would distort the workings of the bulk power market and unfairly increase the value of their excess generation resources.

In light of our intention to resolve the jurisdictional problem cooperatively, we request that our jurisdictional utilities voluntarily file retail transmission tariffs both at the FERC and the NHPUC. Such tariffs shall be non-discriminatory and shall be available to competing suppliers on the same terms and conditions which the utility extends to itself. To the extent that the FERC requires approval of those tariffs before they are made available to competing suppliers, we ask that the utilities seek the FERC's expedited approval.

V. STRANDED COST RECOVERY

As we stated above, we intend to investigate the issue of stranded cost recovery generically and within a separate proceeding which relates to industry restructuring. Nevertheless, as a practical matter utilities will need some guidance on this issue in order to develop unbundled rates which provide customers the necessary incentives to participate in the Pilot. Such guidance must begin with a definition of stranded costs.

A. Definition of Stranded Costs

[20, 21] Stranded costs can be calculated in several ways, some of which are more complex than others. For the purposes of the Pilot, stranded costs will be defined and calculated by projecting the difference between the revenue which a utility would have had an opportunity to collect at current rates, in the absence of the Pilot, and the revenue which the utility expects to collect during the term of the Pilot, including projected revenue from power sales at market prices and from transmission and distribution services. The assumed market prices to be used in these calculations will be issued following our consideration of the recently filed Joint Recommendation between PSNH and the Staff. This definition means that a cost already on the books but not approved for ratemaking purposes during the term of the Pilot will not qualify as a stranded cost. In this calculation, no adjustment is made for variable cost savings associated with lost load since we assume that a franchised utility or its power marketing affiliate will continue to sell to its Pilot customers at prevailing market rates.

B. Stranded Cost Recovery

[22, 23] After estimating the magnitude of stranded costs, the next step is to set the level of recovery for the purposes of developing unbundled rates. We have determined that in the absence of a negotiated resolution which sets the level of recovery for each utility, a fifty-fifty division of stranded costs between participating customers and investors is an equitable starting point. The participating customers' share of these costs shall be recovered via a usage-based

surcharge on distribution service during the

term of the Pilot.

C. Separate Stranded Cost Docket

As stated in the First Revised Guidelines, we expressed our intent to open a separate docket to determine on a utility-specific basis the appropriate level of stranded cost recovery. As set forth above, utilities which fail to submit or receive approval of an alternative stranded cost recovery mechanism are required to develop unbundled rates which recover 50% of their stranded costs. In order to minimize price uncertainty for participating customers, the difference, if any, between the initial 50% recovery level and the level ultimately found to be appropriate shall be shared among all customers.

D. Mitigation Issues

We expect significant and aggressive efforts to mitigate above market costs during the Pilot and in any transition to full competition. We recognize, however, that costs incurred by a utility in the process of mitigating strandable costs must receive different treatment. We believe the appropriate way to address such costs is on a project specific basis. Along these lines, full recovery of power costs associated with any small power producer agreements which are subject to RSA 362-A:4-b shall be contingent upon the outcome of our ongoing inquiry into those arrangements.

VI. RATES FOR UNBUNDLED SERVICES

[24] As noted above, in order to allow customers to benefit from the forces of competitive markets, franchised utilities must unbundle retail electric services. While some argue that unbundling should simply be the functional separation of generation from the remaining industry functions, we believe that approach would result in the loss of valuable information regarding the cost structures of jurisdictional utilities. We will require utilities to disaggregate their bundled retail services into the following minimum functions: customer service, transmission, distribution, C&LM and power supply. The power supply function should be further disaggregated into a market price component and a stranded cost component that reflects the extent to which a utility's generation resources are uneconomic. The overriding policy objectives governing this unbundling are: (i) the provision of accurate market price signals for power supply services; (ii) nondiscriminatory transmission and distribution access and pricing; and (iii) the avoidance of cost shifting among classes or among customers within a class.

Because transmission and distribution, and to a lesser degree customer service, continue to exhibit natural monopoly characteristics, these rates should be based on cost rather than the value of those services in the open market. We will require an embedded cost approach to pricing customer service, transmission, distribution and C&LM. Rather than update embedded costs to a recent test year, the rates for such services shall reflect the embedded costs in existing bundled retail rates. While this approach results in embedded costs of different vintages, it levels the playing field by ensuring that unbundled and bundled service customers in the same franchised area and class pay the same rates for equivalent services. Finally, while the costs

embedded in existing bundled rates will be used as the basis of unbundled rates for the Pilot, utilities will be permitted to revise those rates during the life of the Pilot provided they are successful in gaining rate relief in a general base rate case.

Because the purpose of the Pilot program is to obtain information to help determine whether retail competition is in the public interest, we will require that reasonable incremental costs incurred as a result of the Pilot be recovered from all customers rather than participating customers alone.

VII. RESPONSIBILITIES OF PILOT CUSTOMERS

Under retail competition, customers will have increased opportunities to lower their power costs by selecting among competing power suppliers. However, commensurate with the opportunity for lower costs, customers also

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will assume full responsibility and risk for the consequences of their choices. For example, power may be offered as a discrete commodity without transmission and distribution deliverability, at an apparent low cost. However, under this option, customers must also secure and pay additional amounts for the delivery of that commodity over transmission and distribution systems. The aggregate cost and reliability of the delivered commodity will be the customers' responsibility.

To avoid some of the decisions and risks involved in acquiring unbundled generation, transmission, and distribution services, customers may opt to purchase generation, transmission, and distribution services as a package from a single broker, marketer or aggregator.

Under either approach, it is essential to recognize that the customer bears all financial and reliability risk. As each customer addresses the decision to secure resources from alternate suppliers, the customer must develop a strong understanding of his economic decision-making function, including an understanding of all needs, costs and risks.

[25, 26] Based upon these considerations, any customer selected to participate in the Pilot will be responsible for the following:

A. Negotiation for Supply of Electric Power

The negotiation of a competitive supply of electric power may be done directly by the customer or through an energy broker, marketer or other agent. Electricity may also be purchased from a power marketer affiliated with a franchised utility. The customer will pay for electric power at the negotiated price. The NHPUC will not set or approve that price.

B. Back-Up and Emergency Service

Because of the requirement that competitive suppliers either be NEPOOL members or contract with members for back-up bulk power service, there is no need for Pilot customers to purchase, and utilities to offer, back-up and emergency services. Those services will be bundled in firm power supplies purchased from competitive suppliers.

C. Negotiation and Payment for Delivery of Power

Pilot customers their representatives must negotiate with competitive suppliers for the delivery of electric power. Out-of-state power supplies will be transmitted to the New Hampshire border under FERC-approved transmission rates. Transmission and distribution within New Hampshire will conducted under tariffs approved by both the FERC and the NHPUC.

VIII. PILOT DESIGN

A. Size and Duration

[27] 1. Franchised utilities under our jurisdiction shall permit competitive suppliers non-discriminatory access to 3% of their 1994 peak retail load for purposes of the Pilot. This load shall be distributed among the classes in approximate proportion to the estimated peak load for each class including load served under approved special contracts.

2. Any franchised utility seeking to designate a larger percentage of load for the Pilot may make such a request in its March, 15, 1996 compliance filing.

3. In addition to the 3% of existing load, competitive suppliers will also be permitted to access the loads of new large commercial and industrial customers. New large commercial and industrial customers are customers who locate in a franchised utility's service territory on or after March 1, 1996 and who would otherwise be served under the applicable rate schedules listed in Appendix D. Large commercial and industrial customers switching from one New Hampshire service territory to another are not eligible to participate in the Pilot under the new load category.

4. The approximate existing or old load to be allocated to the Pilot for each franchised utility is as follows:

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

Concord Electric Company	2.75 MW
Connecticut Valley Electric Company	0.86 MW
Exeter and Hampton Electric Company	3.00 MW
Granite State Electric Company	3.75 MW
New Hampshire Electric Cooperative	5.25 MW
Public Service Company of New Hampshire	35.13 MW
Total	50.74 MW

5. The Pilot shall be implemented on May 28, 1996 and shall extend for a period of two years from the date of implementation, unless further ordered by the NHPUC.

6. At the conclusion of the Pilot, all negotiated terms and rates with competitive suppliers shall terminate.

B. Customer Selection

[28] The following guidelines shall control how customers will be selected to participate in the Pilot.

Individual Selection

1. Consistent with RSA 374:26-a, customers in all electric utility franchised areas and in all

classes shall be eligible to be considered for participation in the Pilot, unless they are contractually prohibited from doing so as explained below.

2. Customers with existing contractual obligations to franchised utilities may participate in the Pilot only if by doing so they will not violate their obligations under such contracts, or if they are able to renegotiate the terms of those contracts. Those contracts fall into the category of "special contracts" and contracts associated with approved C&LM programs.

3. Individual customers who wish to participate in the Pilot must first express this interest to their franchised utility. All eligible customers should be afforded an opportunity to express such an interest before the actual participants are selected. Although we are inclined to require interested customers to submit some form of written expression of interest to their franchised utility, we are cognizant of the potentially high administrative costs associated with such a process. Accordingly, we will entertain specific proposals from each utility relative to this aspect of the selection process. We strongly encourage utilities to expeditiously submit their preferred methods for customers to apply for participation in the Pilot.

4. The selection of individual participating customers shall be conducted by each utility under the oversight of the NHPUC Staff. We will not specify how customers should be selected, although we have stated in previous Reports that the process must be fair and random. Once a sufficient number of customers has been selected to fill the requisite 3% load requirement, utilities shall be under no further obligation to select additional customers in the event that customers who are initially selected continue to take bundled service.

5. The customers of municipal electric utilities may participate in the Pilot provided that their utility provides access by developing unbundled rates. A participating municipal electric utility means a non-jurisdictional New Hampshire utility which currently provides bundled retail electric service and which voluntarily allows its customers to participate in the Pilot. If any such municipal utility elects to facilitate the participation of its customers in the Pilot, it must agree to develop non-discriminatory transmission and distribution services.

Group Selection

6. Approximately one half of the existing residential and small commercial customer load earmarked for the Pilot shall be eligible to participate in the Pilot through Geographic Areas of Choice (GACs). GACs are defined as groups of residential and small commercial customers within a defined geographic area.

7. GACs should be nominated by an appropriate government authority.

8. In order for a GAC to be considered for selection, there must be a written expression of interest submitted to the franchised utility which currently serves the geographic area by a date to be determined by the NHPUC. The written expression of interest must include the following information:

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- location and geographic boundaries of proposed GAC
- estimated aggregate load of the GAC, broken down by customer class;

• demographic profile of the GAC;

• number of potential participating customers by class

9. The selection of GACs shall be conducted in a random and fair manner from a pool of volunteer GACs. As with individual selection, utilities should expeditiously submit their preferred methods for GACs to apply for participation in the Pilot. The minimum number of GACs per franchised utility are as follows:

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

Connecticut Valley Electric     — 1
Concord & Exeter Electric       — 1
Granite State Electric          — 1
New Hampshire Electric Coop     — 2
Public Service of New Hampshire — 4
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C. Supplier Eligibility

[29] 1. The potential array of suppliers who are eligible to participate in the Pilot include generators, aggregators, marketers and brokers who seek to supply electricity directly or indirectly to participating customers. Such suppliers may include exempt wholesale generators, qualifying facilities, non-jurisdictional utilities, jurisdictional utility marketing affiliates and non-affiliated power marketers, all located both within and outside the State of New Hampshire.

2. Competitive suppliers must obtain NEPOOL membership or contract with a NEPOOL member in order to participate in the Pilot. This requirement will ensure that competitive suppliers with firm load obligations have adequate power supply resources to meet both their firm load and their apportioned share of the NEPOOL required reserves. This requirement will also ensure that competitive suppliers will gain access to NEPOOL scheduled and unscheduled outage service.

3. Competitive suppliers are eligible to participate in the Pilot only after registering with the NHPUC. Such suppliers must include the following information in their registration:

(a) Name, business organization, principle place of business, and registered New Hampshire agent;

(b) Evidence of eligibility to conduct business in New Hampshire;

(c) Evidence that supplier has obtained NEPOOL membership or has contracted with a NEPOOL member for back-up power supply service.

Only after receiving confirmation of the receipt of such information from the NHPUC may competing suppliers transact to sell power to participating customers.

D. Load Aggregation

[30] 1. Pilot participants shall be allowed to aggregate their loads only for the purpose of negotiating the purchase of power from competitive suppliers.

2. Given its unique circumstances, we will allow NHEC's management to perform the role of a load aggregator/supply negotiator on behalf of member participants who request this service.

E. Usage and Other Customer Data

[31] To develop winning marketing strategies, competing suppliers must obtain good information about the needs and usage patterns of customers. The following guidelines will govern the release by franchised utilities of customer-specific load and usage data to competitive suppliers.

1. Authorization must be obtained before customer-specific load and usage data is made available to competitors. The nature of the required authorization will differ depending upon the selection process used.

• Random individual selection — Authorization to release load and usage data is assumed to be given when a customer is selected to participate in the Pilot unless the customer indicates otherwise in writing to its franchised utility. In that instance, the

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customer's name and address will be released to competitive suppliers but only the participant will receive his or her usage data.

• GAC selection — Authorization is automatically given to release the names and addresses of customers located within the boundaries of a chosen GAC. The availability of all other information shall be subject to customer explicit authorization.

2. Customer-specific load and usage data released by a franchised utility shall include:

(i) Customer's name, billing address, and location (if different).

(ii) The customer's kWh and kW (if applicable) consumption history which is readily available on the franchised utility's computer system.

(iii) Load management or other equipment (if any) installed at customer's location.

3. Data for a prescribed area may be obtained from the franchised utility upon request. Such data may include:

(i) Number of customers by class.

(ii) Typical load shapes.

(iii) Approximate kWh sales and kW load.

4. The incremental cost of producing and communicating customer specific or area specific data may be recovered from competitive suppliers through NHPUC approved charges.

F. Metering

[32-34] 1. In order to avoid the expense of installing hourly recording meters for the Pilot we will allow participating customers to utilize currently installed equipment. Bills for transmission, distribution and power supply services should be calculated based on monthly metering data.

2. Franchised utilities will be required to estimate the hourly loads of Pilot customers using load profiles for the relevant customer class, and shall make this information available to competing suppliers. A description of how one utility currently proposes to use load profiles to estimate hourly loads is contained for informational purposes in Appendix E.

3. Franchised utilities will be responsible for meter reading and transferring data expeditiously to competitive power suppliers.

4. Franchised utilities may levy separate NHPUC approved charges to recover reasonable incremental metering and data transfer costs not provided for in unbundled rates.

5. Franchised utilities may separately bill a competitive supplier for additional metering and communications expenses associated with the use of more sophisticated metering equipment requested by supplier.

6. Although we are not requiring the installation of hourly metering as a condition for participation in the Pilot, in order to assess the accuracy of load estimates, we direct the franchised utilities to cooperate in a collective effort to install the necessary metering and communications equipment to provide statistically valid hourly load data.

G. Billing

1. Competitive suppliers have the option to bill separately for power supply services.

2. Franchised utilities may provide billing services to competitive suppliers if they so desire. If a franchised utility provides billing services to an affiliate power marketer, it must also offer the same or comparable services to non-affiliated competitive suppliers.

3. If a franchised utility provides billing services, the charge for such services shall not exceed the incremental costs incurred.

4. Any bill submitted to a Pilot participant shall include the supplier's name, phone number, and business address.

H. Ancillary Services

Ancillary services are services which may or may not be necessary for the reliable and safe delivery of power from competing suppliers, including but not limited to, voltage control, operating reserves, and power factor adjustment.

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1. Because of the requirement that competitive suppliers must be members of or contract with members of NEPOOL, generation-related ancillary services such as voltage and frequency control and operating reserves will be supplied at the bulk power level and the costs recovered through power supply prices. Consequently, we will not require franchised utilities to offer unbundled generation-related ancillary services.

2. To the extent that there are ancillary services related to the transmission and distribution functions, these services will continue to be provided in a bundled form by the operators of the transmission and distribution systems.

3. Unbundled charges for generation, transmission or distribution related ancillary charges will not be permitted during the term of the Pilot unless already provided under generally available tariffs.

I. Responsibilities of Pilot Customers and Franchised Utilities

[35] 1. It shall be the responsibility of Pilot customers to negotiate with competing suppliers and other service providers. A franchised utility shall not interfere with the negotiations between Pilot customers and competing suppliers, but it shall be permitted to compete in the Pilot on the condition that it establish an affiliate company for that purpose. Although this requirement will ensure that appropriate inter-affiliate pricing arrangements are instituted for the sale of goods and services by jurisdictional utilities, we recognize that it does nothing to curb possible anti-competitive abuses by non-jurisdictional utilities. We anticipate that other regulators, both state and federal, will exercise their authority to prevent market abuses. That limitation notwithstanding, the requirement is consistent with our position that franchised utilities must aggressively mitigate their stranded costs since revenues received from the sale of utility goods and services can be applied against such costs. The guidelines governing the pricing of inter-affiliate transactions are detailed in Section VIII(L) of these Guidelines.

J. Rates and Charges

[36, 37] 1. A utility shall not impose an exit fee on Pilot customers and shall not impose a re-entry fee when those customers return either during or at the termination of the Pilot. Reasonable incremental costs, approved by the NHPUC, which are directly related to serving Pilot customers may be recovered from participants.

2. Rates for unbundled services, calculated in accordance with Section VI of these Guidelines, shall be submitted for NHPUC approval. Workpapers shall be presented identifying by account number the embedded costs allocated to each service for each customer class and the corresponding billing determinants used in the development of rates.

3. While transmission and distribution charges shall be based on individual rather than aggregated customer loads, such charges may be collectively billed to an agent authorized to act on behalf of an aggregated group of customers.

4. A utility shall be entitled to levy a surcharge on all customers to recover reasonable administrative costs, approved by the NHPUC, associated with the establishment and implementation of the Pilot.

5. To the extent that a utility believes that it will incur stranded costs as a result of the Pilot, it may seek recovery of those costs consistent with Section V of these Guidelines. That is, prior to the implementation of the Pilot, the utility shall estimate for each rate class its projected stranded costs and, based on those estimates, develop usage-based, stranded cost charges that recover from participating customers 50% of those costs. The assumed market prices to be used in the calculation of stranded costs will be issued following our consideration of the recently filed Joint Recommendation and Staff.

6. Franchised utilities offering billing services in accordance with Section VIII(G) of these Guidelines shall submit for approval applicable rates and terms and conditions.

K. Customer Protection

1. Existing rules designed to protect

customers who receive bundled electric services shall continue to apply, where appropriate, to unbundled transmission and distribution services offered by franchised utilities.

2. Existing rules relating to the winter termination of certain residential customers shall be applied to all competitive suppliers in the Pilot.

3. The resources of the NHPUC will be available to resolve disputes between customers, utilities and competitive suppliers.

L. Pricing of Inter-affiliate Transactions

[38, 39] We are indifferent as to the effect affiliated agreements have on utility affiliates. Our interest and concern extends only to the effect these agreements have on franchised utilities and their customers. The most common approaches to pricing affiliate transactions are: (a) transfer at cost where cost is defined to include an allowance for a return on capital; (b) transfer at the market rate; and (c) a multiple of cost. All these approaches recognize that affiliates, whether regulated or non-regulated, must conduct their affairs in a businesslike manner and should have an opportunity to earn a fair profit for services provided.

This basic business principle must be reflected in the pricing of any inter-affiliate transaction. Transactions which take place at out of pocket cost violate this principle. Transactions at out-of-pocket cost may be adequate for transactions between divisions or cost centers of the same company but not between independent companies supposedly engaged in arms length negotiations.

We will require that the pricing of inter-affiliate transactions be free of all subsidies. Goods and services traded in competitive markets, such as power supply, will be priced at fair market value. For goods and services purchased from the franchised utility or an affiliated service company, such as internal accounting, preparation of records, financial services, data processing, legal advice, and wages and salaries of employees assigned to Pilot activities, prices shall be set on a cost plus basis including administrative and general overhead.

In order to verify compliance with this guideline, franchised utilities shall file pursuant to RSA 366:3 affiliate agreements which specify in detail the goods and services to be provided and the related pricing provisions. Such agreements shall be submitted no later than March 15, 1996.

IX. MONITORING AND EVALUATION

[40] 1. The NHPUC will monitor the progress of the Pilot and evaluate the development of competitive retail electric markets.

2. In connection with this monitoring process, franchised utilities, competing suppliers and Pilot customers shall make certain information available to the NHPUC. Such information, which we detail below, shall be accorded confidential treatment as appropriate under RSA 91-A, New Hampshire's Right to Know Law.

3. Franchised utilities shall report by class the number of customers and customer groups that request to participate in the Pilot. The names and addresses of customers actually selected, including those within participating GACs, shall be provided to the NHPUC no later than May 1, 1996.

4. Franchised utilities shall record all expenses which relate to the Pilot in separate accounts and shall submit monthly reports to the NHPUC which itemize these expenses. These reports shall also include by class the number of participating customers, monthly kWh and kW sales and associated unbundled revenue based on approved tariffs. Additional revenue related to the provision of metering, billing or data processing services, to recover approved administrative costs, or for goods and services sold to power marketing affiliates shall be separately identified.

5. Franchised utilities subject to the NHPUC's fifty-fifty stranded cost sharing mechanism shall calculate actual net lost revenues by class and submit monthly reports summarizing that information.

6. Competitive power suppliers, including power marketing affiliates, shall file quarterly reports detailing by customer account number the prices and quantities associated with each

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transaction. To the extent that a customer makes more than one power purchase during a reporting period, the price and quantity data for that customer shall be provided on an average or aggregate basis. In addition, in order to verify the reasonableness of inter-affiliate power supply transactions, franchised utilities shall file each month a quantity-weighted average wholesale price for short-term sales and purchases. Short-term transactions are defined as a month or less in duration.

7. We will also require franchised utilities to analyze the customer load data from the sample of participants fitted with hourly recording meters and report their findings in semi-annual reports.

8. Information about competitive power suppliers will be publicly available through the Pilot registration process.

X. COMPLIANCE FILINGS

1. Pursuant to these Guidelines, franchised utilities shall file compliance tariffs incorporating unbundled rates and general terms and conditions for customer, distribution and transmission services. The compliance filings must also specify or contain the following:

(a) workpapers supporting 3% retail load requirement;

(b) breakdown of 3% retail load requirement by rate class and by individual/GAC participation;

(c) adjustments to fuel and purchase power adjustment mechanisms to ensure non-participating customers are not burdened with unrecovered power costs;

(d) workpapers supporting unbundled rates;

(e) method of estimating hourly loads for NEPOOL billing purposes;

(f) time period to transfer metering data to competitive suppliers;

(g) miscellaneous charges and associated workpapers relating to billing, data processing and transfer, and administrative services;

(h) pricing arrangements for power and non-power related goods and services transacted between franchised utilities and affiliated companies;

(i) plans to install hourly load meters for state-wide sample.

Based upon the foregoing, it is hereby

ORDERED, that the foregoing Final Guidelines are APPROVED;

FURTHER ORDERED, that all New Hampshire electric utilities shall implement a retail electric pilot program consistent with these Final Guidelines unless alternative proposals are approved by this Commission; and it is

FURTHER ORDERED, that all New Hampshire electric utilities shall file compliance tariffs and all other information described in Section X on or before March 15, 1996; and it is

FURTHER ORDERED, that for the purposes of making the above-described compliance filings, Granite State, CVEC and PSNH shall file tariffs consistent with their recommended unbundled rates pending our consideration of the Joint Recommendation filed by PSNH.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of February, 1996.

APPENDIX A

New Hampshire Revised Statutes Annotated (RSA) 374:26-a, mandating creation of a pilot program, provides as follows:

374:26-a Retail Competition Pilot Program. The commission shall establish a pilot program, under such terms and conditions as the commission shall deem appropriate, for the purpose of determining the implications of retail competition in the electric industry, provided that the commission determines that such program is fair, lawful, constitutional, consistent with RSA 378:37 and in the public good. This pilot program shall be open to all franchised areas and to all classes of customers.

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

APPENDIX B

Procedural Schedule for
Implementing Final Guidelines

Final Guidelines	February 28, 1996
Compliance Filings	March 15, 1996
Technical Sessions	March 18-29, 1996
Hearings on Pilot Implementation	April 1-5, 1996
Final Commission Report	April 15, 1996
Pilot Commencement	May 28, 1996

APPENDIX C

The following organizations submitted written comments on the Preliminary and Revised Guidelines:

Associated Power Services Inc., Business and Industry Association of New Hampshire, Cabletron Systems Inc., Central Illinois Light Company, Connecticut Valley Electric Company, Conservation Law Foundation, Office of Consumer Advocate, City of Dover, EnerDev, Inc., The Flatley Company, Freedom Energy Company, Funspot, Granite State Electric Company, Granite State Hydropower Association, Great Bay Power Corporation, KCS Power Marketing, Inc., Rep. Jeffrey C. MacGillivray, City of Manchester, New England Cogeneration Association, New Hampshire Charitable Foundation, New Hampshire Community Action Program, New Hampshire Department of Environmental Services, New Hampshire Electric Cooperative, Inc., New Hampshire Energy Management, Public Service Company of New Hampshire, George E. Sansoucy, Save Our Homes Organization, Suncook Energy Corporation, Sweetheart Cup Company Inc., UNITIL System Companies, UtiliCorp United Inc., Wheeled Electric Power Company, and Certain Wood-Fired Qfs. In addition, several residential customers filed comments.

APPENDIX D

New Load Criteria

Large commercial and industrial customers who locate in a franchised utility's service territory on or after March 1, 1996 and who would otherwise be served under the following rate schedules may participate in the Pilot.

Concord Electric Company — G1, G2, G4, QRWH and Off-Peak WH Connecticut Valley Electric — GV, and G-T Exeter & Hampton Electric — G1, G2, G4, QRWH and Off-Peak WH Granite State Electric — G1, T and V New Hampshire Electric Coop — G, PG, PGI Public Service of New Hampshire — GV, LG

APPENDIX E

Determination Of Hourly Loads For NEPOOL Billing

In the event that hourly recording meters are uneconomic or cannot be installed prior to the initiation of the Pilot, existing meters may be utilized and the hourly loads calculated in the following manner:

Supplier shall be required to include the load at each account it serves, including losses, in its own-load dispatch at NEPOOL. The reporting of loads for own-load dispatch purposes will be accomplished by the following:

1) Each account will be assigned to a customer class. A customer class would consist of a group of customers with similar load shape characteristics.

2) Each customer class will have an assigned load profile which is based on historical load profile data for customers in the class. For the Pilot, this load profile will be approved for its accuracy by the NHPUC.

The load profile for each class shall consist of 24 separate profiles which represent average hourly load profiles for typical day types of the week for each month of the year (e.g, average weekdays in March).

3) Each account will be assigned a Usage Factor which represents the relative usage of the

account versus the customer class. The Usage Factor would equal the quotient of (i) the actual total energy consumption of the account

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for the previous twelve months, expressed in kilowatt-hours divided by (ii) the total energy from the load profile for the customer class for a twelve month period, expressed in kilowatt-hours. For example, if a Non-Electric Heat Residential account had actual usage of 5,986 kWh for the past twelve months and the load profile for the class shows an average twelve month usage of 6,000 kWh, then the Usage Factor for this account would equal 0.998.

4) Each day the distribution utility (Disco) shall read the meter at the Transmission Delivery Point to obtain the hourly loads (TDPL). These loads will then be divided between each supplier based on the customers they serve to determine own-load responsibilities at NEPOOL.

5) For customers with direct access metering equipment, Disco shall remotely access the meter for each account once per day and read the hourly load data for the previous day (Monday's load will be accessed on Tuesday, Tuesday's load will be accessed on Wednesday, Wednesday's load will be accessed on Thursday, Thursday's load will be accessed on Friday, and loads for Friday, Saturday and Sunday will be accessed on Monday);

The adjusted load value at the Transmission Delivery Point shall equal the product of: (i) the demand at the meter as measured in kilowatts; and (ii) the Metering Voltage Adjustment Factor expressed as a decimal; and (iii) the Distribution Loss Factor expressed as a decimal.

The Metering Voltage Adjustment Factor shall equal 1.00 if meter is located on the secondary side of customer's transformer and shall equal 0.99 if meter is located on the primary side of the Customer's transformer.

6) Disco shall determine the total load allocated to each supplier at the Transmission Delivery Point from direct access meters.

$$DAML_s = sum^m_{c=1}\ DAMR_{s,c} * (1 + \text{Distr. Loss Factor}) * (1 + \text{Meter Adj. Factor})$$

Where DAML means Direct Access Meter Load and DAMR means Direct Access Meter Reading.

7) Disco shall determine the total load at the Transmission Delivery Point from all suppliers from direct access meters.

$$DAML = sum^n_{s=1}\ DAML_s$$

8) Disco shall determine the total load at the Transmission Deliver Point which is to be allocated to non-direct metered loads (NDAML).

$$NDAML = TDPL - DAML$$

9) Disco shall determine the initial total load at the Transmission Delivery Point which is allocated to each supplier from non-direct access meter loads.

$INDAML_s = sum^p_{k=1} N_{s,k} * LP_k *$
(1 + Distr. Loss Factor)

Where INDAML means initial non-direct access meter load, N number of customers per supplier per customer class and LP the load profile for the customer class.

10) Disco shall determine the initial total load which is allocated to all suppliers.

$$INDAML = sum^n_{s=1} INDAML$$

11) Disco shall adjust the total initial total loads to get the final loads allocated to each supplier at the Transmission Delivery Point from non-direct access metered loads.

$$NDAML_s = INDAML_s * (NDAML/INDAML)$$

12) Disco shall determine the total allocated to each supplier at the Transmission Delivery Point.

$$LOAD_s = DAML_s + NDAML_s$$

13) As a check:

$$TDPL = sum^n_{s=1} LOAD_s$$

The loads assigned to each supplier shall be adjusted for actual sales as determined by the meter readings. Forty five (45) days after the

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end of each month, Disco shall calculate a total adjustment for each calendar month. This will be done by scaling the estimated hourly loads to the metered usage and allocating any difference from the NDAML prorata and multiplying by the Metering Adjustment Factor and Distribution Loss Factor. The total adjusted load will be determined for each supplier and compared to the total load assigned to each supplier for the month. Any differences will be reconciled amongst suppliers at the average NEPOOL cost of supply for the month. A supplier who had more sales than was assessed would pay the difference at the average lambda rate whereas a supplier that was assessed more than the recorded sales would be credited the difference at the average lambda rate.

FOOTNOTES

[1]Appendix C lists the organizations which submitted comments on the Preliminary and Revised Guidelines.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Cabletron Systems, Inc., DR 95-095, Order No. 21,850, 80 NH PUC 620, 164 PUR4th 205, Oct. 3, 1995. [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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NH.PUC*03/01/96*[89047]*81 NH PUC 150*Merrimack County Telephone Company

[Go to End of 89047]

81 NH PUC 150

Re Merrimack County Telephone Company

DR 96-045
Order No. 22,034

New Hampshire Public Utilities Commission

March 1, 1996

ORDER approving a local exchange telephone carrier's proposed addition of Call Return to its custom calling services, where related switching equipment was now compatible with blocking capability, in the interest of privacy and safety.

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1. SERVICE, § 449

[N.H.] Telephone — Special service — Custom calling options — Addition of Call Return feature — Compatibility with blocking capability as a factor — Local exchange carrier. p. 150.

BY THE COMMISSION:

ORDER

[1] On February 8, 1996, Merrimack County Telephone (MCT or Company) filed a petition with the New Hampshire Public Utilities Commission (Commission) seeking to revise its Custom Calling Services (CCS) by introducing a Call Return feature for effect March 11, 1996.

In its transmittal letter, MCT requested that the Commission waive N.H. Admin. Rules, Puc 1601.05 (j), relative to the publication of tariff changes. In lieu of that requirement, the Company sought permission to notify its customers via a bill insert at the time the new service is introduced.

Also in its transmittal letter, MCT stated that it requested approval of the Call Return

feature in a prior filing, but withdrew the petition when the Company discovered that its switching equipment could not suppress the feature if the telephone number of the most recent

incoming call was blocked. Consequently, personal safety concerns prohibited the introduction of the service at that time.

MCT reports that upgrades to the MCT switching equipment have been completed which allow the Call Return feature to work in a manner that protects the safety and privacy of individuals with blocked telephone numbers.

In support of its filing, the Company provided estimates of the incremental costs associated with providing the proposed service and demonstrated that the proposed price exceeds its stated incremental cost.

The Staff has reviewed the petition and noted that the proposed introduction of Call Return is consistent with the guidelines established for NYNEX in DR 91-105 (Phonesmart). In addition, based on a review of the proposed rates and the reported costs, the Economics Staff recommended that the service be approved as proposed.

We have reviewed the Petition and the Staff's recommendation and find that the proposed filing is in the public good. Because safety and privacy concerns associated with the Call Return feature were the subject of significant debate during DR 91-105, and consistent with our treatment of other companies that requested approval of this service, we believe the public should be afforded the opportunity to respond in support of, or in opposition to, Call Return. Consequently, we will deny the Company's request to waive Puc 1601.05 (j), relative to the publication of tariff changes.

Based on the foregoing, it is hereby

ORDERED *NISI*, that the following pages of MCT's NHPUC No. 7 are approved:

Part III - Section 3

First Revised Page 6

First Revised Page 10

First Revised Page 12

and it is

FURTHER ORDERED, that MCT's request to waive N.H. Admin. Rules Puc 1601.05 (j) is denied; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules, Puc 1601.05, the Petitioner shall cause an attested copy of this Order *Nisi* to be published once in a statewide newspaper of general circulation, such publication to be no later than March 8, 1996 and to be documented by affidavit filed with this office on or before March 15, 1996; and it is

FURTHER ORDERED, that MCT send a copy of this Order *Nisi* to all individuals on the attached service list of NHPUC docket DR 91- 105, Phonesmart, by first class U.S. mail, postmarked no later than March 8, 1996 and shall be documented by affidavit with the Commission on or before March 15, 1996; and it is

FURTHER ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or file a written request for a hearing on this matter before

the Commission no later than March 22, 1996; and it is

FURTHER ORDERED, that the Petitioner shall file a compliance tariff with the Commission on or before March 15, 1996, in accordance with N.H. Admin. Rules, Puc 1601.04 (b).

FURTHER ORDERED, that this Order *Nisi* shall be effective as of March 29, 1996, unless the Commission, on its own motion, orders otherwise.

By order of the Public Utilities Commission of New Hampshire this first day of March, 1996.

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NH.PUC*03/04/96*[89048]*81 NH PUC 152*Public Service Company of New Hampshire

[Go to End of 89048]

81 NH PUC 152

Re Public Service Company of New Hampshire

DR 95-173

Order No. 22,035

New Hampshire Public Utilities Commission

March 4, 1996

ORDER rejecting an electric utility's proposed special rate contract with Keene State College as filed. The commission finds possibly anticompetitive those provisions in the contract that prevent the customer from contacting any other power supplier for at least an eight-year period. Additionally, the commission is troubled by those terms that prohibit any third-party from developing generation facilities on the customer's property.

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1. MONOPOLY AND COMPETITION, § 21

[N.H.] Restraint of trade and anticompetitive practices — Special contracts — Terms encumbering customer's property — Anti-self-generation provisions — Rejection of proposed contract — Electric utility. p. 154.

2. MONOPOLY AND COMPETITION, § 21

[N.H.] Restraint of trade and anticompetitive practices — Special contracts — Terms encumbering customer's property or rights — Prohibitions on third-party power supplier bids — Determination of anticompetitive effects — Electric utility — Rejection of proposed contract. p. 154.

3. RATES, § 211

[N.H.] Special rate contracts — Anticogeneration or load retention agreements — Factors affecting rejection — Anticompetitive effects — Electric utility. p. 154.

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4. MONOPOLY AND COMPETITION, § 21

[N.H.] Restraint of trade and anticompetitive practices — Special contracts — Effect of terms prohibiting competing third-party power supplier bids — Acquiescence by customer as a factor — Meeting of the minds — Electric service — Dissenting opinion. p. 154.

BY THE COMMISSION:

ORDER

Public Service Company of New Hampshire (PSNH), filed on June 12, 1995, pursuant to RSA 378:18, a request for approval of a special contract, Special Contract No. NHPUC-117 (NHPUC-117), between PSNH and Keene State College (KSC) located in Keene, New Hampshire. PSNH describes the intent of its filing as an anti-cogeneration/load retention filing. Therefore, this filing falls neither under the auspices of the Commission's Checklist for Economic Development and Business Retention Discounted Rates (Checklist) set forth in Docket DR 91-172 or the recently enacted bill, N.H. Laws of 1995, Chapter 272, Section 9,

which requires the Commission to establish procedures for the review and approval of generally available rate schedules for electric service that foster economic development and retain existing load within the state. For purposes of familiarity and expediency of review, PSNH filed NHPUC-117 in the same general format as economic development and business retention special contract filings made under the Checklist.

PSNH's filing included, in both redacted and unredacted form, the special contract, testimony, and a technical statement supporting a discounted rate for KSC based on the viable cogeneration alternative modeled by PSNH. PSNH also requested protective treatment for certain information considered confidential in the filing. On August 22, 1995, the Commission denied in part and granted in part PSNH's Motion for Protective Order (Order No. 21,791).

PSNH asserts in its filing that NHPUC-117 is designed to retain the electric load of KSC and that absent this special contract, KSC would install cogeneration. In support of its assertion, PSNH modelled its own cogeneration study for KSC. PSNH states that its study supports PSNH's position that KSC has a viable cogeneration option and because of the importance of electricity in KSC's budget, KSC would likely install cogeneration. KSC budgeted $1.1 million for electricity in 1995. Electricity costs represent more than 20 percent of KSC's Support Budget. For further support, PSNH points to Plymouth State College which installed cogeneration to replace its electricity purchases from the New Hampshire Electric Cooperative. PSNH argues that retaining the load and the resulting contribution to fixed costs will, among other things, assist PSNH's efforts to improve its financial performance and keep rates lower for all other customers. A letter attached to the filing by Bradford K. Perry, Vice Chancellor of Financial Affairs and Treasurer, University System of New Hampshire, states that KSC supports approval of NHPUC-117. Mr. Perry believes that cogeneration is a viable option for KSC and would be financially beneficial for KSC to undertake, but KSC would prefer to take service under NHPUC-117 which Mr. Perry states would approximate the savings of cogeneration over the same period of time. Service under NHPUC-117 would allow KSC to concentrate its management requirements on higher education. Savings from NHPUC-117 would go directly toward reducing the educational costs of students.

The pricing contained in NHPUC-117 is identical to service provided to KSC under Rate LG of PSNH's tariff, but NHPUC-117 provides a monthly credit of $11,600 to KSC's bill, subject to adjustments dependent upon usage variances greater or lesser than 5 percent, for a period of eight years as described in *Article 10 — Effective Date and Contract Term.* After eight years, NHPUC-117 terminates and KSC will return to the applicable standard tariff rates.

In accordance with *Article 6 — Sole Supplier*, KSC must use PSNH as its sole supplier of electricity during the term of the contract. Additionally, Article 6 prohibits KSC from

Page 153

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allowing "[a] third party to own or operate a generating facility on property it owns, acquires or controls within its Keene campus, for the purpose of selling the power produced by such a facility to retail customers of Northeast Utilities' subsidiaries or retail customers of Northeast Utilities' wholesale customers during the term of this Agreement."[1(14)] Article 6 is intended to ensure that KSC remains a customer of PSNH during the contract term so the benefits to PSNH

and its other customers are achieved.

[1-3] The Commission has reviewed NHPUC-117, the supporting materials and the information provided on the land affected by NHPUC-117. We have conducted our review pursuant to the language of RSA 378:18, which gives the Commission the authority to approve special contracts in which "special circumstances exist which render such departure from the general schedules just and consistent with the public interest ..." Consistent with the concerns we expressed in Nashua Foundries, Order No. 21,782 (August 14, 1995), we find that the contract provision preventing third parties from developing a generating facility on KSC's property for the purpose of protecting all customers of Northeast Utilities contains public policy implications that extend beyond the confines of NHPUC-117. For the circumstances contained in NHPUC-117, unlike Nashua Foundries and others, we find no viable offsetting mechanism such as the condemnation option under RSA 371:1 to remedy the anti-competitive aspect of Article 6 which we found in those special contracts. *See* Order No. 21,929 at 7. Moreover, *Article 10 — Effective Date and Term* binds KSC to PSNH for eight years without any early termination provision for KSC. In a more traditional regulatory period, these provisions may have been appropriate and perhaps necessary. However, at the present time we cannot make such evaluations without regard to the changes that are occurring in the electric utility industry and the effects these contract provisions may have on those changes.

Based upon our review of the filing, we find that although Special Contract No. NHPUC-117 would provide benefits to both PSNH and KSC, those benefits are insufficient to overcome our public interest concerns about the potentially anti-competitive effects of NHPUC-117 as contained in the Article 6 provision and the irrevocable eight year term. We find these inconsistent with the present move toward a more competitive electric utility industry and therefore will withhold our approval of this special contract.

Based upon the foregoing, it is hereby

ORDERED, that Public Service Company of New Hampshire's petition for approval of Special Contract No. NHPUC-117 is DENIED.

By order of the Public Utilities Commission of New Hampshire this fourth day of March, 1996.

Dissenting Opinion of
Commissioner Bruce B. Ellsworth

I would approve the contract.

[4] This contract is brought to us by two willing parties — a willing seller (PSNH), and a willing buyer (Keene State College). As the majority notes, a letter attached to the filing by Bradford K. Perry, Vice Chancellor of Financial Affairs and Treasurer, University System of New Hampshire, states that KSC supports approval of NHPUC-117. I cannot find that this Commission should preempt the decision of two willing parties to this contract.

Further, I cannot join the majority in finding that because there appears to be no viable offsetting mechanism such as the condemnation option under RSA 371:1, that this Commission has the authority to impose its judgement as to the best use of state-owned land. The evaluation of the best use of university land rests with the Board of Trustees. I would defer to their

judgement for that evaluation in this docket and I cannot find that the absence of such an evaluation gives us authority to intercede with our own.

While I join my colleagues in their concerns about the anti-competitive effects of this contract, I am also concerned that our denial may risk the parties' withdrawal of the proposal based on their unwillingness to accept our stipulations. I find the benefits of the proposed contact to outweigh the consequences of the public

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policy issues.

I would approve the contract as filed.

Bruce B. Ellsworth
Commissioner

March 4, 1996

FOOTNOTES

[1]By letter of the Executive Director of the Commission, dated November 9, 1995, PSNH was directed to file supplemental information on the KSC special contract. Specifically, the Commission requested information on the land affected by NHPUC-117, including whether the land affected had generation potential. On November 29, 1995, PSNH filed a one-page summary of the information requested. PSNH stated that Keene State College owns approximately 150 acres of land in the City of Keene with smaller acreage in two nearby towns. The Keene land is a mix of rural and urban property. The campus does not have generation, but a small wood burning generator was used in the past. PSNH by the nature of its filing and the material presented on November 22, 1995, has concluded that KSC has the land, thermal load and infrastructure to install generation. PSNH notes that any generation installed by PSNH would have to meet the non-attainment air pollution standards contained in ENV-A-622.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 95-149, Order No. 21,782, 80 NH PUC 526, Aug. 14, 1995. [N.H.] Re Public Service Co. of New Hampshire, DR 95-171, DR 95-173, Order No. 21,791, 80 NH PUC 536, Aug. 22, 1995. [N.H.] Re Public Service Co. of New Hampshire, DR 95-149, Order No. 21,929, 80 NH PUC 770, Dec. 4, 1995.

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NH.PUC*03/04/96*[89049]*81 NH PUC 155*Public Service Company of New Hampshire

[Go to End of 89049]

Re Public Service Company of New Hampshire

DR 95-171
Order No. 22,036

New Hampshire Public Utilities Commission

March 4, 1996

ORDER rejecting an electric utility's proposed special rate contract with the University of New Hampshire as filed. The commission finds possibly anticompetitive those provisions in the contract that prevent the customer from contacting any other power supplier for at least an eight-year period. Additionally, the commission is troubled by those terms that prohibit any third-party from developing generation facilities on the customer's property.

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1. MONOPOLY AND COMPETITION, § 21

[N.H.] Restraint of trade and anticompetitive practices — Special contracts — Terms encumbering customer's property — Anti-self-generation provisions — Rejection of proposed contract — Electric utility. p. 157.

2. MONOPOLY AND COMPETITION, § 21

[N.H.] Restraint of trade and anticompetitive practices — Special contracts — Terms encumbering customer's property or rights — Prohibitions on third-party power supplier bids — Determination of anticompetitive effects — Electric utility — Rejection of proposed contract. p. 157.

3. RATES, § 211

[N.H.] Special rate contracts — Anticogeneration or load retention agreements — Factors affecting rejection — Anticompetitive effects — Electric utility. p. 157.

4. MONOPOLY AND COMPETITION, § 21

[N.H.] Restraint of trade and

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anticompetitive practices — Special contracts — Effect of terms prohibiting competing third-party power supplier bids — Acquiescence by customer as a factor — Meeting of the minds — Electric service — Dissenting opinion. p. 157.

BY THE COMMISSION:

ORDER

Public Service Company of New Hampshire (PSNH), filed on June 12, 1995, pursuant to

RSA 378:18, a request for approval of a special contract, Special Contract No. NHPUC-116 (NHPUC-116), between PSNH and the University of New Hampshire located in Durham, New Hampshire. PSNH describes the intent of its filing as an anti-cogeneration/load retention filing. Therefore, this filing falls neither under the auspices of the Commission's Checklist for Economic Development and Business Retention Discounted Rates (Checklist) set forth in Docket DR 91-172 or the recently enacted bill, N.H. Laws of 1995, Chapter 272, Section 9, which requires the Commission to establish procedures for the review and approval of generally available rate schedules for electric service that foster economic development and retain existing load within the state. For purposes of familiarity and expediency of review, PSNH filed NHPUC-116 in the same general format as economic development and business retention special contract filings made under the Checklist.

PSNH's filing included, in both redacted and unredacted form, the special contract, testimony, and a technical statement supporting a discounted rate for UNH based on the viable cogeneration alternative modeled by PSNH and a consultant to UNH. PSNH also requested protective treatment for certain information considered confidential in the filing. On August 22, 1995, the Commission denied in part and granted in part PSNH's Motion for Protective Order (Order No. 21,791).

PSNH asserts in its filing that NHPUC-116 is designed to retain the electric load of UNH and that absent this special contract, UNH would install cogeneration at its Durham campus. In support of its assertion, PSNH analyzed a cogeneration study done for UNH as well as modelling its own cogeneration study for UNH. PSNH states that both studies support PSNH's position that UNH has a viable cogeneration option and because of the importance of electricity in UNH's budget, UNH would likely install cogeneration. UNH budgeted $4.2 million for electricity in 1995. Electricity costs represent more than 22 percent of UNH's Support Budget. For further support, PSNH points to Plymouth State College which installed cogeneration to replace its electricity purchases from the New Hampshire Electric Cooperative. PSNH argues that retaining the load and the resulting contribution to fixed costs will, among other things, assist PSNH's efforts to improve its financial performance and keep rates lower for all other customers. A letter attached to the filing by Bradford K. Perry, Vice Chancellor of Financial Affairs and Treasurer, University System of New Hampshire, states that UNH supports approval of NHPUC-116. Mr. Perry believes that cogeneration is a viable option for UNH and would be financially beneficial for UNH to undertake, but UNH would prefer to take service under NHPUC-116 which Mr. Perry states would approximate the savings of cogeneration over the same period of time. Service under NHPUC-116 would allow UNH to concentrate its management requirements on higher education. Savings from NHPUC-116 would go directly toward reducing the educational costs of students.

The pricing contained in NHPUC-116 is identical to service provided to UNH under Rate LG and Rate B of PSNH's tariff, but NHPUC-116 provides a monthly credit of $37,000 to UNH's bill, subject to adjustments dependent upon usage variances greater or lesser than 5 percent, for eight years as described in *Article 19 — Effective Date and Contract Term*. NHPUC-116 states that in no event can the contract be terminated in less than eight years and that after the eight year term of the contract, UNH will return to the applicable standard tariff rates until such time as either party provides twelve month written notice to terminate the contract. NHPUC-116 also

includes a maintenance service agreement, contained in Articles 7 through Article 14, whereby PSNH will provide maintenance to UNH's primary distribution system. The maintenance service agreement remains effective, subject to certain conditions, for the eight year term of the special contract. The maintenance service agreement specifies that PSNH will provide maintenance up to a maximum annual amount in the first year of $60,000. The value of PSNH's maintenance service shall increase thereafter by $2,000 per year up to a yearly maximum of $80,000.

In accordance with *Article 6 — Sole Supplier*, UNH must use PSNH as its sole supplier of electricity during the term of the contract, except for the 500 kW NORESCO generator currently providing service to UNH. Additionally, Article 6 prohibits UNH from allowing "[a] third party to own or operate a generating facility on property it owns, acquires or controls at the Durham campus, for the purpose of selling the power produced by such a facility to retail customers of Northeast Utilities' subsidiaries or retail customers of Northeast Utilities' wholesale customers during the term of this Agreement."[1(15)] Article 6 is intended to ensure that UNH remains a customer of PSNH during the contract term so the benefits to PSNH and its other customers are achieved.

[1-3] The Commission has reviewed NHPUC-116, the supporting materials and the information provided on the land affected by NHPUC-116. We have conducted our review pursuant to the language of RSA 378:18, which gives the Commission the authority to approve special contracts in which "special circumstances exist which render such departure from the general schedules just and consistent with the public interest ..." Consistent with the concerns we expressed in Nashua Foundries, Order No. 21,782 (August 14, 1995), we find that the contract provision preventing third parties from developing a generating facility on UNH's Durham campus for the purpose of protecting all customers of Northeast Utilities contains public policy implications that extend beyond the confines of NHPUC-116. For the circumstances contained in NHPUC-116, unlike Nashua Foundries and others, we find no viable offsetting mechanism such as the condemnation option under RSA 371:1 to remedy the anti-competitive aspect of Article 6 which we found in those special contracts. *See* Order No. 21,929 at 7. Moreover, *Article 19 — Effective Date and Term* binds UNH to PSNH for at least eight years without any early termination provision for UNH. In a more traditional regulatory period, these provisions may have been appropriate and perhaps necessary. However at the present time, we cannot make such evaluations without regard to the changes that are occurring in the electric utility industry and the effects these contract provisions may have on those changes.

Based upon our review of the filing, we find that although Special Contract No. NHPUC-116 would provide benefits to both PSNH and UNH, those benefits are insufficient to overcome our public interest concerns about the potentially anti-competitive effects of NHPUC-116 as contained in the Article 6 provision and the irrevocable eight year term. We find these inconsistent with the present move toward a more competitive electric utility industry and therefore will withhold our approval of this special contract.

Based upon the foregoing, it is hereby

ORDERED, that Public Service Company of New Hampshire's petition for approval of Special Contract No. NHPUC-116 is DENIED.

By order of the Public Utilities Commission of New Hampshire this fourth day of March, 1996.

Dissenting Opinion of
Commissioner Bruce B. Ellsworth

I would approve the contract.

[4] This contract is brought to us by two willing parties — a willing seller (PSNH), and a willing buyer (University of New Hampshire). As the majority notes, a letter attached to the filing by Bradford K. Perry, Vice Chancellor of Financial Affairs and Treasurer, University System of New Hampshire, states that KSC supports approval of NHPUC-116. I cannot find that this Commission should preempt the decision of two willing parties to this contract.

Page 157

Further, I cannot join the majority in finding that because there appears to be no viable offsetting mechanism such as the condemnation option under RSA 371:1, that this Commission has the authority to impose its judgement as to the best use of state-owned land. The evaluation of the best use of university land rests with the Board of Trustees. I would defer to their judgement for that evaluation in this docket and I cannot find that the absence of such an evaluation gives us authority to intercede with our own.

While I join my colleagues in their concerns about the anti-competitive effects of this contract, I am also concerned that our denial may risk the parties' withdrawal of the proposal based on their unwillingness to accept our stipulations. I find the benefits of the proposed contact to outweigh the consequences of the public policy issues.

I would approve the contract as filed.

Bruce B. Ellsworth
Commissioner

March 4, 1996

FOOTNOTES

[1]By letter of the Executive Director of the Commission, dated November 9, 1995, PSNH was directed to file supplemental information on the UNH special contract. Specifically, the Commission requested information on the land affected by NHPUC-116, including whether the land affected had generation potential. On November 22, 1995, PSNH filed a two-page summary of the information requested. PSNH stated that the University of New Hampshire, Durham campus, occupies approximately 1,000 acres spread over a complex mix of rural and town property. The campus does have generation — a 500 kW NORESCO generator operated under a lease with option by UNH to purchase in 1998. The entire output of the NORESCO generator is bought at prices fixed in 1985. PSNH by the nature of its filing and the material presented on November 22, 1995, has concluded that UNH has the land, thermal load and infrastructure to

install generation. PSNH notes that any generation installed by PSNH would have to meet the non-attainment air pollution standards contained in ENV-A-622.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 95-149, Order No. 21,782, 80 NH PUC 526, Aug. 14, 1995. [N.H.] Re Public Service Co. of New Hampshire, DR 95-171, DR 95-173, Order No. 21,791, 80 NH PUC 536, Aug. 22, 1995. [N.H.] Re Public Service Co. of New Hampshire, DR 95-149, Order No. 21,929, 80 NH PUC 770, Dec. 4, 1995.

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NH.PUC*03/04/96*[89050]*81 NH PUC 158*Retail Competition Pilot Program

[Go to End of 89050]

81 NH PUC 158

Re Retail Competition Pilot Program

Applicant: Connecticut Valley Electric Company

DR 95-250
Order No. 22,037

New Hampshire Public Utilities Commission

March 4, 1996

ORDER approving an electric utility's recommended plan for implementing a pilot program for competitive electric services. Under the plan, rates are to be unbundled and tariffs are to be filed for open-access retail transmission service, with a 10% rate reduction or credit provided as an incentive for customers to participate in the pilot. To avoid customer confusion, the utility is directed to rename its access charge as a stranded cost charge. Given the utility's small size, it is not required to form a separate power marketing affiliate before competing in the pilot.

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1. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric service — Pilot program for retail competition — Open-access transmission — Unbundling of rates — Rate reduction

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of 10% as incentive for participation. p. 161.

2. RATES, § 321

[N.H.] Electric rate design — Unbundling — Factors — Pilot program for retail competition

— Necessity of open-access transmission — Need for 10% rate credit as incentive for participation. p. 161.

3. RATES, § 140

[N.H.] Factors affecting reasonableness — Competition — Pilot program for retail competition — Electric services — Pilot components — Open-access transmission — Unbundling of rates — Rate credits for customer incentive. p. 161.

4. RATES, § 260

[N.H.] Surcharges — Purpose — Funding of incentive rate credits associated with pilot program for retail competition — Electric services — Credits available to program participants — Surcharges applicable to nonparticipants. p. 161.

5. DISCRIMINATION, § 96

[N.H.] Rates — Electric service — Pilot program for retail competition — Incentive rate credits available to program participants — Surcharges applicable to nonparticipants — Surcharges as funding rate credits. p. 161.

6. RATES, § 332

[N.H.] Electric rate design — Special charges — Stranded cost charge as replacing access charge — As component of pilot program for retail competition. p. 161.

7. SERVICE, § 320

[N.H.] Electric — Pilot program for retail competition — Program elements — Open-access transmission — Unbundling of rates — Rate credits for customer incentive. p. 161.

8. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric service — Pilot program for retail competition — No need for utility formation of separate power marketing affiliate — Factors — Small size of utility. p. 161.

APPEARANCES: Ken Picton, Esq. on behalf of Connecticut Valley Electric Company; James Rodier, Esq. on behalf of Freedom Energy Company; Daniel Allegretti, Esq. on behalf of Public Utilities Policies Institute; Gerald Eaton, Esq. on behalf of Public Service Company of New Hampshire; Susan Chamberlin, Esq. on behalf of Granite State Electric Company; Debra Barradale, for Enerdev; Penti Aalto, for Northeast Energy & Commerce Association; James Monihan for Cabletron Systems Inc.; Robert Backus, Esq. for the Campaign for Ratepayers' Rights; Michael Holmes, Esq. for the Office of the Consumer Advocate on behalf of residential ratepayers; Robert Frank, Esq. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. INTRODUCTION

On February 6, 1996, Connecticut Valley Electric Company (CVEC) and its parent corporation, Central Vermont Public Service Corporation (CVPS), submitted in the above

captioned proceeding a Recommendation for the purpose of resolving certain issues raised by CVEC relative to its participation in the Pilot.

Hearings were held February 20 and 21, 1996 at which CVEC presented testimony in support of its Recommendation. Testimony opposing the Recommendation was presented by Freedom Energy Company (Freedom).

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II. POSITIONS OF THE PARTIES AND STAFF

A. CVEC

The Recommendation states that it is intended solely as a nonprecedential resolution of certain issues raised in CVEC's comments on the Preliminary and Revised Guidelines relative to its participation in the Pilot. Specifically, the Recommendation claims not to create a precedent with respect to the appropriate level of stranded cost recovery or the Commission's jurisdiction over transmission and distribution services.

The key objectives stated in the Recommendation are to achieve a reasonable compromise that eliminates from the Pilot litigation of the issues of stranded costs and jurisdiction, and which results in expected potential bill reductions that provide meaningful incentives for customers to participate in the Pilot. CVEC believes that the unbundled rates and incentive credits set forth in Attachment 1 to the Recommendation accomplish those objectives.[1(16)]

The Recommendation states that, relative to the bundled tariff rates in effect for non-participating customers over the duration of the Pilot, the charges and credits shown in Attachment 1 will be adjusted to maintain the approximate 10% bill reduction (based on the assumed market prices utilized in Attachment 1) via the participation incentive credit. Under cross examination, the witness for CVEC agreed to adjust the participation incentive credit if the Commission requires Pilot customers to pay CVEC's C&LM surcharge. In the event the Commission concludes that the proposed 10% credit is inadequate to encourage participation, CVEC suggests that extra credit could be funded through a surcharge on non-participating customers.

In order to implement retail access, CVPS expresses the intent to file with the FERC and the Commission an amendment to its service agreement with CVPS under which retail transmission service will be made available to all Pilot customers, not just CVEC's. The CVPS retail transmission service will be provided directly to Pilot participants. The Recommendation states that CVEC will use its best efforts to make such filings on or before March 1, 1996. In addition to transmission and distribution charges, the unbundled rates set forth in Attachment 1 contain "access" charges. The stated purpose of those access charges is to recover costs that can not be recovered through market prices paid in the Pilot. CVEC unbundled rates assume a market price of 2.9 cents/kWh for all customer classes.

With respect to the issue of power marketing affiliates, CVEC's witness testified that although CVPS is considering marketing power in the Pilot it is not proposing to set up a separate company for that purpose.

Finally, CVEC asserts that unless expressly provided for in the Recommendation, the

Commission's Final Guidelines and Order shall control the implementation of the Pilot.

B. Freedom

Freedom's testimony paralleled its testimony during the hearing on the Joint Recommendation submitted by Granite State Electric Company (Granite State) and Staff. In summary, Freedom contends that the evidentiary record does not support the assertion that a 10% bill reduction will provide meaningful incentives for customers to participate in the Pilot. Based on Exhibits 11 and 12 in the Granite State case, Freedom alleged that only one-half of all customers selected for participation will actually enter into competitive supply arrangements.

Freedom also contends that the assumed market prices used to develop the unbundled rates do not provide potential retail competitors a reasonable opportunity to compete in the Pilot. It asserts that the wholesale market price of power delivered to the CVEC distribution system is 2.7 cents/kWh. According to Freedom, after adjustment for distribution losses, the cost of power delivered to the meter of a CVEC customer increases to 2.86 cents/kWh, which compares with the Recommendation's 2.9 cents/kWh. A margin of 0.04 cents/kWh, according to Freedom, is insufficient for affiliated or non-affiliated marketers to recover their non-power costs.

Further, Freedom believes that the proposed participation incentive credit will create confusion in the minds of customers. Freedom contends that the establishment of a 100% stranded cost charge sends the signal that utilities can expect to receive full recovery of their uneconomic costs. The payment of a participation incentive credit, according to Freedom, serves only to mask that fact.

With respect to the issue of transmission access, Freedom suggests that in the event CVPS declines to file voluntary, open-access retail transmission tariffs, the Commission should order CVEC to take receipt of power from competitive suppliers and then deliver it to Pilot customers.

Finally, Freedom repeated its Granite State testimony regarding the need for franchised utilities to establish power marketing affiliates for the purpose of competing in the Pilot.

III. COMMISSION ANALYSIS

Many of the issues and proposed solutions addressed in the CVEC Recommendation are similar, if not identical, to those dealt with in the Joint Recommendation submitted by Granite State and Staff. Indeed, CVEC's witness testified that the Recommendation benefitted significantly from the work of the signatories to that document. Accordingly, our findings in this case will closely follow our order conditionally approving the Granite State Joint Recommendation (Order No. 22,029).

[1-8] For the reasons set forth in Order No. 22,029, we question whether the proffered 10% rate reduction provides meaningful incentives for customers to participate in the Pilot. This concern, however, must be weighed against other factors which tend to support approval of the proposed rate reduction, such as CVEC's recent low earnings, its willingness to file open-access retail transmission tariffs, and its agreement to fund the proposed participation incentive credits. On balance, we find a 10% rate reduction a reasonable resolution of the issues and we will approve it for CVEC.

In Order 22,029 we concluded that the retail market prices paid by Pilot customers are likely to be higher than those used in the calculation of Granite State's unbundled rates. Despite the fact that CVEC's proposed market prices are generally higher than those utilized by Granite State, we will reserve final judgement on this issue until the completion of our inquiry into the Joint Recommendation submitted by PSNH and the Staff.

Also for the reasons given Order 22,029, we will require that CVEC's proposed "access charge" in its unbundled rates be designated as a "stranded cost charge."

We disagree with Freedom's assertion that a participation incentive credit on the bills of Pilot customers will serve only to confuse. On the contrary, we believe that the combination of a 100% stranded cost charge and a participation incentive credit is both informative and understandable. It is also consistent with CVEC's stated goal of not establishing any legal or policy precedent relative to the recovery of stranded costs.

As noted in the Final Guidelines, open access to the transmission system is a fundamental prerequisite to retail electric competition. We therefore commend CVEC for its willingness to set aside its legal and policy differences on this issue and for filing tariffs that provide all Pilot customers access to transmission services.

We will require CVEC to submit unbundled rates in the form detailed on pages 4-11 of Exhibit 1. We believe that this level of unbundling provides customers with detailed information about the services that they receive and also allows us to make comparisons with similar services provided by other New Hampshire utilities. We will also require CVEC to offer and charge Pilot customers for C&LM programs.

Finally, because of CVEC's small size and the potential benefits to be gained from approving different implementation plans, we will allow CVEC to compete in the Pilot without forming a power marketing affiliate provided that it first develop appropriate accounting and transfer pricing arrangements to insure costs and revenues are properly reported and all subsidies between regulated and unregulated activities are eliminated.

Based upon the foregoing, it is hereby

ORDERED, that CVEC's

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Recommendation is conditionally approved subject to a final determination of the appropriate assumed market prices for calculating stranded costs; and it is

FURTHER ORDERED, that the Commission will determine the appropriate assumed market prices to be used in such calculations following its consideration of PSNH's Joint Recommendation; and it is

FURTHER ORDERED, that any CVEC access charge shall be designated on the bills of participating customers as a "stranded cost charge"; and it is

FURTHER ORDERED, that CVEC's compliance filing shall contain the unbundled rates and rate structures, including C&LM surcharges, incorporated in Exhibit 1, pages 4-11, to the Recommendation and be updated to reflect the outcome of our inquiry into assumed market

prices; and it is

FURTHER ORDERED, that CVEC or its parent corporation, CVPS, may compete in the Pilot without first establishing a power marketing affiliate.

By order of the New Hampshire Public Utilities Commission this fourth day of March, 1996.

FOOTNOTES

[1]CVEC suggests replacing Attachment 1 to the filing with one of two documents contained in Exhibit CVEC-1, i.e, Attachment 1 — Alternate, which separately identifies the unbundled transmission, distribution and C&LM charges; or Attachment 1 — Replacement, which rebundles CVPS charges together with CVEC transmission and distribution charges to produce wires charge for each class.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Retail Competition Pilot Program, DR 95-250, Order No. 22,029, 81 NH PUC 120, Feb. 28, 1996.

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NH.PUC*03/04/96*[89051]*81 NH PUC 162*Connecticut Valley Electric Company, Inc.

[Go to End of 89051]

81 NH PUC 162

Re Connecticut Valley Electric Company, Inc.

DR 95-307
Order No. 22,038

New Hampshire Public Utilities Commission

March 4, 1996

ORDER adopting stipulation as to an electric utility's 1996 conservation and load management programs and budget. The utility is allowed to retain retrofit programs aimed at small commercial customers, but retrofit programs for industrial and large commercial customers are cut by 50% in conjunction with implementation of a direct billing plan.

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1. CONSERVATION, § 1

[N.H.] Conservation and load management programs — Electric utility — Stipulation — 1996 budget — Continuation of small commercial retrofit programs — Reductions in industrial and large commercial retrofit programs — Direct billing plans as a factor. p. 163.

2. ELECTRICITY, § 4

[N.H.] Operating practices — Conservation and load management programs — Stipulation — New annual budget — Continuation of small commercial retrofit programs — Reductions in industrial and large commercial retrofit programs — Direct billing options as a factor. p. 163.

APPEARANCES: Connecticut Valley Electric Company, Inc. by Kenneth C. Picton, Esq.; 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 November 3, 1995, Connecticut Valley Electric Company (CVEC) filed its 1996 Conservation and Load Management (C&LM) program with the Commission for effect January 1, 1996. At a duly noticed pre-hearing Conference on December 20, 1995, the Commission approved a procedural schedule extending beyond the January 1 effective date. CVEC informed the Commission it would continue billing its tariffed C&LM Percentage Adjustment (C&LMPA) rate until the Commission orders a revised C&LMPA rate.

There were no intervenors other than the Office of Consumer Advocate (OCA) which is a statutorily recognized intervenor. After a discovery period during which data requests and responses were filed, Commission Staff (Staff) filed testimony. While the OCA participated in discovery and was notified of all meetings and settlement discussions, it chose not to participate further. On February 5, 1996, Staff and CVEC participated in a settlement conference which resulted in a Stipulation resolving all issues. The Stipulation was filed with the Commission on February 14, 1996 and presented at a final hearing on February 15, 1996.

II. THE STIPULATION

[1, 2] The proposed C&LM program produced only four issues of disagreement between Staff and CVEC, which the Stipulation resolves. The issues are: (1) CVEC's reduced C&LM budget and kilowatt hour (kWh) savings goals; (2) elimination and modification of Commercial and Industrial (C&I) and Residential programs and budgets; (3) the level of C&LMPA rates; and (4) CVEC's C&I Direct Billing program.

CVEC and Staff agreed that the proposed 1996 C&LM budget of $104,355 is appropriate and acceptable with several revisions. Specifically, CVEC agrees to extend a 1995 offer of $75,000 in incentives and administrative costs to a particular industrial customer provided that the customer agrees to have the measures installed in 1996. CVEC also agrees to increase its proposed 1996 expenditures for Residential New Construction, Point of Sale, and Market Driven programs. The result of the agreed upon revisions is to raise the budgeted expenditures to $268,761.

Staff and CVEC agreed that the proposed 1996 C&LM annual energy savings goal, as

revised in settlement discussions, is appropriate and acceptable. The revisions include: adjustments reflecting the results of monitoring and evaluation studies conducted by CVEC's parent corporation; retention of the Small Commercial Retrofit program as a component of the Market Driven program; including the savings projected for the $75,000 incentives offer eliminating the Farms program, Market-Driven Motors program and Industrial New Construction program; a 50% reduction in projected savings in the Industrial Retrofit and Large Commercial Retrofit due to implementation of the Direct Billing program; and, finally, a more realistic estimate of the projected savings for the Small Commercial New Construction program. The aggregated effect of these revisions is to raise projected annual energy savings to 1,019,055 kWh.

CVEC and Staff agreed that the C&LMPA rate resulting from the above-discussed adjustments and other adjustments in the Point of Sale Lighting, the Residential New Construction, and the Small Commercial Retrofit programs, is 1.19% for residential, a decrease of 0.8% from 1995, and negative 1.46% for C&I, a decrease of 4.2% from 1995.

In the last issue of disagreement, the Direct Billing Program, Staff and CVEC agreed that the program would continue, tracked according to project-specific labor hours in order to ensure labor cost recovery. Staff and CVEC agreed that project-specific costs will not be recovered prospectively but will instead be allocated to Administrative costs until the project is undertaken and documented. Further, Staff and CVEC agreed that Direct Bill contracts are not special contracts within the meaning of RSA 378:18 and do not require specific approval by the Commission. CVEC agreed to notify the Staff of every Direct Bill contract entered with a customer.

Finally, there was an issue raised at the

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hearing concerning whether the proposed charges should take effect on a bills rendered or meters read basis. We believe it is appropriate for these charges to take effect in all bills rendered after March 1, 1996.

III. COMMISSION ANALYSIS

After careful review of the Settlement Agreement, testimony and exhibits, we find that the CVEC C&LM programs proposed, as modified by the Stipulation, are reasonable and in the public good. The filing is consistent with the requirements and standards of RSA 378:38 *et seq.*

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 the C&LMPA rate is effective as of bills rendered after March 1, 1996.

By order of the Public Utilities Commission of New Hampshire this fourth day of March, 1996.

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[Go to End of 89052]

81 NH PUC 164

Re One Call Communications, Inc., dba Opticom

DR 96-036
Order No. 22,039

New Hampshire Public Utilities Commission

March 4, 1996

ORDER authorizing an interexchange telephone carrier to offer new inbound and outbound 800 services for "hospitality" customers (such as hotels and motels) that have significant monthly long-distance usage.

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1. RATES, § 585

[N.H.] Telephone rate design — Toll service — Hotel and motel customers — New inbound and outbound 800 service rates — Minimum monthly usage as a factor — Interexchange telephone carrier. p. 164.

2. DISCRIMINATION, § 167

[N.H.] Rates — Telephone toll service — Hotel and motel customers — Special inbound and outbound 800 service rates — Minimum monthly usage as a factor — Interexchange telephone carrier. p. 164.

BY THE COMMISSION:

ORDER

[1, 2] On February 3, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from One Call Communications, Inc. d/b/a Opticom (Opticom) requesting authority to introduce Privileged, Target 800 and Ultra 800 for effect March 7, 1996.

Privileged is an outbound toll service for Hospitality customers such as hotels, motels and condominiums whose average monthly long distance usage exceeds $7500. The proposed rate for this service is $.10 per minute during all time periods.

Target 800 is an inbound 800 service for Hospitality customers such as hotels, motels and condominiums. There is a monthly minimum billing of $5.00 and the proposed rate is $.12 per minute.

Ultra 800 is an inbound 800 service designed for business subscribers. There is a monthly

minimum billing of $5.00 and the proposed rate is $.155 per minute. Each of the proposed services are billed in one minute increments with a one minute minimum.

We find the proposed changes to be in the public good. New services expand the choice of telephone services and foster competition in the New Hampshire intrastate toll market which allow the Commission to analyze the effects of such competition. Therefore, the Commission

Page 164

will authorize the introduction of Privileged, Target 800 and Ultra 800.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of Opticom's tariff, NHPUC No. 1 are approved for effect as filed:

8th Revised Page 2

5th Revised Page 2.1

7th Revised Page 2.2

1st Revised Page 50.1

2nd Revised Page 57

3rd Revised Page 58

3rd Revised Page 59

5th Revised Page 60

3rd Revised Page 61

1st Revised Page 62

Original Page 63;

and it is

FURTHER ORDERED, that Opticom file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this fourth day of March, 1996.

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NH.PUC*03/04/96*[89053]*81 NH PUC 165*MCI Telecommunications Corporation of New Hampshire

[Go to End of 89053]

81 NH PUC 165

Re MCI Telecommunications Corporation of New Hampshire

DR 96-038
Order No. 22,040

New Hampshire Public Utilities Commission

March 4, 1996

ORDER approving an interexchange telephone carrier's various proposed tariff changes, including elimination of the "Friends and Family" discount applicable to operator-assisted collect calls, introduction of intrastate toll rates for calls made from coin or pay telephones, and clarification of operator assistance charges for Vnet and MCI Vision services.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll services — "Friends and Family" calling circle plans — Elimination of certain discounts — As to operator-assisted collect calls — Other tariff changes and clarifications — Interexchange carrier. p. 165.

2. RATES, § 565

[N.H.] Telephone rate design — Coin or pay telephones — Toll services — New intrastate toll rates — Interexchange carrier. p. 165.

BY THE COMMISSION:

ORDER

[1, 2] On February 5, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from MCI Communications Corporation of New Hampshire (MCI) requesting authority to make various revisions to its tariff for effect March 5, 1996. The following revisions are proposed in this filing:

The Friends & Family discount for operator assisted collect calls to the subscriber by another Friends & Family member is being eliminated.

The Text Telephone Discount will include operator assisted Option A (Execunet) calls.

Intrastate toll rates for coin calls from payphones are being introduced.

Language is being added to clarify operator service charges for Vnet Service and MCI Vision Service.

Minor revisions are being made to the Prepaid debit card section to allow cards to be sold in both dollar and unit denominations. In addition, the number of inactivated

cards in a batch for which a customer may receive reimbursement is being reduced from 100 to 25.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize MCI to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of MCI's tariff, NHPUC No. 1 are approved for effect as filed:

44th Revised Page 1

24th Revised Page 2

24th Revised Page 3

31st Revised Page 3.1

6th Revised Page 25.2

2nd Revised Page 25.4

1st Revised Page 25.5

3rd Revised Page 26

1st Revised Page 26.3

9th Revised Page 39

4th Revised Page 55

6th Revised Page 59.8;

and it is

FURTHER ORDERED, that MCI file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this fourth day of March, 1996.

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NH.PUC*03/04/96*[89054]*81 NH PUC 166*Integrated Water Systems, Inc.

[Go to End of 89054]

81 NH PUC 166

Re Integrated Water Systems, Inc.

DR 94-094
Order No. 22,041

New Hampshire Public Utilities Commission

March 4, 1996

APPLICATION by water utility for authority to increase rates by an additional $47,007 (23.9%) over that granted in Order No. 21,547 (80 NH PUC 95); granted as modified, pursuant to stipulation, in the amount of $27,652 (13.99%). The increase is seen as justified for the transition from flat rates to metered rates. The newly adopted metered rates provide for a monthly customer charge of $13 and usage charges of $3.73 per thousand gallons.

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1. RATES, § 604

[N.H.] Water rate design — Factors affecting need for additional increase — Transition from flat to metered rates — Monthly customer charge of $13 — Consumption charge of $3.73 per thousand gallons. p. 167.

2. RATES, § 260

[N.H.] Surcharges — As part of water rate design — For period of transition from flat to metered rates — Monthly customer surcharge of 67 cents — To cover legal and accounting costs associated with metering. p. 167.

3. EXPENSES, § 144

[N.H.] Water utility — Transition from flat to metered rates — Associated legal and accounting costs — Recovery via surcharge. p. 167.

BY THE COMMISSION:

Page 166

ORDER

On December 4, 1995, Integrated Water Systems, Inc. (Integrated or the Company) filed for an adjustment to its water rates pursuant to a Stipulation Agreement (the Agreement) approved by the New Hampshire Public Utilities Commission (the Commission) in Order No. 21,547 issued February 22, 1995. The Agreement was entered into by Integrated, the Commission Staff (Staff), Locke Lake Colony Association (the Association), and the Office of Consumer Advocate (OCA). This filing requests additional revenue of $47,007, or an increase of 23.9% over the revenue requirement approved by the Commission in Order No. 21,547. The Company also requested a new metered water rate comprised of a fixed charge of $20 per month plus a consumption charge of $0.0029 per gallon ($2.175 per hundred cubic feet).

The Agreement provided for a step adjustment to the water rates of Integrated once the installation of water meters was complete at each customer location in the franchise area at Locke Lake. Costs identified for recovery in the step adjustment were summarized as follows: 1) the capital costs of the meters; 2) pump testing of the Company's existing wells; 3) any portion of the $16,212 cost of a Hydrosource study found to benefit the Company's ratepayers through procurement of additional supply; 4) one year's depreciation expense of the meters; 5)

consideration of other direct operating expenses in connection with the meters; 6) one-half year accumulated depreciation of the meters; and 7) an adjustment to the Company's cost of debt for a scheduled interest rate change in June of 1995 and for any debt incurred with respect to the metering project.

On February 6, 1996 Staff witnesses Mark A. Naylor and Jane A. Emerson filed testimony with respect to the Company's proposed step adjustment. On February 7th, Staff witness James L. Lenihan filed testimony with respect to implementing a metered rate. On February 16th, Staff, the Company, and the Association met to discuss the Staff testimony, and to exchange additional information with respect to Integrated's request. As a result, on March 1, 1996 the Commission received a memorandum from Assistant Finance Director Naylor which indicated that the Staff and parties had reached an agreement on outstanding issues resulting from the differences between the Company's filing and Staff testimony. Staff now recommends additional revenues of $27,652, or an increase of 13.99% over the revenue requirement approved in Order No. 21,547. Total additions to rate base are $136,873, consisting of costs for meters of $115,772, pump testing of $18,515, billing software of $2,000, and working capital of $586. Removing one-half year of accumulated depreciation on the meters of $2,894, and using the recommended rate of return of Staff witness Emerson of 10.39%, the Company will realize $13,926 in return on these rate base additions. In addition, expenses of $4,752 are provided for meter reading and meter maintenance and $7,000 for depreciation expense. Also included in the step adjustment is $1,974 in additional revenue resulting from the application of an updated cost of capital. The increase of 0.64% in the total cost of capital results from the agreement of the parties on the interpretation of item (g) of paragraph 4 of the Agreement (item #7 above), including the agreement to use the cost of capital and capital structure updated for the changes to the amount outstanding and the cost of the Mortgage Debt.

[1-3] The Staff and parties have also thoroughly reviewed the impact of Integrated's proposed metered rate, and have agreed on a rate which includes a fixed monthly customer charge of $13 plus $3.73 per thousand gallons of consumption ($2.80 per hundred cubic feet). The reduction in the monthly customer charge from that originally proposed by the Company is to protect those year-round customers at Locke Lake from assuming a disproportionate burden of the Company's revenues.

Finally, the Staff and parties have agreed to a recovery of those direct legal and accounting expenses associated with this step adjustment filing by a surcharge to customers over an 18 month period. The total costs of $7,377.46 result in a monthly surcharge of $0.67 to the Company's ratepayers.

We find the resolution to this step adjustment filing as presented by the Staff and parties,

Page 167

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and as outlined herein, to be a reasonable one, and we will approve it. We find that the aforementioned costs have been prudently incurred and that the plant additions proposed to be included in customer rates are used and useful. We find that the metered rate as outlined effectively strikes a reasonable balance between year-round and seasonal customers. We also find reasonable in this specific instance the resolution of the interpretation of the ambiguous

wording regarding the interest rate adjustment. We also approve of the recovery of the Company's direct expenses associated with the filing of this step adjustment as noted above through a surcharge to customers over an 18-month period.

Based upon the foregoing, it is hereby

ORDERED, that Integrated Water Services, Inc. is hereby authorized to increase its revenue requirement by $27,652, by the implementation of a monthly customer charge of $13.00 and a monthly consumption charge of $3.73 per thousand gallons ($2.80 per hundred cubic feet), effective with the date of this Order; and it is

FURTHER ORDERED, that Integrated is authorized to recover, over 18 months, its direct legal and accounting expenses for this step adjustment in a monthly surcharge of $0.67 to its 614 customers; and it is

FURTHER ORDERED, that Integrated file revised tariff pages reflecting its new rates within ten days of the date of this Order.

By order of the Public Utilities Commission of New Hampshire this fourth day of March, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Integrated Water Systems, Inc., DR 94-094, Order No. 21,547, 80 NH PUC 95, Feb. 22, 1995.

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NH.PUC*03/05/96*[89055]*81 NH PUC 168*LDM Systems, Inc.

[Go to End of 89055]

81 NH PUC 168

Re LDM Systems, Inc.

DE 95-314
Order No. 22,042

New Hampshire Public Utilities Commission

March 5, 1996

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

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1. CERTIFICATES, § 123

[N.H.] Telephone carrier — Intrastate intraLATA long-distance services — Interim authority

— Assessment of competitive impacts — Exclusion of local exchange services. p. 168.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate intraLATA toll services — Interim authority — Assessment of competitive impacts — Exclusion of local exchange services. p. 168.

BY THE COMMISSION:

ORDER

[1, 2] On November 8, 1995, LDM Systems, Inc. (LDM), a New York corporation, petitioned the New Hampshire Public Utilities Commission (Commission) for authority to do business as a telecommunications public utility in the State of New Hampshire (petition) pursuant to, *inter alia*, RSA 374:22 and RSA 374:26. LDM has demonstrated the financial, managerial and technical ability to offer service as conditioned by this order. The Commission previously approved numerous, similar petitions filed during the Trial Period, pursuant to the Modified Stipulation Agreement (Stipulation) in Docket No. DE 90-002, approved by Order No. 20,916 (August 2, 1993). Our orders in those

numerous dockets granted the petitioner(s) interim authority to offer intraLATA toll service, specifically excluding local exchange service, for the service territory of the entire State of New Hampshire, during the Trial Period, in order to allow the Commission to analyze competition during the two-year Trial Period.

Because the Trial Period identified by the Stipulation expired on September 30, 1995, we have explicitly clarified that the authority we had granted remains in effect until we specifically modify or revoke that authority, after analysis of the Trial Period. *See* Order No. 21,851 (October 3, 1995). Likewise, our grant of authority ordered herein remains in effect until we specifically modify or revoke that authority.

The public good is served by permitting such competition by telecommunications companies. The Commission permits competitive entry in order to foster competition in the New Hampshire intrastate toll market and to allow the Commission to analyze the effects of such competition.

The public should be provided an opportunity to respond in support of, or in opposition to this petition.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that LDM is granted interim authority to offer as a telecommunications public utility intraLATA toll service, specifically excluding local exchange service, for the service territory of the entire State of New Hampshire, subject to the following conditions:

1. The services shall be offered by approved tariffs.

2. The services shall be offered until the Commission orders otherwise.

3. LDM shall file tariffs for new services and changes in approved services (other than rate

changes), with effective dates of no less than 30 days after the date the tariffs are filed with the Commission.

4. Within one business day of offering an approved service to the public at a rate different from its rates on file with the Commission, LDM shall notify the Commission of the change.

5. LDM is exempted from NH Admin. Rules, Puc 406.03 Accounting Records; Puc 407 Forms Required of All Telephone Utilities; and Puc 409 Uniform System of Accounts for Telecommunications Companies.

6. LDM shall maintain its book and records in accordance with Generally Accepted Accounting Principles.

7. LDM 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. LDM 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. LDM shall compensate the appropriate Local Exchange Company for all originating and terminating access used by LDM pursuant to NET Tariff N.H.P.U.C. 79, Switched Access Service Rate or its successors or its relevant equivalent contained in the tariffs of the Independent Local Exchange Companies.

10. New Service offerings filed for approval with the Commission shall be accompanied by tariff pages describing the service, rates and effective dates; and it is

FURTHER ORDERED, that the authority granted herein remains in full force and effect until the Commission orders otherwise; and it is

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

FURTHER ORDERED, that LDM 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 March 12, 1996, and an affidavit proving publication shall be filed with the Commission on or before March 19, 1996; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, et seq., LDM shall pay all

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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 March 26, 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 April 2, 1996; and it is

FURTHER ORDERED, this Order *Nisi* shall be effective April 4, 1996, unless the Commission provides otherwise in a supplemental order issued prior to the effective date and it is

FURTHER ORDERED, that LDM shall file a compliance tariff with the Commission on or before April 4, 1996, in accordance with NH Admin. Rules, Puc 1601.01 (b).

By order of the Public Utilities Commission of New Hampshire this fifth day of March, 1996.

Notice of Conditional Approval of
LDM SYSTEMS, INC.

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

On November 8, 1995, LDM Systems, Inc. (LDM), a New York corporation, filed with the New Hampshire Public Utilities Commission (Commission) a petition to do business as a telecommunications public utility in the State of New Hampshire, specifically to provide intrastate long distance telecommunications services.

In Order No. 22,042, issued in Docket No. DE 95-314, the Commission granted LDM conditional approval to operate as of April 4, 1996, subject to the right of the public and interested parties to comment on LDM 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 LDM's petition to do business in the State must be submitted in writing no later than March 26, 1996, and reply comments no later than April 2, 1996, to:

Dr. Sarah P. Voll
Executive Director and Secretary
Public Utilities Commission
8 Old Suncook Road
Concord, New Hampshire 03301-7319

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Generic Investigation into IntraLATA Toll Competition Access Rates, DE 90-002, Order No. 20,916, 78 NH PUC 365, Aug. 2, 1993. [N.H.] Re Long Distance North of New Hampshire, Inc., et al., DE 87-249, Order No. 21,851, 80 NH PUC 628, Oct. 3, 1995.

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NH.PUC*03/05/96*[89056]*81 NH PUC 170*EnergyNorth Natural Gas, Inc.

[Go to End of 89056]

81 NH PUC 170

Re EnergyNorth Natural Gas, Inc.

DR 96-049
Order No. 22,043

New Hampshire Public Utilities Commission

March 5, 1996

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

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proceeding — Gas local distribution company. p. 171.

BY THE COMMISSION:

ORDER

[1] On February 15, 1996, 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 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 enacted.

Based on 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 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 fifth day of March, 1996.

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NH.PUC*03/05/96*[89057]*81 NH PUC 171*Federal TransTel, Inc.

[Go to End of 89057]

81 NH PUC 171

Re Federal TransTel, Inc.

DE 95-291
Order No. 22,044

New Hampshire Public Utilities Commission

March 5, 1996

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

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1. CERTIFICATES, § 123

[N.H.] Telephone carrier — Intrastate intraLATA long-distance services — Interim authority — Assessment of competitive impacts — Exclusion of local exchange services. p. 172.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate intraLATA toll services — Interim authority — Assessment of competitive impacts — Exclusion of local exchange services. p. 172.

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BY THE COMMISSION:

ORDER

[1, 2] On October 20, 1995, Federal TransTel, Inc. (FTI), a Georgia corporation, petitioned the New Hampshire Public Utilities Commission (Commission) for authority to do business as a telecommunications public utility in the State of New Hampshire (petition) pursuant to, *inter alia*, RSA 374:22 and RSA 374:26. FTI has demonstrated the financial, managerial and technical ability to offer service as conditioned by this order. The Commission previously approved numerous, similar petitions filed during the Trial Period, pursuant to the Modified Stipulation Agreement (Stipulation) in Docket No. DE 90-002, approved by Order No. 20,916 (August 2, 1993). Our orders in those numerous dockets granted the petitioner(s) interim authority to offer intraLATA toll service, specifically excluding local exchange service, for the service territory of the entire State of New Hampshire, during the Trial Period, in order to allow the Commission to analyze competition during the two-year Trial Period.

Because the Trial Period identified by the Stipulation expired on September 30, 1995, we have explicitly clarified that the authority we had granted remains in effect until we specifically modify or revoke that authority, after analysis of the Trial Period. *See* Order No. 21,851 (October 3, 1995). Likewise, our grant of authority ordered herein remains in effect until we specifically modify or revoke that authority.

The public good is served by permitting such competition by telecommunications companies. The Commission permits competitive entry in order to foster competition in the New Hampshire intrastate toll market and to allow the Commission to analyze the effects of such competition.

The public should be provided an opportunity to respond in support of, or in opposition to this petition.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that FTI is granted interim authority to offer as a telecommunications public utility intraLATA toll service, specifically excluding local exchange service, for the service territory of the entire State of New Hampshire, subject to the following conditions:

1. The services shall be offered by approved tariffs.

2. The services shall be offered until the Commission orders otherwise.

3. FTI shall file tariffs for new services and changes in approved services (other than rate changes), with effective dates of no less than 30 days after the date the tariffs are filed with the Commission.

4. Within one business day of offering an approved service to the public at a rate different from its rates on file with the Commission, FTI shall notify the Commission of the change.

5. FTI is exempted from NH Admin. Rules, Puc 406.03 Accounting Records; Puc 407 Forms Required of All Telephone Utilities; and Puc 409 Uniform System of Accounts for Telecommunications Companies.

6. FTI shall maintain its book and records in accordance with Generally Accepted

Accounting Principles.

7. FTI 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. FTI 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. FTI shall compensate the appropriate Local Exchange Company for all originating and terminating access used by FTI pursuant to NET Tariff N.H.P.U.C. 79, Switched Access Service Rate or its successors or its relevant equivalent contained in the tariffs of the Independent Local Exchange Companies.

10. New Service offerings filed for approval with the Commission shall be accompanied by tariff pages describing the service, rates and effective dates; and it is

FURTHER ORDERED, that the authority

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granted herein remains in full force and effect until the Commission orders otherwise; and it is

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

FURTHER ORDERED, that FTI 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 March 12, 1996, and an affidavit proving publication shall be filed with the Commission on or before March 19, 1996; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, et seq. FTI 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 March 26, 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 April 2, 1996; and it is

FURTHER ORDERED, this Order *Nisi* shall be effective April 4, 1996, unless the Commission provides otherwise in a supplemental order issued prior to the effective date and it is

FURTHER ORDERED, that FTI shall file a compliance tariff with the Commission on or before April 4, 1996, in accordance with NH Admin. Rules, Puc 1601.01 (b).

By order of the Public Utilities Commission of New Hampshire this fifth day of March, 1996.

Notice of Conditional Approval of
FEDERAL TRANSTEL, INC.

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

On October 20, 1995, Federal TransTel, Inc. (FTI), a Georgia corporation, filed with the New Hampshire Public Utilities Commission (Commission) a petition to do business as a telecommunications public utility in the State of New Hampshire, specifically to provide intrastate long distance telecommunications services.

In Order No. 22,044, issued in Docket No. DE 95-291, the Commission granted FTI conditional approval to operate as of April 4, 1996, subject to the right of the public and interested parties to comment on FTI 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 FTI's petition to do business in the State must be submitted in writing no later than March 26, 1996, and reply comments no later than April 2, 1996, to:

Dr. Sarah P. Voll
Executive Director and Secretary
Public Utilities Commission
8 Old Suncook Road
Concord, New Hampshire 03301-7319

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Generic Investigation into IntraLATA Toll Competition Access Rates, DE 90-002, Order No. 20,916, 78 NH PUC 365, Aug. 2, 1993. [N.H.] Re Long Distance North of New Hampshire, Inc., et al., DE 87-249, Order No. 21,851, 80 NH PUC 628, Oct. 3, 1995.

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NH.PUC*03/11/96*[89058]*81 NH PUC 174*Public Service Company of New Hampshire

[Go to End of 89058]

81 NH PUC 174

Re Public Service Company of New Hampshire

DR 96-077
Order No. 22,045

New Hampshire Public Utilities Commission

March 11, 1996

ORDER somewhat narrowing the scope of an electric utility's fuel and purchased power adjustment clause proceeding. Although the commission agrees to defer consideration of a recent extended refueling outage at the Maine Yankee power plant and a malfunctioning reactor trip at the Seabrook station, the commission refuses to again defer review of 1991 outages caused by mussel fouling at the Millstone nuclear station in Connecticut, even though Connecticut is in the midst of its own investigation into the matter.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 12

[N.H.] Direct energy costs — Fuel and purchased power adjustment clause — Scope of proceeding — Nuclear generating costs as significant issue — Impact of extended, unplanned outages — Millstone 3 power plant — Deferral of issue no longer appropriate — Location of plant out-of-state notwithstanding — Electric utility. p. 175.

2. ELECTRICITY, § 4

[N.H.] Generating plant — Operating practices — Nuclear station outages — At Millstone 3 unit — Consideration within fuel and purchased power adjustment clause proceeding — Deferral of other nuclear plant-related issues — As to Maine Yankee and Seabrook stations. p. 175.

3. COMMISSIONS, § 26

[N.H.] Conflicts of jurisdiction — Proceedings pending before other agencies — Review of nuclear plant operations and outages — Jurisdictional utility with ownership interest in out-of-state plant — General deferral to host jurisdiction where outage actually occurred. p. 175.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On February 21, 1996 Public Service Company of New Hampshire (PSNH) filed a Motion to Amend the Scope (Motion) of issues to be addressed in its next Fuel and Purchased Power Adjustment Clause (FPPAC) proceeding. On February 23, 1996 the Office of the Consumer Advocate (OCA) filed an objection to the motion, and on March 4, 1996 the Commission Staff filed an objection to the Motion.

II. POSITIONS OF THE PARTIES AND STAFF

A. *Public Service Company of New Hampshire*

In its Motion PSNH requests that the Commission investigation into the prudence of the following events be deferred to some other time: (A) a 1991 outage at Millstone Unit 3 related to mussel-fouling of the heat exchangers; (B) a 1991 outage at Millstone 3 for repairs to the service water system discovered during the mussel fouling outage; (C) the extension of the recent refueling outage at Maine Yankee; (D) consideration of the issues relative to the sharing

agreement raised in Mr. Cannata's direct testimony in the previous FPPAC filing (DR 95-220); (E) the reactor trip which occurred at Seabrook Station on January 27, 1996 caused by a malfunction in the Electro-hydraulic Control System.

In support of its request to defer Commission consideration of events (A) and (B), PSNH asserts that these issues are currently the subject

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of a prudence investigation being conducted by the Connecticut Department of Public Utility Control (DPUC). Based on Commission practice and previous decisions deferring to investigations in the host jurisdiction, PSNH requests that the Commission defer its investigation until such time as Connecticut concludes its investigation. PSNH further asserts that it has not prepared testimony or developed a case relative to event (B) thereby further warranting deferral of this issue.

In support of deferring the Commission's investigation into event (C), PSNH asserts that Maine Yankee went back on line on January 16, 1996 at reduced power and still has not received approval from the Nuclear Regulatory Commission (NRC) to operate at full power. The outage duration and repairs were extensive and the preparation of required documentation will take some time. Further, the Maine Public Utilities Commission (MPUC) may conduct its own investigation into this outage.

In support of deferral of item (D), PSNH points to the unavailability of Mr. McCluskey of the Commission Staff because of his extensive involvement in the "pilot program" in electric service competition.

In support of deferral of event (E), PSNH asserts that the event occurred on January 27, 1996 and its cause is still under internal investigation.

B. *Office of the Consumer Advocate*

The OCA objected to a deferral of events (A) and (B) because the Commission indicated in DR 95-220 that it would address the Millstone 3 outage in this FPPAC period. Order No. 21,849. The OCA further contends that there is no guarantee that the DPUC will move forward on these issues as they have yet to act, all of which to the detriment of its clients.

With regard to event (C) the OCA requested that the Commission move forward at this time or in the alternative require PSNH to bear the replacement power costs incurred because of the event until the Company can establish the prudence of the event.

OCA conceded that items (D) and (E) must be deferred at this time.

C. *Commission Staff*

Staff objected to the deferral of events (A) and (B). Staff based its objection on the Commission's indication that it would address this event in this FPPAC proceeding in DR 95-220. Staff further argued that the Commission's policy to defer to the host jurisdiction should not be used as a justification to extend the review of outages indefinitely. Alternatively Staff contends the Commission should balance the expense of duplication of effort against the harm of stale information and the benefit of moving forward to this jurisdiction.

Staff did not object to the deferral of items (C), (D) and (E).

III. COMMISSION ANALYSIS

[1-3] With regard to the two events at Millstone 3 in 1991 we agree with the OCA and Staff that our investigation into the prudence of those outages cannot be deferred any longer. While it is our general practice to defer to the host jurisdiction to conduct the initial prudence investigation into unplanned outages, we believe this principle of comity must be balanced against the harm of indefinitely delaying our review of an outage.

As noted by Staff it has been over four years since these outages occurred and there is a danger in delaying our investigation any longer. That danger includes stale data, the possibility of witnesses no longer being available, and the probability of diminished recollection of events by witnesses. We are also cognizant of the OCA's concern that ratepayers are in effect financing the Company's deferral of this issue, and the fact that the DPUC has already had an opportunity to adjudicate the issue.

Thus, we conclude that we should investigate the prudence of these outages in the next FPPAC filing.

With regard to event at Maine Yankee, because Maine Yankee only returned to service on January 16, 1996, the NRC has not yet allowed it to operate at full power, and the MPUC has not had an opportunity to investigate the prudence of the outage we will defer consideration of this issue at this time.

Given that neither the OCA nor Staff object to the deferral of consideration of the sharing agreement issues raised by Mr. Cannata or the January 27, 1996 reactor trip at Seabrook, and because the requests appear reasonable we will defer consideration of these issues at this time.

Based upon the foregoing, it is hereby

ORDERED, that Public Service Company of New Hampshire's request to defer consideration of the two events at Millstone 3 in 1991 are denied; and it is

FURTHER ORDERED, Public Service Company of New Hampshire's request to defer consideration of the Maine Yankee outage, the sharing agreement issues and the recent Seabrook reactor trip are granted.

By order of the Public Utilities Commission of New Hampshire this eleventh day of March, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 95-220, Order No. 21,849, 80 NH PUC 617, Oct. 3, 1995.

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[Go to End of 89059]

81 NH PUC 176

Re Connecticut Valley Electric Company, Inc.

DR 94-315
Order No. 22,046

New Hampshire Public Utilities Commission

March 11, 1996

ORDER granting protective treatment to a status report and associated draft memorandum of understanding as between an electric utility and a Canadian hydropower facility, in the course of the utility's integrated least-cost planning proceeding.

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1. PROCEDURE, § 16

[N.H.] Discovery and inspection — Confidentiality — Of status report and draft memorandum of understanding — As to Canadian hydropower purchase transactions — In context of integrated least-cost planning proceeding — Disclosure as jeopardizing ongoing negotiations — Electric utility. p. 177.

BY THE COMMISSION:

ORDER

On March 4, 1996, the Connecticut Valley Electric Company, Inc. (CVEC) filed with the New Hampshire Public Utilities Commission (Commission) a status report (Status Report) updating the earlier filed "Central Vermont Public Service Corporation Confidential Status Report on Current Hydro-Quebec Negotiations" and a draft Memorandum of Understanding (MOU). Concurrent with filing the Status Report, CVEC filed a Motion for Confidential Treatment of both the Status Report and the MOU. CVEC's motion states that CVEC made a good faith attempt to obtain the concurrence of the parties in this docket but was not able to reach the Commission Staff (Staff). The Office of the Consumer Advocate (OCA) indicated that it would take no position on the motion.

In its motion CVEC argues that the Status Report and the MOU should be afforded protective treatment because, using our analysis in *Re NET*, Order No. 21,731, 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, CVEC states that it provided the documents required in Puc 204.08(b)(1) and cited the statutory support required by Puc 204.08(b)(2). CVEC states that the Information consists of confidential financial

information which is not general public knowledge and for which measures have been taken to prevent dissemination, thus meeting the requirements of Puc 204.08(b)(4). CVEC

Page 176

further provides facts describing the benefits of non-disclosure, thus meeting the requirements of Puc 204.08(b)(3).

[1] CVEC has alleged that disclosure of the Status Report and/or the MOU would result in harm to both itself and its customers. Disclosure of either document would jeopardize current and nearly completed negotiations which, if successful will reduce power supply costs. Hence, disclosure could result in higher power supply costs to CVEC and higher costs for CVEC's customers.

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 to CVEC of non-disclosure appear to outweigh the benefits to the public 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 CVEC's Motion for Confidential Treatment of the Status Report and the MOU is GRANTED; and it is

FURTHER ORDERED, that this order is subject to reconsideration in the event that the Commission Staff or any party raises concerns and it is subject to the on-going right 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 eleventh day of March, 1996.

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*03/11/96*[89060]*81 NH PUC 177*LCI Telemanagement Corporation

[Go to End of 89060]

81 NH PUC 177

Re LCI Telemanagement Corporation

DR 96-051
Order No. 22,047

New Hampshire Public Utilities Commission

March 11, 1996

ORDER authorizing an interexchange telephone carrier to introduce a new billing option for small business customers with toll charges of less than $100 a month. The new option, applicable to inbound 800, outbound toll, and credit card calling, would allow the customer to be billed through its local exchange carrier, subject to a $5 monthly fee and a 25-cent surcharge on credit card calls.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Small business customers — Toll, 800, and credit card services — New billing options — Billings through local exchange carrier — Monthly recurring charge — Surcharge on credit card calls — Interexchange telephone carrier. p. 177.

BY THE COMMISSION:

ORDER

[1] On February 16, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from LCI Telemanagement Corporation (LCT) requesting authority to introduce a Small Business Local Exchange Carrier (LEC) Billed Product for effect March 18, 1996.

The Small Business LEC Billed Product is designed for small business customers whose long distance telephone bills are less than $100

Page 177

per month and who desire to have their long distance billed through the LEC. The product offers outbound toll, inbound 800 and credit card usage for $.19 per minute. There is a $5.00 monthly recurring fee and a 25 cent surcharge for credit card calls.

We find the proposed changes to be in the public good. New services expand the choice of telephone services and foster competition in the New Hampshire intrastate toll market which allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize the introduction of the Small Business LEC Billed Product. Based upon the foregoing, it is hereby

ORDERED, that the following pages of LCT's tariff, NHPUC No. 1 are approved for effect as filed:

3rd Revised Check Sheet Page 1

3rd Revised Contents Page 2

Original Page 35;

and it is

FURTHER ORDERED, that LCT file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this eleventh day of March, 1996.

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NH.PUC*03/11/96*[89061]*81 NH PUC 178*LCI International Telecom Corporation

[Go to End of 89061]

81 NH PUC 178

Re LCI International Telecom Corporation

DR 96-037
Order No. 22,048

New Hampshire Public Utilities Commission

March 11, 1996

ORDER authorizing an interexchange telephone carrier to implement certain tariff changes, under which "888" dialing would be incorporated into "800" services and separate charges would apply to residential versus business customers for directory assistance service.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — "800" services — Incorporation of "888" calling — Interexchange telephone carrier. p. 178.

2. RATES, § 553

[N.H.] Telephone rate design — Directory assistance service — Separate charges for residential versus business customers — Interexchange telephone carrier. p. 178.

BY THE COMMISSION:

ORDER

[1, 2] On February 5, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from LCI International Telecom Corporation (LCI) requesting authority to make various revisions to its tariff. LCI requests to add terms to the definition section, change 800 service to include 888, create separate DA rates for residential and business customers, and

introduce two new services called Project Accounting Codes and Campus Talk Dedicated Service.

The Commission staff reviewed the proposed revisions and, after LCI withdrew its request to introduce a toll product called Multi-Level Marketing, recommended approval.

Based on the staff recommendation, we find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize LCI

Page 178

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to revise its tariff.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of LCI's tariff, NHPUC No. 3 are approved for effect as filed:

1st Revised Page 1

1st Revised Page 2

1st Revised Page 3

1st Revised Page 3.1

Section 1

1st Revised Page 1

Section 2

1st Revised Page 25

Original Page 26

Original Page 27

Section 3

1st Revised Page 40

Original Page 41

Section 4

1st Revised Page 9

1st Revised Page 10

1st Revised Page 22

1st Revised Page 27

Original Page 28

Original Page 29;

and it is

FURTHER ORDERED, that LCI file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this eleventh day of March, 1996.

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NH.PUC*03/11/96*[89062]*81 NH PUC 179*New England Telephone and Telegraph Company

[Go to End of 89062]

81 NH PUC 179

Re New England Telephone and Telegraph Company

DR 96-043
Order No. 22,049

New Hampshire Public Utilities Commission

March 11, 1996

ORDER agreeing that certain parts of a special rate contract executed by a local exchange telephone carrier and Lockheed Sanders Corporation for the provision of fiber distributed data interface service should be subject to protective treatment in that disclosure of such information could place both the carrier and the customer at a competitive disadvantage.

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1. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective treatment — Relative to special rate contract — Customer-specific operational and usage data — Competitive disadvantages of disclosure — Benefits of nondisclosure outweighing those of disclosure — Telecommunications services. p. 180.

BY THE COMMISSION:

ORDER

On February 9, 1996, the 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 Lockheed Sanders Corporation for the provision of Fiber Distributed Data Interface (FDDI) service. Concur-

rent with the special contract, NYNEX filed a Motion for Confidential Treatment of portions of the contract and supporting materials (hereinafter collectively the Information). According to NYNEX, neither the Commission Staff nor the Office of Consumer Advocate takes a position regarding the motion.

In its motion NYNEX argues that the Information should be afforded protective treatment because, using our analysis in *Re NET*, Order No. 21,731, 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, NYNEX states that it provided the documents required in Puc 204.08(b)(1) and cited the statutory support required by Puc 204.08(b)(2). NYNEX states that the Information consists of details of special contracts relating to pricing and incremental cost information for competitive services not reflected in tariffs of general application, thus meeting the requirements of Puc 204.08(b)(4). NYNEX further provides facts describing the benefits of non-disclosure, thus meeting the requirements of Puc 204.08(b)(3).

[1] We recognize that the detailed customer specific information regarding customer usage, costs and terms of service contained in the Information is critical to review of the special contract by the Commission and Commission Staff, as required by RSA 378:18.

We also recognize that businesses engaged in discussions with regulated utilities are reluctant to disclose sensitive commercial and financial information if it is to become part of the public record.

NYNEX has alleged that disclosure of the information would result in harm to both itself and Lockheed Sanders. Harm to Lockheed Sanders could occur because Customer Proprietary Network Information, which the FCC has determined is protectible, would be released as would sensitive financial information. Harm to NYNEX would result because disclosure would jeopardize its ongoing commercial relationship based on an understanding that financially sensitive information will be treated confidentially.

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 to NYNEX and Lockheed Sanders of non-disclosure appear to outweigh the benefits to the public 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 NYNEX's Motion for Confidential Treatment of portions of its special contract for the provision of FDDI service to Lockheed Sanders, and the supporting materials thereto, is GRANTED; and it is

FURTHER ORDERED, that this order is subject to reconsideration in the event that the Commission Staff or any party raises concerns and it is subject to the on-going right 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 eleventh day of March, 1996.

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*03/11/96*[89063]*81 NH PUC 181*Public Service Company of New Hampshire

[Go to End of 89063]

81 NH PUC 181

Re Public Service Company of New Hampshire

DR 95-321
Order No. 22,050

New Hampshire Public Utilities Commission

March 11, 1996

ORDER setting hearings to consider an electric utility's proposed special rate contract with an industrial customer, American Tissue Mills of New Hampshire, Inc. Although the contract had already been revised to eliminate terms the commission previously has deemed anticompetitive (namely the prohibition of placement of generating facilities on customer premises), the commission still finds that the contract should be reviewed at public hearing, to determine the necessity for it vis-a-vis newly available economic development and business retention tariffs.

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1. RATES, § 166

[N.H.] Factors affecting reasonableness — Solicitation or retention of business — Economic development (ED) incentives for industrial load — New tariffed rates — In lieu of special rate contracts — Legislative preference for ED tariffs over special contracts — Electric utility. p. 182.

2. MONOPOLY AND COMPETITION, § 21

[N.H.] Restraint of trade and anticompetitive practices — Special rate contracts — Prohibitions on generating facilities on customer property — Determination of anticompetitive effects — Elimination of the offensive terms — Electric utility. p. 182.

3. RATES, § 339

[N.H.] Electric rate design — Industrial customer — Special discounted rate contract — Designed to retain load — Consideration of contract at public hearing — To determine need for special contracts vis-a-vis newly available economic development and business retention tariffs. p. 182.

BY THE COMMISSION:

ORDER

I. DESCRIPTION OF THE FILING

Public Service Company of New Hampshire (PSNH), filed with the New Hampshire Public Utilities Commission (Commission) on November 15, 1995, Special Contract No. NHPUC-126 with American Tissue Mills of New Hampshire, Inc. (ATM-NH), a New Hampshire corporation, which operates a mill located in Winchester, New Hampshire engaged in the manufacture of bulk paper from reclaimed fiber.

The Special Contract is a seven year, firm retail sales agreement, effective on December 1, 1995, or upon the date of the Commission's order approving the Contract. It is primarily a business retention application intended to avoid plant closure and the layoff of 33 employees.

The filing was prepared by PSNH with both the Commission's "Checklist for Economic Development and Business Retention Discounted Rates" and "Guidelines for Economic Development and Business Retention Filings" in mind. It includes, in both redacted and unredacted form, the special contract, testimony and a technical statement supporting a discounted rate for ATM-NH.

With respect to the guidelines set forth in the Checklist, PSNH represents that electric costs comprise a significant portion of ATM-NH's overall production costs and percent of sales.

Because of ATM-NH's need for immediate relief, PSNH includes pricing terms in the contract, which, once approved, would provide

a rebate to ATM-NH equivalent to the difference between the LG tariff rates and the pricing under the Special Contract for the period from December 1, 1995 through the date of approval for Special Contract No. 126.

In its November 15, 1995 filing, PSNH stated it would have preferred to render service to ATM-NH under tariff rates approved as part of the Commission's Guidelines for Economic Development and Business Retention in DR 95-180. Although PSNH offers to pursue serving ATM-NH with its Business Retention (BR) rates, when approved and available,[1(17)] comparison of expected costs to ATM-NH under PSNH's proposed BR rates with PSNH's proposed Special Contract NHPUC No. 126 rates show purchases under the special contract provide significantly lower total costs and greater savings to ATM-NH than under its proposed BR rates.

Under the terms of Special Contract No. NHPUC-126, PSNH will provide ATM-NH with rates that provide fixed customer and demand charges which escalate over time and an energy charge that is .75 cents per KWH above the sum of total FPPAC costs and the Nuclear Decommissioning Charge during the term of the contract.

The Department of Resources and Economic Development (DRED) has been notified of ATM-NH's needs, and ATM-NH has agreed to meet with DRED.

PSNH representatives have worked with ATM-NH to define energy conservation opportunities at ATM-NH. Since ATM-NH acquired the mill one and a half years ago, ATM-NH has re-lamped the entire facility with high pressure sodium lamps. All other measures and efforts are currently on hold pending approval of the special contract. In addition, PSNH proposes to contribute $40,000 toward the purchase of an engineering study and resulting upgrade of manufacturing equipment to be installed at the Winchester mill.

The special contract proposal is consistent with PSNH's Integrated Resource Plan. The special contract rates also exceed the marginal cost of serving the load in every year of the term of the agreement.

Article 8 - PSNH as Sole Supplier, requires ATM-NH to take electricity only from PSNH, but no longer prohibits electric generation on ATM-NH property, even if the electricity would be sold to retail customers of Northeast Utilities. However, revised language in the contract provides that if ATM-NH takes heat or steam from generation which is used to displace PSNH sales, ATM-NH will be billed under standard tariff rates for the remaining term of the special contract.

II. COMMISSION ANALYSIS

[1-3] The primary issue of concern to the Commission in this filing is whether there is justification and need for special contracts now that PSNH has the approval to implement Economic Development and Business Retention tariffs. The Legislature in Senate Bill 168 has expressed its preference for economic development and business retention tariffs that are intended to meet the needs of businesses with competitiveness and economic concerns, rather than economic development and business retention special contracts.

Therefore, we believe it is the burden of the parties in this contract to appear before the Commission and prove that Special Contract No. NHPUC-126 is necessary for the retention of business and employment at its mill in Winchester and that PSNH's BR tariff is inadequate to provide the economies needed to keep the ATM-NH plant in Winchester, N.H. open and to retain the employment of its 33 employees.

Based upon the foregoing, it is hereby

ORDERED, that a Hearing on Special Contract No. NHPUC-126 is held before the New Hampshire Public Utilities Commission located at 8 Old Suncook Road, Concord, New Hampshire on March 21, 1996 at 10:00 a.m.; 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 March 14, 1996, 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 March 21, 1996; 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 March 19, 1996, 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 March 20, 1996.

By order of the Public Utilities Commission of New Hampshire this eleventh day of March, 1996.

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.

FOOTNOTES

[1]On June 26, 1995, PSNH filed with the NHPUC a petition for approval of its Economic Development Energy Service Rate (Rate ED) and Business Retention Energy Service Rate (Rate BR) tariff sheets. On February 23, 1996 the NHPUC issued Order No. 22,027 Conditionally approving Economic Development and Business Retention Rates ordering PSNH to file tariff pages in conformance with Order No. 22,027. On March 7, 1996, PSNh filed Business Retention Service Rate BR pages with the NHPUC in accordance with the Commission's Tariff Filing Rules.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 95-180, Order No. 22,027, 81 NH PUC 109, 170 PUR4th 538, Feb. 23, 1996.

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NH.PUC*03/12/96*[89064]*81 NH PUC 183*New England Telephone and Telegraph Company

[Go to End of 89064]

81 NH PUC 183

Re New England Telephone and Telegraph Company

DR 96-044
Order No. 22,051

New Hampshire Public Utilities Commission

March 12, 1996

ORDER agreeing that certain parts of a special rate contract executed by a local exchange telephone carrier and United Parcel Service for the provision of interLATA usage service should be subject to protective treatment in that disclosure of such information could place both the carrier and the customer at a competitive disadvantage.

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1. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective treatment — Relative to special rate contract — Customer-specific operational and usage data — Competitive disadvantages of disclosure — Benefits of nondisclosure outweighing those of disclosure — Telecommunications services. p. 184.

BY THE COMMISSION:

ORDER

On February 9, 1996, the New England Telephone and Telegraph Company (NYNEX)

Page 183

filed with the New Hampshire Public Utilities Commission (Commission), pursuant to RSA 378:18, a special contract with UPS Corporation for the provision of interLATA usage services. Concurrent with the special contract, NYNEX filed a Motion for Confidential Treatment of portions of the contract and supporting materials (hereinafter collectively the Information). According to NYNEX, neither the Commission Staff nor the Office of Consumer Advocate takes a position regarding the motion.

In its motion NYNEX argues that the Information should be afforded protective treatment because, using our analysis in *Re NET*, Order No. 21,731, 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, NYNEX states that it provided the documents required in Puc 204.08(b)(1) and cited the statutory support required by Puc 204.08(b)(2). NYNEX states that the Information consists of details of the special contract relating to pricing and incremental cost information for competitive services not reflected in tariffs of general application, thus meeting the requirements of Puc 204.08(b)(4). NYNEX further provides facts describing the benefits of non-disclosure, thus meeting the requirements of Puc 204.08(b)(3).

[1] We recognize that the detailed customer specific information regarding customer usage, costs and terms of service contained in the Information is critical to review of the special contract by the Commission and Commission Staff, as required by RSA 378:18.

We also recognize that businesses engaged in discussions with regulated utilities are reluctant to disclose sensitive commercial and financial information if it is to become part of the public record.

NYNEX has alleged that disclosure of the information would result in harm to both itself and UPS. Harm to UPS could occur because UPS's Customer Proprietary Network Information, which the FCC has determined is protectible, would be released. NYNEX could be harmed because the information could be used as a price floor which competitive providers could use to undercut NYNEX's price and customers could use to unfairly leverage their bargaining posture in future requests for similar service.

Under the balancing test we have applied in prior cases, *Re NET*, 74 NHPUC 307 (1989), *Re Eastern Utilities Associates*, 76 NH PUC 236 (1991) *et al.*, the benefits to NYNEX and UPS of non-disclosure appear to outweigh the benefits to the public 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 NYNEX's Motion for Confidential Treatment of portions of its special contract for the provision of interLATA usage services to UPS, and the supporting materials thereto, is GRANTED; and it is

FURTHER ORDERED, that this order is subject to reconsideration in the event that the Commission Staff or any party raises concerns and it is subject to the on-going right 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 twelfth day of March, 1996.

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*03/12/96*[89065]*81 NH PUC 185*Public Service Company of New Hampshire

[Go to End of 89065]

81 NH PUC 185

Re Public Service Company of New Hampshire

DR 94-300 et al.
Order No. 22,052

New Hampshire Public Utilities Commission

March 12, 1996

ORDER asserting commission jurisdiction over power purchase agreements that an electric utility had been directed to renegotiate with wood-fired small power producers. Commission finds that inclusive in such jurisdiction is the authority to determine whether the utility's parent company had used its own "best efforts" in the renegotiation process.

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1. COGENERATION, § 17

[N.H.] Contracts — Power purchase agreements — As between electric utility and wood-fired small power producers — Necessity of renegotiation — Extent of commission jurisdiction over renegotiated contracts. p. 187.

2. CONTRACTS, § 7

[N.H.] Commission jurisdiction — As to renegotiated agreements — Commission mandate for renegotiation as a factor — Determination of "best efforts" in renegotiation process — Power purchase agreements as between electric utility and wood-fired small power producers. p. 187.

APPEARANCES: Gerald M. Eaton, Esq., Senior Counsel and Rath, Young and Pignatelli by M. Curtis Whittaker, Esq. on behalf of Public Service Company of New Hampshire; Brown, Olson and Wilson By Robert A. Olson, Esq on behalf of Bridgewater Power Company, BioEnergy Corporation, Hemphill Power and Light Company, Whitefield Power and Light; Charles E. Niebling and Eric Kingsley for New Hampshire Timberland Owners; Office of the Consumer Advocate by Michael W. Holmes, Esq. on behalf of Residential Ratepayers; Robert J. Frank, Esq. on Behalf of Commission Staff Chief Economist, Thomas C. Frantz; and Eugene F. Sullivan III on behalf of all other members of the Staff of the New Hampshire Public Utilities Commission.

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" woodburning 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 year have resulted in the filing of four renegotiated agreements between Public Service Company of New Hampshire (PSNH) and four woodburning small power producers (SPPs). The agreements with the two Tractebel facilities (Pinetree Power, Inc. and Pinetree Power-Tamworth, Inc.) are apparently still the subject of negotiations as no agreements have been filed with the Commission.

Each of the four renegotiated agreements was assigned a docket number as the renegotiated agreements were filed with the Commission.[1(18)] At the request of PSNH, the three dockets

assigned to the renegotiated agreements and DR 94-300 were consolidated for hearing purposes and for administrative efficiency.

On January 25, 1996 the Commission held a prehearing conference to establish, among other things, a procedural schedule to govern its investigation into the renegotiated agreements. Subsequent to the taking of appearances the parties and Staff went off the record to attempt to develop a consensual procedural schedule. During the discussions concerning a procedural

schedule a dispute arose over the Commission's jurisdiction over the renegotiated agreements, and, therefore, the scope of its investigation into the renegotiated agreements. At the request of the parties and Staff the Commission reconvened the hearing.

The jurisdictional dispute concerned the Commission's authority to investigate whether Northeast Utilities had met its obligation to use its "best efforts" to renegotiate these SPP agreements under Paragraph 12 of the Rate Agreement. The Staff and the parties made brief oral presentations whereupon the Commission requested that the issue be addressed through a motion regarding scope and responses to the motion.

On February 5, 1996 PSNH filed a Motion to Limit Scope and for Further Relief (Motion). On February 16, 1996 the Staff and the Office of the Consumer Advocate (OCA) jointly filed an Objection to the Motion to Limit Scope (Objection).

II. POSITIONS OF THE PARTIES AND STAFF

A. *Public Service Company of New Hampshire*

The gravamen of PSNH's position on the scoping issue is that the Rate Agreement is a contract between Northeast Utilities Service Company (NUSCO) and the State of New Hampshire, as represented by the Office of the Attorney General. Thus, PSNH/NUSCO contends that its obligation to use "best efforts" to renegotiate the SPP rate orders under Paragraph 12 of the Rate Agreement is solely an issue between NUSCO and the Attorney General's Office. Motion at p.1, ¶ I., A.-B.

In support of its position that it has met its obligations to the State of New Hampshire under Paragraph 12 of this "contract," PSNH/NUSCO attached two letters from the Office of the Attorney General in which that Office indicates that it believes PSNH/NUSCO has met its obligations under Paragraph 12 of the Rate Agreement when and if certain renegotiated agreements are filed, approved and put into effect by PSNH.

Consequently, PSNH/NUSCO concludes that this Commission has no jurisdiction to conduct an evidentiary examination into NUSCO's efforts to renegotiate these rate orders under Paragraph 12 of the Rate Agreement.

PSNH/NUSCO goes on to indicate that all of the renegotiated agreements are contingent on a finding that NUSCO has fully met its obligations under Paragraph 12 of the Rate Agreement. PSNH/NUSCO then concludes that should the Commission fail to approve the renegotiated agreements as filed it would result in financial harm to PSNH ratepayers because the renegotiated agreements would not be consummated by PSNH.

The other relief requested in the Motion is ministerial in nature. PSNH requested that the docket designation DR 94-300 no longer be used in this proceeding, and that the docket be closed. PSNH also requested that interventions in the remaining three dockets be specific to the project(s) that the party demonstrates its interest and the corresponding docket.

B. *Office of the Consumer Advocate and Staff*

The OCA's and Staff's joint Objection to the Motion sets forth two grounds establishing Commission jurisdiction over Paragraph 12 of the Rate Agreement.

The Objection contends that the Rate Agreement is not merely an agreement between the executive branch and NUSCO, and that if it were it would have no legal force or effect. Rather, the Objection asserts that the Rate Agreement required the approval of the Legislature before it became effective. The Objection points out that the Legislature conferred authority over the Rate Agreement to this Commission with the passage of RSA Chapter 362- C. The Objection then cites to RSA 362-C:3 which provides the Commission with the authority to "implement the provisions of the Agreement."

Thus, the OCA and Staff conclude that the Legislature has granted this Commission continuing jurisdiction to ensure that NU fulfills its obligations under Paragraph 12 of the Rate Agreement.

The Objection also cites the Mobile-Sierra

doctrine recognized by this Commission in previous decisions as grounds for the Commission's continuing jurisdiction over the Rate Agreement. *See, United Gas Pipeline Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956).

The Objection does not oppose PSNH/NUSCO's request to treat each docket separately or to require each intervenor to establish its interest in each docket.

III. COMMISSION ANALYSIS

The issue before us, although discrete on its face, has broad ramifications. The discrete issue is the Commission's continuing jurisdiction over Paragraph 12 of the Rate Agreement. There is nothing unique to Paragraph 12, however, that would distinguish it from any of the other provisions of the Rate Agreement. Thus, our decision in this proceeding necessarily reflects the continuing jurisdiction of the Commission over all of the terms, conditions and obligations contained in the Rate Agreement approved by this Commission in 1990. *Re Northeast Utilities/Public Service Company of New Hampshire*, 114 PUR4th 385, 75 NH PUC 396 (1990). Given this conclusion, our analysis will not focus on the Commission's jurisdiction over Paragraph 12, but all of the terms, conditions and obligations contained in the Rate Agreement.[2(19)]

Paragraph 14 of the Rate Agreement, entitled "*Legislation*," states that:

> [t]he State shall initiate and support legislation needed to implement this Agreement as an enforceable obligation of the State and to provide any statutory changes required to implement this Agreement.

Rate Agreement at D-21.

Pursuant to this obligation the State's executive branch, the signatory to the Agreement, initiated and supported the passage of RSA chapter 362-C. Thus, both parties recognized the need for, and explicitly provided for, legislative approval of the Rate Agreement.

RSA 362-C did not, however, expressly approve the Rate Agreement. Pursuant to RSA 362-C:3 the Legislature authorized this Commission "to determine whether the implementation of the agreement would be consistent with the public good." RSA 362-C:3 further provides that if the Commission finds the Rate Agreement to be consistent with the public good, it "shall initiate such other hearings and take such other actions as may be necessary to implement the provisions of the agreement."

[1, 2] Once the Commission found the Rate Agreement to be consistent with the public good, it not only retained continuing jurisdiction over the provisions of the Rate Agreement by the Legislature, but was charged with the responsibility to ensure that the provisions of the Rate Agreement are satisfied. *Re Northeast Utilities/Public Service Company of New Hampshire*, 75 NH PUC 396, 482 (1990).

Thus, RSA 362-C:3 requires this Commission to determine whether Northeast Utilities fulfilled its obligations to New Hampshire's ratepayers to use its best efforts to renegotiate the thirteen agreements specified in the Rate Agreement between PSNH and certain SPPs. Moreover, the provisions of RSA 365:5 authorize us to initiate an inquiry into any action or omission of a utility under our jurisdiction. We believe it is an appropriate exercise of our authority to investigate not only the terms and conditions of the renegotiated agreements but the overall prudence of the company's conduct with respect to the agreements. Even if Section 12 were silent on the issue of "best efforts," we believe our examination of the agreements could properly include that issue as it is akin to the prudence analysis which we frequently conduct in the regulation of our jurisdictional utilities. Accordingly, the company's best efforts in renegotiating these agreements will be evaluated in these dockets.

We believe we can narrow the scope of our investigation into "best efforts," however, by limiting the time period during which "best efforts" should have been employed by Northeast Utilities. We will give the parties and Staff ten (10) business days to attempt to reach a consensus on this issue. If no consensus is reached, the parties and Staff shall file their positions on the period of time which they believe is relevant

for our consideration.

With regard to PSNH/NUSCO's requests for further relief, we will grant the requests to treat each docket separately and to require each intervenor to establish its interest in each docket. The request to close docket DR 94-300 is denied. DR 94-300 was opened to monitor PSNH/NUSCO's progress into the renegotiations of the remaining six SPP agreements. Two of those agreements have yet to be renegotiated, thus, closing the docket would be premature. We will no longer include DR 94-300 with the other dockets in this proceeding and, rather, through it will continue to monitor PSNH/NUSCO's progress into the renegotiations with the remaining

two SPPs.

Finally, while the parties and Staff confer to establish the time frame of our "best efforts" investigation they should also confer on an appropriate procedural schedule to govern the remainder of this proceeding. If they are unable to reach agreement, each party shall file its proposed schedule in writing for our consideration fifteen business days from the issuance of this order.

Based upon the foregoing, it is hereby

ORDERED, that PSNH/NUSCO's Motion to Limit the Scope of this proceeding is denied, and that the Commission will exercise its jurisdiction to determine whether Northeast Utilities has met its obligations under Paragraph 12 of the Rate Agreement; and it is

FURTHER ORDERED, that the parties and Staff shall confer with one another to attempt to establish the time period for our review of best efforts and file any such agreement within ten business days following the issuance of this order; if they are unable to reach agreement on this issue, they shall file their respective positions for our consideration within fifteen business days following the issuance of this order; and it is

FURTHER ORDERED, that the parties and Staff shall confer with one another to attempt to establish a procedural schedule to govern our investigation into the renegotiated agreements and file such agreements within ten business days following the issuance of this order; if they are unable to reach agreement on a procedural schedule, they shall file their respective positions for our consideration of this issue within fifteen business days following the issuance of this order; and it is

FURTHER ORDERED, that PSNH/ NUSCO's request to treat each docket separately and to require each intervenor to establish its interest in each docket although the dockets are consolidated for administrative purposes is granted; and it is

FURTHER ORDERED, that PSNH/ NUSCO's request to close DR 94-300 is denied.

By order of the Public Utilities Commission of New Hampshire this twelfth day of March, 1996.

FOOTNOTES

[1]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).

[2]We note that the Attorney General's Office did not waive any rights relative to an investigation into best efforts at the Bridgewater facility. Thus, regardless of our decision herein "best efforts" in regard to that facility is an open issue.

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. [U.S.Sup.Ct.] United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S.

332, 12 PUR3d 112, 100 L. Ed. 373, 76 S. Ct. 373, Feb. 27, 1956.

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NH.PUC*03/12/96*[89066]*81 NH PUC 189*Atlantic Cellular/New Hampshire RSA One, L.P., dba Atlantic Long Distance

[Go to End of 89066]

81 NH PUC 189

Re Atlantic Cellular/New Hampshire RSA One, L.P., dba Atlantic Long Distance

DE 95-351
Order No. 22,053

New Hampshire Public Utilities Commission

March 12, 1996

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

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1. CERTIFICATES, § 123

[N.H.] Telephone carrier — Intrastate intraLATA long-distance services — Interim authority — Assessment of competitive impacts — Exclusion of local exchange services. p. 189.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate intraLATA toll services — Interim authority — Assessment of competitive impacts — Exclusion of local exchange services. p. 189.

BY THE COMMISSION:

ORDER

[1, 2] On December 19, 1995, Atlantic Cellular/New Hampshire, L.P., d/b/a Atlantic Long Distance (ALD), a Delaware Limited Partnership, petitioned the New Hampshire Public Utilities Commission (Commission) for authority to do business as a telecommunications public utility in the State of New Hampshire (petition) pursuant to, *inter alia*, RSA 374:22 and RSA 374:26. ALD has demonstrated the financial, managerial and technical ability to offer service as conditioned by this order. The Commission previously approved numerous, similar petitions filed during the Trial Period, pursuant to the Modified Stipulation Agreement (Stipulation) in Docket No. DE 90-002, approved by Order No. 20,916 (August 2, 1993). Our orders in those numerous dockets granted the petitioner(s) interim authority to offer intraLATA toll service, specifically excluding local exchange service, for the service territory of the entire State of New

Hampshire, during the Trial Period, in order to allow the Commission to analyze competition during the two-year Trial Period.

Because the Trial Period identified by the Stipulation expired on September 30, 1995, we have explicitly clarified that the authority we had granted remains in effect until we specifically modify or revoke that authority, after analysis of the Trial Period. *See* Order No. 21,851 (October 3, 1995). Likewise, our grant of authority ordered herein remains in effect until we specifically modify or revoke that authority.

The public good is served by permitting such competition by telecommunications companies. The Commission permits competitive entry in order to foster competition in the New Hampshire intrastate toll market and to allow the Commission to analyze the effects of such competition.

The public should be provided an opportunity to respond in support of, or in opposition to, this petition.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that ALD is granted interim authority to offer as a telecommunications public utility intraLATA toll service, specifically excluding local exchange service, for the service territory of the entire State of New Hampshire, subject to the following conditions:

1. The services shall be offered by approved tariffs.

2. The services shall be offered until the Commission orders otherwise.

3. ALD Shall file tariffs for new services and changes in approved services (other than rate changes), with effective dates of no less than 30 days after the date the tariffs are filed with the Commission.

4. Within one business day of offering an approved service to the public at a rate different from its rates on file with the Commission, ALD shall notify the Commission of the change.

5. ALD is exempted from N.H. Admin. Rules Puc 406.03 Accounting Records; Puc 407 Forms Required of All Telephone Utilities; and Puc 409 Uniform System of Accounts for Telecommunications Companies.

6. ALD shall maintain its book and records in accordance with Generally Accepted Accounting Principles.

7. ALD 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. ALD 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. ALD shall compensate the appropriate Local Exchange Company for all originating and terminating access used by ALD pursuant to NET Tariff N.H.P.U.C. 79, Switched Access

Service Rate or its successors or its relevant equivalent contained in the tariffs of the Independent Local Exchange Companies.

10. New Service offerings filed for approval with the Commission shall be accompanied by tariff pages describing the service, rates and effective dates; and it is

FURTHER ORDERED, that the authority granted herein remains in full force and effect until the Commission orders otherwise; and it is

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

FURTHER ORDERED, that ALD shall publish a copy of the Notice of Conditional Approval attached to this Order once in a statewide newspaper of general circulation, such publication shall occur no later than March 19, 1996, and an affidavit proving publication shall be filed with the Commission on or before March 26, 1996; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, *et seq.*, ALD 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 April 2, 1996; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than April 9, 1996; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective April 11, 1996, unless the Commission provides otherwise in a supplemental order issued prior to the effective date; and it is

FURTHER ORDERED, that ALD shall file a compliance tariff with the Commission on or before April 11, 1996, in accordance with N.H. Admin. Rules Puc 1601.01 (b).

By order of the Public Utilities Commission of New Hampshire this twelfth day of March, 1996.

Notice of Conditional Approval of
ATLANTIC CELLULAR/NEW HAMPSHIRE RSA NUMBER ONE, L.P. d/b/a ATLANTIC LONG DISTANCE

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

On December 19, 1995, Atlantic Cellular/New Hampshire RSA Number One, L.P. d/b/a Atlantic Long Distance (ALD), a Delaware Limited Partnership, filed with the New Hampshire Public Utilities Commission (Commission) a petition to do business as a telecommunications public utility in the State of New Hampshire, specifically to provide intrastate long distance telecommunications services.

In Order No. 22,053, issued in Docket No. DE 95-351, the Commission granted ALD conditional approval to operate as of April 11, 1996, subject to the right of the public and interested parties to comment on ALD 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 ALD's petition to do business in the State must be submitted in writing no later than April 2, 1996, and reply comments no later than April 9, 1996, to:

Dr. Sarah P. Voll
Executive Director and Secretary
New Hampshire Public Utilities Commission
8 Old Suncook Road
Concord, New Hampshire 03301-7319

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Generic Investigation into IntraLATA Toll Competition Access Rates, DE 90-002, Order No. 20,916, 78 NH PUC 365, Aug. 2, 1993. [N.H.] Re Long Distance North of New Hampshire, Inc., et al., DE 87-249, Order No. 21,851, 80 NH PUC 628, Oct. 3, 1995.

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NH.PUC*03/12/96*[89067]*81 NH PUC 191*Pennichuck Water Works, Inc.

[Go to End of 89067]

81 NH PUC 191

Re Pennichuck Water Works, Inc.

DR 95-361
Order No. 22,054

New Hampshire Public Utilities Commission

March 12, 1996

ORDER authorizing a water utility to extend service into a previously unfranchised area of the Town of Bedford, charging core system rates thereto.

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1. SERVICE, § 210

[N.H.] Extensions — Water utility — Into municipality — Factors affecting approval — Municipal consent — Previously unfranchised area. p. 191.

2. FRANCHISES, § 53

[N.H.] Amendment — Expansion of franchise area — Into previously unfranchised area — Water utility. p. 191.

3. RATES, § 595

[N.H.] Water rate design — Core system rates — Applicability of — To customers in newly expanded franchise area. p. 191.

BY THE COMMISSION:

ORDER

The Petitioner, Pennichuck Water Works, Inc. (Pennichuck) filed on December 22, 1995, a request for permission to provide water service in a large portion of the remaining unfranchised portion of the Town of Bedford and to charge core system rates for such service. The New Hampshire Public Utilities Commission (Commission) had earlier granted Pennichuck permission to provide water service in the northwest quadrant of the Town of Bedford and to charge interim core system rates by Order No. 20,913, issued July 23, 1993, in Docket No. DE 92-185.

The Town of Bedford and Manchester Water Works support Pennichuck's petition. In addition, the Department of Environmental Services notes its support for the expansion of Pennichuck's franchise area.

[1-3] There are no other water utilities in the vicinity of the proposed expansion and, as noted above, consent from the relevant parties has been obtained. The Commission therefore finds that allowing Pennichuck to expand its service area as requested is in the public

Page 191

interest. Furthermore, the Commission finds that, in light of the likely phased, intermittent extension of service to customers within the new service area, core tariff rates provide a reasonable surrogate for cost-based rates and are just and reasonable on an interim basis.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that Pennichuck is granted permission pursuant to RSA 374:22 and 26 to extend its service area in the Town of Bedford consistent with the map provided as Exhibit A to its Petition and the narrative description supplied by a letter dated February 22, 1996; and it is

FURTHER ORDERED, that Pennichuck's Petition to Charge Core System Tariff Rates for English Woods is granted on an interim basis; and it is

FURTHER ORDERED, that approval to provide service in the above portion of the Town of Bedford does not constitute approval of any capital costs associated with plant and equipment to be used to furnish water service therein; and it is

FURTHER ORDERED, that the Petitioner shall serve a copy of this Order *Nisi* on the Bedford Town Clerk and the customers of English Woods by first class mail and, 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 service and publication to be no later than March 19, 1996 and to be documented by affidavit filed with this office on or before March 26, 1996; and it is

FURTHER ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or file a written request for a hearing on this matter before the Commission no later than April 2, 1996; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than April 9, 1996; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective April 11, 1996, unless the Commission provides otherwise in a supplemental order issued prior to the effective date; and it is

FURTHER ORDERED, that the Petitioner shall file a compliance tariff with the Commission on or before April 11, 1996, in accordance with N.H. Admin. Rules, Puc 1601.04(b).

By order of the Public Utilities Commission of New Hampshire this twelfth day of March, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Pennichuck Water Works, Inc., DE 92-185, Order No. 20,913, 78 NH PUC 362, July 23, 1993.

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NH.PUC*03/12/96*[89068]*81 NH PUC 192*Retail Competition Pilot Program

[Go to End of 89068]

81 NH PUC 192

Re Retail Competition Pilot Program

DR 95-250
Order No. 22,055

New Hampshire Public Utilities Commission

March 12, 1996

ORDER declining to compel the parent holding company of an electric utility to join as a full party a proceeding addressing the utility's participation in a pilot program on competitive electric services. Accordingly, Northeast Utilities Service Company need not file for party status, since its subsidiary, Public Service Company of New Hampshire, can provide commitment enough vis-a-vis the pilot program.

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1. PARTIES, § 16

[N.H.] Respondents — Necessary parties — Parent holding company — Of electric utility — Pilot program on competitive electric services — No need to join parent company as formal party — Factors — Utility subsidiary as actual participant in pilot — Sufficient representation in itself. p. 193.

Page 192

BY THE COMMISSION:

ORDER

[1] On February 22, 1996, Public Service Company of New Hampshire (PSNH), Northeast Utilities Service Company (NUSCO), and the Staff submitted a Joint Recommendation (Recommendation) for the purpose of resolving certain issues raised by PSNH relative to its participation in the Pilot. The cover letter accompanying the filing states that "NUSCO is not, and does not seek, party status in this docket."

On February 27, 1996, Freedom Energy Company (Freedom) filed a motion and requested that the Commission join NUSCO as a party in this proceeding. In explanation, Freedom states that in order for the Commission to enforce its decisions in this proceeding it must have jurisdiction over NUSCO.

On March 5, PSNH filed an objection to Freedom's motion to join NUSCO. PSNH notes that the retail transmission tariff filings mentioned in the Recommendation can not be made without the agreement of NUSCO. In addition, PSNH's objection states that NUSCO's agreement is required in order to modify PSNH's Fuel and Purchase Power Adjustment Clause (FPPAC) in order to prevent cost shifting from participants to non-participants. According to PSNH, the Commission's jurisdiction over PSNH, not NUSCO, is sufficient to ensure that the commitments made in the Recommendation will be performed.

Although NUSCO is a signatory to the Recommendation, we do not believe that it is necessary for NUSCO to made a full party to this proceeding. In its objection PSNH has committed to ensure that all obligations under the Recommendation will be honored in the event that we ultimately approve it. Accordingly, we decline Freedom's request.

Based upon the foregoing, it is hereby

ORDERED, that Freedom's Motion to Join NUSCO as a Party is DENIED.

By order of the New Hampshire Public Utilities Commission this twelfth day of March, 1996.

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NH.PUC*03/18/96*[89069]*81 NH PUC 193*Kearsarge Telephone Company

[Go to End of 89069]

81 NH PUC 193

Re Kearsarge Telephone Company

DR 96-053
Order No. 22,056

New Hampshire Public Utilities Commission

March 18, 1996

ORDER suspending a local exchange telephone carrier's proposed additions to its advanced calling services, which included such features as preferred call forwarding, call rejection, repeat dialing, Caller ID, call return, and priority ringing.

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1. SERVICE, § 449

[N.H.] Telephone — Special service — Advanced calling services — Call forwarding, rejection, and return options — Repeat dialing and priority ringing options — Caller ID and associated blocking — Local exchange carrier — Suspension of new features. p. 193.

2. RATES, § 248

[N.H.] Schedules and procedure — Suspension — Of proposed service options — To allow for adequate investigatory period — As to custom calling services — Local exchange telephone carrier. p. 193.

BY THE COMMISSION:

ORDER

[1, 2] On February 20, 1996, Kearsarge Telephone Company (KTC or Company) filed tariff pages proposing to introduce Advanced Calling Services (ACS) for effect March 22, 1996. The ACS which the Company seeks to introduce include: Anonymous Call Rejection,

Page 193

Call Rejection, Call Return, Preferred Call Forwarding, Priority Ringing, Repeat Dialing, Special Call Acceptance, Caller ID and Caller ID Blocking.

In support of its filing, the Company filed forecasts of revenues and expenses associated with the proposed features. In addition, the Company submitted proposed notifications to be sent to KTC customers describing ACS services and associated blocking services.

Staff requires time to investigate the filing and material filed in support of the proposed tariff and therefore requested that the proposed tariff pages be suspended.

We have reviewed Staff's request and will suspend the proposed filing to allow a thorough review of the tariff filing and the accompanying supporting materials.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of Kearsarge Telephone Company are suspended:

NHPUC No. 7

Section 3 - Original Sheets 33-41

By order of the Public Utilities Commission of New Hampshire this eighteenth day of March, 1996.

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NH.PUC*03/18/96*[89070]*81 NH PUC 194*Kearsarge Telephone Company

[Go to End of 89070]

81 NH PUC 194

Re Kearsarge Telephone Company

DR 96-054
Order No. 22,057

New Hampshire Public Utilities Commission

March 18, 1996

ORDER suspending a local exchange telephone carrier's proposed introduction of integrated services digital network services.

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1. SERVICE, § 449

[N.H.] Telephone — Special service — Integrated services digital network (ISDN) offerings — Local exchange carrier — Suspension of new features. p. 194.

2. RATES, § 248

[N.H.] Schedules and procedure — Suspension — Of proposed service options — To allow for adequate investigatory period — As to integrated services digital network (ISDN) offerings — Local exchange telephone carrier. p. 194.

BY THE COMMISSION:

ORDER

[1, 2] On February 20, 1996, Kearsarge Telephone Company (KTC or Company) filed tariff pages proposing to introduce Integrated Services Digital Network (ISDN) Services for effect

March 22, 1996. In support of its filing, the Company filed forecasts of revenues and expenses associated with the proposed features.

Staff requires time to investigate the filing and material filed in support of the proposed tariff and therefore requested that the proposed tariff pages be suspended.

We have reviewed Staff's request and will suspend the proposed filing to allow a thorough review of the tariff filing and the accompanying supporting materials.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of Kearsarge Telephone Company are suspended:

NHPUC No. 7

Section 2 - Original Sheets 7-15

By order of the Public Utilities Commission of New Hampshire this eighteenth day of March, 1996.

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NH.PUC*03/18/96*[89071]*81 NH PUC 195*Kearsarge Telephone Company

[Go to End of 89071]

81 NH PUC 195

Re Kearsarge Telephone Company

DR 96-055
Order No. 22,058

New Hampshire Public Utilities Commission

March 18, 1996

ORDER suspending a local exchange telephone carrier's proposal for the elimination of two-party residential service, where questions remained as to certain terms that would require a grandfathered customer to change his or her basic exchange service should he or she decide to change long-distance carriers.

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1. SERVICE, § 452

[N.H.] Telephone — Party-line service — Proposed elimination of two-party residential service — Grandfathering of existing customers — Suspension of proposal — Factors — Questionable terms linking basic exchange service to change in interexchange carrier. p. 195.

BY THE COMMISSION:

ORDER

[1] On February 20, 1996, Kearsarge Telephone Company (KTC or Company) filed tariff pages proposing to eliminate Two-Party Service, effective March 22, 1996. In its petition the Company proposed to upgrade to Single-Party Service customers who subscribe to Two-Party Service as of March 2, 1996. The Company would continue to assess these customers the current Two-Party rates until they disconnect their service, move their service, suspend their service, subscribe to various advanced features or change their current long distance provider.

In addition, the proposed tariff pages included language stating that the Two-Party rate assessed to the grandfathered customers would increase by an amount equal to any increases assessed on One-Party residential line rates.

Staff has reviewed the proposed filing and identified several concerns. Specifically, the Staff is concerned that the Company would tie a customer's decision to change its long distance provider with a required change to a customer's type of basic exchange service. In addition, the Staff believes that rate increases for Basic Exchange Service should not be automatic and implemented without review and a finding that the rate change is just and reasonable. Staff has discussed its concerns with the Company. KTC informed Staff that the Company would revise its proposed tariff pages to address Staff's concerns.

We have reviewed Staff's request and will suspend the proposed filing to allow the Company to revise its proposed tariff pages and to resubmit them to the Commission for review.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of Kearsarge Telephone Company are suspended:

NHPUC No. 7
Section 2 - Second Revised Sheet 1
Section 2 - Eighth Revised Sheet 2

By order of the Public Utilities Commission of New Hampshire this eighteenth day of March, 1996.

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NH.PUC*03/18/96*[89072]*81 NH PUC 196*Startel Communications, Inc.

[Go to End of 89072]

81 NH PUC 196

Re Startel Communications, Inc.

DR 96-052
Order No. 22,059

New Hampshire Public Utilities Commission

March 18, 1996

ORDER approving numerous tariff changes proposed by an interexchange telephone carrier and

requiring it to submit a whole new tariff since such changes affected more than 50% of the existing tariff.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll services — Numerous tariff changes — Revisions of coupon, association, and discount programs — Implementation of new 800, travel card, and other calling plans — Interexchange telephone carrier. p. 196.

2. RATES, § 238

[N.H.] Schedules and procedure — Necessity of filing — When proposed revisions change more than 50% of existing tariffs — Interexchange telephone carrier. p. 196.

BY THE COMMISSION:

ORDER

[1] On February 20, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from Startel Communications, Inc., formerly Telstar Long Distance (Startel) requesting authority to make various changes to its tariff including the introduction of several new services.

Proposed changes to Startel's tariff, NHPUC No. 2 include revisions to coupon programs, association programs, emergency calls, initial contract period, termination or denial of service by carrier, rate centers, discount schedules, definitions and description of service.

New services being proposed include Telstar MTS Calling, Telstar Nova, Telstar Nova 800, Telstar Flexcall, Telstar Flexcall 800, Telstar Regional Advantage, Telstar Call Direct I, Telstar Call Direct I 800, Standard Travel Card, Telstar Enhanced Travel Card, Telstar Group Call I, Telstar Group Call II, and Telstar Group Call III. Each of these products is either an outbound toll, inbound 800 or calling card service. The products have various access arrangements, volume discounts and term discounts.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize Startel to revise its tariff as outlined above.

[2] The proposed revisions require a change to more than 50 percent of the existing tariff. N.H. Admin. Rule Puc 1601.05(b)(2) requires that a complete new tariff shall be filed whenever more than 50% of the pages of the tariff are affected in a single filing. Startel attempted to comply with this requirement by changing the revision numbers on each page and the tariff number to NHPUC Tariff No. 3. We find this unacceptable and therefore we will require Startel to file a compliance filing with pages annotated as Originals in Tariff No. 3.

Based upon the foregoing, it is hereby

ORDERED, that Startel's tariff, NHPUC No. 3 is approved for effect as filed as of the date of

this order on the condition that all pages be filed as Originals; and it is

FURTHER ORDERED, that Startel file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this eighteenthh day of March, 1996.

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NH.PUC*03/18/96*[89073]*81 NH PUC 197*New Hampshire Electric Cooperative

[Go to End of 89073]

81 NH PUC 197

Re New Hampshire Electric Cooperative

DR 96-040
Order No. 22,060

New Hampshire Public Utilities Commission

March 18, 1996

ORDER suspending an electric cooperative's proposed surcharge mechanism for the recovery of transition costs associated with a change in accounting for post-retirement benefits other than pensions. A procedural schedule is established for addressing the proposal, with a deadline of May 24, 1996, for the filing of a settlement in the matter.

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1. EXPENSES, § 49

[N.H.] Employee pensions and welfare — Post-retirement benefits other than pensions — Change in accounting methods — Compliance with Statement of Financial Accounting Standards No. 106 — Associated transition costs — Proposed recovery via surcharge — Suspension of surcharge mechanism — Procedural schedule — Electric cooperative. p. 197.

2. RATES, § 248

[N.H.] Schedules and procedure — Suspension — Of proposed surcharge mechanism — For the recovery of transition costs — Associated with accounting change for post-retirement benefits other than pensions — Procedural schedule for considering — Settlement conferences and deadlines — Electric cooperative. p. 197.

APPEARANCES: Mark E. Howard, Esq. of Broderick and Dean on behalf of New Hampshire Electric Cooperative, Inc., Eugene F. Sullivan, Finance Director, on behalf of Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

[1, 2] On February 8, 1996, New Hampshire Electric Cooperative, Inc. (NHEC), filed with the New Hampshire Public Utilities Commission (Commission) a petition setting forth its proposal to implement a surcharge to retail electric rates to recover the costs associated with the Financial Accounting Standard's Board Statement 106 regarding the accrual for post-retirement benefits other than pensions (PBOP).

At the duly noticed prehearing conference held on March 14, 1996, NHEC and the Commission Staff (Staff) recommended the following procedural schedule. The Commission, consistent with current practice, has added a deadline for the filing of a settlement agreement. The schedule is as follows:

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

March 29, 1996 Data Request by Staff Due
April 12, 1996 Data Responses by NHEC Due
April 22, 1996 Technical Session
April 26, 1996 Testimony by Staff Due
May 3, 1996    Data Requests by NHEC Due
May 10, 1996   Data Responses by Staff Due
May 17, 1996   Settlement Conference, 10:00 a.m.
May 24, 1996   Filing of Settlement Agreement,
               if any
June 4, 1996   Hearing, 10:00 a.m.
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Staff stated that it believed the significant issues to be addressed in this proceeding are, 1) the appropriate recovery mechanism, 2) the evaluation of PBOP costs currently included in base rates, 3) the amortization period for the accumulated post-retirement benefit obligation (APBO) and the expected post-retirement benefit obligation (EPBO), 4) the actuarial study used to estimate benefits, and 5) the proposed implementation date.

Based upon the foregoing, it is hereby

ORDERED, that the proposed FAS 106 Surcharge Rate be suspended; and it is

FURTHER ORDERED, that the above

Page 197

proposed procedural schedule is hereby approved and adopted.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of March, 1996.

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NH.PUC*03/18/96*[89074]*81 NH PUC 198*Northern Utilities, Inc.

[Go to End of 89074]

DR 95-345, 95-346
Order No. 22,061

New Hampshire Public Utilities Commission

March 18, 1996

ORDER establishing a procedural schedule for considering a natural gas local distribution company's proposed special rate contracts for the provision of liquefied natural gas storage service for Granite State Gas Transmission, Inc., and for the provision of transportation service for Portland Natural Gas Transmission System.

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1. RATES, § 384

[N.H.] Natural gas rate design — Transportation service — Storage service for liquefied natural gas — Proposed special rate contracts — Procedural schedule for consideration of — Local gas distribution company. p. 198.

BY THE COMMISSION:

ORDER

[1] On December 11, 1995, Northern Utilities, Inc. (Northern) filed with the New Hampshire Public Utilities Commission (Commission) Precedent Agreements with Granite State Gas Transmission, Inc. for LNG Storage Services and with Portland Natural Gas Transmission System for Transportation Services.

The Commission set a prehearing conference for March 13, 1996, set a deadline for intervention requests and prefiled testimony, and required the Parties and Commission Staff (Staff) to summarize their positions with regard to the filing for the record.

Maritimes & Northeast Pipeline. L.L.C. (Maritimes) and Portland Natural Gas Transmission System (Portland) sought limited intervention. Northern filed an objection to Maritime's request, but withdrew its objection at the Prehearing Conference on the assurance that limited intervention only entitles an entity to make a statement and receive orders and administrative notices from the Commission. Accordingly, we will grant Maritimes and Portland limited intervention.

At the prehearing conference Northern, Maritimes, Portland, the Office of Consumer Advocate (OCA), which is a statutorily recognized intervenor, and Staff agreed to the following procedural schedule:

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

Data Requests to Northern, Set #1         04/03/96
Data Responses from Northern, Set #1      04/17/96
Technical Session                         04/24/96
Data Requests to Northern, Set #2          5/01/96
Data Responses from Northern, Set #2      05/08/96
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Testimony by Staff/Intervenors            05/29/96
Data Requests from Northern               06/05/96
Data Responses to Northern                06/19/96
Rebuttal Testimony by Northern            06/26/96
Sur-rebuttal Testimony by                 07/03/96
  Staff/Intervenors
Settlement Conference                     07/09/96
Hearings                            07/16 & 17/96
  (If No Settlement is Reached)
Settlement Agreement Draft                07/16/96
File Settlement Agreement                 07/23/96
Hearings (If Settlement is Reached)       07/30/96
```

Also at the prehearing conference, in accordance with the Order of Notice, Northern stated that it intended to demonstrate that the agreements are just and reasonable and the approval of them is in the public good. It noted that its current lease with the Portland Pipe Line is scheduled to terminate on April 30, 1998 and that it intended to demonstrate that it had studied its options to replace the lease and that the proposed agreements represent the most cost

Page 198

effective solution for continued service to its customers.

Maritime stated that it disagreed with the characterization of its 1-Source proposal as unreliable and reserved the right to offer a more extensive statement at a later date. Portland also reserved the right to state its position at a later time.

OCA stated that it was investigating the agreements and currently could take no position on the filing.

Staff stated that the issues that it intended to review were set out in the Order of Notice: 1. whether the contracts are just and reasonable; 2. whether the Federal Energy Regulatory Commission (FERC) has granted the necessary authority; 3. the cost-effectiveness of developing a LNG storage facility to satisfy Northern's firm customer demands and the prudence of that decision; and 4. Northern's ability to serve its firm customers in the event the lease is not extended or the LNG facility is not approved.

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 Maritimes and Portland are granted limited 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 eighteenth day of March, 1996.

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NH.PUC*03/18/96*[89076]*81 NH PUC 201*National Telephone Communications, Inc.

[Go to End of 89076]

81 NH PUC 201

Re National Telephone Communications, Inc.

DE 95-299
Order No. 22,063

New Hampshire Public Utilities Commission

March 18, 1996

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

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1. CERTIFICATES, § 123

[N.H.] Telephone carrier — Intrastate intraLATA long-distance services — Interim authority — Assessment of competitive impacts — Exclusion of local exchange services. p. 202.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate intraLATA toll services — Interim authority — Assessment of competitive impacts — Exclusion of local exchange services. p. 202.

Page 201

BY THE COMMISSION:

ORDER

[1, 2] On October 27, 1995, National Telephone Communications, Inc. (NTC), a Nevada corporation, petitioned the New Hampshire Public Utilities Commission (Commission) for authority to do business as a telecommunications public utility in the State of New Hampshire (petition) pursuant to, *inter alia*, RSA 374:22 and RSA 374:26. NTC has demonstrated the financial, managerial and technical ability to offer service as conditioned by this order. The Commission previously approved numerous, similar petitions filed during the Trial Period, pursuant to the Modified Stipulation Agreement (Stipulation) in Docket No. DE 90-002, approved by Order No. 20,916 (August 2, 1993). Our orders in those numerous dockets granted the petitioner(s) interim authority to offer intraLATA toll service, specifically excluding local exchange service, for the service territory of the entire State of New Hampshire, during the Trial Period, in order to allow the Commission to analyze competition during the two-year Trial Period.

Because the Trial Period identified by the Stipulation expired on September 30, 1995, we have explicitly clarified that the authority we had granted remains in effect until we specifically modify or revoke that authority, after analysis of the Trial Period. *See* Order No. 21,851 (October 3, 1995). Likewise, our grant of authority ordered herein remains in effect until we specifically modify or revoke that authority.

The public good is served by permitting such competition by telecommunications companies. The Commission permits competitive entry in order to foster competition in the New Hampshire intrastate toll market and to allow the Commission to analyze the effects of such competition.

The public should be provided an opportunity to respond in support of, or in opposition to this petition.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that NTC is granted interim authority to offer as a telecommunications public utility intraLATA toll service, specifically excluding local exchange service, for the service territory of the entire State of New Hampshire, subject to the following conditions:

1. The services shall be offered by approved tariffs.

2. The services shall be offered until the Commission orders otherwise.

3. NTC shall file tariffs for new services and changes in approved services (other than rate changes), with effective dates of no less than 30 days after the date the tariffs are filed with the Commission.

4. Within one business day of offering an approved service to the public at a rate different from its rates on file with the Commission, NTC shall notify the Commission of the change.

5. NTC is exempted from NH Admin. Rules, Puc 406.03 Accounting Records; Puc 407 Forms Required of All Telephone Utilities; and Puc 409 Uniform System of Accounts for Telecommunications Companies.

6. NTC shall maintain its book and records in accordance with Generally Accepted Accounting Principles.

7. NTC 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. NTC 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. NTC shall compensate the appropriate Local Exchange Company for all originating and terminating access used by NTC pursuant to NET Tariff N.H.P.U.C. 79, Switched Access Service Rate or its successors or its relevant equivalent contained in the tariffs of the Independent Local Exchange Companies.

10. New Service offerings filed for approval with the Commission shall be accompanied by tariff pages describing the service, rates and effective dates; and it is

Page 202

FURTHER ORDERED, that the authority granted herein remains in full force and effect until the Commission orders otherwise; and it is

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

FURTHER ORDERED, that NTC 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 March 25, 1996, and an affidavit proving publication shall be filed with the Commission on or before April 1, 1996; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, et seq. NTC 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 April 8, 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 April 15, 1996; and it is

FURTHER ORDERED, this Order *Nisi* shall be effective April 17, 1996, unless the Commission provides otherwise in a supplemental order issued prior to the effective date and it is

FURTHER ORDERED, that NTC shall file a compliance tariff with the Commission on or before April 8, 1996, in accordance with NH Admin. Rules, Puc 1601.01 (b).

By order of the Public Utilities Commission of New Hampshire this eighteenthh day of March, 1996.

Notice of Conditional Approval of
NATIONAL TELEPHONE COMMUNICATIONS, INC.

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

On October 27, 1995, National Telephone Communications, Inc. (NTC), a Nevada corporation, filed with the New Hampshire Public Utilities Commission (Commission) a petition to do business as a telecommunications public utility in the State of New Hampshire, specifically to provide intrastate long distance telecommunications services.

In Order No. 22,063, issued in Docket No. DE 95-299, the Commission granted NTC conditional approval to operate as of April 17, 1996, subject to the right of the public and interested parties to comment on NTC 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 NTC's petition to do business in the State must be submitted in writing no later than April 8, 1996, and reply comments no later than April 15, 1996, to:

Dr. Sarah P. Voll
Executive Director and Secretary
Public Utilities Commission

8 Old Suncook Road
Concord, New Hampshire 03301-7319

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Generic Investigation into IntraLATA Toll Competition Access Rates, DE 90-002, Order No. 20,916, 78 NH PUC 365, Aug. 2, 1993. [N.H.] Re Long Distance North of New Hampshire, Inc., et al., DE 87-249, Order No. 21,851, 80 NH PUC 628, Oct. 3, 1995.

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NH.PUC*03/18/96*[89077]*81 NH PUC 204*Affinity Network, Inc., dba ANI Communications

[Go to End of 89077]

81 NH PUC 204

Re Affinity Network, Inc., dba ANI Communications

DE 95-203
Order No. 22,064

New Hampshire Public Utilities Commission

March 18, 1996

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

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1. CERTIFICATES, § 123

[N.H.] Telephone carrier — Intrastate intraLATA long-distance services — Interim authority — Assessment of competitive impacts — Exclusion of local exchange services. p. 204.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate intraLATA toll services — Interim authority — Assessment of competitive impacts — Exclusion of local exchange services. p. 204.

BY THE COMMISSION:

ORDER

[1, 2] On July 27, 1995, Affinity Network, Inc. d/b/a ANI Communications (ANI), a California corporation, petitioned the New Hampshire Public Utilities Commission (Commission) for authority to do business as a telecommunications public utility in the State of New Hampshire (petition) pursuant to, *inter alia*, RSA 374:22 and RSA 374:26. ANI's filing was

accompanied by an incomplete and unsupported Motion for Confidentiality. The Motion became moot when the company filed the material in the public record, and counsel withdrew its Motion by letter of March 11, 1996.

ANI has demonstrated the financial, managerial and technical ability to offer service as conditioned by this order. The Commission previously approved numerous, similar petitions filed during the Trial Period, pursuant to the Modified Stipulation Agreement (Stipulation) in Docket No. DE 90-002, approved by Order No. 20,916 (August 2, 1993). Our orders in those numerous dockets granted the petitioner(s) interim authority to offer intraLATA toll service, specifically excluding local exchange service, for the service territory of the entire State of New Hampshire, during the Trial Period, in order to allow the Commission to analyze competition during the two-year Trial Period.

Because the Trial Period identified by the Stipulation expired on September 30, 1995, we have explicitly clarified that the authority we had granted remains in effect until we specifically modify or revoke that authority, after analysis of the Trial Period. *See* Order No. 21,851 (October 3, 1995). Likewise, our grant of authority ordered herein remains in effect until we specifically modify or revoke that authority.

The public good is served by permitting such competition by telecommunications companies. The Commission permits competitive entry in order to foster competition in the New Hampshire intrastate toll market and to allow the Commission to analyze the effects of such competition.

The public should be provided an opportunity to respond in support of, or in opposition to, this petition.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that ANI is granted interim authority to offer as a telecommunications public utility intraLATA toll service, specifically excluding local exchange service, for the service territory of the entire State of New Hampshire, subject to the following conditions:

1. The services shall be offered by approved tariffs.

2. The services shall be offered until the Commission orders otherwise.

3. ANI shall file tariffs for new services and changes in approved services (other than

Page 204

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, ANI shall notify the Commission of the change.

5. ANI is exempted from NH Admin. Rules, Puc 406.03 Accounting Records; Puc 407 Forms Required of All Telephone Utilities; and Puc 409 Uniform System of Accounts for Telecommunications Companies.

6. ANI shall maintain its book and records in accordance with Generally Accepted Accounting Principles.

7. ANI 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. ANI 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. ANI shall compensate the appropriate Local Exchange Company for all originating and terminating access used by ANI pursuant to NET Tariff N.H.P.U.C. 79, Switched Access Service Rate or its successors or its relevant equivalent contained in the tariffs of the Independent Local Exchange Companies.

10. New Service offerings filed for approval with the Commission shall be accompanied by tariff pages describing the service, rates and effective dates; and it is

FURTHER ORDERED, that the authority granted herein remains in full force and effect until the Commission orders otherwise; and it is

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

FURTHER ORDERED, that ANI 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 March 25, 1996, and an affidavit proving publication shall be filed with the Commission on or before April 1, 1996; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, et seq. ANI 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 April 8, 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 April 15, 1996; and it is

FURTHER ORDERED, this Order *Nisi* shall be effective April 17, 1996, unless the Commission provides otherwise in a supplemental order issued prior to the effective date and it is

FURTHER ORDERED, that ANI shall file a compliance tariff with the Commission on or before April 8, 1996, in accordance with NH Admin. Rules, Puc 1601.01 (b).

By order of the Public Utilities Commission of New Hampshire this eighteenth day of March, 1996.

Notice of Conditional Approval of
AFFINITY NETWORK, INC.

d/b/a ANI Communications, Inc.

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

On July 27, 1995, Affinity Network, Inc. d/b/a ANI Communications (ANI), a California corporation, filed with the New Hampshire Public Utilities Commission (Commission) a petition to do business as a telecommunications public utility in the State of New Hampshire, specifically to provide intrastate long distance

Page 205

telecommunications services.

In Order No. 22,064, issued in Docket No. DE 95-203, the Commission granted ANI conditional approval to operate as of April 17, 1996, subject to the right of the public and interested parties to comment on ANI 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 ANI's petition to do business in the State must be submitted in writing no later than April 8, 1996, and reply comments no later than April 15, 1996, to:

Dr. Sarah P. Voll
Executive Director and Secretary
Public Utilities Commission
8 Old Suncook Road
Concord, New Hampshire 03301-7319

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Generic Investigation into IntraLATA Toll Competition Access Rates, DE 90-002, Order No. 20,916, 78 NH PUC 365, Aug. 2, 1993. [N.H.] Re Long Distance North of New Hampshire, Inc., et al., DE 87-249, Order No. 21,851, 80 NH PUC 628, Oct. 3, 1995.

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NH.PUC*03/18/96*[89078]*81 NH PUC 206*Premiere Communications, Inc.

[Go to End of 89078]

81 NH PUC 206

Re Premiere Communications, Inc.

DE 95-308
Order No. 22,065

New Hampshire Public Utilities Commission

March 18, 1996

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

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1. CERTIFICATES, § 123

[N.H.] Telephone carrier — Intrastate intraLATA long-distance services — Interim authority — Assessment of competitive impacts — Exclusion of local exchange services. p. 206.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate intraLATA toll services — Interim authority — Assessment of competitive impacts — Exclusion of local exchange services. p. 206.

BY THE COMMISSION:

ORDER

[1, 2] On November 6, 1995, Premiere Communications, Inc. (PCI), a Florida corporation, petitioned the New Hampshire Public Utilities Commission (Commission) for authority to do business as a telecommunications public utility in the State of New Hampshire (petition) pursuant to, *inter alia*, RSA 374:22 and RSA 374:26. PCI has demonstrated the financial, managerial and technical ability to offer service as conditioned by this order. The Commission previously approved numerous, similar petitions filed during the Trial Period, pursuant to the Modified Stipulation Agreement (Stipulation) in Docket No. DE 90-002, approved by Order No. 20,916 (August 2, 1993). Our orders in those numerous dockets granted the petitioner(s) interim authority to offer intraLATA toll service, specifically excluding local exchange service, for the service territory of the entire State of New Hampshire, during the Trial Period, in order to allow the Commission to analyze competition during the two-year Trial Period.

Because the Trial Period identified by the Stipulation expired on September 30, 1995, we have explicitly clarified that the authority we had granted remains in effect until we specifically modify or revoke that authority, after analysis of the Trial Period. *See* Order No.

21,851 (October 3, 1995). Likewise, our grant of authority ordered herein remains in effect until we specifically modify or revoke that authority.

The public good is served by permitting such competition by telecommunications companies. The Commission permits competitive entry in order to foster competition in the New Hampshire intrastate toll market and to allow the Commission to analyze the effects of such competition.

The public should be provided an opportunity to respond in support of, or in opposition to, this petition.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that PCI is granted interim authority to offer as a telecommunications public utility intraLATA toll service, specifically excluding local exchange service, for the service territory of the entire State of New Hampshire, subject to the following conditions:

1. The services shall be offered by approved tariffs.

2. The services shall be offered until the Commission orders otherwise.

3. PCI shall file tariffs for new services and changes in approved services (other than rate changes), with effective dates of no less than 30 days after the date the tariffs are filed with the Commission.

4. Within one business day of offering an approved service to the public at a rate different from its rates on file with the Commission, PCI shall notify the Commission of the change.

5. PCI is exempted from NH Admin. Rules, Puc 406.03 Accounting Records; Puc 407 Forms Required of All Telephone Utilities; and Puc 409 Uniform System of Accounts for Telecommunications Companies.

6. PCI shall maintain its book and records in accordance with Generally Accepted Accounting Principles.

7. PCI 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. PCI 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. PCI shall compensate the appropriate Local Exchange Company for all originating and terminating access used by PCI pursuant to NET Tariff N.H.P.U.C. 79, Switched Access Service Rate or its successors or its relevant equivalent contained in the tariffs of the Independent Local Exchange Companies.

10. New Service offerings filed for approval with the Commission shall be accompanied by tariff pages describing the service, rates and effective dates; and it is

FURTHER ORDERED, that the authority granted herein remains in full force and effect until the Commission orders otherwise; and it is

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

FURTHER ORDERED, that PCI 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 March 25, 1996, and an affidavit proving publication shall be filed with the Commission on or before April 1, 1996; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, *et seq.* PCI 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 April 8, 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 April 15, 1996; and it is

FURTHER ORDERED, this Order *Nisi*

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shall be effective April 17, 1996, unless the Commission provides otherwise in a supplemental order issued prior to the effective date and it is

FURTHER ORDERED, that PCI shall file a compliance tariff with the Commission on or before April 8, 1996, in accordance with NH Admin. Rules, Puc 1601.01 (b).

By order of the Public Utilities Commission of New Hampshire this eighteenth day of March, 1996.

Notice of Conditional Approval of
PREMIERE COMMUNICATIONS, INC.

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

On November 6, 1995, Premiere Communications, Inc. (PCI), a Florida corporation, filed with the New Hampshire Public Utilities Commission (Commission) a petition to do business as a telecommunications public utility in the State of New Hampshire, specifically to provide intrastate long distance telecommunications services.

In Order No. 22,065, issued in Docket No. DE 95-308, the Commission granted PCI conditional approval to operate as of April 17, 1996, subject to the right of the public and interested parties to comment on PCI 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 PCI's petition to do business in the State must be submitted in writing no later than April 8, 1996, and reply comments no later than April 15, 1996, to:

Dr. Sarah P. Voll
Executive Director and Secretary
Public Utilities Commission
8 Old Suncook Road
Concord, New Hampshire 03301-7319

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Generic Investigation into IntraLATA Toll Competition Access Rates, DE 90-002,

Order No. 20,916, 78 NH PUC 365, Aug. 2, 1993. [N.H.] Re Long Distance North of New Hampshire, Inc., et al., DE 87-249, Order No. 21,851, 80 NH PUC 628, Oct. 3, 1995.

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NH.PUC*03/18/96*[89079]*81 NH PUC 208*Starlink Communications, LLC

[Go to End of 89079]

81 NH PUC 208

Re Starlink Communications, LLC

DE 95-322
Order No. 22,066

New Hampshire Public Utilities Commission

March 18, 1996

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

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1. CERTIFICATES, § 123

[N.H.] Telephone carrier — Intrastate intraLATA long-distance services — Interim authority — Assessment of competitive impacts — Exclusion of local exchange services. p. 208.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate intraLATA toll services — Interim authority — Assessment of competitive impacts — Exclusion of local exchange services. p. 208.

BY THE COMMISSION:

ORDER

[1, 2] On November 16, 1995, Starlink

Communications, LLC. (SCL) petitioned the New Hampshire Public Utilities Commission (Commission) for authority to do business as a telecommunications public utility in the State of New Hampshire (petition) pursuant to, *inter alia*, RSA 374:22 and RSA 374:26. SCL has demonstrated the financial, managerial and technical ability to offer service as conditioned by this order. The Commission previously approved numerous, similar petitions filed during the Trial Period, pursuant to the Modified Stipulation Agreement (Stipulation) in Docket No. DE 90-002, approved by Order No. 20,916 (August 2, 1993). Our orders in those numerous dockets granted the petitioner(s) interim authority to offer intraLATA toll service, specifically excluding

local exchange service, for the service territory of the entire State of New Hampshire, during the Trial Period, in order to allow the Commission to analyze competition during the two-year Trial Period.

Because the Trial Period identified by the Stipulation expired on September 30, 1995, we have explicitly clarified that the authority we had granted remains in effect until we specifically modify or revoke that authority, after analysis of the Trial Period. *See* Order No. 21,851 (October 3, 1995). Likewise, our grant of authority ordered herein remains in effect until we specifically modify or revoke that authority.

The public good is served by permitting such competition by telecommunications companies. The Commission permits competitive entry in order to foster competition in the New Hampshire intrastate toll market and to allow the Commission to analyze the effects of such competition.

The public should be provided an opportunity to respond in support of, or in opposition to this petition.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that SCL is granted interim authority to offer as a telecommunications public utility intraLATA toll service, specifically excluding local exchange service, for the service territory of the entire State of New Hampshire, subject to the following conditions:

1. The services shall be offered by approved tariffs.

2. The services shall be offered until the Commission orders otherwise.

3. SCL shall file tariffs for new services and changes in approved services (other than rate changes), with effective dates of no less than 30 days after the date the tariffs are filed with the Commission.

4. Within one business day of offering an approved service to the public at a rate different from its rates on file with the Commission, SCL shall notify the Commission of the change.

5. SCL is exempted from NH Admin. Rules, Puc 406.03 Accounting Records; Puc 407 Forms Required of All Telephone Utilities; and Puc 409 Uniform System of Accounts for Telecommunications Companies.

6. SCL shall maintain its book and records in accordance with Generally Accepted Accounting Principles.

7. SCL 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. SCL 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. SCL shall compensate the appropriate Local Exchange Company for all originating and terminating access used by SCL pursuant to NET Tariff N.H.P.U.C. 79, Switched Access Service Rate or its successors or its relevant equivalent contained in the tariffs of the

Independent Local Exchange Companies.

10. New Service offerings filed for approval with the Commission shall be accompanied by tariff pages describing the service, rates and effective dates; and it is

FURTHER ORDERED, that the authority granted herein remains in full force and effect until the Commission orders otherwise; and it is

FURTHER ORDERED, that nothing contained in this Order shall be construed to allow

Page 209

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

FURTHER ORDERED, that SCL 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 March 25, 1996, and an affidavit proving publication shall be filed with the Commission on or before April 1, 1996; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, *et seq.* SCL 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 April 8, 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 April 15, 1996; and it is

FURTHER ORDERED, this Order *Nisi* shall be effective April 17, 1996, unless the Commission provides otherwise in a supplemental order issued prior to the effective date and it is

FURTHER ORDERED, that SCL shall file a compliance tariff with the Commission on or before April 8, 1996, in accordance with NH Admin. Rules, Puc 1601.01 (b).

By order of the Public Utilities Commission of New Hampshire this eighteenth day of March, 1996.

Notice of Conditional Approval of
STARLINK COMMUNICATIONS, LLC.

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

On November 16, 1995, Starlink Communications, LLC. (SCL), a California limited liability corporation,, filed with the New Hampshire Public Utilities Commission (Commission) a petition to do business as a telecommunications public utility in the State of New Hampshire, specifically to provide intrastate long distance telecommunications services.

In Order No. 22,066, issued in Docket No. DE 95-322, the Commission granted SCL conditional approval to operate as of April 17, 1996, subject to the right of the public and

interested parties to comment on SCL 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 SCL's petition to do business in the State must be submitted in writing no later than April 8, 1996, and reply comments no later than April 15, 1996, to:

Dr. Sarah P. Voll
Executive Director and Secretary
Public Utilities Commission
8 Old Suncook Road
Concord, New Hampshire 03301-7319

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Generic Investigation into IntraLATA Toll Competition Access Rates, DE 90-002, Order No. 20,916, 78 NH PUC 365, Aug. 2, 1993. [N.H.] Re Long Distance North of New Hampshire, Inc., et al., DE 87-249, Order No. 21,851, 80 NH PUC 628, Oct. 3, 1995.

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NH.PUC*03/18/96*[89080]*81 NH PUC 211*EnergyNorth Natural Gas, Inc.

[Go to End of 89080]

81 NH PUC 211

Re EnergyNorth Natural Gas, Inc.

DR 95-343
Order No. 22,067

New Hampshire Public Utilities Commission

March 18, 1996

ORDER adopting a settlement agreement with respect to a natural gas local distribution company's first conservation and load management (C&LM) program filing. The program targets commercial and industrial (C&I) customers and seeks to identify those C&I sites most suitable for retrofit applications. Plans for residential C&LM are to follow.

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1. CONSERVATION, § 1

[N.H.] Conservation and load management (C&LM) programs — Natural gas local distribution company — Settlement agreement — Company's initial C&LM filing — Removal of fuel conversion incentives — Targeting of commercial and industrial (C&I) customers — Assessment of C&I retrofit opportunities — Future development of residential C&LM plans. p. 211.

2. GAS, § 7

[N.H.] Operating practices — Conservation and load management (C&LM) programs — Settlement terms — Utility's first-ever C&LM filing — Elimination of fuel conversion goals — Emphasis on commercial and industrial (C&I) customers — Assessment of C&I retrofit opportunities — Future development of residential C&LM plans — Local distribution company. p. 211.

BY THE COMMISSION:

ORDER

On June 30, 1995, EnergyNorth Natural Gas, Inc. (ENGI) filed a Least Cost Integrated Resource Plan with the New Hampshire Public Utilities Commission (Commission) which incorporated Conservation and Load Management (C&LM) programs. On December 11, 1995, the Commission granted a Motion to Separate Proceedings which resulted in this docket. This docket is an initial C&LM filing by ENGI and included a mid-year evaluation of the Residential C&LM Pilot Program; ENGI did not file any formal testimony with its filing other than its Mid-year Evaluation Report and no tariff changes were requested by ENGI. A full-scale C&LM program filing is expected to be filed in June 1996.

Pursuant to a Commission approved procedural schedule, ENGI and the Commission Staff (Staff) exchanged discovery materials. The Office of the Consumer Advocate did not participate.

On January 25, 1996, Staff and ENGI participated in a technical session to discuss program issues related to the existing Residential Pilot Program and the proposed Commercial & Industrial (C&I) Pilot Program. At the technical session, Staff and ENGI reached a settlement resolving all issues. The Settlement Agreement was presented to the Commission, in writing, with a request that the Commission issue an order *nisi* approving the Settlement Agreement.

[1, 2] The Settlement Agreement creates the following obligations on the part of ENGI:

1. ENGI will remove all references to potential fuel conversion opportunities from its proposed C&I pilot program customer surveys and refrain from discussing conversion opportunities within all of its C&LM programs.

2. ENGI will conduct Large C&I customer surveys and facility site assessments as a C&I pilot program to identify potential large C&LM retrofit opportunities. The pilot program shall begin 30 days from the effective date of this order and end on June 30, 1997. Results of the pilot program will be incorporated in the full-scale C&LM program; and current C&I surcharges shall remain in effect until the conclusion of the pilot program.

Page 211

3. ENGI will submit Monitoring and Evaluation (M&E) reports to the Commission which shall follow the format of electric utility C&LM M&E reports (as updated).

4. ENGI shall file its first full-scale residential C&LM program plan no later than June 30, 1996. The full-scale residential program plan shall cover the period from July 1, 1996 through

June 30, 1997.

5. ENGI shall file its first full-scale C&I C&LM program plan on June 30, 1997. The full-scale C&I program plan shall cover the period from July 1, 1997 through June 30, 1999, or such time as is coincident with ENGI's Least Cost Integrated Resource Plan's filing dates.

In addition, ENGI and Staff agreed that, in the future, C&LM surcharges shall be filed only in C&LM proceedings, rather than combined in other proceedings.

After careful review of the provisions of the Settlement Agreement we find that the ENGI C&LM programs proposed, as further clarified by the Settlement Agreement, are reasonable and in the public good.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that the 1996 Conservation and Load Management Programs originally filed on June 30, 1995 and revised pursuant to the Mid-Year Evaluation Report, as amended by the Settlement Agreement are 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 March 25, 1996 and to be documented by affidavit filed with this office on or before April 1, 1996; and it is

FURTHER ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or file a written request for a hearing on this matter before the Commission no later than April 8, 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 April 15, 1996; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective April 17, 1996, 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 eighteenth day of March, 1996.

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NH.PUC*03/19/96*[89075]*81 NH PUC 199*EnergyNorth Natural Gas, Inc.

[Go to End of 89075]

81 NH PUC 199

Re EnergyNorth Natural Gas, Inc.

Additional applicant: Northern Utilities, Inc.

DE 95-121
Order No. 22,062

New Hampshire Public Utilities Commission

March 19, 1996

ORDER clarifying the commission's expectation that cost-of-service studies ordered undertaken by two natural gas local distribution companies in Order No. 21,186 (79 NH PUC 202) would be used to set permanent new rates for gas transportation services, replacing the interim rates that had been adopted therein.

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1. RATES, § 143

[N.H.] Factors affecting reasonableness — Cost of service — Performance of associated studies — As required of local gas distribution companies — For purposes of setting permanent gas transportation service rates. p. 201.

2. RATES, § 384

[N.H.] Natural gas rate design — Transportation service — Basis for permanent new rates — New cost-of-service studies — Future review of impact of new rates on revenue allocation — Local gas distribution companies. p. 201.

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 services. *Re Generic Investigation into Natural Gas Transportation Service and Rates*, 78 NH PUC 479, 492. The interim rates were put into effect for a period of two years to allow New Hampshire's Local Distribution Companies, EnergyNorth Natural Gas, Inc. (ENGI) and Northern Utilities, Inc. (Northern), to develop and file Cost of Service (COS) studies addressing the appropriate customer costs and interruptible transportation costs. *Re Generic Investigation into Natural Gas Transportation Service and Rates*, 78 NH PUC 479, 492; and *Re Generic Investigation into Natural Gas Transportation Service and Rates*, 78 NH PUC 599, 602.

By Report and Order No. 21,186, the Commission expanded the scope of the COS 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.

Pursuant to these orders, ENGI and Northern filed the COS studies on October 19 and 23, 1995, respectively. During discovery and the technical sessions with the parties, the Commission Staff (Staff) became aware of a major difference of opinion regarding the scope of this docket. The issues in question included: what are the purposes of the COS studies, and more specifically,

will this proceeding result in the establishment of permanent transportation rates and, if so, what is the effect of the establishment of those rates on other elements of the companies' rate structures. Attempts to negotiate a resolution acceptable to all Parties have been unsuccessful.

II. POSITIONS OF THE PARTIES AND STAFF

On February 12, 1996, Staff filed with the Commission a Motion for Clarification of Scope of Docket (Motion) and a more detailed supporting memorandum (Memo). In its Motion, Staff requested that the Commission (i) clarify its understanding of the purposes of the cost of service studies and the scope of this docket and (ii) hold this proceeding in abeyance until resolution of this matter.

In its Memo, Staff outlined what it believes are the four basic options available to the Commission, should the results of the COS studies be accepted. The options are as follows: 1. the Commission orders permanent transportation rates to be developed and implemented from the COS studies but leaves the bundled sales rates unchanged; 2. the Commission accepts the results of the COS studies but maintains the interim rates until ENGI and Northern file rate cases to adjust all their rates, both sales and transportation services; 3. the Commission maintains the established revenue requirements of ENGI and Northern at current levels, but orders changes in the values, and possibly the design, of all rates, i.e., a revenue neutral rate redesign; 4. the Commission orders that a full base rate case be filed by both companies.

On February 23, 1996, ENGI filed its response to Staff's Motion and memorandum with the Commission. ENGI asserted the scope of this docket should be limited to Option 2, i.e., Commission review and approval of the COS studies conducted by the Companies, Option 2. ENGI had several objections to Staff's Option 1. First and foremost, ENGI was concerned that the establishment of permanent transportation rates in this docket, more than likely below the level of the present interim rates, would lead to customer migration from bundled sales service to transportation service, which, in turn, would cause some revenue erosion. In addition, ENGI indicated that such an action by the Commission would deprive it of the revenues established by the Commission in its last rate case. In the alternative, the Commission could order EnergyNorth to file a separate revenue neutral rate redesign proceeding, which would utilize the COS study approved in this current docket.

On February 28, 1996, Northern filed its response to Staff's Motion with the Commission. Northern also found Staff's Option 2 to be the most appealing choice. Unlike ENGI, Northern indicated that it would support Staff's Option 1 (in the instance that the Commission determines that permanent transportation rates should be established in this docket), provided

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that the Commission sets permanent transportation rates at Northern's "example" rates, which contain a 75% "revenue neutrality" adjustment. Due to the excessive expenses associated with Options 3 and 4, Northern has determined that these alternatives are not in its, or its ratepayers, best interests.

III. COMMISSION ANALYSIS

[1, 2] In reviewing Staff's February 12, 1996 filing as well as the responses from ENGI and

Northern, and given the extensive record in DE 91-149, we will clarify the purpose of the COS studies, and therefore the scope of this docket.

It is our expectation that the COS studies will be used to develop a set of permanent transportation rates in this proceeding. These rates will replace the two year interim rates adopted in DE 91-149. If we accept the COS studies and establish permanent transportation rates based on those studies, then we recognize that the effect on revenues is unknown. Thus, we will not modify revenue requirements or shift costs to other classes of customers in this proceeding. If, in fact, new transportation rates result in reduced revenues to the Companies, and if those revenues result in a return on investment below an appropriate level, the companies are free to file rate cases pursuant to RSA 378.

It is our understanding that ENGI did not include a set of permanent transportation rates based on its COS study in its October 19, 1995 filing. We believe this information is necessary for this docket to proceed. Thus, EnergyNorth must develop and file a set of permanent transportation rates based on its COS study within a week of the issuance of this Order.

We also recognize that the existing procedural schedule for this docket must be modified. Staff and the Parties should confer and develop a new procedural schedule to submit to the Commission within three days of the filing of ENGI's permanent transportation rates.

Based upon the foregoing, it is hereby

ORDERED, that the intent of this docket is to establish permanent transportation rates to replace the interim rates currently in place; and it is

FURTHER ORDERED, that EnergyNorth Natural Gas, Inc. file a set of permanent transportation rates based on its COS study within a week of the issuance of this Order; and it is

FURTHER ORDERED, that Staff and the Parties develop a new procedural schedule and submit it to the Commission within three days of the filing of EnergyNorth's permanent transportation rates.

By order of the Public Utilities Commission of New Hampshire this nineteenth day of March, 1996.

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NH.PUC*03/22/96*[89081]*81 NH PUC 212*CCI Telecommunications of New Hampshire, Inc.

[Go to End of 89081]

81 NH PUC 212

Re CCI Telecommunications of New Hampshire, Inc.

DE 96-010
Order No. 22,068

New Hampshire Public Utilities Commission

March 22, 1996

ORDER granting intervention and adopting a procedural schedule for considering a telecommunications carrier's application for interim authority to provide private line intrastate intraLATA service.

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1. CERTIFICATES, § 158

[N.H.] Procedure — Adoption of procedural schedule — Relative to proposed private line intrastate intraLATA services — Telecommunications carrier. p. 213.

2. SERVICE, § 433

[N.H.] Telephone — Proposed private line intrastate intraLATA services — Adoption of procedural schedule — Noting of interventions. p. 213.

BY THE COMMISSION:

ORDER

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On January 11, 1996, CCI Communications of New Hampshire (Continental) filed with the New Hampshire Public Utilities Commission (Commission) a Petition for Authority to Provide Telecommunications Services, along with supporting documents and a motion for interim authority.

The Commission set a prehearing conference for February 27, 1996, set a deadline for intervention requests and called for initial positions of the Parties and Commission Staff (Staff).

New England Telephone and Telegraph (NYNEX), the City of Dover (Dover), Granite State Telephone, Merrimack County Telephone, Contoocook Valley Telephone, Wilton Telephone, Hollis Telephone, Dunbarton Telephone, Northland Telephone, Bretton Woods Telephone, and Dixville Telephone (the Independents), MCI Metro Access Transmission Services (MCI Metro), and Union Telephone Company (Union), sought intervention. On March 29, 1996, Frontier Communications of New England, Inc. sought late intervention but then withdrew its request. On March 7, 1996, MedNet Services (MedNet) sought limited intervention.

At the prehearing conference on February 27, 1996, Continental opposed the intervention of Union and the Independents; Continental suggested that this docket address the limited issue of interim authority, leaving the broader issues to a proposed generic docket regarding cable company provision of telephone service. Union argued that this docket will affect its revenues and that Union wished to participate in the necessary discussion of the impact of the recently enacted federal Telecommunications Act of 1996 and N.H. RSA 374:22 as they pertain to this docket. NYNEX recommended that all parties meet in technical session to stipulate to Continental's interim authority as equal to that granted MCI Metro in DE 94-151, a recommendation which the parties and Staff agreed to discuss.

We granted the respective Intervenor status requested by each party for the purposes of

participation in the ensuing technical session on February 27, 1996. At the conclusion of the technical session, Continental withdrew its objection to intervention by Union and the Independents; and the parties and Staff presented an agreement as to the scope of the proceeding.

[1, 2] The parties and Staff agreed that the scope of the proceeding is limited to the issue of authority for Continental to provide services at the same level as that granted to MCI Metro in Docket No. DE 94-151. To that end, the parties and Staff agreed to meet in a second technical session on March 12, 1996 to craft a stipulation based upon DE 94-151. If, at the conclusion of the second technical session, no agreement was reached, Staff and the parties agreed to propose a procedural schedule for full litigation of the issues. If an agreement was reached, Staff and the parties would inform the Commission and request a date for presenting the agreement to the Commission.

We will grant the requests for full intervention by NYNEX, Dover, the Independents, MCI Metro, and Union. We will grant the request for limited intervention by MedNet. We find the proposed procedural schedule to be reasonable and will approve it. We have been informed that the parties and Staff have reached an agreement based upon DE 94-151, and will therefore schedule a hearing for April 8, 1996 at 1:30 P.M.

Based upon the foregoing, it is hereby

ORDERED, that NYNEX, Dover, the Independents, MCI Metro, and Union are granted full intervention in this case and MedNet is granted limited intervention; and it is

FURTHER ORDERED, that the parties and Staff shall file a copy of their agreements on April 1, 1996.

By order of the Public Utilities Commission of New Hampshire this twenty-second day of March, 1996.

BARTLETT L THOMAS ESQ
CCI COMMUNICATIONS OF NH
RIVERBEND BUSINESS PK
6 CAMPANELLI DR
ANDOVER MA 01810-1095

VICTOR D DEL VECCHIO ESQ
NYNEX
185 FRANKLIN ST RM 1403
BOSTON MA 02110-1585

Page 213

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EXCEPT FOR DISCOVERY FILINGS, AN ORIGINAL & 8 COPIES TO:

DR SARAH P VOLL
EXEC DIRECTOR &
SECRETARY
NHPUC
8 OLD SUNCOOK RD
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PURSUANT TO N.H. ADMIN RULE PUC 204.03(C), DISCOVERY SHALL BE FILED DIRECTLY WITH THE FOLLOWING STAFF RATHER THAN WITH THE EXECUTIVE DIRECTOR

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BULK MATERIALS:

Upon request, Staff may waive receipt of some of its multiple copies of bulk materials filed as data responses. Staff cannot waive other parties' right to receive bulk materials.

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NH.PUC*03/25/96*[89082]*81 NH PUC 215*New England Telephone and Telegraph Company

[Go to End of 89082]

81 NH PUC 215

Re New England Telephone and Telegraph Company

DR 95-310
Order No. 22,069

New Hampshire Public Utilities Commission

March 25, 1996

ORDER approving ministerial corrections to a local exchange telephone carrier's new tariffs for Common Channel Signaling Access and Signaling System 7 service options available to switched access customers. For the original order approving the tariffs, see Order No. 22,026 (81 NH PUC 107), *supra.*

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1. RATES, § 592

[N.H.] Telephone rate design — Toll service — Switched access — Optional transport features — Common Channel Signaling Access — Signaling System 7 — Ministerial corrections to tariffs. p. 215.

2. SERVICE, § 467

[N.H.] Telephone — Switched access — Optional transport features — Common Channel Signaling Access — Signaling System 7 — Ministerial corrections to tariffs. p. 215.

BY THE COMMISSION:

ORDER

[1, 2] On March 14, 1996 New England Telephone and Telegraph Company (NYNEX or Company) petitioned to revise its tariff to correct an administrative error and requested a waiver of PUC 1601.05 (j), relative to the publication of tariff changes. In this filing, NYNEX seeks to introduce a tariff page containing a description of rates and charges which were approved by Order No. 22,026 in docket DR 95-310, introducing Common Channel Signaling Access (CCSA) and Signaling System 7 (SS7) as optional features for switched access customers.

Staff recommended the tariff page be approved as filed and did not object to the Company's request for waiver of PUC 1601.05 (j).

We have reviewed Staff's recommendation and the petition filed by the Company and find that the proposed offering is the public good. In addition, since this is an administrative filing, we will grant the Company's request for waiver of PUC 1601.05 (j).

Based upon the foregoing, it is hereby

ORDERED, that the following tariff page of NYNEX is approved:

NHPUC No. 79

Section 6 - Original of Page 19.1

FURTHER ORDERED, that the above tariff pages shall be effective as of April 13, 1996; and it is

FURTHER ORDERED, that NYNEX file a compliance tariff with the Commission on or before April 24, 1996, 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, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New England Teleph. & Teleg. Co., DR 95-310, Order No. 22,026, 81 NH PUC 107, Feb. 21, 1996.

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NH.PUC*03/25/96*[89083]*81 NH PUC 216*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 89083]

81 NH PUC 216

Re New England Telephone and Telegraph Company dba NYNEX

DR 96-044
Order No. 22,070

New Hampshire Public Utilities Commission

March 25, 1996

ORDER approving a local exchange telephone carrier's proposed special toll service contract with United Parcel Service (UPS), which contract resulted from a nationwide request for proposals solicited by UPS.

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1. SERVICE, § 468

[N.H.] Telephone — Toll service — Special service contracts — As the result of a national bidding process — Reasonableness. p. 216.

2. RATES, § 582

[N.H.] Telephone rate design — Toll service — Special rate contract — As the result of a nationwide bidding process — Pricing set at or above average access rate — Yet representing discount from customer's previous rate level. p. 216.

BY THE COMMISSION:

ORDER

On February 9, 1996, New England Telephone and Telegraph Company (Company or NYNEX) filed with the New Hampshire Public Utilities Commission (Commission) redacted and unredacted copies of Special Contract No. 96-03 for toll service between NYNEX and United Parcel Service (UPS). In support of its filing, NYNEX filed a price analysis and information regarding billing and service details associated with the proposed contract. The special contract was accompanied by a Motion for Protective Treatment to exempt portions of the special contract and supporting materials from public disclosure. On March 12, 1996, the Commission issued Order No. 22,051 granting NYNEX's motion.

In its filing, NYNEX explained that in 1995 UPS put its intraLATA toll service out to bid via

Request for Proposal (RFP) to the Regional Bell Operating Companies and all of the major interLATA carriers. NYNEX responded to the RFP and was selected as the intraLATA carrier in the NYNEX region.

[1, 2] NYNEX stated that the proposed special contract was filed in accordance with RSA 378:18 and did not fall within the scope of the Stipulation in docket DE 90-002. Although the Stipulation in docket DE 90-002 addressed special contracts for toll services, NYNEX noted that the Stipulation allows NYNEX to respond competitively in situations where NYNEX demonstrates that a Toll Provider has offered a multi-year service contract to a specific customer for toll services which are provided at or above the average access rate for the relevant form of access for that customer for the term of the proposed contract, but below the current rate for the relevant form of access for that customer. In such situations, NYNEX may, as a competitive response to that specific multi-year offer, offer its toll services for the same term period as the offer to which NYNEX is responding, at a rate not lower than the average of the relevant price floors. NYNEX explained that workpapers accompanying its filing demonstrated that the proposed contract is priced above the relevant price floor.

In addition, since the proposed special contract resulted from a competitive response to a nationwide RFP, NYNEX stated its belief that interested bidders were notified as part of the RFP process. Consequently, NYNEX did not plan to notify the signatories to the Stipulation nor other competitive providers. Further, NYNEX believes it is unnecessary and would be unduly burdensome for the Commission to require the Company to notify all the Signatories to the DE 90-002 Stipulation or other authorized Toll Providers in the state. NYNEX

Page 216

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also stated that such notification would provide the Signatories with competitively sensitive information which has been granted proprietary treatment previously.

Staff has reviewed the analysis submitted by the Company and noted that the Company employed a weighted average price floor based on the segment specific price floors established in its June 1995 toll filing together with location specific volume forecasts. Applying this methodology, the Company should receive an average revenue per minute in excess of the weighted average price floor. Based on this, the Staff recommended the Commission approve the proposed special contract.

Based on Staff's recommendation, we find the proposed special contract to be in the public interest.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that NYNEX's Special Contract No. 96-03 with UPS 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. 96-03, 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 UPS in Special Contract No. 96-03; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 1601.05, the Petitioner shall cause an attested copy of this Order *Nisi* to be published once in a statewide newspaper of general circulation, such publication to be no later than April 1, 1996 and to be documented by affidavit filed with this office on or before April 8, 1996; and it is

FURTHER ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or file a written request for a hearing on this matter before the Commission no later than April 15, 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 April 22, 1996; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective April 24, 1996, unless the Commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this twenty-fifth day of March, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New England Teleph. & Teleg. Co., DR 96-044, Order No. 22,051, 81 NH PUC 183, Mar. 12, 1996.

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NH.PUC*03/25/96*[89084]*81 NH PUC 217*Kearsarge Telephone Company

[Go to End of 89084]

81 NH PUC 217

Re Kearsarge Telephone Company

DR 96-055
Order No. 22,071

New Hampshire Public Utilities Commission

March 25, 1996

ORDER authorizing a local exchange telephone carrier to eliminate two-party residential service. Grandfathered customers will not be required to change basic exchange service should they change long-distance carriers, as had been proposed originally.

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1. SERVICE, § 452

[N.H.] Telephone — Party-line service — Elimination of two-party residential service — Grandfathering of existing customers — Upgrading to single-party service — No linking

Page 217

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of basic exchange service to choice of interexchange carrier. p. 218.

BY THE COMMISSION:

ORDER

[1] On February 20, 1996, Kearsarge Telephone Company (KTC or Company) filed with the New Hampshire Public Utilities Commission (Commission) tariff pages proposing to eliminate Two-Party Service, effective March 22, 1996. In its petition the Company proposed to upgrade to Single-Party Service those customers who subscribe to Two-Party Service as of March 2, 1996. The Company planned to continue to assess these customers the current Two-Party rates until they disconnect their service, move their service, suspend their service, subscribe to various advanced features or change their current long distance provider.

In addition, the proposed tariff pages included language stating that the Two-Party rate assessed to the grandfathered customers would increase by an amount equal to any increases assessed on One- Party residential line rates.

Staff reviewed the proposed filing and identified several concerns. Specifically, the Staff expressed concern that the Company would tie a customer's decision to change its long distance provider with a required change to a customer's type of basic exchange service. In addition, the Staff believed that rate increases for Basic Exchange Service should not be automatic and implemented without review and a Commission finding that the rate change is just and reasonable. Staff discussed its concerns with the Company. KTC informed Staff that the Company would revise its proposed tariff pages to address Staff's concerns.

Consequently, Staff requested that the Commission suspend the petition to provide the Company with time to revise and re-submit its proposed tariff pages. On March 18, 1996, the Commission issued Order No. 22,058 suspending the proposed tariff pages. On March 20, 1995 the Company re-submitted tariff pages revised to reflect Staff's concerns.

Staff reviewed the revised petition and the information filed in support of the petition and recommended that the Commission approve the petition.

Based on Staff's recommendation, we find that the proposed filing is in the public good.

Based on the foregoing, it is hereby

ORDERED, that the following pages of Kearsarge Telephone Company's Tariff PUC No. 7 are approved:

Section 2 - Second Revised Sheet 1
Section 2 - Eighth Revised Sheet 2

and it is

FURTHER ORDERED, that the above tariff pages shall be effective as of April 22, 1996; and it is

FURTHER ORDERED, that Kearsarge file a compliance tariff with the Commission on or before April 24, 1996, 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, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Kearsarge Teleph. Co., DR 96-053, Order No. 22,056, 81 NH PUC 193, Mar. 18, 1996.

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NH.PUC*03/26/96*[89085]*81 NH PUC 218*Northern Utilities, Inc.

[Go to End of 89085]

81 NH PUC 218

Re Northern Utilities, Inc.

DR 96-075
Order No. 22,072

New Hampshire Public Utilities Commission

March 26, 1996

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

Page 218

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 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. 219.

BY THE COMMISSION:

ORDER

On March 15, 1996, Northern Utilities, Inc. (Northern) filed with the New Hampshire Public Utilities Commission (Commission) a request for protective treatment for identification of Northern's gas suppliers and certain terms of the gas supply agreements negotiated by Northern with said suppliers. Northern seeks protection of this information as it relates to the pending Cost of Gas Adjustment (CGA) proceeding in both the discovery and hearing phases of this docket.

In its Motion, Northern 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. Northern 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). The Commission also recognizes that the information contained in the filing is sensitive commercial information in a competitive market. 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 enacted. Thus, based on the company's representations we find the harm to Northern of disclosure outweighs the benefits to the public of disclosure.

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 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, Northern 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, 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-sixth day of March, 1996.

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NH.PUC*03/26/96*[89086]*81 NH PUC 220*Public Service Company of New Hampshire

[Go to End of 89086]

81 NH PUC 220

Re Public Service Company of New Hampshire

DR 96-058
Order No. 22,073

New Hampshire Public Utilities Commission

March 26, 1996

MOTION by electric utility for protective treatment of a special rate contract negotiated with the Elliot Rose Company; granted as to customer-specific usage data cited therein.

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1. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective treatment — Relative to special rate contract — Granted as to customer-specific usage data relied upon therein — Competitive forces as a factor — Electric utility. p. 220.

BY THE COMMISSION:

ORDER

On February 27, 1996 Public Service Company of New Hampshire (PSNH) filed with the New Hampshire Public Utilities Commission (Commission) Special Contract No. NHPUC-128 with Elliot Rose Company of Madbury, Inc. (Madbury Rose). The proposed special contract and supporting testimony were filed in redacted form along with a Motion for Protective Order (Motion) relative to certain information which PSNH alleges is confidential commercial information subject to exemption from public disclosure pursuant to RSA 91-A:5(IV) and NH Puc Rule 204.08(a), *et seq.* PSNH filed unredacted copies of the proposed special contract and testimony in order for the Commission to consider PSNH's request for protective treatment. PSNH's motion seeks protective treatment of certain load and usage data of Madbury Rose which is contained within the proposed special contract and supporting testimony.

According to PSNH, the Office of Consumer Advocate and the Commission Staff have taken no position relative to PSNH's request for protective treatment.

[1] As we have consistently held in past proceedings, the Commission and its Staff often need to review certain confidential commercial and financial information in order to assess the merits of proposed special contracts as required by RSA 378:18. Although we require this information for our review of such filings, we also recognize the need to protect from public disclosure customer specific information regarding usage and load data which constitutes commercially sensitive information subject to exemption from public disclosure pursuant to RSA 91-A:5(IV) and NH Puc Rule 204.08(a). After reviewing the instant filing, we find that

protective treatment of such information in the case of Madbury Rose is justified and in the public good. The redacted portions of PSNH's filing are appropriate for such protection.

Based upon the foregoing, it is hereby

ORDERED, that PSNH's Motion for Protective Order in this matter is GRANTED pursuant to RSA 91-A:5,IV and N.H. Admin. Rules, Puc 204.08; and it is

FURTHER ORDERED, that this order is subject to reconsideration in the event that the Commission Staff or any party raised concerns, after review of the redacted materials, as well as the on-going rights of the Commission to reconsider this order in light of RSA 91-A, should circumstances so warrant.

By order of the Public Utilities Commission of New Hampshire this twenty-sixth day of March, 1996.

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NH.PUC*03/26/96*[89087]*81 NH PUC 221*Northern Utilities, Inc.

[Go to End of 89087]

81 NH PUC 221

Re Northern Utilities, Inc.

DR 96-056
Order No. 22,074

New Hampshire Public Utilities Commission

March 26, 1996

ORDER approving a natural gas local distribution company's proposal to reduce the minimum annual usage threshold by which a customer can qualify for discounts under extra large volume rate schedules. Protective treatment is accorded those supporting cost data documents submitted by the company that contain sensitive commercial or trade secret information.

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1. RATES, § 382

[N.H.] Natural gas rate design — Special factors — Size of load — Extra large volume customers — Reduction in minimum qualifying annual usage level — Reflective of costs of service — Local distribution company. p. 222.

2. SERVICE, § 332

[N.H.] Natural gas — Extra large volume customers — Reduction in minimum qualifying annual usage level — From one million therms to 700,000 therms — Cost basis — Local distribution company. p. 222.

3. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective treatment — For cost support data — As to special service rates for extra large volume gas customers — Commercial and trade secret information — Benefits of nondisclosure as outweighing those of disclosure — Local distribution company. p. 222.

BY THE COMMISSION:

ORDER

Northern Utilities, Inc. (Northern or the Company), on February 21, 1996, filed with the New Hampshire Public Utilities Commission (Commission), a request for a reduction in the minimum annual use requirement for service under the extra large volume rate schedules, XLV-1 and XLVFT-1. In support of its petition, Northern submitted the pre-filed direct testimony of Mr. Joseph A. Ferro, Manager of Rate Services. The specific reduction in the minimum annual use requirement the Company is seeking is from one million (1,000,000) therms to seven hundred thousand (700,000) therms. Northern does not seek to change either the rates charged or the further eligibility condition of Winter Period usage of less than seventy (70) percent of annual usage.

Also on February 21, 1996, Northern filed with the Commission a Motion for Protective Treatment (Motion), arguing that the documents filed contained 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. Northern also stated that it does not disclose the identifying information and terms to anyone outside its corporate affiliates and representatives.

In his testimony, Mr. Ferro argued that the current eligibility criterion of a minimum 1,000,000 therms annually for the XLV service, initially set in 1991 in Docket No. DR 91-081, was developed in an *ad hoc* manner without a solid cost-based foundation. Mr. Ferro then demonstrated, using marginal cost revenue requirement principles, that the rate for XLV service is cost reflective down to a minimum annual usage requirement in the neighborhood of 700,000 therms. Specifically, after determining the marginal cost sales revenue requirement of each Commercial and Industrial (C&I) customer and after sorting these customers (along with their load characteristics and marginal cost revenue requirements) by annual load in ascending order, Mr. Ferro was able to form three C&I customer groups: small, medium, and

Page 221

large annual volume, such that each group produced one-third of the marginal cost revenue requirement.

Focusing on the large annual volume group, Mr. Ferro was able to determine that at roughly the 700,000 annual therm usage level, there was a significant difference in per unit costs (marginal cost revenue requirement divided by annual load). That is, those C&I customers that had annual loads in excess of 700,000 therms (along with the additional condition of Winter Period usage of less than seventy (70) percent of annual usage) had significantly lower unit costs (closer to the XLV rate) than the smaller C&I customers in the large volume group. It was this

cost-reflective finding that led Mr. Ferro to propose the 700,000 therms annual minimum threshold level for the XLV customer class.

Using this new lower minimum threshold standard, Mr. Ferro indicated that two additional existing customers would be eligible for the XLV service, bringing to five the total number of customers that are anticipated to be in the XLV customer class. Mr. Ferro also quantified the revenue loss that Northern would incur by making available the XLV rate to the two additional existing customers, this being on the order of $84,000.

[1, 2] In a memorandum filed with the Commission on March 18, 1996, the Commission Staff (Staff) indicated that it had reviewed the Company petition and would support it. Staff noted that it agreed with Mr. Ferro's characterization of the existing 1,000,000 therm minimum annual threshold level as *ad hoc*, and to the extent that the proposed 700,000 therm minimum annual use criterion is based on certain recognized and accepted marginal cost principles, it represents a marked improvement over the status quo. Having stated that, Staff took the position that a more involved study would have to be undertaken by the Company should it decide to redesign all of its rates in a general rate case proceeding; as indicated in his testimony, Mr. Ferro supported this position.

Upon review of the filings, we find the proposed changes in the public good. For some time now, this Commission has been moving toward establishing rates and customer class threshold volumes which are more cost-reflective. We see the Company's proposal as furthering our long term objective. Therefore, the Commission will authorize Northern to revise its tariff as outlined above.

[3] With respect to Northern's Motion for Protective Treatment, we will grant said Motion, noting that we recognize that the information identified above is critical to the review by the Commission, Staff, and the Office of Consumer Advocate (OCA). We also recognize that the information contained in the filing is sensitive commercial information in a competitive market. 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 enacted. Thus, based on Northern's representations, we find the harm to Northern of disclosure outweighs the benefit to the public of disclosure.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that Northern's petition requesting that the annual minimum usage requirement for service under the extra large volume rate schedules, XLV-1 and XLVFT-1, be lowered from one million (1,000,000) therms to seven hundred thousand (700,000) therms is granted; and it is

FURTHER ORDERED, that Northern's Motion for Protective Treatment is granted to allow Staff and the OCA to fully review the filing 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; and it is

FURTHER ORDERED, that the following pages of Northern's NH PUC No. 8 Tariff are approved:

Tenth Revised Page 30,

Seventh Revised Page 63;

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

Page 222

published once in a statewide newspaper of general circulation, such publication to be no later than April 2, 1996 and to be documented by affidavit filed with this office on or before April 9, 1996; and it is

FURTHER ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or file a written request for a hearing on this matter before the Commission no later than April 16, 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 April 23, 1996; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective April 25, 1996, unless the Commission provides otherwise in a supplemental order issued prior to the effective date; and it is

FURTHER ORDERED, that the Petitioner shall file a compliance tariff with the Commission on or before April 25, 1996, in accordance with N.H. Admin. Rules, Puc 1601.04(b).

By order of the Public Utilities Commission of New Hampshire this twenty-sixth day of March, 1996.

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NH.PUC*03/26/96*[89088]*81 NH PUC 223*Advanced Telecommunications Network, Inc.

[Go to End of 89088]

81 NH PUC 223

Re Advanced Telecommunications Network, Inc.

DE 95-364
Order No. 22,075

New Hampshire Public Utilities Commission

March 26, 1996

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

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1. CERTIFICATES, § 123

[N.H.] Telephone carrier — Intrastate intraLATA long-distance services — Interim authority — Assessment of competitive impacts — Exclusion of local exchange services. p. 223.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate intraLATA toll services — Interim authority — Assessment of competitive impacts — Exclusion of local exchange services. p. 223.

BY THE COMMISSION:

ORDER

[1, 2] On December 26, 1995, Advanced Telecommunications Network, Inc. (ATN), a New Jersey corporation, petitioned the New Hampshire Public Utilities Commission (Commission) for authority to do business as a telecommunications public utility in the State of New Hampshire (petition) pursuant to, *inter alia*, RSA 374:22 and RSA 374:26. ATN has demonstrated the financial, managerial and technical ability to offer service as conditioned by this order. The Commission previously approved numerous, similar petitions filed during the Trial Period, pursuant to the Modified Stipulation Agreement (Stipulation) in Docket No. DE 90-002, approved by Order No. 20,916 (August 2, 1993). Our orders in those numerous dockets granted the petitioner(s) interim authority to offer intraLATA toll service, specifically excluding local exchange service, for the service territory of the entire State of New Hampshire, during the Trial Period, in order to allow the Commission to analyze competition during the two-year Trial Period.

Because the Trial Period identified by the Stipulation expired on September 30, 1995, we have explicitly clarified that the authority we had granted remains in effect until we specifically modify or revoke that authority, after analysis of the Trial Period. *See* Order No. 21,851 (October 3, 1995). Likewise, our grant of authority ordered herein remains in effect

until we specifically modify or revoke that authority.

The public good is served by permitting such competition by telecommunications companies. The Commission permits competitive entry in order to foster competition in the New Hampshire intrastate toll market and to allow the Commission to analyze the effects of such competition.

The public should be provided an opportunity to respond in support of, or in opposition to this petition.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that ATN is granted interim authority to offer as a telecommunications public utility intraLATA toll service, specifically excluding local exchange service, for the service territory of the entire State of New Hampshire, subject to the following conditions:

1. The services shall be offered by approved tariffs.

2. The services shall be offered until the Commission orders otherwise.

3. ATN shall file tariffs for new services and changes in approved services (other than rate changes), with effective dates of no less than 30 days after the date the tariffs are filed with the Commission.

4. Within one business day of offering an approved service to the public at a rate different from its rates on file with the Commission, ATN shall notify the Commission of the change.

5. ATN is exempted from NH Admin. Rules, Puc 406.03 Accounting Records; Puc 407 Forms Required of All Telephone Utilities; and Puc 409 Uniform System of Accounts for Telecommunications Companies.

6. ATN shall maintain its book and records in accordance with Generally Accepted Accounting Principles.

7. ATN 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. ATN 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. ATN shall compensate the appropriate Local Exchange Company for all originating and terminating access used by ATN pursuant to NET Tariff N.H.P.U.C. 79, Switched Access Service Rate or its successors or its relevant equivalent contained in the tariffs of the Independent Local Exchange Companies.

10. New Service offerings filed for approval with the Commission shall be accompanied by tariff pages describing the service, rates and effective dates; and it is

FURTHER ORDERED, that the authority granted herein remains in full force and effect until the Commission orders otherwise; and it is

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

FURTHER ORDERED, that ATN 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 April 2, 1996, and an affidavit proving publication shall be filed with the Commission on or before April 9, 1996; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, et seq. ATN 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 April 16, 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 April 23, 1996; and it is

FURTHER ORDERED, this Order *Nisi* shall be effective April 25, 1996, unless the Commission provides otherwise in a

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supplemental order issued prior to the effective date and it is

FURTHER ORDERED, that ATN shall file a compliance tariff with the Commission on or before April 25, 1996, in accordance with NH Admin. Rules, Puc 1601.01 (b).

By order of the Public Utilities Commission of New Hampshire this twenty-sixth day of March, 1996.

Notice of Conditional Approval of
ADVANCED TELECOMMUNICATIONS NETWORK, INC.

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

On December 26, 1995, Advanced Telecommunications Network, Inc. (ATN), a New Jersey corporation, filed with the New Hampshire Public Utilities Commission (Commission) a petition to do business as a telecommunications public utility in the State of New Hampshire, specifically to provide intrastate long distance telecommunications services.

In Order No. 22,075, issued in Docket No. DE 95-364, the Commission granted ATN conditional approval to operate as of April 25, 1996, subject to the right of the public and interested parties to comment on ATN 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 ATN's petition to do business in the State must be submitted in writing no later than April 16, 1996, and reply comments no later than April 23, 1996, to:

Dr. Sarah P. Voll
Executive Director and Secretary
Public Utilities Commission
8 Old Suncook Road
Concord, New Hampshire 03301-7319

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Generic Investigation into IntraLATA Toll Competition Access Rates, DE 90-002, Order No. 20,916, 78 NH PUC 365, Aug. 2, 1993. [N.H.] Re Long Distance North of New Hampshire, Inc., et al., DE 87-249, Order No. 21,851, 80 NH PUC 628, Oct. 3, 1995.

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NH.PUC*03/26/96*[89089]*81 NH PUC 225*AmeriVision Communications, Inc.

[Go to End of 89089]

81 NH PUC 225

Re AmeriVision Communications, Inc.

DE 96-014
Order No. 22,076

New Hampshire Public Utilities Commission

March 26, 1996

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

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1. CERTIFICATES, § 123

[N.H.] Telephone carrier — Intrastate intraLATA long-distance services — Interim authority — Assessment of competitive impacts — Exclusion of local exchange services. p. 225.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate intraLATA toll services — Interim authority — Assessment of competitive impacts — Exclusion of local exchange services. p. 225.

BY THE COMMISSION:

ORDER

[1, 2] On January 15, 1996 AmeriVision

Page 225

Communications, Inc., an Oklahoma corporation, petitioned the New Hampshire Public Utilities Commission (Commission) for authority to do business as a telecommunications public utility in the State of New Hampshire (petition) pursuant to, *inter alia*, RSA 374:22 and RSA 374:26. AmeriVision Communications, Inc. has demonstrated the financial, managerial and technical ability to offer service as conditioned by this order. The Commission previously approved numerous, similar petitions filed during the Trial Period, pursuant to the Modified Stipulation Agreement (Stipulation) in Docket No. DE 90-002, approved by Order No. 20,916 (August 2, 1993). Our orders in those numerous dockets granted the petitioner(s) interim authority to offer intraLATA toll service, specifically excluding local exchange service, for the service territory of the entire State of New Hampshire, during the Trial Period, in order to allow the Commission to analyze competition during the two-year Trial Period.

Because the Trial Period identified by the Stipulation expired on September 30, 1995, we

have explicitly clarified that the authority we had granted remains in effect until we specifically modify or revoke that authority, after analysis of the Trial Period. *See* Order No. 21,851 (October 3, 1995). Likewise, our grant of authority ordered herein remains in effect until we specifically modify or revoke that authority.

The public good is served by permitting such competition by telecommunications companies. The Commission permits competitive entry in order to foster competition in the New Hampshire intrastate toll market and to allow the Commission to analyze the effects of such competition.

The public should be provided an opportunity to respond in support of, or in opposition to this petition.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that AmeriVision Communications, Inc. is granted interim authority to offer as a telecommunications public utility intraLATA toll service, specifically excluding local exchange service, for the service territory of the entire State of New Hampshire, subject to the following conditions:

1. The services shall be offered by approved tariffs.

2. The services shall be offered until the Commission orders otherwise.

3. AmeriVision Communications, Inc. shall file tariffs for new services and changes in approved services (other than rate changes), with effective dates of no less than 30 days after the date the tariffs are filed with the Commission.

4. Within one business day of offering an approved service to the public at a rate different from its rates on file with the Commission, AmeriVision Communications, Inc. shall notify the Commission of the change.

5. AmeriVision Communications, Inc. is exempted from NH Admin. Rules, Puc 406.03 Accounting Records; Puc 407 Forms Required of All Telephone Utilities; and Puc 409 Uniform System of Accounts for Telecommunications Companies.

6. AmeriVision Communications, Inc. shall maintain its book and records in accordance with Generally Accepted Accounting Principles.

7. AmeriVision Communications, Inc. 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. AmeriVision Communications, Inc. 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. AmeriVision Communications, Inc. shall compensate the appropriate Local Exchange Company for all originating and terminating access used by AmeriVision Communications, Inc. pursuant to NET Tariff N.H.P.U.C. 79, Switched Access Service Rate or its successors or its relevant equivalent contained in the tariffs of the Independent Local Exchange Companies.

10. New Service offerings filed for approval with the Commission shall be accompanied by tariff pages describing the service, rates and effective dates; and it is

FURTHER ORDERED, that the authority granted herein remains in full force and effect until the Commission orders otherwise; and it is

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

FURTHER ORDERED, that AmeriVision Communications, Inc. 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 April 2, 1996, and an affidavit proving publication shall be filed with the Commission on or before April 9, 1996; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, et seq., AmeriVision Communications, Inc. 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 April 16, 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 April 23, 1996; and it is

FURTHER ORDERED, this Order *Nisi* shall be effective April 25, 1996, unless the Commission provides otherwise in a supplemental order issued prior to the effective date and it is

FURTHER ORDERED, that AmeriVision Communications, Inc. shall file a compliance tariff with the Commission on or before April 25, 1996, in accordance with NH Admin. Rules, Puc 1601.01 (b).

By order of the Public Utilities Commission of New Hampshire this twenty-sixth day of March, 1996.

Notice of Conditional Approval of
AmeriVision Communications, Inc.

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

On January 15, 1996 AmeriVision Communications, Inc., an Oklahoma corporation, filed with the New Hampshire Public Utilities Commission (Commission) a petition to do business as a telecommunications public utility in the State of New Hampshire, specifically to provide intrastate long distance telecommunications services.

In Order No. 22,076, issued in Docket No. DE 96-014, the Commission granted AmeriVision Communications, Inc. conditional approval to operate as of April 25, 1996, subject to the right of the public and interested parties to comment on AmeriVision Communications, Inc. 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 AmeriVision Communications, Inc.'s petition to do business in the State must be submitted in writing no later than April 16, 1996, and reply comments no later than April 23, 1996, to:

Dr. Sarah P. Voll
Executive Director and Secretary
Public Utilities Commission
8 Old Suncook Road
Concord, New Hampshire 03301-7319

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Generic Investigation into IntraLATA Toll Competition Access Rates, DE 90-002, Order No. 20,916, 78 NH PUC 365, Aug. 2, 1993. [N.H.] Re Long Distance North of New Hampshire, Inc., et al., DE 87-249, Order No. 21,851, 80 NH PUC 628, Oct. 3, 1995.

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NH.PUC*03/26/96*[89090]*81 NH PUC 228*Holiday Ridge Supply Company

[Go to End of 89090]

81 NH PUC 228

Re Holiday Ridge Supply Company

DR 96-021
Order No. 22,077

New Hampshire Public Utilities Commission

March 26, 1996

ORDER admonishing a water utility for not having initiated a meter installation program earlier as directed, but nevertheless exempting the utility from the meter requirements at the present time, given the utility's precarious financial situation.

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1. SERVICE, § 310

[N.H.] Meters — Mandate for installation of — Water utility — Exemption from installation requirement — Factors — Insufficient funding. p. 228.

2. SERVICE, § 473

[N.H.] Water utility — Equipment and facilities — Installation of meters — Exemption from

installation requirement — Factors — Insufficient funding. p. 228.

3. WATER, § 12

[N.H.] Water utility — Construction and equipment — Installation of meters — Exemption from installation mandate — Factors — Precarious finances. p. 228.

APPEARANCES: Fay E. Melendy, Esq. for Holiday Ridge Supply Company, E. Barclay Jackson for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

By letter dated December 12, 1995, Holiday Ridge Supply Company (Holiday Ridge or the company) requested the New Hampshire Public Utilities Commission (Commission) to grant it relief from a provision of the Stipulation approved to in Docket DR 89-068. The provision required Holiday Ridge to install meters in its franchise area.

Holiday Ridge did not file testimony in addition to its December 12, 1995 letter and attachments. Staff filed testimony on February 5, 1996. Settlement discussions were unavailing and an evidentiary hearing before the Commission was held on February 14, 1996.

Holiday Ridge argued that it should be relieved of the meter installation requirement because (1) the company is unable to acquire external financing, (2) the company is not currently earning its authorized rate of return, and (3) the company has had additional expenditures imposed upon it by the Safe Drinking Water Act (SDWA) and as a result by a sanitary survey deficiency report issued by the New Hampshire Department of Environmental Services.

The Commission Staff (Staff) opposed Holiday Ridge's request. Staff cited the Stipulation, approved by Order No. 19,951 on October 9, 1990, in which the Commission resolved the issue of metering vs. non-metering, by deciding against issuing a waiver of the metering requirement of N.H. Admin. Rule Chapter Puc 603.05(a). Staff pointed out that the Stipulation included a rate increase which should have covered metering and that Holiday Ridge has been profitable during the six years since the Stipulation. Staff's position was that Holiday Ridge has had the financial capability but chooses not to install meters in its franchise.

[1-3] After reviewing the testimony and exhibits, we conclude that Holiday Ridge should have begun installation of meters soon after the resolution of DR 89-068. We chastise the company for not doing so and for not informing us sooner of its inability to install meters before the expiration of the five years covered by the Stipulation in that docket. Further, we find unpersuasive Holiday Ridge's

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argument regarding the company's failure to earn its authorized rate of return.

Notwithstanding the foregoing, the overall situation of Holiday Ridge warrants the company's exemption from the requirements of N.H. Admin Rule Chapter Puc 603.05(a) at this time. Holiday Ridge's current financial obligations, including those resulting from the SDWA,

and the small size of the company lead us to grant the company's request.

Based upon the foregoing, it is hereby

ORDERED, that Holiday Ridge shall be exempt at this time from the metering requirement of N.H. Admin. Rule Chapter Puc 603.05(a).

By order of the Public Utilities Commission of New Hampshire this twenty-sixth day of March, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Holiday Ridge Supply Co., Inc., DR 89-068, Order No. 19,951, 75 NH PUC 665, Oct. 9, 1990.

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NH.PUC*03/26/96*[89091]*81 NH PUC 229*Public Service Company of New Hampshire

[Go to End of 89091]

81 NH PUC 229

Re Public Service Company of New Hampshire

DR 95-205 et al.
Order No. 22,078

New Hampshire Public Utilities Commission

March 26, 1996

ORDER denying rehearing of Order Nos. 21,953 (80 NH PUC 796), 21,988 (81 NH PUC 47, *supra*), 21,995 (81 NH PUC 58, *supra*), 21,996 (81 NH PUC 60, *supra*), and 21,997 (81 NH PUC 62, *supra*), in which the commission had approved various special rate contracts negotiated by an electric utility and individual industrial customers. Commission rejects arguments that recent state legislation allowing tariffed economic development rates forecloses continued use of special rate contracts.

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1. PROCEDURE, § 32

[N.H.] Rehearing versus reconsideration — No provision for reconsideration per se — Treatment of motion for reconsideration as motion for rehearing. p. 231.

2. RATES, § 166

[N.H.] Factors affecting reasonableness — Solicitation or retention of business — Authorization for economic development rate tariffs — But no proscription of special rate contracts — Electric utilities. p. 231.

3. RATES, § 211

[N.H.] Special rate contracts — Negotiations with individual customers — Continued viability — Provisions for tariffed economic development/business retention rates notwithstanding — Electric utilities. p. 231.

4. RATES, § 49

[N.H.] Commission jurisdiction — As to special rate contracts — Criteria for approval — No unlawful infringement on traditional rate-making practices — No legislative prohibitions on special rate contracts — New provisions for tariffed economic development/business retention rates notwithstanding. p. 231.

5. CONTRACTS, § 4

[N.H.] Commission jurisdiction — As to special rate contracts — Approval or disapproval — "Checklist" of criteria — No unlawful infringement on traditional rate-making practices — No legislative prohibitions on special rate contracts — New provisions for tariffed economic development/business retention rates notwithstanding. p. 231.

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BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On January 18, 1996 the New Hampshire Public Utilities Commission (Commission) approved revised Special Contract No. NHPUC-118 between Public Service Company of New Hampshire (PSNH) and Teradyne, Inc. (Teradyne). Order No. 21,953. On January 29, 1996 the Commission approved revised Special Contract No. NHPUC-119 between Public Service and Kollsman, a division of Sequa Corporation (Kollsman). Order No. 21,997. On January 29, 1996 the Commission approved revised Special Contract No. NHPUC-120 between Public Service and Miniature Precision Bearings Corporation (MPB). Order No. 21,996. On January 25, 1996 the Commission approved revised Special Contract No. NHPUC-121 between Public Service and Textron Automotive Interiors, Inc. (Textron). Order No. 21,995. On January 18, 1996 the Commission approved revised Special Contract No. NHPUC-122 between Public Service and Wyman-Gordon Investment Castings, Inc. (Wyman-Gordon). Order No. 21,988.[1(20)]

On January 29, 1996 the Campaign for Ratepayers' Rights (CRR) filed a Motion for Rehearing of Order No. 21,953 approving the special contract between PSNH and Teradyne, and under separate cover letter filed Motions for Reconsideration of Orders Nos. 21,997, 21,996, 21,995, and 21,988 between PSNH and Kollsman, MPB, Textron and Wyman-Gordon, respectively. On January 30, 1996 the Office of the Consumer Advocate (OCA) filed a Motion to Join Campaign for Ratepayers Rights' (sic) Motion for Reconsideration (sic).[2(21)]

On February 8, 1996 PSNH filed objections to both motions. On January 26, 1996 the Public

Utility Policy Institute (PUPI) filed a Motion to Intervene, and on February 1, PSNH filed an objection to the Motion to Intervene. On January 29, the Commission informed PUPI that intervention was not a prerequisite to filing comments during the Orders *Nisi* period.

II. POSITIONS OF THE PARTIES

A. *CRR AND OCA*

In its Motion for Rehearing of Order No. 21,953 approving the special contract between Teradyne and PSNH and its Motions for Reconsideration of Orders Nos. 21,997, 21,996, 21,995, and 21,988 between PSNH and Kollsman, MPB, Textron and Wyman-Gordon, respectively, CRR stated the same grounds for Commission rehearing and reconsideration.

Initially, CRR alleges that RSA 362-C:6 does not allow the Commission to consider or approve special contracts under RSA 378:18 during the Rate Agreement, and therefore, the Commission does not have jurisdiction to approve any special contracts involving PSNH.

CRR alleges in the alternative or as additional support of its initial position, that the General Court's passage of SB 168 eliminates the Commission's authority to approve special contracts.

Finally, CRR alleged that the Commission's Checklist for Economic Development and Business Retention Special Contracts (Checklist) established in Order Nos. 20,633 and 20,805 was established in violation of the rule-making provisions of RSA chapter 541-A. *Re Generic Discounted Rates Docket*, 77 NH PUC 650 (1992); *Re Generic Discounted Rates Docket*, 78 NH PUC 316 (1993) This conclusion leads CRR to contend that the special contracts in dispute are illegal because PSNH filed the information set forth in the Checklist in support of the approval of the special contracts.

B. *PSNH*

PSNH asserted that RSA 362-C:6 did not affect the Commission's jurisdiction to allow PSNH to enter into special contracts under 378:18. PSNH contended that 362-C:6 was solely designed to establish the mechanism for determining base rates under the Rate Agreement and was not intended to affect RSA 378:18.

PSNH further asserted that the Commis-

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sion has approved special contacts over the past four years under the Rate Agreement.

PSNH asserts that CRR should have raised its objections to the Checklist over four years ago during the duly noticed proceedings that concluded with the development of the Checklist.

Finally, PSNH asserted that the passage of SB 168 did not foreclose the availability of special contracts to PSNH.

C. *PUPI*

PUPI filed no comments in response to the Commission's letter indicating it was free to do so.

III. COMMISSION ANALYSIS

The issues before us are, as set forth in the positions of the parties, whether the special

contracting provisions of RSA 378:18 are no longer available to PSNH subsequent to the Legislature's passage of RSA 362-C:6 and RSA 378:11-a (Supp. 1995), and whether the Checklist established in our generic investigation into discounted rates constituted an illegal rulemaking under RSA chapter 541-A.

[1] Initially, we note that CRR has chosen to style its motions as a Motion for Rehearing and Motions for Reconsideration, although the substantive challenges to our decisions are repeated verbatim under both headings. Because CRR provides no statutory, administrative rule or common law citations in either of the motions for the standard of review to be applied to its motions, and because there is no provision under our rules, in statute or at common law for the "reconsideration" of our orders we are forced to assume that both of these motions are filed pursuant to RSA 541:3 (Supp. 1995) and we will apply the standard of review set forth therein, thereby preserving the parties' appellate rights.[3(22)] *Cf.* RSA 365:28.

[2-5] All of the contracts at issue herein were filed pursuant to RSA 378:18 which reads as follows:

> Special Contracts for Service. Nothing herein
> shall prevent a public utility from making a contract for service at rates other than those fixed by its schedules of general application, if special circumstances exist which render such departure from the general schedules just and consistent with the public interest, and the commission shall by order allow such contract to take effect.

In each of these Dockets, PSNH supplied the Commission with the information delineated in the Checklist for Economic Development and Business Retention Discounted Rates. *Re Generic Discounted Rates Docket*, 78 NH PUC 316-317 (1993). The information was used to determine whether a variance from rate schedules of general application was justified.

As we have stated previously, we do not believe RSA 362-C:6 was intended to bar PSNH from entering into special contracts at rates other than those fixed by its schedules of general application. Order No. 21,953. We agree with PSNH that RSA 362-C:6 is intended to apply only to "base rates," i.e., "schedules of general application."

Our position is supported by a ruling of the Merrimack County Superior Court (McGuire, J.) on December 11, 1995 in *NH Office of Consumer Advocate et al. v. Public Utilities Commission*, Docket No. 95-E-331. In denying a Petition filed by OCA and CRR seeking to enjoin our deliberations of this and other special contracts, the court found that in approving the rate agreement the Legislature did not vacate or alter our authority under RSA 378:18 to approve special contracts "and has not done so since the passage of the rate agreement." For all of the foregoing reasons, CRR's motion is denied.

We find support for this position in the Legislature's passage of SB 168, 1995 Laws, Chapter 272:9. If in fact, RSA 362-C:6 precluded PSNH from entering into special contracts pursuant to RSA 378:18, the passage of Chapter 272:9 would have been unnecessary and superfluous. If RSA 362-C:6 precluded PSNH from entering into special contracts, the Legislature could have merely reiterated this prohibition. Rather, after finding that "the

present de facto negotiation of special [contracts] for large electricity consumers increases the pressure for an ultimate cost shift to smaller consumers," Chapter 272 establishes a Restructuring Committee to study, among other things, "[s]pecial case reduced rate contracts" and creates RSA 378:11-a providing for the establishment of rates of general application for economic development and business retention.

Because it is a fundamental principle of statutory interpretation that the Legislature does not act unnecessarily, *State v. Powell*, 132 N.H. 562, 568 (1989), we conclude that RSA 362-C:6 is not a bar to the special contracting process.

We further find that RSA 378:11-a is also not a bar to special contracts for electric utilities. Unlike RSA 362-C, which for the purposes of this analysis only addressed the Rate Agreement providing for the acquisition of PSNH by Northeast Utilities, RSA 378:11-a affects all of the State's electric utilities. As is set forth above, the Legislature, after finding that special contracts may have an undesirable effect on small electric consumers, allows electric utilities to file economic development and business retention tariffs of general application. RSA 378:11-a does not, however, prohibit special contracts at rates other than those established in tariffs of general application. Special circumstances may still exist where a variance from an economic development or business retention tariff of general application may be necessary.

Furthermore, RSA 378:11-a contains no explicit prohibition on special contracts for economic development or business retention and we will not arbitrarily read such a prohibition into the statute.

With regard to CRR's assertion that the development of the Checklist was an illegal rulemaking in violation of RSA chapter 541-A, we disagree. The Checklist is not a set of mandatory criteria which must be filed with the Commission or met by the utility in order to qualify for a special contract for business retention or economic development. In Order No. 20,633 in docket DR 91-172, after concluding that rates of general application for economic development and business retention were inappropriate, the Commission acknowledged that the "special contracts review process is time-consuming," and at times presents our Staff with "impossible determinations of a customer's true motivations when, for example, it states it will not remain in New Hampshire unless it obtains a discount." *Re Generic Discounted Rates Docket*, 78 NH PUC 316-317 (1993). Given these findings the Commission "ecourage[d] the Staff to develop a "checklist" of necessary information for all special contract requests, which can be followed by a utility in preparing a filing with the Commission." *Re Generic Discounted Rates Docket*, 77 NH PUC 650, 655 (1992)

Following that direction, the Staff developed such a Checklist that the Commission adopted by Order No. 20,882. In adopting the Staff's checklist, the Commission stated that "special contracts concerning economic development or business retention incorporate the *guidelines of the checklist in order to streamline our review process*." (emphasis added) *Id.* at 316.

Thus, the Checklist is not a mandate, or a precondition for the filing of a special contract for business retention or economic development. It is a guideline to ensure a streamlined review thereby reducing the amount of time required for Commission consideration. For those companies that do file in accordance with the Checklist, the Commission committed to use its best efforts to complete its review within 60 days. *Re Generic Discounted Rates Docket*, 78 NH

PUC 316-317 (1993). In support of this position we note that no special contract filing has been rejected for failure to supply all of the information in the Checklist, and on certain occasions we have required more information than is contained in the Checklist.

RSA 541-A:1, XV (Supp. 1995) states that "[t]he term [rule] does not include ... informational pamphlets, letters or other explanatory material which refers to a statute or rule without affecting its substance or interpretation ... ." Given that the Checklist is not a mandatory precondition for review or approval of a special contract for economic development or business retention we cannot conclude the Checklist is a rule. In the words of RSA 541-A:1, XV the Checklist is informational and explanatory to

utilities to assist them in obtaining expedited review of these special contracts.

Finally, even if the Checklist is an invalid rule we fail to see why this would invalidate our orders approving the special contracts at issue. Neither CRR nor the OCA has been adversely affected by the checklist; both of these parties were free to file comments with the Commission demonstrating why the contracts were not in the public interest. If any party has been adversely affected by this process it would be the utilities and their customers that supplied the Commission with information in conformance with an illegal rule. *See*, RSA 541-A:23, III.

Based upon the foregoing, it is hereby

ORDERED, that the Campaign for Ratepayers' Rights' Motions for Rehearing, and Reconsideration are denied.

By order of the Public Utilities Commission of New Hampshire this twenty-sixth day of March, 1996.

FOOTNOTES

[1]All of these special contracts had initially been rejected by the Commission because they contained anti-competitive provisions that were inappropriate in an emergingly competitive market. PSNH revised and refiled the special contracts without those anti-competitive provisions.

[2]The "Motion to Join" includes those contracts CRR asked for Commission Reconsideration.

[3]This finding comports with the manner the OCA styled its Motion to Join.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 95-205, Order No. 21,953, 80 NH PUC 796, Dec. 20, 1995. [N.H.] Re Public Service Co. of New Hampshire, DR 95-303, Order No. 21,988, 81 NH PUC 47, Jan. 18, 1996. [N.H.] Re Public Service Co. of New Hampshire, DR 95-270, Order No. 21,995, 81 NH PUC 58, Jan. 25, 1996. [N.H.] Re Public Service Co. of New Hampshire, DR 95-230, Order No. 21,996, 81 NH PUC 60, Jan. 29, 1996. [N.H.] Re Public

Service Co. of New Hampshire, DR 95-214, Order No. 21,997, 81 NH PUC 62, Jan. 29, 1996.
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NH.PUC*03/28/96*[89092]*81 NH PUC 233*EnergyNorth Natural Gas, Inc.

[Go to End of 89092]

81 NH PUC 233

Re EnergyNorth Natural Gas, Inc.

DR 96-049
Order No. 22,079

New Hampshire Public Utilities Commission

March 28, 1996

ORDER approving a natural gas local distribution company's summer cost-of-gas adjustment filing, resulting in a credit of 7.42 cents per therm, attributable to the combined effects of prior-period overcollections, lower-than-projected supply costs, warmer-than-normal weather, and associated lower volumes of sales. Consideration of sales versus transportation or gas-on-gas competition was deferred to another proceeding.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 10

[N.H.] Direct energy costs — Cost-of-gas adjustment — Summer season — Factors affecting increase — Per-therm credit mechanism — Warmer weather and associated lower sales — Prior-period overcollections — Local distribution company. p. 235.

2. MONOPOLY AND COMPETITION, § 58

[N.H.] Gas services — Sales versus transportation — So-called gas-on-gas competition — As element in cost-of-gas adjustment — Deferral to different proceeding. p. 235.

APPEARANCES: McLane, Graf, Raulerson and Middleton by Steven V. Camerino, Esq. on behalf of EnergyNorth Natural Gas, Inc.; and Kenneth E. Yasuda, Sr. on behalf of the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On February 15, 1996, EnergyNorth Natural Gas, Inc. (ENGI or EnergyNorth) filed its Cost

of Gas Adjustment (CGA) for the Summer 1996 period. Accompanying its CGA filing was a motion seeking protective treatment, which was granted on March 5, 1996 in Order No. 22,043. There were no requests for intervention filed in this matter, and a duly noticed hearing was held on March 19, 1996.

II. POSITIONS OF ENGI AND STAFF

A. *ENGI*

ENGI requests a CGA rate for the 1996 Summer period of ($.0742) per therm. Mr. Donald Carroll, ENGI's Vice President of Gas Supply, testified that a prior period overcollection of $173,848 was included in the proposed credit. This overcollection was due, in part, to lower than projected gas costs during the 1995 summer period. Therm sales for the period were below those forecasted due to warmer than normal weather, and the lower volume of sales resulted in lower total gas costs. The proposed credit of ($.0742) per therm, when compared with last summer's CGA credit of ($.0903) per therm, would result in a monthly increase of approximately $0.75 for the average residential customer.

Tennessee Gas Pipeline (Tennessee) filed with the Federal Energy Regulatory Commission (FERC) for a rate increase of 25% which took effect July 1, 1995, increasing EnergyNorth's annual gas costs by approximately $2.4 million. Mr. Carroll testified that the Tennessee Customers Group contested the increase and a settlement for substantially lower rates is imminent. Any resulting refunds will be included in future CGA's.

Mr. Carroll also testified regarding EnergyNorth's contract with Pendulum Gas Services (Pendulum). The Mansfield Consortium (Consortium), of which EnergyNorth is a member, selected Pendulum as its Asset Maximization Regional Manager. Consortium members have individual contracts with Pendulum that require Pendulum to market excess gas and capacity and attain the best value possible. Pendulum solicits bids for those services and gives Consortium members the right of first refusal once the market price is determined. Pendulum receives a commission on margins earned by the company through sales they have brokered. Pendulum is no longer performing off hour balancing and nominating for EnergyNorth and no longer receives a monthly fee.

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. Mr. Carroll testified that there are seven 280 day sales customers that currently are using either #2 fuel oil or propane and provide very favorable margins. These customers returned approximately $400,000 in margins during 1995. If those customers were to switch to 280 day transportation service, the resulting margins would be approximately $100,000. If ENGI were allowed to use transportation service as an alternate fuel, rather than oil or propane, then the Company may be able to retain a portion of the $300,000 that might otherwise be lost. Mr. Carroll proposed establishing a floor price based on the transportation rate and a premium. The premium would cover such services as balancing and nominating.

Upon cross examination, Mr. Carroll stated that if EnergyNorth were allowed to flex down their 280 day sales service price to the transportation rate plus a premium, ENGI could expect to receive $150,000 in margins from those customers, compared to $100,000 if all customers currently using #2 fuel oil and propane converted to 280 transportation service. Mr. Carroll

explained that this was a worst case scenario, that some customers may not wish to deal with

the daily balancing and nominating and some have unstable loads that might make it difficult to convert. In the event that these customers did not convert, EnergyNorth would still be able to collect high margins.

In response to questions from the bench, Mr. Carroll stated that EnergyNorth does not currently participate in the futures market. He believes that hedging is inherently risky, and if ENGI were to "guess" wrong, and if prices went below those contracted for, the difference in costs may not be recoverable through the CGA. Mr. Carroll stated that EnergyNorth and Staff had agreed to meet and discuss use of the futures market, and how resulting gains or losses should be treated.

B. *Staff*

Staff indicated its support for ENGI's revised 1996 Summer CGA filing. With regard to the 280 day sales versus 280 day transportation service, it was Staff's understanding based on orders arising from the transportation docket (DE 91-149) that the Commission does not favor this type of gas-on-gas competition, primarily because the Commission desires to foster transportation service. Another concern is that the costs associated with providing 280 day service, such as balancing and nominating costs, should be better identified and quantified. The cost issues are currently being addressed in the natural gas transportation cost of service studies docket, DE 95-121. It is Staff's recommendation that this issue not be addressed until those costs are determined.

III. COMMISSION ANALYSIS

[1, 2] After having reviewed the record, we conclude that ENGI's 1996 Summer CGA is reasonable and consistent with its previous performance relative to minimizing gas costs. Accordingly, we accept and approve ENGI's proposed 1996 Summer CGA rate of ($.0742) per therm.

The Commission recognizes that use of the futures markets can help stabilize gas prices, but also carry an inherent risk. We encourage EnergyNorth and Staff to explore how these markets could be used to reduce price swings while still minimizing gas costs.

Finally, the Commission does not believe this is the appropriate docket in which to address the issue of whether the provisions in the 280 day sales service tariff related to alternative fuels should be interpreted to include 280 day transportation service.

Based upon the foregoing, it is hereby

ORDERED, that ENGI's First Revised Page 32 superseding Original Page 32, N.H.P.U.C. tariff of EnergyNorth Natural Gas, Inc. providing for a Summer 1996 Cost of Gas Adjustment credit of $0.0742 per therm for the period April 1, 1996 through October 31, 1996 is hereby approved; and it is

FURTHER ORDERED, that the over-/under-collection shall accrue interest at the Prime Rate reported in the Wall Street Journal. The rate is to be adjusted each quarter using the rate

reported on the first date of the month preceding the first month of the quarter; and it is

FURTHER ORDERED, that should the monthly reconciliation of known and projected gas costs deviate from the 10 percent trigger mechanism, 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 twenty-eighth day of March, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re EnergyNorth Natural Gas, Inc., DR 96-049, Order No. 22,043, 81 NH PUC 170, Mar. 5, 1996.

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NH.PUC*03/29/96*[89093]*81 NH PUC 236*New England Telephone and Telegraph Company

[Go to End of 89093]

81 NH PUC 236

Re New England Telephone and Telegraph Company

DR 95-179
Order No. 22,080

New Hampshire Public Utilities Commission

March 29, 1996

ORDER approving a local exchange telephone carrier's proposed introduction of frame relay service, a virtual private data network service that allows a customer to simulate a dedicated high-speed data network.

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1. SERVICE, § 433

[N.H.] Telephone — New frame relay service offering — Bi-directional data communications service — Simulation of dedicated high-speed data network — But reliance on shared rather than dedicated network facilities — Local exchange telephone carrier. p. 236.

BY THE COMMISSION:

ORDER

[1] On June 26, 1995, New England Telephone and Telegraph Company (NYNEX or Company) petitioned to introduce Frame Relay Service (FRS), a virtual private data network service which allows customers to simulate a dedicated high speed data network.

On July 20, 1995, the Commission issued Order No. 21,763 suspending the filing to allow Staff time to review the filing. NYNEX responded to Staff requests for information by providing a copy of the associated network technical plan. Staff required time to investigate the filing and material filed in support of the proposed tariff and therefore requested that the proposed tariff pages be suspended. On October 20, 1995, the Commission issued Order No. 21,873 suspending the proposed tariff pages.

FRS is a bidirectional data communications service that provides connections among widely distributed customer locations that require the transfer of high speed, bursty data. The basic service capability provided by FRS is called a Permanent Virtual Connection (PVC). A PVC is a two-way data path between two customer locations that provides a function equivalent to a private line between the locations. Unlike a private line, FRS does not dedicate fixed capacity on network facilities to each connection. Instead, network facilities are shared over many PVCs, with each PVC using the network facility capacity for only the time required to transmit a specific burst of data across the network.

Staff has reviewed the proposed filing and the supporting documentation, including the document "Frame Relay in the State of New Hampshire, Plan No. NSP94-06" (Network Plan). In its analysis, NYNEX forecasted a contribution towards shared costs in the second year of service availability. Based on the filing and the Network Plan, Staff recommended the proposed tariff pages be approved.

We have reviewed Staff's recommendation and the petition filed by the Company and find that the proposed offering is the public good. Since Staff's recommendation has relied, in part, on the contents of the Network Plan, we believe the Network Plan should be made a part of the record in this docket. Accordingly, we will require the Company to file 9 copies of the document entitled "Frame Relay in the State of New Hampshire, Plan No. NSP94-06" within 7 days of this order.

Based upon the foregoing, it is hereby

ORDERED, that the following tariff pages of NYNEX are approved:

NHPUC No. 75 Part C Section 12 - Original Table of Contents Page 1 - Original Pages 1 through 7

FURTHER ORDERED, that the above tariff pages shall be effective as of March 29, 1996; and it is

FURTHER ORDERED, that within 7 days of this order, NYNEX shall file with the Commission 9 copies of the document entitled "Frame Relay in the State of New Hampshire, Plan No. NSP94-06"; and it is

FURTHER ORDERED, that NYNEX may seek to protect the document by filing a Motion for Confidentiality, pursuant to the procedures outlined in N.H. Admin. Rules, Puc 403.07 and 403.08; and it is

FURTHER ORDERED, that NYNEX file a compliance tariff with the Commission on or before April 26, 1996, in accordance with N.H. Admin. Rules, Puc 1601.04(b).

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of March, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New England Teleph. & Teleg. Co. dba NYNEX, DR 95-179, Order No. 21,763, 80 NH PUC 484, July 20, 1995.

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NH.PUC*03/29/96*[89094]*81 NH PUC 237*Retail Competition Pilot Program

[Go to End of 89094]

81 NH PUC 237

Re Retail Competition Pilot Program

Applicant: Public Service Company of New Hampshire

DR 95-250
Order No. 22,081

New Hampshire Public Utilities Commission

March 29, 1996

ORDER approving an electric utility's recommended plan for implementing a pilot program for competitive electric services. Under the plan, rates will be unbundled into separate transmission and distribution charges, open-access retail transmission service will be provided both within and outside of the utility's service territory, and a 10% rate reduction or credit will be applicable to customers that participate in the pilot.

Although the utility is allowed to participate in the pilot under its current corporate identity, it is encouraged to pursue formation of a separate subsidiary or affiliate for that purpose as expeditiously as possible. In the meantime, it is to at least establish a separate division as a functional equivalent of a separate legal entity for providing pilot services.

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1. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric service — Pilot program for retail competition — As experiment of limited

size and duration — No expectation of meaningful ratepayer savings as a result — Industry restructuring as more likely to provide true rate relief. p. 242.

2. ELECTRICITY, § 1

[N.H.] Pilot program for retail competition — As precursor to proposed industry restructuring — Pilot design — Final guidelines — As distinguished from final rulings. p. 242.

3. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric service — Pilot program for retail competition — Issues associated with transition to competition — Recovery of stranded costs — Jurisdiction over retail transmission service — Deferral of complex issues from pilot proceeding to industry restructuring proceeding. p. 242.

4. RATES, § 321

[N.H.] Electric rate design — Unbundling into separate distribution and transmission schedules — Pursuant to pilot program for retail competition — Basis for amounts "backed out" of bundled rates — Avoided costs versus retail market price — Reliance on market-based pricing assumptions — Wholesale market rate for

Page 237

short-term transactions as starting point — Adjustments for losses in transmission and distribution — Recognition of transaction costs incurred by competitive suppliers in making retail sales. p. 242.

5. EXPENSES, § 120

[N.H.] Electric utilities — Competitive suppliers — Costs incurred under pilot program for retail competition — Transaction costs — Losses in transmission and distribution — As adjustments to unbundled but market-based rates. p. 242.

6. INTERCORPORATE RELATIONS, § 1.1

[N.H.] Nature of relationship — Competitive provision of electric service — By dominant electric utility — Under pilot program for retail competition — Necessity of forming separate subsidiary or affiliate — Service through separate division for the interim. p. 243.

7. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric service — Pilot program for retail competition — Means of competing — Through separate division for the interim — Necessity of expeditious formation of distinct power marketing subsidiary or affiliate for the long-term. p. 243.

8. AUTOMATIC ADJUSTMENT CLAUSES, § 10

[N.H.] Electric utility — Fuel and purchased power adjustment clauses (FPPACs) — FPPAC charges applicable to wholesale customers — Effect of pilot program for retail competition — No recovery via FPPAC of pilot-related costs. p. 244.

9. SERVICE, § 320

[N.H.] Electric — Pilot program for retail competition — Program elements — Open-access

transmission — Availability — Both inside and outside utility's existing service area — To customers of both a cooperative and municipal utilities. p. 244.

10. RATES, § 321

[N.H.] Electric rate design — Unbundling — Pursuant to pilot program for retail competition — 10% incentive rate credit to encourage participation. p. 244.

BY THE COMMISSION:

ORDER

I. INTRODUCTION

This order addresses the Joint Recommendation (Recommendation) entered into by Public Service Company of New Hampshire (PSNH), Northeast Utilities Service Company (NUSCO) and the Staff of the New Hampshire Public Utilities Commission (Staff) relative to several aspects of PSNH's participation in the retail electric Pilot Program (Pilot). The Commission has been directed by the Legislature to establish the Pilot pursuant to NH RSA 374:26-a. This order also resolves one outstanding issue which was raised earlier in this proceeding relative to a similar Joint Recommendation entered into by Staff and Granite State Electric Company. That issue involves a determination of the appropriate market price assumptions which utilities will be required to utilize in calculating their projected stranded costs during the Pilot.

II. PROCEDURAL HISTORY

On February 22, 1996, PSNH filed with the Commission a Joint Recommendation entered into by PSNH, NUSCO and Staff. On March 6, 1996, PSNH filed Explanatory Testimony of Gary A. Long.

Freedom Energy Company (Freedom) filed a Motion to Join NUSCO as a Party on February 27, 1996. PSNH filed a written objection to such motion on March 5, 1996. On

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March 12, 1996 we issued Order No. 22,055 in which we denied Freedom's Motion to Join NUSCO as a party.

Hearings were held relative to the Recommendation and other outstanding issues on March 11, 12, 13 and 15. We deliberated the issues addressed in this Order at our March 25, 1996 public hearing.

III. POSITIONS OF THE PARTIES AND STAFF

A. The Recommendation

The Recommendation is similar in format to the one entered into by Staff and Granite State, which we conditionally approved in Order No. 22,029 (February 28, 1996) and one submitted by Connecticut Valley Electric Company (CVEC) which we conditionally approved in Order No. 22,037 (March 4, 1996). As with the Granite State filing, PSNH and Staff recommend that the Commission "disengage" from the Pilot certain contentious issues which must be addressed in a

transition to retail competition. Specifically, the Recommendation proposes a non-precedential and negotiated resolution of stranded cost recovery and federal/state jurisdiction over retail electric transmission services. PSNH Exhibit 4 p.1. The Recommendation includes proposed unbundled rates, "access charges" and "incentive credits" for each rate class. The stated objectives of the Recommendation are to (a) provide [the Commission] a "reasonable compromise which eliminates the issues of stranded costs and jurisdiction from this proceeding insofar as they relate to the Pilot," and (b) "... provide incentives for PSNH's customers to participate in the Pilot." PSNH Exhibit 4, ¶ 5. We will allow PSNH to recover most of the revenues which it otherwise would not have earned as a result of the anticipated loss of retail customers in the Pilot.

The Recommendation includes a commitment by both NUSCO and PSNH to file non-discriminatory retail transmission tariffs with the Commission and FERC in order to provide retail transmission service to Pilot customers inside and outside of PSNH's service territory.

The Recommendation acknowledges disagreement between Staff and PSNH relative to two issues. First, Staff and PSNH disagree on the amount that needs to be "backed out" of bundled rates. Staff contends that it should be the anticipated market price for retail transactions during the Pilot. PSNH contends that the appropriate amount should be based upon its short-term avoided costs. The Recommendation includes a range of amounts which should be deducted from the bundled rates for each rate class. PSNH and Staff agree to be bound by the Commission's decision relative to this issue.

The second area of disagreement recognized in the Recommendation relates to the conditions under which PSNH should be permitted to participate in the Pilot as a competitive supplier. The Recommendation provides that PSNH is permitted to withdraw the Recommendation if it is not allowed to participate in the Pilot as a competitive supplier.

1. PSNH

According to PSNH, the Recommendation provides a negotiated resolution of certain issues raised by Granite State relative to its participation in the Pilot. Specifically, the Recommendation claims not to create a precedent with respect to the appropriate level of stranded cost recovery or the Commission's jurisdiction over transmission and distribution services.

PSNH presented the testimony of Frank P. Sabatino, PSNH's Vice President of Wholesale Power Marketing, relative to the estimated wholesale market prices which form the basis for the assumed retail market prices for the Pilot. Mr. Sabatino testified that in his opinion there would not be a significant increase in wholesale power prices during the next few years, and therefore, actual prices in recent wholesale transactions provide a reasonable basis from which estimate retail prices during the Pilot. Based upon Mr. Sabatino's estimates, PSNH projects average wholesale prices of 2.72¢/KWh for 1996 and 2.92¢/KWh for 1997. According to PSNH, broken down by customer class and averaged for the two year period of the Pilot, these wholesale projections are as follows:

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

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LG rate class — 2.62¢/KWh
GV rate class — 2.71¢/KWh
G rate class  — 2.74¢/KWh
D rate class  — 2.93¢/KWh
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Mr. Sabatino acknowledged that there would be transmission and distribution losses associated with delivering power at retail. Mr. Long also testified that the PSNH's losses for serving Rate LG customers is 4.3% and 6.7% for all other classes.

PSNH contends that it should be allowed to compete for retail load directly through it. At the hearing Staff supported the Commission's ruling in its Final Guidelines which requires franchised utilities to compete for retail customers in the Pilot through an affiliate.

2. Staff

Staff indicated that it believed the Recommendation represented a reasonable compromise of the contested issues in this proceeding despite the concerns expressed by other witnesses. Mr. McCluskey acknowledged on cross-examination that Staff did not have all of the information available to it which was presented at the hearing when it entered into the Recommendation. He further agreed that the market price assumptions were critical aspect of the Recommendation and that if those assumptions were too low, that participating customers would not be able to achieve the savings necessary to encourage customer participation. Nevertheless, Mr. McCluskey testified that the record in this proceeding supports the market price assumptions at the high end of the range presented in the Recommendation.

Staff stood by its contention that PSNH should be required to form an affiliate through which it would compete for Pilot customers. Mr. McCluskey testified that if an affiliate was not required, then PSNH could sell at incremental cost and thus have the ability to use its core customers to subsidize its participation in the Pilot.

B. Freedom

Freedom opposes the Recommendation and contends that the Commission should maintain the approach expressed in the Final Guidelines. Alternatively, Freedom urges the Commission to increase the market price assumption to 4¢ KWh and increase the stranded cost recovery to yield an anticipated 20% discount off current bundled rates.

Freedom also contends that the Commission should not permit PSNH to participate in the Pilot as a competitive supplier unless it does so through an affiliate. According to Freedom, this requirement is "essential to the credibility and success of the Pilot Program." Post-Hearing Argument of Freedom Energy Company, p.1.

C. NHEC

NHEC argues that the Commission should reject the Recommendation because it does not provide the benefits for which Staff bargained. Specifically, NHEC contends that the Recommendation does not prevent PSNH from appealing the Final Guidelines and it contains no "real" commitment by PSNH regarding transmission access. NHEC asserts that the Recommendation should be rejected because PSNH has refused to provide retail transmission services in order to permit its wholesale customers, including NHEC, to participate in the Pilot.

D. Granite State

Granite State contends that the Commission should adopt the market price assumptions which were proposed in its Joint Recommendation with Staff, which range from 2.5 to 2.9¢/KWh. Granite State maintains that "the Commission should be careful not to err on the high side of market price assumptions as some have argued because it could impact market pricing to the detriment of pilot customers and utilities participating in the pilot ... " Comments of Granite State Electric Company and New England Power Company on Joint Recommendation Market Pricing, p.1-2. Alternatively, Granite State indicates that if the Commission adopts it would be willing to proceed with the Pilot with higher market price assumptions if it was authorized to defer the recovery of the additional lost revenues for recovery in rates at

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the end of the Pilot. *Id.* at 4-5.

E. Unitil

During the hearing, Unitil offered testimony relative to the assumed retail market prices which it urged the Commission to adopt. Specially, Unitil contends that the projected wholesale prices during the Pilot, on which retail prices must be based, are considerably higher than those testified to by witnesses for PSNH and Granite State. Unitil also agreed that such wholesale prices must be adjusted for losses and for transaction costs incurred in selling at retail. Unitil estimated that such transaction costs would be $60 per customer or an average of .37¢/KWh.

F. Cabletron

Cabletron opposes the Recommendation and argues that the Commission should apply the approach adopted in the Final Guidelines. Cabletron shares the concerns of other groups relative to the market price assumptions and level of stranded cost recovery contained in the Recommendation. During the hearing, Cabletron Chairman, Craig Benson, stated that the Pilot can do more than insure lower cost electricity, it can push the state's electric utilities to become more competitive in a number of different areas. Mr. Benson expressed concern about the level of stranded cost recovery called for in the Recommendation, noting that stranded costs in general are based upon many assumptions that should not be accepted at face value. He stated that the Commission should move forward with the Pilot under the terms originally established in the preliminary guidelines. Mr. Benson also encouraged the Commission to proceed to deregulate the electric utility industry as soon as possible.

G. PUPI

PUPI contends that it would be "inappropriate to use the wholesale market price of power to set the power cost to be removed from embedded rates ... " Comments on PSNH & Staff Joint Recommendation, p.1. According to PUPI, wholesale rates do not reflect the cost of bringing that power to market which would create a barrier to meaningful supplier competition. During the hearing PUPI offered the testimony of Richard LaCapra who testified that the proper retail market price assumptions should be 3.6-3.8¢/KWh, plus transaction costs. According to Mr. LaCapra, it is more important for the Commission to establish appropriate market price assumptions than to increase the stranded cost discount because the assumed market price will determine whether competitors have meaningful access the retail market during the Pilot.

G. CRR

CRR submitted written comments which offered conditional support for the Recommendation. CRR urged the Commission to adopt market price assumptions which are at the high end of the proposed range.

H. OCA

OCA contends that the testimony relative to assumed retail market prices by Mssrs. Gantz, LaCapra and Rosen are more credible than the testimony of witnesses for PSNH, Granite State and Staff. OCA suggests that the testimony of utility witnesses is unreliable because it is questionable whether the utilities truly want a successful Pilot. Office of Consumer Advocate Summary of Argument, p. 2-3. OCA believes that it is better for the Commission to err on the side of caution and adopt higher market prices which provide a greater guarantee that there will be adequate incentives to encourage customer participation in the Pilot.

I. Other Participants

A number of other participants offered written comments regarding the Recommendation. The following participants expressed support for the Recommendation: Greater Portsmouth Chamber of Commerce, the New Hampshire Business and Industry Association, Greater Manchester Chamber of Commerce and the Home Builders Association of New

Hampshire. Opposition to the Recommendation was expressed in a Recommendation of Customer & Supplier Organizations. The following organizations are signatories to that document: John Ryan, Energy Advocate for the C.A.P. Agencies, Cabletron, Enerdev, Inc., Enron Capital and Trade Resources, Freedom, Granite State Taxpayers, Inc., KCS Power Marketing, Inc., Retail Merchants Association of New Hampshire and Wheeled Electric Power Company.

III. COMMISSION ANALYSIS

When we established the Preliminary Guidelines for the Pilot, we also took the opportunity to express our initial views regarding many of the complex issues which must be resolved in order to move toward an expeditious and orderly transition to retail electric competition in New Hampshire. Not surprisingly, our views relative to state/federal jurisdiction and stranded cost recovery generated considerable contention. In the case of PSNH, we also held that the Rate Agreement did not prohibit the implementation of the Pilot.

[1-3] In the Final Guidelines we reiterated these initial views, but expressly stated that they do not constitute final legal rulings on these matters. This approach reflects our belief that the Pilot is not the appropriate forum for stakeholders and other parties to deliberate, debate and ultimately litigate the merits of our views relative to such contentious issues. In our view, these issues are more appropriately resolved in the context of restructuring proceedings. The purpose of the Pilot is to explore the implications of retail competition through an experiment which is limited in size and duration; it should not be used as a vehicle to attempt to resolve all of the complex and contentious issues associated with a transition to retail competition for all

customers. Likewise, the Pilot is not intended to guarantee immediate or substantial near-term rate relief for New Hampshire ratepayers. The limited size and duration of the Pilot means that only a small percentage of New Hampshire customers will be able to participate in the Pilot. Meaningful rate relief, through the introduction of retail competition, can only be achieved in the context of industry restructuring efforts which we anticipate initiating in the near future.

Based on the foregoing considerations, we believe that it is appropriate and in the public interest to consider alternatives to the Final guidelines which defer a thorough consideration of the most contentious issues in order to implement the Pilot expeditiously. Nonetheless, any such alternative must provide customers with a meaningful opportunity to participate in a competitive market. It is with these considerations in mind that we evaluate the PSNH Recommendation.

A. Avoided Costs vs. Market Price Assumptions

[4, 5] We first consider the disagreement over whether the amount that should be "backed out" out of bundled rates should be PSNH's avoided costs or an assumed retail market price. In our view, this issue is easily resolved because it has already been addressed in the Guidelines which require utilities to take reasonable actions during the Pilot to mitigate stranded costs. The first and obvious mitigation strategy is to sell the output of resources that otherwise would have been used to supply bundled service to retail customers. The use of a utility's incremental cost would not recognize the margin which could be earned on those sales.

We turn next to the determination of the appropriate level of the assumed retail market prices which should be used by all utilities in the development of unbundled rates. At the outset, we agree with the view that the starting point for this determination should be the projected wholesale market price of power for short-term transactions. The record reflects wholesale power price projections which range from just under 2.5¢/KWh to approximately 3.8¢/KWh. After reviewing the record and considering all of the testimony presented on this issue, we believe that the weight of the evidence supports the wholesale market price assumptions attributed to PSNH's affiliate, Western Massachusetts Electric, which were provided by PSNH's witness, Frank P.

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Sabatino. Mr. Sabatino projected that the average wholesale price during the Pilot will be 2.82¢ KWh. PSNH's breakdown by customer class is set forth above in the description of its position. The projected wholesale prices provided by PSNH are also supported by previous testimony of witnesses in the hearings which addressed the Recommendations of Granite State and CVEC. Based upon our determination that these projections are supported by the weight of the evidence, we direct each utility to use these class-specific wholesale prices as the basis for the assumed retail market prices to be used in the Pilot.

Because the foregoing price assumptions reflect *wholesale* price assumptions, it is appropriate to make several adjustments in order to calculate projected retail prices. We agree with the opinion that the wholesale price assumptions should be adjusted for losses associated with the delivery of power over each utility's transmission and distribution system. In addition, we will require the loss adjusted wholesale prices to be increased to recognize that competitive suppliers will incur real transaction costs in order make a retail sale to customers in the Pilot. We

find that the transaction cost estimate of 0.37¢/KWH presented by George Gantz of Unitil is a reasonable forecast of those costs.

These considerations result in assumed market prices which exceed those presented in the Recommendation. The table below sets forth our calculation of the appropriate assumed retail prices for PSNH. Thus, our approval of the PSNH, Granite State and CVEC Recommendations is contingent upon the use of these assumed market prices adjusted for losses on a utility-specific basis. In the event that a utility is ordered to implement the Pilot based on the Final Guidelines, the same market price assumptions should be used to calculate the stranded cost component of the unbundled rates.

As several witnesses pointed out during the hearing, if the assumed retail market prices established by the Commission turn out to be higher than the actual market prices at which power is sold in the Pilot, the result would be to increase customer savings but also increase the financial impact on the state's franchised utilities. As we stated above, we have undertaken an evaluation to establish market price assumptions which have the most support in the record. In the event that these retail price assumptions turn out to be incorrect, we believe it is reasonable to allow utilities to seek recovery of revenues which it otherwise would have earned during the Pilot. Accordingly, to the extent that actual market prices are lower than those established herein, we will allow PSNH, Granite State and CVEC to seek recovery of revenues which represent the difference between such actual market prices and those proposed in their Recommendations. Any such recovery must be sought at the conclusion of the Pilot after the Commission has the opportunity to evaluate data from which the calculation of actual market prices must be made.

B. Affiliate Requirement

[6, 7] We next consider the issue of whether PSNH should be permitted to participate directly in the Pilot as a competitive supplier, through its current corporate entity, or whether it should be required to participate through a subsidiary or affiliate. After considering the extensive testimony on this subject, we must initially express our strong preference that PSNH and its parent company move expeditiously to form an appropriate subsidiary or affiliate to participate in the Pilot. We expect that PSNH will undertake efforts to create such an entity, if it has not already done so. Nevertheless, we are cognizant of the testimony of Mr. Keane, PSNH's Treasurer, that there may be insufficient time for PSNH to receive all the necessary regulatory approvals before the Pilot implementation date. It is for this reason alone that we will permit PSNH to participate in the Pilot, through its current corporate entity, but upon the conditions set forth below.

We will permit PSNH to participate in the Pilot through the establishment of a division which will offer the functional equivalent of a separate legal entity. In the event that PSNH elects this alternative, we direct it to file with the Commission by April 2, 1996 a description of the mechanisms and safeguards which will achieve the functional equivalent of a separate

legal entity. This proposal must include (a) the establishment of proper accounting mechanisms, (b) proposed budgets for such a division and (c) a commitment to sell wholesale power to its competitors under rates, terms and conditions that are comparable to those which are

available to its division. PSNH is required to specify the pricing methodology which it proposes to employ for wholesale power sales and the mechanism to ensure comparability. The latter requirement reflects the concern which we share with several witnesses, particularly Mr. LaCapra, that unless certain safeguards are implemented, PSNH's market power could be exercised in a manner which would unfairly hinder the ability of competitive suppliers to participate in the Pilot. Due to the fact that PSNH's uneconomic power costs will be recovered through an unavoidable stranded cost charge, it could effectively thwart market entry by pricing power at its marginal cost while competitors must purchase at the prevailing wholesale market rate. This would result in captive customers subsidizing the competitive activities of PSNH and would not "foster competition" as PSNH alleged. Accordingly, we will require PSNH to offer to any competitive supplier capacity/power at the same rates and under the same terms and conditions which it makes available to its division for retail sale.

C. Wholesale FPPAC

[8] Although the Recommendation does not address the impact of the Pilot on the wholesale FPPAC rate, it is an issue that was raised at the hearings. We believe that it would be unfair to wholesale customers to allow wholesale FPPAC charges to increase as a result of implementing the Pilot. Therefore, in addition to the retail FPPAC modifications proposed by PSNH, we direct it to propose a modification to the wholesale FPPAC formula in order to ensure that wholesale customers incur no greater power costs than they would in the absence of the Pilot.

D. Eligibility for Transmission Services

[9] We believe that transmission services should be extended to potential Pilot customers of NHEC and municipal electric utilities irrespective of potential legal disputes over wholesale contracts. As a further condition of our approval of the Recommendation, we will require PSNH and NUSCO to make available to NHEC and to all municipal electric utilities transmission tariffs on the same rates, terms and conditions which apply to other non-PSNH Pilot participants.

The Recommendation appropriately acknowledges that the proposed retail transmission tariffs are subject to review and approval by this Commission and the FERC which will take place after such tariffs are filed. Accordingly, our conditional approval of the Recommendation is contingent upon the approval of those tariffs.

E. Miscellaneous Issues

1. *Acquisition Premium*

We will allow PSNH to unbundle the costs associated with the acquisition premium which are currently recovered in bundled rates. Nevertheless, this decision should not be interpreted as an indication that such unbundling would be appropriate in any future proceedings related to restructuring. Rather, we accept this approach only for the purposes avoided a dispute over the proper treatment and recovery of such costs.

2. *Participation Incentive Credit*

[10] The participation incentive credit approach proposed in the Recommendation is a reasonable one and we will approve it. We also believe that the record supports the conclusion that a 10% discount will generate sufficient participation in order to meet the objectives of the Pilot.

Based upon the foregoing, it is hereby

ORDERED, that the Joint Recommendation of PSNH, NUSCO and Staff is approved under the foregoing terms and conditions; and it is

FURTHER ORDERED, that the assumed

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retail market prices assumptions for the Pilot shall be those which we have adopted in this order; and it is

FURTHER ORDERED, that PSNH shall file with the Commission its proposed procedures for establishing a retail sales division prior to the close of business on April 2, 1996. By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of March, 1996.

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

ASSUMED MARKET PRICES FOR PSNH

Referred To On Page 13 [81 NH PUC 243] of Order No. 22,081 (March 29, 1996)

	1996 ¢/kWh	1997 Avg. ¢/kWh	¢/kWh	Loss Fct Adj %	¢/kWh	Trans Cost 0.37 ¢/kWh
Avg	2.72	2.92	2.82	1.060	2.989	3.359
LG	2.55	2.69	2.62	1.043	2.733	3.103
GV	2.62	2.79	2.71	1.067	2.886	3.256
G	2.65	2.83	2.74	1.067	2.924	3.294
D	2.81	3.04	2.93	1.067	3.121	3.491

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Retail Competition Pilot Program, DR 95-250, Order No. 22,029, 81 NH PUC 120, Feb. 28, 1996. [N.H.] Re Retail Competition Pilot Program, DR 95-250, Order No. 22,037, 81 NH PUC 158, Mar. 4, 1996. [N.H.] Re Retail Competition Pilot Program, DR 95-250, Order No. 22,055, 81 NH PUC 192, Mar. 12, 1996. [N.H.] Re Retail Competition Pilot Program, DR 95-250, Order No. 22,081, 81 NH PUC 237, Mar. 29, 1996.

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NH.PUC*04/01/96*[89095]*81 NH PUC 245*Retail Competition Pilot Program

[Go to End of 89095]

Re Retail Competition Pilot Program

Petitioner: Public Service Company of New Hampshire

DR 95-250
Order No. 22,082

New Hampshire Public Utilities Commission

April 1, 1996

ORDER declining to add certain proposed findings of fact and law to Order No. 22,081 (81 NH PUC 237, *supra*), which related to acceptance of an electric utility's plan for participation in a pilot program of retail electric competition. Commission notes that it still plans to address issues of stranded cost recovery and of jurisdiction over intrastate transmission service in separate proceedings.

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1. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric service — Retail competition pilot program — Miscellaneous issues — Recovery of associated stranded costs — Jurisdiction over intrastate transmission services — Consideration in separate proceedings. p. 246.

2. ELECTRICITY, § 2

[N.H.] Jurisdictional issues — Over *intrastate* transmission services — Resolution in separate proceeding. p. 246.

3. EXPENSES, § 120

[N.H.] Electric utilities — Stranded costs

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— Associated with retail competition pilot program — Deferral to separate proceeding. p. 246.

4. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric — Retail competition pilot — Pilot design — Eligibility for participation — Inclusion of retail customers of state's largest cooperative — Inclusion of retail customers of municipal utilities — Final guidelines — Affirmation. p. 246.

BY THE COMMISSION:

ORDER

[1-4] This order supplements Order No. 22,081 (March 29, 1996) in which we conditionally approved a Joint Recommendation (Recommendation) entered into by the Staff of the New Hampshire Public Utilities Commission (Staff) and Public Service Company of New Hampshire

(PSNH). On March 20, 1996, PSNH filed a Request for Findings and Rulings Pursuant to RSA 541-A:35. Although PSNH's requested findings and rulings are neither factual findings nor legal rulings, we will nonetheless address each one individually as follows.

1. Request #1 is denied for the reasons set forth in Order No. 22,081. As stated in that Order, the Recommendation is in the public good and is approved only if PSNH accepts and fully complies with the additional conditions set forth therein.

2. Request #2 is denied for the reasons set forth in Order No. 22,081. We incorporate by reference our analysis in that Order of the appropriate market price assumptions which should be used during the Pilot.

3. Request #3 is specifically addressed in Order No. 22,081 which is incorporated by reference herein.

4. Request #4 is partially approved and partially denied. We offer no determination as to the intent of PSNH for entering into the Recommendation. Our conditional approval of the Recommendation does not alter our decision as expressed in the Final Guidelines relative to the nature of our positions on certain issues. Specifically, we elected to defer final consideration of the following issues: (a) stranded cost recovery issues in the context of industry-wide restructuring, (b) state-federal jurisdiction over retail electric transactions, and (c) issues related to the Rate Agreement. Nevertheless, we deny PSNH's request to defer a final ruling on the "effect of several partial requirements agreements between the municipal, NHEC and PSNH" to the following extent. Our ruling is final regarding the eligibility of customers who are located within the service area of the New Hampshire Electric Cooperative, as well as those within the service areas of municipal utilities, to participate in the Pilot. This decision does not constitute a determination of the cost impact under existing wholesale contracts, if any, such participation may produce.

5. Request #5 is approved under the terms set forth in Order No. 22,081.

Based upon the foregoing, it is hereby

ORDERED, that PSNH's Request for Findings and Rulings Pursuant to RSA 541-A:35 are addressed as set forth above.

By order of the Public Utilities Commission of New Hampshire this first day of April, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Retail Competition Pilot Program, DR 95-250, Order No. 22,081, 81 NH PUC 237, Mar. 29, 1996.

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NH.PUC*04/02/96*[89096]*81 NH PUC 247*MCI Metro Access Transmission Services, Inc.

[Go to End of 89096]

81 NH PUC 247

Re MCI Metro Access Transmission Services, Inc.

DE 94-151
Order No. 22,083

New Hampshire Public Utilities Commission

April 2, 1996

MOTION by a telecommunications carrier for protective treatment of a special high-capacity, nonswitched access service contract negotiated with Digital Equipment Corporation; granted as to customer-specific usage and cost-of-service data cited therein.

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1. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective treatment — Relative to special telecommunications service contract — Granted as to customer-specific usage and cost-of-service data relied upon therein — Factors — Extent of competition — Commercially sensitive nature of information — Hampering of marketing efforts — Benefits of nondisclosure as outweighing those of disclosure — Telephone carrier. p. 247.

BY THE COMMISSION:

ORDER

On February 20, 1996, MCI Metro Access Transmission Services, Inc. (MCI Metro) filed with the New Hampshire Public Utilities Commission (Commission), pursuant to RSA 378:18, a special contract with Digital Equipment Corporation (DEC) for the provision of certain high capacity, non-switched telecommunications services (the Service Agreement). Concurrent with the Service Agreement, MCI Metro filed a Motion for Confidential Treatment of portions thereof and supporting materials (hereinafter collectively the Information). A Substitute Motion for Partial Confidential Treatment was filed on March 5, 1996. The Commission Staff made no objection to the Substitute Motion. The Office of Consumer Advocate takes no position regarding the Substitute Motion.

In its motion MCI Metro argues that the Service Agreement should be afforded protective treatment because, using our analysis in DR 95-069, *Re New England Telephone Company*, (Order No. 21,731, dated July 10, 1995), 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, MCI Metro states that it provided the documents required in Puc 204.08(b)(1) and cited the statutory support required by Puc 204.08(b)(2). MCI Metro states that the Information consists of details of a special contract relating to incremental cost information for competitive services not reflected in tariffs of general application, thus meeting the requirements

of Puc 204.08(b)(4). MCI Metro also provides facts describing the benefits to the company of non-disclosure, thus meeting the requirements of Puc 204.08(b)(3).

[1] We recognize that the detailed customer specific information regarding customer usage, costs and terms of service contained in the Service Agreement is critical to reasoned review by the Commission and Commission Staff, as required by RSA 378:18.

We also recognize that businesses engaged in discussions with regulated utilities are reluctant to disclose sensitive commercial and financial information if the information is to become part of the public record.

MCI Metro has alleged that disclosure of the information would result in harm to both itself and DEC. Harm to MCI Metro would occur because valuable marketing information could be obtained by competitors providing alternatives to the services MCI Metro provides. In addition, DEC's position in its own competitive markets would be jeopardized and DEC's Customer Proprietary Network Information, which the FCC has determined is protected,

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would be released.

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 to MCI Metro of non-disclosure appear to outweigh the benefits to the public 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 MCI Metro's Motion for Confidential Treatment of portions of the Service Agreement for the provision of certain high capacity, non-switched services and the supporting materials thereto, is GRANTED; and it is

FURTHER ORDERED, that this order is subject to reconsideration in the event that the Commission Staff or any party raises concerns and it is subject to the on-going right 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 second day of April, 1996.

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*04/02/96*[89097]*81 NH PUC 248*Public Service Company of New Hampshire

[Go to End of 89097]

81 NH PUC 248

Re Public Service Company of New Hampshire

DR 96-035
Order No. 22,084

New Hampshire Public Utilities Commission

April 2, 1996

MOTION by electric utility for protective treatment of a special contract negotiated with Praxair, Inc., for installation of an on-site production facility; granted as to customer-specific usage, demand, and load data cited therein.

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1. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective treatment — Relative to special facility construction contract — Granted as to customer-specific usage and load data relied upon therein — Factors — Extent of competition — Commercially sensitive nature of information — Benefits of nondisclosure as outweighing those of disclosure — Electric utility. p. 249.

BY THE COMMISSION:

ORDER

On February 2, 1996, the 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 Praxair, Incorporated (Praxair) for the provision of an on-site production facility. Concurrent with the special contract, PSNH filed a Motion for Confidential Treatment of portions of the contract and supporting materials (hereinafter collectively the Information). According to PSNH, the Commission Staff (Staff) neither opposed nor supported the motion prior to reviewing the special contract; the Office of Consumer Advocate also took no position.

In its motion PSNH argues that the Information should be afforded protective treatment because, using our analysis in *Re NET*, Order No. 21,731, 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, PSNH states that it provided the documents required in Puc 204.08(b)(1) and cited the statutory support required by Puc 204.08(b)(2). PSNH states that the Information

consists of details of confidential commercial and financial information that is not general public knowledge and for which measures have been taken to prevent dissemination in the ordinary course of business, thus meeting the requirements of Puc 204.08(b)(4). PSNH further

provides facts describing the benefits of non-disclosure, thus meeting the requirements of Puc 204.08(b)(3).

[1] We recognize that the detailed customer specific information regarding customer usage, costs and terms of service contained in the Information is critical to review of the special contract by the Commission and Commission Staff, as required by RSA 378:18.

We also recognize that businesses engaged in discussions with regulated utilities are reluctant to disclose sensitive commercial and financial information if it is to become part of the public record.

PSNH has alleged that disclosure of the information would result in competitors of both PSNH and Praxair to use load information, studies involving alternative sources, and other decision affecting details contained in the information to gain an unfair commercial advantage. In addition, harm to PSNH would result because disclosure would jeopardize its ongoing commercial relationship based on an understanding that financially sensitive information will be treated confidentially.

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 to PSNH of non-disclosure appear to outweigh the benefits to the public 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 PSNH's Motion for Confidential Treatment of portions of its special contract with Praxair and the supporting materials thereto, is GRANTED; and it is

FURTHER ORDERED, that this order is subject to reconsideration in the event that the Commission Staff or any party raises concerns and it is subject to the on-going right 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 second day of April, 1996.

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*04/02/96*[89098]*81 NH PUC 249*Hertz Technologies, Inc.

[Go to End of 89098]

81 NH PUC 249

Re Hertz Technologies, Inc.

DR 96-060
Order No. 22,085

New Hampshire Public Utilities Commission

April 2, 1996

ORDER authorizing an interexchange telephone carrier to make various tariff revisions so as to introduce both inbound and outbound toll and toll-free calling packages on a term subscription basis, but with customers having a choice of term duration and of dedicated or switched access.

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1. RATES, § 592

[N.H.] Telephone rate design — Toll service — Tariff revisions — New inbound and outbound toll and toll-free service packages — Choice of subscription term — Choice of dedicated or switched access — Interexchange telephone carrier. p. 250.

2. RATES, § 309

[N.H.] Installation and connection charges — Nonrecurring charges — Tariff revisions — Associated with new toll and toll-free service plans — Interexchange telephone carrier. p. 250.

Page 249

BY THE COMMISSION:

ORDER

[1, 2] On February 28, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from Hertz Technologies, Inc., (Hertz) requesting authority to introduce new toll and toll-free packages, delete three existing toll and toll- free packages and revise installation and recurring charges for effect March 28, 1996.

The proposed new services include Option O, Option P, FlexOne and Option S47. The various opt ions offer service on a month-to-month, 1 year, 2 year or 3 year basis. The options also include a choice of switched or dedicated access as well as outbound toll or inbound toll-free service.

Schedule H, Schedule S, and Schedule I are being deleted. These services included outbound and inbound alternatives with a choice of switched or dedicated access.

Schedule A, B, and C rates are being reduced. The switched access Schedule M rates are being increased. Installation and recurring rates are being revised as well.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize Hertz to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of Hertz's tariff, NHPUC No. 1 are approved for effect as filed:

1st Revised Page 2

1st Revised Page 3

1st Revised Page 25

1st Revised Page 26

Original Page 26.1

Original Page 26.2

Original Page 26.3

Original Page 26.4

1st Revised Page 27

1st Revised Page 28

1st Revised Page 35

1st Revised Page 36

1st Revised Page 39

1st Revised Page 40

1st Revised Page 41

1st Revised Page 42

Original Page 42.1

Original Page 42.2

Original Page 42.3

Original Page 42.4

Original Page 42.5

Original Page 42.6;

and it is

FURTHER ORDERED, that Hertz file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this second day of April, 1996.

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NH.PUC*04/02/96*[89099]*81 NH PUC 250*U.S. Long Distance, Inc.

[Go to End of 89099]

81 NH PUC 250

Re U.S. Long Distance, Inc.

DE 95-319
Order No. 22,086

New Hampshire Public Utilities Commission

April 2, 1996

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

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1. CERTIFICATES, § 123

[N.H.] Telephone carrier — Intrastate intraLATA long-distance services — Interim authority — Assessment of competitive impacts — Exclusion of local exchange services. p. 251.

Page 250

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate intraLATA toll services — Interim authority — Assessment of competitive impacts — Exclusion of local exchange services. p. 251.

BY THE COMMISSION:

ORDER

[1, 2] On November 15, 1995, U.S. Long Distance, Inc. (USLD), a Texas corporation, petitioned the New Hampshire Public Utilities Commission (Commission) for authority to do business as a telecommunications public utility in the State of New Hampshire (petition) pursuant to, *inter alia*, RSA 374:22 and RSA 374:26. USLD has demonstrated the financial, managerial and technical ability to offer service as conditioned by this order. The Commission previously approved numerous, similar petitions filed during the Trial Period, pursuant to the Modified Stipulation Agreement (Stipulation) in Docket No. DE 90-002, approved by Order No. 20,916 (August 2, 1993). Our orders in those numerous dockets granted the petitioner(s) interim authority to offer intraLATA toll service, specifically excluding local exchange service, for the service territory of the entire State of New Hampshire, during the Trial Period, in order to allow the Commission to analyze competition during the two-year Trial Period.

Because the Trial Period identified by the Stipulation expired on September 30, 1995, we have explicitly clarified that the authority we had granted remains in effect until we specifically modify or revoke that authority, after analysis of the Trial Period. *See* Order No. 21,851

(October 3, 1995). Likewise, our grant of authority ordered herein remains in effect until we specifically modify or revoke that authority.

The public good is served by permitting such competition by telecommunications companies. The Commission permits competitive entry in order to foster competition in the New Hampshire intrastate toll market and to allow the Commission to analyze the effects of such competition.

The public should be provided an opportunity to respond in support of, or in opposition to this petition.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that USLD is granted interim authority to offer as a telecommunications public utility intraLATA toll service, specifically excluding local exchange service, for the service territory of the entire State of New Hampshire, subject to the following conditions:

1. The services shall be offered by approved tariffs.

2. The services shall be offered until the Commission orders otherwise.

3. USLD shall file tariffs for new services and changes in approved services (other than rate changes), with effective dates of no less than 30 days after the date the tariffs are filed with the Commission.

4. Within one business day of offering an approved service to the public at a rate different from its rates on file with the Commission, USLD shall notify the Commission of the change.

5. USLD is exempted from NH Admin. Rules, Puc 406.03 Accounting Records; Puc 407 Forms Required of All Telephone Utilities; and Puc 409 Uniform System of Accounts for Telecommunications Companies.

6. USLD shall maintain its book and records in accordance with Generally Accepted Accounting Principles.

7. USLD 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. USLD 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. USLD shall compensate the appropriate Local Exchange Company for all originating

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and terminating access used by USLD pursuant to NET Tariff N.H.P.U.C. 79, Switched Access Service Rate or its successors or its relevant equivalent contained in the tariffs of the Independent Local Exchange Companies.

10. New Service offerings filed for approval with the Commission shall be accompanied by tariff pages describing the service, rates and effective dates.

FURTHER ORDERED, that the authority granted herein remains in full force and effect until the Commission orders otherwise; and it is

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

FURTHER ORDERED, that USLD 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 April 9, 1996, and an affidavit proving publication shall be filed with the Commission on or before April 16, 1996; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, et seq. USLD 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 April 23, 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 April 30, 1996; and it is

FURTHER ORDERED, this Order *Nisi* shall be effective May 2, 1996, unless the Commission provides otherwise in a supplemental order issued prior to the effective date and it is

FURTHER ORDERED, that USLD shall file a compliance tariff with the Commission on or before May 2, 1996, in accordance with NH Admin. Rules, Puc 1601.01 (b).

By order of the Public Utilities Commission of New Hampshire this second day of April, 1996.

Notice of Conditional Approval of
U.S. LONG DISTANCE, INC.

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

On November 15, 1995, U.S. Long Distance, Inc. (USLD), a Texas corporation, filed with the New Hampshire Public Utilities Commission (Commission) a petition to do business as a telecommunications public utility in the State of New Hampshire, specifically to provide intrastate long distance telecommunications services.

In Order No. 22,086, issued in Docket No. DE 95-319, the Commission granted USLD conditional approval to operate as of May 2, 1996, subject to the right of the public and interested parties to comment on USLD 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 USLD's petition to do business in the State must be submitted in writing no later than April 23, 1996, and reply comments no later than April 30, 1996, to:

Dr. Sarah P. Voll
Executive Director and Secretary
Public Utilities Commission
8 Old Suncook Road
Concord, New Hampshire 03301-7319

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Generic Investigation into IntraLATA Toll Competition Access Rates, DE 90-002, Order No. 20,916, 78 NH PUC 365, Aug. 2, 1993. [N.H.] Re Long Distance North of New Hampshire, Inc., et al., DE 87-249, Order No. 21,851, 80 NH PUC 628, Oct. 3, 1995.

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NH.PUC*04/08/96*[89100]*81 NH PUC 253*Public Service Company of New Hampshire

[Go to End of 89100]

81 NH PUC 253

Re Public Service Company of New Hampshire

DR 95-180
Order No. 22,087

New Hampshire Public Utilities Commission

April 8, 1996

ORDER denying rehearing of Order No. 22,027 (81 NH PUC 109, *supra*) as to the treatment of revenue shortfalls resulting from application of economic development (ED) and business retention (BR) rate tariffs approved for an electric utility therein. Commission says that enabling legislation is clear and unambiguous that ratepayers are not in any way to subsidize the discount given to ED/BR customers. Accordingly, losses associated with ED/BR rates may not be recovered from other ratepayers.

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1. RATES, § 165

[N.H.] Factors affecting reasonableness — Reductions in revenues — Shortfalls associated with economic development- and business retention-related discounts — No recovery from other ratepayers — Electric utility. p. 254.

2. REVENUES, § 5

[N.H.] Electric utility — Shortfalls associated with economic development- and business retention-related discounts — Avoidance of subsidization by other ratepayers — Legislative

prohibitions on rate recovery. p. 254.

3. EXPENSES, § 42

[N.H.] Deficits under rate schedules — Shortfalls associated with new economic development- and business retention-related discounts — No recovery from other ratepayers — Electric utility. p. 254.

4. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric — Economic development rates — Business retention rates — Discount-related shortfalls — No recovery of difference in rates. p. 254.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY.

On February 23, 1996 the New Hampshire Public Utilities Commission (Commission) issued Order No. 22,027 holding, in relevant part, that RSA 378:11-a (Supp. 1995) did not allow Public Service Company of New Hampshire (PSNH), or any other electric utility, to recover from other ratepayers the difference between its normal tariffed rate and an economic development rate.

On March 7, 1996 PSNH filed a Motion for Reconsideration (Motion) of this holding "pursuant to RSA 365:28 and RSA 541:3." PSNH also cited to RSA 365:8 as the "most applicable legal basis for reconsideration of this Order."[1(23)] *Motion* at 1.

On March 13, 1996 Freedom Energy Company (Freedom) filed an objection to the Motion.

II. POSITIONS OF THE PARTIES.

A. *PSNH*.

PSNH asserts that the Commission has misinterpreted that section of RSA 378:11-a that refers to revenue recovery for utilities offering economic development rates.

In support, PSNH provides hypothetical examples demonstrating the revenue losses a utility would suffer as a result of the Commission's interpretation of RSA 378:11-a. PSNH concludes in a footnote that this potential for decreased revenues produces "an absurd result," and thus the Commission must have

misinterpreted the Legislature's meaning.

B. *FREEDOM*.

Freedom challenges PSNH's assertions as unlikely because they assume the electric utility industry will continue to be regulated under traditional ratemaking principles.

Freedom further asserts that the Commission has properly interpreted RSA 378:11-a, and that PSNH's assertions merely reveal its industrial rates are currently exploitive.

III. COMMISSION ANALYSIS.

[1-4] The issue before us is the proper legal interpretation of that portion of RSA 378:11-a that reads as follows:

> [f]or the purposes of ratemaking a utility that adopts an economic development rate shall not be allowed to recover from other ratepayers the difference between the regular tariffed rate and the economic development rate, and in any rate proceeding subsequent to approval of economic development rates the commission shall not impute to the utility's revenue requirement the difference between the regular tariffed rate and the economic development rate for those customers who qualify for the economic development rate.

In Order No. 22,027 we held that this language does not allow a utility offering an economic development rate to recover from its customers the difference between its regular tariffed rate and the discounted rates.

PSNH asserts that the Commission's interpretation of the above quoted language leads to an absurd result when applied to traditional ratemaking methodologies. That is, PSNH contends that because offering an economic development rate works to its economic disadvantage under traditional ratemaking principles it would never offer such a rate, and thus, this could not have been the intent of the Legislature.

We disagree. We find that the intent of the Legislature is apparent from the plain language of the statute: it did not want other ratepayers burdened with the responsibility of compensating utilities because their industrial rates are not competitive in the national and international marketplaces.

Furthermore, given the Legislature's initiatives in creating a competitive market for electric utility services, we cannot assume, as has PSNH, that the Legislature contemplated the services in question would remain subject to traditional ratemaking principles. *See eg.*, RSA 374:3-a (alternative forms of regulation); RSA 374:26-a (Supp. 1995) (pilot program in retail electric competition); HB 1392 (1996) (utilities' obligation to mitigate stranded costs). Thus, we cannot conclude that the legislation as interpreted leads to an absurd or ridiculous result.

In light of these findings new hearings on the issue pursuant to RSA 365:28 or RSA 541:3 would not be productive because our conclusions would not change even if PSNH presented evidence to support its contentions.

The role of the Commission is to effectuate the expressed will of the Legislature set forth in statute. If PSNH believes the Legislature was in error in enacting that portion of RSA 378:11-a that does not allow electric utilities to collect lost revenues from reduced economic development rates from their other customers, it should make its arguments to the Legislature. Based upon the foregoing, it is hereby

ORDERED, that Public Service Company of New Hampshire's Motion for Reconsideration or a new hearing is denied.

By order of the Public Utilities Commission of New Hampshire this eighth day of April, 1996.

FOOTNOTES

[1]We fail to see the applicability of RSA 365:8 to the Standard of review, and, therefore our analysis herein. RSA 365:8 is merely a recitation of the Commission's rulemaking authority. We will assume this was a typographical error and the intended reference was RSA 365:28 which authorizes the Commission to alter orders after notice and hearing.

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EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 95-180, Order No. 22,027, 81 NH PUC 109, 170 PUR4th 538, Feb. 23, 1996.

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NH.PUC*04/08/96*[89101]*81 NH PUC 255*Public Service Company of New Hampshire

[Go to End of 89101]

81 NH PUC 255

Re Public Service Company of New Hampshire

DR 95-180
Order No. 22,088

New Hampshire Public Utilities Commission

April 8, 1996

ORDER accepting compliance filings submitted by an electric utility pursuant to Order No. 22,027 (81 NH PUC 109, *supra*) as to certain terms of the utility's newly approved business retention rates.

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1. RATES, § 166

[N.H.] Factors affecting reasonableness — Solicitation of business — Special business retention rate discounts — Compliance filings — Electric utility. p. 255.

BY THE COMMISSION:

ORDER

[1] On March 7, 1996, Public Service Company of New Hampshire (PSNH), pursuant to

Order No. 22,027 issued February 23, 1996, filed compliance tariff pages in accordance with the Commission's tariff filing rules. PSNH filed the following tariff pages, effective March 18, 1996, to NHPUC No. 36 - Electricity:

2nd Revised Pages 73, 74, 75, 76, 77, 78, 79, 80, 82, 83

3rd Revised Pages 2 and 81

PSNH's 2nd Revised Pages 73 through 78 pertain solely to PSNH's Economic Development Service Rate ED and were filed blank pending PSNH's Motion for Reconsideration of Order No. 22,027 concerning the revenue recovery aspects of Rate ED. The Motion for Reconsideration is addressed in Order No. 22,087.

The Commission in Order No. 22,027 required a number of changes to PSNH's Business Retention Service Rate BR including the deletion of the alternative rate discount section contained in "PERCENT DISCOUNTS" on Page 81, narrower language in the "SUCCESSORS and ASSIGNS" section and removal of the anti- competitive language contained in the "PSNH AS SOLE SUPPLIER" section.

Based on our review and Staff's recommendation of the conformance tariff pages relating to Rate BR contained in 2nd Revised Pages 79, 80, 82, 83 and 3rd Revised Page 81, we find the compliance tariff meets the concerns we addressed in Order No. 22,027 and is in the public interest.

Based upon the foregoing, it is hereby

ORDERED, that the following tariff pages

NHPUC No. 36 - Electricity
Public Service Company of New

Hampshire

2nd Revised Pages 79, 80, 82, 83
3rd Revised Pages 2, 81

are approved effective April 8, 1996.

By order of the Public Utilities Commission of New Hampshire this eighth day of April, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 95-180, Order No. 22,027, 81 NH PUC 109, 170 PUR4th 538, Feb. 23, 1996. [N.H.] Re Public Service Co. of New Hampshire, DR 95-180, Order No. 22,087, 81 NH PUC 253, Apr. 8, 1996.

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NH.PUC*04/08/96*[89102]*81 NH PUC 256*New Hampshire Electric Cooperative, Inc.

[Go to End of 89102]

81 NH PUC 256

Re New Hampshire Electric Cooperative, Inc.

DR 95-021
Order No. 22,089

New Hampshire Public Utilities Commission

April 8, 1996

ORDER approving further modifications to an electric cooperative's compact fluorescent lighting program component of its most recent demand-side management and conservation and load management plans.

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1. CONSERVATION, § 1

[N.H.] Electric cooperative — Demand-side management plans — Individual conservation and load management programs — Further revisions to compact fluorescent lighting component — Participation by commercial and industrial customers as well as residential customers — Increase in rebate amounts — Increase in purchase limit eligible for rebates — Further reduction in customer participation goals. p. 256.

BY THE COMMISSION:

ORDER

[1] On October 16, 1995 by Order No. 21,863 the New Hampshire Public Utilities Commission (Commission) approved a demand-side management residential compact fluorescent lighting program for New Hampshire Electric Cooperative, Inc. (NHEC). NHEC is now proposing to modify its fluorescent lighting program.

The customer participation goal was revised downward from an initial goal of 8,550 customers to 4,275. NHEC then set a target goal of 1,700 but due to marketing difficulties has reduced it further to 1,200.

NHEC proposes to increase the number of bulbs each customer is eligible to receive. Originally there was a $7 per bulb rebate on a maximum of six bulbs per customer. The latest proposal includes the $7 per bulb for ten bulbs, in addition to a $3 rebate on up to four bulbs from General Electric (GE). This change would result in increasing the customer rebate.

NHEC is also requesting that the Better Bulb program, currently available only to the residential class, be extended to the commercial and industrial sectors.

The final provision is a rebate alternative to the current Commercial and Industrial Financing Program. Under the rebate alternative, NHEC would offer a rebate, similar to the financing "buydown," to commercial and industrial users who prefer to purchase qualifying energy

efficiency improvements rather than finance them.

Staff has reviewed the current proposal presented by NHEC and recommends that the Commission approve the program changes.

Based on the foregoing, it is hereby

ORDERED, that the proposal of a $7 rebate on up to ten bulbs along with the GE rebate of $3 on up to four bulbs is approved; and it is

FURTHER ORDERED, that the Better Bulb program be extended to commercial and industrial customers; and it is

FURTHER ORDERED, that the proposed alternative of a rebate to commercial and industrial users is approved; and it is

FURTHER ORDERED, that these changes are effective from the date of this order and will remain in effect through the current program year.

By order of the Public Utilities Commission of New Hampshire this eighth day of April, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New Hampshire Electric Co-op., Inc., DR 95-021, Order No. 21,863, 80 NH PUC 647, Oct. 16, 1995.

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NH.PUC*04/08/96*[89103]*81 NH PUC 257*USA Calling, Inc.

[Go to End of 89103]

81 NH PUC 257

Re USA Calling, Inc.

DE 95-309
Order No. 22,090

New Hampshire Public Utilities Commission

April 8, 1996

ORDER denying an interexchange telephone carrier authority to offer intrastate long-distance services, due to its lack of response to questions raised as to its proposed tariffs.

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1. CERTIFICATES, § 76

[N.H.] Denial of — Factors — Deficient tariff proposals — Failure to respond to commission staff inquiries — Interexchange telephone carrier. p. 257.

BY THE COMMISSION:

ORDER

[1] On November 6, 1995, USA Calling, Inc. (USA), a Georgia corporation, petitioned the New Hampshire Public Utilities Commission (Commission) for authority to do business as a telecommunications public utility in the State of New Hampshire (petition) pursuant to, *inter alia*, RSA 374:22 and RSA 374:26.

Commission Staff (Staff) issued its written response to USA's petition on February 6, 1996. On February 20, 1996, counsel for USA notified the Commission that it was no longer representing USA in this matter. On March 26, 1996 Staff called USA's last known telephone number and received an intercept message that the number had been disconnected. On March 27, 1996, Staff issued a letter, to USA's last known address, advising USA that Staff had received no response to its letter of February 6, 1996, and that Staff would make its recommendation to the Commission on or before April 4, 1996.

As of April 4, 1996, Staff has received no reply to the tariff and qualifying issues addressed in its letter of February 6, 1996. Staff believes that USA has had adequate opportunity to respond and does not expect a response to be forthcoming. Accordingly, Staff recommends that USA's petition be denied, without prejudice.

We have reviewed the recommendation of Staff and concur that USA has received fair notice and opportunity to be heard, which it has not exercised. We have no evidence that the petition as filed is in the public good; we cannot approve the petition without USA addressing the issues raised by Staff. We will deny the petition of USA without prejudice to refile in the future.

Based upon the foregoing, it is hereby

ORDERED, that USA's petition for authority to offer service as a telecommunications public utility is denied.

By order of the Public Utilities Commission of New Hampshire this eighth day of April, 1996.

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NH.PUC*04/08/96*[89104]*81 NH PUC 257*GE Capital Exchange Corporation dba GE Exchange

[Go to End of 89104]

81 NH PUC 257

Re GE Capital Exchange Corporation dba GE Exchange

DR 96-064
Order No. 22,091

New Hampshire Public Utilities Commission

April 8, 1996

ORDER authorizing an interexchange telephone carrier to provide various new switched outbound and inbound toll and toll-free calling service packages.

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1. RATES, § 592

[N.H.] Telephone rate design — Toll service — Switched service options — Outbound

Page 257

and inbound toll and toll-free calling plans — New offerings — Interexchange carrier. p. 258.

BY THE COMMISSION:

ORDER

[1] On March 11, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from GE Capital Communication Service Corporation d/b/a GE Exchange and d/b/a GE Capital Exchange (GE) requesting authority to introduce GE Long Distance, NetPlan and NetValue, for effect April 10, 1996.

GE Long Distance is a switched service designed to provide a unified service for single or multi-location companies. The service offers outbound toll, inbound toll-free and calling card service for $.1990 per minute billed by the local exchange carrier. This service is an add-on to GE's interstate service.

Service descriptions for NetPlan and NetValue are the same. Both offer outbound toll, inbound toll-free, and calling card service with direct billing from GE. The services are only available to customers who subscribe to the companion interstate service. Rates for NetPlan are between 10 and 16 cents higher per minute than NetValue.

We find the proposed changes to be in the public good. New services expand the choice of telephone services and foster competition in the New Hampshire intrastate toll market which allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize the introduction of GE Long Distance, NetPlan and NetValue.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of GE's tariff, NHPUC No. 1 are approved for effect as filed:

5th Revised Page 2

3rd Revised Page 4

4th Revised Page 5

Original Page 46.1

Original Page 46.2

Original Page 65;

and it is

FURTHER ORDERED, that GE file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this eighth day of April, 1996.

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NH.PUC*04/09/96*[89105]*81 NH PUC 258*LCI International Telecom Corporation

[Go to End of 89105]

81 NH PUC 258

Re LCI International Telecom Corporation

Additional applicant: LCI Telemanagement Corporation

DE 96-039
Order No. 22,092

New Hampshire Public Utilities Commission

April 9, 1996

ORDER approving an intracorporate reorganization under which LCI Telemanagement Corporation will merge into LCI International Telecom Corporation.

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1. CONSOLIDATION, MERGER, AND SALE, § 23

[N.H.] Factors affecting approval — Economy and efficiency — No operational changes — Transparent effect as to customers — Compliance with standard of no net harm — Telecommunications carriers. p. 259.

BY THE COMMISSION:

Page 258

ORDER

[1] On February 7, 1996, LCI International Telecom, Corp. (LCI Telecom) and LCI

Telemanagement, Corp. (LCI Telemanagement), both Delaware corporations (Petitioners), filed with the New Hampshire Public Utilities Commission (Commission), a joint petition (Petition) for approval of an intra-corporate transfer whereby: (1) LCI Telemanagement will merge into LCI Telecom; and (2) LCI Telemanagement's authority to conduct business in the State of New Hampshire as a telecommunications public utility will transfer to LCI Telecom.

LCI Telecom received authority in DE 94-290 (December 14, 1994) by Order No. 21,463. LCI Telemanagement received authority in DE 95-164 (August 22, 1995) by Order No. 21,793.

LCI Telemanagement is a corporation formed specifically for the purpose of facilitating the acquisition of Corporate Telemanagement Group, Inc. (CTG). The Commission approved the merger of CTG into LCI Telemanagement on August 22, 1995 in Docket No. DE 95-164 by Order No. 21,793.

LCI Telecom proposes, based upon representations made by its counsel, to adopt the tariff of LCI Telemanagement. LCI Telecom will notify the Commission upon consummation of the merger.

Petitioners evidenced technical, managerial, and financial competence in the record of the above docket. There are no operational changes as a result of the Petition. Petitioners represent that the transfer of control will be essentially transparent to the customers, as they propose to adopt the existing tariffed rates and services currently on file with the Commission by LCI Telemanagement. Petitioners anticipate achieving economic efficiencies from the transfer which it believes will enhance its competitiveness.

We find that the merger of LCI Telemanagement into LCI Telecom, the transfer of authority from LCI Telemanagement to LCI Telecom 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). The transfer of control may in fact produce net benefits to LCI Telemanagement's customers and ratepayers. We will, therefore, approve the Petition.

Based upon the foregoing, it is hereby

ORDERED, that the Petition for approval of a the merger of LCI Telemanagement into LCI Telecom, the transfer of authority from LCI Telemanagement to LCI Telecom is GRANTED; and it is

FURTHER ORDERED, that LCI Telecom file a properly annotated compliance tariff title page adopting the tariff of LCI Telemanagement in accordance with NH Admin. Rules, Puc 1601.01 (b)., on or before ninth day of May, 1996.

By order of the Public Utilities Commission of New Hampshire this ninth day of April, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Corporate Telemanagement Group, Inc., DE 95-164, Order No. 21,793, 80 NH PUC 540, Aug. 22, 1995. [N.H.] Re LCI International of New Hampshire, Inc., DE 94-290, Order No. 21,463, 79 NH PUC 687, Dec. 14, 1994.

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[Go to End of 89106]

81 NH PUC 259

Re Kearsarge Telephone Company

DR 96-053
Order No. 22,093

New Hampshire Public Utilities Commission

April 9, 1996

ORDER approving a local exchange telephone carrier's proposed introduction of advanced calling services, including such features as call forwarding, call rejection, call return, special call acceptance, Caller ID, repeat dialing, and priority ringing. Moreover, Caller ID-related

Page 259

blocking service will be available on a per-line basis as well as to subscribers with nonpublished numbers.

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1. SERVICE, § 449

[N.H.] Telephone — Special service — Advanced calling services — Call forwarding and return options — Special call rejection and acceptance features — Multi-ring options — Local exchange carrier. p. 260.

2. SERVICE, § 449

[N.H.] Telephone — Special service — Advanced calling services — Caller ID — Associated blocking — Availability on a per-line basis — Provision to subscribers with nonpublished numbers — Local exchange carrier. p. 260.

3. RATES, § 553

[N.H.] Telephone rate design — Advanced calling services — Caller ID — Associated blocking — Free per-line blocking — Blocking for subscribers with nonpublished numbers — Local exchange carrier. p. 260.

BY THE COMMISSION:

ORDER

[1-3] On February 20, 1996, Kearsarge Telephone Company (KTC or Company) filed tariff pages proposing to introduce Advanced Calling Services (ACS) for effect March 22, 1996. The

ACS which the Company seeks to introduce include: Anonymous Call Rejection, Call Rejection, Call Return, Preferred Call Forwarding, Priority Ringing, Repeat Dialing, Special Call Acceptance, Caller ID and Caller ID Blocking.

In support of its filing, the Company filed forecasts of revenues and expenses associated with the proposed features. In addition, the Company submitted proposed notifications to be sent to KTC customers describing the proposed ACS services and associated blocking services.

Staff requested time to investigate the filing and material filed in support of the proposed tariff and therefore requested that the proposed tariff pages be suspended. On March 18, 1996, the Commission issued Order No. 22,056 suspending the proposed tariff pages.

After reviewing the filing, Staff expressed concern about the Company's proposed Caller ID Blocking - Per Line option. Initially, the Company proposed to offer Caller ID Blocking - Per Line only to those customers whose safety is at risk if their identity or location is disclosed through Caller ID's operation, including law enforcement agencies, domestic violence programs and sexual assault agencies' clients, volunteers and staff, and other customers who can demonstrate a safety risk. In addition, these customers could request per line blocking without incurring a charge from a period 30 days prior to and 60 days following the official introduction of the service and upon application of new telephone service.

Staff notified the Company that it would support the filing only if line blocking were made available to all customers, without charge, for a period 30 days prior to and 60 days following the introduction of Caller ID service. In addition, Staff believed that customers with non-published service, a service in which the subscriber's name, address and telephone number are not made available to the general public notwithstanding any claim of emergency the calling party may present, have an expectation that the Company will not disclose their telephone number automatically. Consequently, Staff contended the lines of customers with non-published service should be blocked automatically. Prior to E911, customers who wished to keep their telephone numbers private faced a dilemma: line blocking under the older system prohibited the transmission of a caller's name, address and telephone number to emergency services personnel. Now, with the implementation of E911, a customer may choose to protect his privacy and still allow the disclosure of his telephone number to the emergency service

Page 260

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bureau during emergencies. Staff provided the Company with a copy of Order No. 20,494, issued May 27, 1992 in DR 91-105, NYNEX's Phonesmart docket, in which the Commission provided guidelines to govern NYNEX's introduction of Caller ID services.

The Company provided Staff with a subsection of a Federal Communications Commission order, FCC 95-187, adopted May 4, 1995 in CC docket No. 91-281, in which the following sentence appears on page 5, paragraph 5: "Federal policy prohibits default per line blocking." Staff directed the Company to paragraph 6 on the same page which states: "Furthermore, we require that when a caller requests that the name of the subscriber to the line from which he is calling be concealed, a carrier may not reveal that name to the called party." Staff believes that basic exchange customers with non-published service have affirmed their expectation of privacy when they subscribed to non-published service. Staff explained to the Company that the

Commission has applied these guidelines to other local exchange companies that have petitioned to introduce Caller ID services. Following discussions with Staff, the Company agreed to revise its tariffs to comply with the guidelines established in DR 91-105. Further, the Company has agreed to block the lines of customers with non- published service, although it continues to interpret the FCC order differently from Staff.

The Company submitted its revised tariff pages on March 29, recommended they be approved.

We have reviewed the petition and the Staff's recommendation and find that the proposed tariff pages, as revised, are in the public good. In addition, we accept the Company's agreement to block the lines of customers with non-published service. In order to insure that customers are aware of blocking options upon request for initial service, we will require the Company to incorporate a procedure for its service order representatives to offer new customers both blocking options. We are pleased that the Company responded to Staff's request to provide customers who select per line blocking with stickers that indicate that the line is blocked.

Based on the foregoing, it is hereby

ORDERED *NISI*, that the following pages of Kearsarge Telephone Company Tariff PUC No. 7 are approved:

Section 3

Original Sheets 33-42

and it is

FURTHER ORDERED, that KTC include information about per line and per call blocking options in its ACS promotional material and in its service order procedures for initial service; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules, Puc 1601.05, the Petitioner shall cause an attested copy of this Order *Nisi* to be published once in a statewide newspaper of general circulation, such publication to be no later than April 16, 1996 and to be documented by affidavit filed with this office on or before April 23, 1996; and it is

FURTHER ORDERED, that KTC send a copy of this Order *Nisi* to all individuals on the attached service list of NHPUC docket DR 91-105, Phonesmart, by first class U.S. mail, postmarked no later than April 16, 1996 and shall be documented by affidavit with the Commission on or before April 23, 1996; and it is

FURTHER ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or file a written request for a hearing on this matter before the Commission no later than April 30, 1996; and it is

FURTHER ORDERED, that the Petitioner shall file a compliance tariff with the Commission on or before May 9, 1996, in accordance with N.H. Admin. Rules, Puc 1601.04 (b).

FURTHER ORDERED, that this Order *Nisi* shall be effective as of May 9, 1996, unless the Commission, on its own motion, orders otherwise.

By order of the Public Utilities Commission of New Hampshire this ninth day of April, 1996.

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BOSTON MA 02107

BETH OSLER
NEW ENGLAND TEL CO
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MANCHESTER NH 03105

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Kearsarge Teleph. Co., DR 96-053, Order No. 22,056, 81 NH PUC 193, Mar. 18, 1996. [N.H.] Re New England Teleph. Co., DE 91-105, Order No. 20,494, 77 NH PUC 254, May 27, 1992.

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NH.PUC*04/09/96*[89107]*81 NH PUC 262*LCI International Telecom Corporation

[Go to End of 89107]

81 NH PUC 262

Re LCI International Telecom Corporation

DR 96-071
Order No. 22,094

New Hampshire Public Utilities Commission

April 9, 1996

ORDER authorizing an interexchange telephone carrier to introduce a new outbound toll service aimed at small business customers.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Outbound calling plan — Small business customers — Minimum billing period of 30 seconds — Interexchange telephone carrier. p. 263.

Page 262

BY THE COMMISSION:

ORDER

[1] On March 11, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from LCI International Telecom Corporation (LCI) requesting authority to introduce a toll product called Multi-Level Marketing (MLM).

MLM is an outbound toll product designed for small businesses. There is a 30 second minimum billing period with 6 second additional increments. The undiscounted rates are $.20, $.15 and $.13 for day, evening and night/weekend respectively. This service is an add-on to interstate service.

We find the proposed change to be in the public good. New services expand the choice of telephone services and foster competition in the New Hampshire intrastate toll market which allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize the introduction of MLM.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of LCI's tariff, NHPUC No. 3 are approved for effect as filed:

Check Sheet/Table of Contents

2nd Revised Page 1

2nd Revised Page 2

2nd Revised Page 3.1

Section 2

Original Page 28

Section 4

Original Page 30;

FURTHER ORDERED, that LCI file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this ninth day of April, 1996.

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NH.PUC*04/09/96*[89108]*81 NH PUC 263*J D Services, Inc., dba American Freedom Network

[Go to End of 89108]

81 NH PUC 263

Re J D Services, Inc., dba American Freedom Network

DE 96-030
Order No. 22,095

New Hampshire Public Utilities Commission

April 9, 1996

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

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1. CERTIFICATES, § 123

[N.H.] Telephone carrier — Intrastate intraLATA long-distance services — Interim authority — Assessment of competitive impacts — Exclusion of local exchange services. p. 263.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate intraLATA toll services — Interim authority — Assessment of competitive impacts — Exclusion of local exchange services. p. 263.

BY THE COMMISSION:

ORDER

[1, 2] On January 29, 1996, J D Services, Inc. d/b/a American Freedom Network (AFN), a Utah corporation, petitioned the New Hampshire Public Utilities Commission (Commission) for

authority to do business as a telecommunications public utility in the State of New Hampshire (petition) pursuant to, *inter alia*, RSA 374:22 and RSA 374:26. AFN has demonstrated the financial, managerial and technical ability to offer service as conditioned by this order. The Commission previously approved numerous, similar petitions filed

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during the Trial Period, pursuant to the Modified Stipulation Agreement (Stipulation) in Docket No. DE 90- 002, approved by Order No. 20,916 (August 2, 1993). Our orders in those numerous dockets granted the petitioner(s) interim authority to offer intraLATA toll service, specifically excluding local exchange service, for the service territory of the entire State of New Hampshire, during the Trial Period, in order to allow the Commission to analyze competition during the two-year Trial Period.

Because the Trial Period identified by the Stipulation expired on September 30, 1995, we have explicitly clarified that the authority we had granted remains in effect until we specifically modify or revoke that authority, after analysis of the Trial Period. *See* Order No. 21,851 (October 3, 1995). Likewise, our grant of authority ordered herein remains in effect until we specifically modify or revoke that authority.

The public good is served by permitting such competition by telecommunications companies. The Commission permits competitive entry in order to foster competition in the New Hampshire intrastate toll market and to allow the Commission to analyze the effects of such competition.

The public should be provided an opportunity to respond in support of, or in opposition to this petition.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that AFN is granted interim authority to offer as a telecommunications public utility intraLATA toll service, specifically excluding local exchange service, for the service territory of the entire State of New Hampshire, subject to the following conditions:

1. The services shall be offered by approved tariffs.

2. The services shall be offered until the Commission orders otherwise.

3. AFN shall file tariffs for new services and changes in approved services (other than rate changes), with effective dates of no less than 30 days after the date the tariffs are filed with the Commission.

4. Within one business day of offering an approved service to the public at a rate different from its rates on file with the Commission, AFN shall notify the Commission of the change.

5. AFN is exempted from NH Admin. Rules, Puc 406.03 Accounting Records; Puc 407 Forms Required of All Telephone Utilities; and Puc 409 Uniform System of Accounts for Telecommunications Companies.

6. AFN shall maintain its book and records in accordance with Generally Accepted Accounting Principles.

7. AFN 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. AFN 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. AFN shall compensate the appropriate Local Exchange Company for all originating and terminating access used by AFN pursuant to NET Tariff N.H.P.U.C. 79, Switched Access Service Rate or its successors or its relevant equivalent contained in the tariffs of the Independent Local Exchange Companies.

10. New Service offerings filed for approval with the Commission shall be accompanied by tariff pages describing the service, rates and effective dates.

FURTHER ORDERED, that the authority granted herein remains in full force and effect until the Commission orders otherwise; and it is

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

FURTHER ORDERED, that AFN 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 April 16, 1996, and an affidavit proving publication shall be filed with the Commission on or before April

23, 1996; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, et seq. AFN 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 April 30, 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 7, 1996; and it is

FURTHER ORDERED, this Order *Nisi* shall be effective May 9, 1996, unless the Commission provides otherwise in a supplemental order issued prior to the effective date and it is

FURTHER ORDERED, that AFN shall file a compliance tariff with the Commission on or before May 9, 1996, in accordance with NH Admin. Rules, Puc 1601.01 (b).

By order of the Public Utilities Commission of New Hampshire this ninth day of April, 1996.

Notice of Conditional Approval of

J D SERVICES, INC. d/b/a AMERICAN FREEDOM NETWORK

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

On January 29, 1996, J D Services, Inc. d/b/a American Freedom Network (AFN), a Utah corporation, filed with the New Hampshire Public Utilities Commission (Commission) a petition to do business as a telecommunications public utility in the State of New Hampshire, specifically to provide intrastate long distance telecommunications services.

In Order No. 22,095, issued in Docket No. DE 96-030, the Commission granted AFN conditional approval to operate as of May 9, 1996, subject to the right of the public and interested parties to comment on AFN 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 AFN's petition to do business in the State must be submitted in writing no later than April 30, 1996, and reply comments no later than May 7, 1996, to:

Dr. Sarah P. Voll
Executive Director and Secretary
Public Utilities Commission
8 Old Suncook Road
Concord, New Hampshire 03301-7319

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Generic Investigation into IntraLATA Toll Competition Access Rates, DE 90-002, Order No. 20,916, 78 NH PUC 365, Aug. 2, 1993. [N.H.] Re Long Distance North of New Hampshire, Inc., et al., DE 87-249, Order No. 21,851, 80 NH PUC 628, Oct. 3, 1995.

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NH.PUC*04/09/96*[89109]*81 NH PUC 265*Total National Telecommunications, Inc., dba Total World Telecom

[Go to End of 89109]

81 NH PUC 265

Re Total National Telecommunications, Inc., dba Total World Telecom

DE 95-301
Order No. 22,096

New Hampshire Public Utilities Commission

April 9, 1996

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

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1. CERTIFICATES, § 123

[N.H.] Telephone carrier — Intrastate

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intraLATA long-distance services — Interim authority — Assessment of competitive impacts — Exclusion of local exchange services. p. 266.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate intraLATA toll services — Interim authority — Assessment of competitive impacts — Exclusion of local exchange services. p. 266.

BY THE COMMISSION:

ORDER

[1, 2] On October 30, 1995, Total National Telecommunications, Inc., d/b/a Total World Telecom, a Texas corporation, petitioned the New Hampshire Public Utilities Commission (Commission) for authority to do business as a telecommunications public utility in the State of New Hampshire (petition) pursuant to, *inter alia*, RSA 374:22 and RSA 374:26. Total National Telecommunications, Inc., d/b/a Total World Telecom has demonstrated the financial, managerial and technical ability to offer service as conditioned by this order. The Commission previously approved numerous, similar petitions filed during the Trial Period, pursuant to the Modified Stipulation Agreement (Stipulation) in Docket No. DE 90-002, approved by Order No. 20,916 (August 2, 1993). Our orders in those numerous dockets granted the petitioner(s) interim authority to offer intraLATA toll service, specifically excluding local exchange service, for the service territory of the entire State of New Hampshire, during the Trial Period, in order to allow the Commission to analyze competition during the two-year Trial Period.

Because the Trial Period identified by the Stipulation expired on September 30, 1995, we have explicitly clarified that the authority we had granted remains in effect until we specifically modify or revoke that authority, after analysis of the Trial Period. *See* Order No. 21,851 (October 3, 1995). Likewise, our grant of authority ordered herein remains in effect until we specifically modify or revoke that authority.

The public good is served by permitting such competition by telecommunications companies. The Commission permits competitive entry in order to foster competition in the New Hampshire intrastate toll market and to allow the Commission to analyze the effects of such competition.

The public should be provided an opportunity to respond in support of, or in opposition to, this petition.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that Total National Telecommunications, Inc. d/b/a Total World Telecom

is granted interim authority to offer as a telecommunications public utility intraLATA toll service, specifically excluding local exchange service, for the service territory of the entire State of New Hampshire, subject to the following conditions:

1. The services shall be offered by approved tariffs.

2. The services shall be offered until the Commission orders otherwise.

3. Total National Telecommunications, Inc., d/b/a Total World Telecom shall file tariffs for new services and changes in approved services (other than rate changes), with effective dates of no less than 30 days after the date the tariffs are filed with the Commission.

4. Within one business day of offering an approved service to the public at a rate different from its rates on file with the Commission, Total National Telecommunications, Inc., d/b/a Total World Telecom shall notify the Commission of the change.

5. Total National Telecommunications, Inc., d/b/a Total World Telecom is exempted from NH Admin. Rules, Puc 406.03 Accounting Records; Puc 407 Forms Required of All Telephone Utilities; and Puc 409 Uniform System of Accounts for Telecommunications Companies.

6. Total National Telecommunications, Inc., d/b/a Total World Telecom shall maintain its book and records in accordance with Generally Accepted Accounting Principles.

7. Total National Telecommunications,

Page 266

Inc., d/b/a Total World Telecom 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. Total National Telecommunications, Inc., d/b/a Total World Telecom 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. Total National Telecommunications, Inc., d/b/a Total World Telecom shall compensate the appropriate Local Exchange Company for all originating and terminating access used by Total National Telecommunications, Inc., d/b/a Total World Telecom pursuant to NET Tariff N.H.P.U.C. 79, Switched Access Service Rate or its successors or its relevant equivalent contained in the tariffs of the Independent Local Exchange Companies.

10. New Service offerings filed for approval with the Commission shall be accompanied by tariff pages describing the service, rates and effective dates; and it is

FURTHER ORDERED, that the authority granted herein remains in full force and effect until the Commission orders otherwise; and it is

FURTHER ORDERED, that nothing contained in this Order shall be construed to allow Total National Telecommunications, Inc., d/b/a Total World Telecom to operate outside of the conditions set forth in appropriate Local Exchange Company tariffs; and it is

FURTHER ORDERED, that Total National Telecommunications, Inc., d/b/a Total World

Telecom 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 April 16, 1996, and an affidavit proving publication shall be filed with the Commission on or before April 23, 1996; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, et seq., Total National Telecommunications, Inc., d/b/a Total World Telecom 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 April 30, 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 7, 1996; and it is

FURTHER ORDERED, this Order *Nisi* shall be effective May 9, 1996, unless the Commission provides otherwise in a supplemental order issued prior to the effective date and it is

FURTHER ORDERED, that Total National Telecommunications, Inc., d/b/a Total World Telecom shall file a compliance tariff with the Commission on or before May 9, 1996, in accordance with NH Admin. Rules, Puc 1601.01 (b).

By order of the Public Utilities Commission of New Hampshire this ninth day of April, 1996.

Notice of Conditional Approval of
Total National Telecommunications, Inc. d/b/a Total World Telecom

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

On October 30, 1995, Total National Telecommunications, Inc., d/b/a Total World Telecom, a Texas corporation, filed with the New Hampshire Public Utilities Commission (Commission) a petition to do business as a telecommunications public utility in the State of New Hampshire, specifically to provide intrastate long distance telecommunications services.

In Order No. 22,096, issued in Docket No. DE 95-301, the Commission granted Total National Telecommunications, Inc., d/b/a Total World Telecom conditional approval to operate as of May 9, 1996, subject to the right of the

Page 267

public and interested parties to comment on Total National Telecommunications, Inc., d/b/a Total World Telecom 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 Total National Telecommunications, Inc., d/b/a Total World Telecom's petition to do business in the State must be submitted in writing no later than April 30, 1996, and reply comments no later than May 7, 1996, to:

Dr. Sarah P. Voll
Executive Director and Secretary
Public Utilities Commission
8 Old Suncook Road
Concord, New Hampshire 03301-7319

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Generic Investigation into IntraLATA Toll Competition Access Rates, DE 90-002, Order No. 20,916, 78 NH PUC 365, Aug. 2, 1993. [N.H.] Re Long Distance North of New Hampshire, Inc., et al., DE 87-249, Order No. 21,851, 80 NH PUC 628, Oct. 3, 1995.

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NH.PUC*04/12/96*[89110]*81 NH PUC 268*Retail Competition Pilot Program

[Go to End of 89110]

81 NH PUC 268

Re Retail Competition Pilot Program

Petitioners: Concord Electric Company; Exeter and Hampton Electric Company

DR 95-250
Order No. 22,097

New Hampshire Public Utilities Commission

April 12, 1996

ORDER clarifying that final guidelines established in Order No. 22,033 (81 NH PUC 130, *supra*) for a pilot program of retail electric competition did not constitute a final ruling on such. Accordingly, a petition for rehearing of that order is deemed moot, in that, in the absence of a final *ruling*, the matter is not yet ripe for appeal. Pointing to the complexity of the issue of stranded costs, and the impact of the filed-rate doctrine thereon, the commission again states its intention to address such matters more fully in a separate investigatory proceeding.

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1. APPEAL AND REVIEW, § 9

[N.H.] Right to appeal — Orders subject to review — Necessity of final order — Final guidelines as not constituting final ruling — Mere guidelines as not ripe for appeal. p. 269.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 10

[N.H.] Direct energy costs — Fuel and purchased power adjustment clauses (FPPACs) — Effect of new retail electric competition pilot program — FPPACs as improper device for recovery of associated stranded costs — But further consideration in separate stranded cost

proceeding. p. 269.

3. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric service — Retail competition pilot program — Recovery of associated stranded costs — Complexity of issue as a factor — Deferral to separate proceeding. p. 269.

4. EXPENSES, § 120

[N.H.] Electric utilities — Stranded costs — Associated with retail competition pilot program — Complexity of issue as a factor — Deferral to separate proceeding. p. 269.

5. RATES, § 47

[N.H.] Commission jurisdiction — Limitations — Federally prescribed rates — Filed-rate

Page 268

doctrine — Effect on recovery of uneconomic costs of federally approved wholesale power contracts — Further consideration. p. 269.

6. EXPENSES, § 120

[N.H.] Electric utilities — Purchased power — Federally approved wholesale power purchase contracts — Uneconomic costs — But recovery under the filed-rate doctrine — Impact of transition to competition — Further consideration. p. 269.

BY THE COMMISSION:

ORDER

This order addresses a Request for Clarification (Request) filed by Concord Electric Company and Exeter & Hampton Electric Company (collectively, Unitil). Unitil requests a clarifying order which addresses three areas discussed in the Final Guidelines (Order No. 22,033, February 28, 1996). In the absence of such clarifications, Unitil alternatively moves for rehearing pursuant to RSA 541:3.

[1-4] First, Unitil seeks clarification regarding the finality of the Commission's position relative to fuel and purchased power adjustment clauses. In the Final Guidelines, we stated our belief that fuel adjustment mechanisms should not be utilized as a means of shifting uneconomic power costs from Pilot participants to non-participating customers. This issue is inexorably linked to our consideration of stranded costs. We agree that our position as stated in the Final Guidelines does not constitute a final ruling on this issue. Any such ruling should occur in the context of a separate stranded cost proceeding and we reiterate our intent to open such a proceeding for any utility that does not receive Commission approval to implement the Pilot under terms and conditions other than in a manner contemplated by the Final Guidelines. The Pilot is not the appropriate forum to resolve issues which we intend to address in restructuring proceedings. Accordingly, we grant Unitil's requested clarification relative to this issue.

[5, 6] Next, Unitil seeks an order clarifying the finality of the Commission's position relative to the filed rate doctrine: specifically, whether the filed rate doctrine precludes the Commission

from denying utilities with FERC-approved power contracts "the right to full recovery of power costs shifted to non-participants under the Pilot program through application of the fuel and purchase power adjustment mechanism ... " Request, p. 4. As with Unitil's first requested clarification, this issue is most appropriately addressed in the context of stranded cost deliberations which we have expressly deferred. Accordingly, we grant Unitil's second requested clarification and reiterate herein that any previously expressed views relative to the filed rate doctrine do not constitute final rulings which are ripe for appeal.

Finally, Unitil seeks clarification

> ... that utilities which participate in the Pilot under the 50/50 sharing mechanism for stranded costs incurred under FERC-approved wholesale power contracts as a result of the Pilot Program will be provided an opportunity for reconciliation of such costs at the time the Commission makes a final determination on the issue of stranded cost recovery in a future generic proceeding on electric utility restructuring.

Request, p.4. Again, this is consistent with the approach which we established in the Final Guidelines. Accordingly, we grant Unitil's third requested clarification.

In light of the foregoing clarifications, Unitil's motion for rehearing is rendered moot.

Based upon the foregoing, it is hereby

ORDERED, that Unitil's Request for Clarification is GRANTED; and it is

FURTHER ORDERED, that Unitil's Motion for Rehearing is thereby rendered moot.

By order of the Public Utilities Commission of New Hampshire this twelfth day of April, 1996.

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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.

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NH.PUC*04/12/96*[89111]*81 NH PUC 270*Retail Competition Pilot Program

[Go to End of 89111]

81 NH PUC 270

Re Retail Competition Pilot Program

Applicant: Granite State Electric Company

DR 95-250
Order No. 22,098

New Hampshire Public Utilities Commission

April 12, 1996

ORDER approving as modified an electric utility's compliance filing for implementing a pilot program for competitive electric services. Commission addresses such plan components as meter charges, franchise taxes, retail transmission tariffs, estimates of hourly load, and billing procedures.

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1. PAYMENT, § 17

[N.H.] Billing and metering — Under pilot program for retail competition — Transmission service component — Willingness of electric utility to act as billing agent — Data transfer and collection procedures. p. 271.

2. RATES, § 323

[N.H.] Electric rate design — Demand and load factors — Estimations of hourly load — Development of uniform measurement standards — Under pilot program for retail competition. p. 271.

3. RATES, § 321

[N.H.] Electric rate design — Unbundling of rates — Under pilot program for retail competition — Effect of market forces — Minimum savings target of 10.2% — Compliance filing. p. 272.

4. RATES, § 287

[N.H.] Meter charges — Electric utility — Under retail competition pilot program — Inapplicability to customer-installed meters. p. 272.

5. RATES, § 332

[N.H.] Electric rate design — Meter charges — Under retail competition pilot program — Inapplicability to customer-owned meters. p. 272.

6. RATES, § 147

[N.H.] Factors affecting reasonableness — Taxation — Franchise taxes — Component of rates under pilot program for retail competition — Electric services — Proper agent to collect taxes — Factors — Opportunities for aggregation. p. 273.

7. RATES, § 332

[N.H.] Electric rate design — Special charges — Stranded cost charge — As result of pilot program for retail competition — Impropriety of indemnification clauses. p. 273.

8. EXPENSES, § 120

[N.H.] Electric utility — Stranded costs — Associated with pilot program for retail competition — Recovery via stranded cost charge — Impropriety of indemnification clauses. p. 273.

9. SERVICE, § 320

[N.H.] Electric — Pilot program for retail competition — Program elements — Necessity of retail transmission — Compliance filings. p. 273.

10. RATES, § 339

[N.H.] Electric rate design — Unbundling

Page 270

— Under pilot program for retail competition — Necessity of retail transmission tariffs — Compliance filings. p. 273.

11. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric service — Pilot program for retail competition — Retail transmission as integral component — Compliance filings. p. 273.

BY THE COMMISSION:

ORDER

I. INTRODUCTION

On March 15, 1996, Granite State Electric Company (Granite State) filed tariffs and other submissions in compliance with Order Nos. 22,029 and 22,033 (February 28, 1996) relative to Granite State's participation in the retail electric competition pilot program (Pilot). The filing contains proposed unbundled rates, describes the unbundling process (including the development of unbundled retail transmission rates) and sets out a detailed Pilot implementation plan.

On March 29, 1996, the Commission issued Order No. 22,081 which partially approved a Joint Recommendation between PSNH and Staff. That order also directed all New Hampshire electric utilities, including Granite State, to use certain class-specific retail market prices when developing unbundled rates for the pilot. The assumed market prices adopted by the Commission have the effect of reducing the level of Granite State's unbundled stranded cost charges which were set forth in its Joint Recommendation with Staff.

After technical sessions on March 18-19, hearings were conducted April 1-2, 1996. Granite State and Staff presented oral testimony during such hearings and a number of participants cross-examined these witnesses.

On April 4, 1996, Granite State filed with the Commission a letter stating that its consent is required for any modification that decreases the level of the stranded cost charges agreed to in the Joint Recommendation. Granite State stated that it would revise the unbundled stranded cost charges in the Joint Recommendation to correspond to the market price findings set forth in Order No. 22,081 subject to certain conditions which are discussed below.

On April 11, 1996, Granite State filed a letter with the Commission in which it proposed several modifications to its filing as a result of discussions with Staff. See, Attachment 1.

II. COMMISSION ANALYSIS

A. *General Observations*

While Granite State and its transmission affiliate have yet to file the necessary tariffs to provide retail transmission access for Pilot customers, it is nonetheless appropriate to recognize and commend Granite State for submitting a filing which is both detailed and thoughtful. Before turning to a more detailed analysis of Granite State's filing, there are three exemplary aspects of the filing which should serve as a model for other utilities.

[1] First, we believe that Granite State's willingness to function as the transmission billing agent for its Pilot customers will significantly reduce the complexity of unbundled electric services and promote customer choice.

Second, we believe that the developmental work on customer billing and customer service processes could significantly reduce transaction costs and enhance the efficiency of data transfer and collection procedures.

[2] Third, we recognize the substantial effort that has gone into creating a fair and accurate method to estimate the hourly loads of customers fitted with simple metering equipment. In our view, the hourly load estimation methodology proposed by Granite State will reduce estimation error and help ensure that power costs are fairly allocated between participating and non-participating customers. In the absence of technological developments in metering technology, we believe that a fair and reasonably accurate method to estimate customer loads is crucial to allow residential and

small commercial customers to benefit from competition. In light of the importance of this aspect of the Pilot, we believe that it would be inefficient and confusing for each utility to employ a different estimation technique. We therefore direct Staff to arrange a technical session to explore ways for each of the other utilities to employ Granite State's load estimation methodology.

We turn now to several aspects of Granite State's filing which do not appear to comport with the requirements established in the Final Guidelines and related Commission orders.

B. *Proposed Modifications to Compliance Filing*

Granite State and Staff have proposed to modify several aspects of the filing by supplementing the record with a list of agreed revisions to the initial filing. These proposed modifications are detailed in Attachment 1 to this Order. These proposed changes are adopted in their entirety.

We now turn our attention to several other issues raised during and subsequent to the implementation hearings.

C. *April 4, 1996 Letter in Response to Order No. 22,081*

[3] In light of Order Nos. 22,029 and 22,033, it is unnecessary for us to review and approve Granite State's proposed amendment to the Joint Recommendation. Nonetheless, we offer the

following observations regarding Granite State's April 4, 1996 letter. We agree with two points set forth in on page two of the letter. Subparagraph one essentially reiterates our ruling that utilities will be provided the opportunity to recover revenues which are lost in the event that the assumed retail market prices which we have established for the Pilot turn out to be higher than actual market prices. Subparagraph three addresses Granite State's burden of proving that actual market prices during the Pilot are below the assumed prices before Granite State is entitled to any such recovery.

Subparagraph two of Granite State's letter provides that no other adjustment of the access charges shall be made during the Pilot after the adjustment is made for the Commission's assumed retail market prices. We are very concerned that such a limitation Granite State could prevent the Commission from taking action in the event that market conditions change significantly during the Pilot. For instance, if wholesale market prices rise as result of unforeseen circumstances, we reserve the right to direct utilities to make changes in their unbundled rates in order to help preserve the level of savings upon which anticipated customer participation in the Pilot is premised. We are concerned about the possibility that market prices could significantly increase due to unanticipated events, such as the recent developments at Northeast Utilities' three Millstone plants.

In subparagraph four of its letter, Granite State seeks our approval of a contractual arrangement between Granite State and New England Power Company (NEP). We take no position at this time on this proposed arrangement between Granite State and NEP.

Finally, we note that the savings level depicted on Page 1 of Granite State's April 4 letter (9.9%) is less than the 10.2% level proposed and approved in Order 22,029. Accordingly, we direct Granite State to adjust the unbundled rates to correspond to the saving level approved in that Order.

D. *Meter Charges/Ownership*

[4, 5] Based on our review of the record, we reject the proposed metering charges contained in Section VIII(A) of Granite State's Implementation Plan. We believe such charges are unnecessary given the fact that the underlying costs will be recovered through the unbundled customer and distribution charges. With respect to the issue of metering equipment which has been fully paid for by the customer, including the cost of installation, we believe that fairness dictates that ownership remain with the customer. We will therefore require Granite State to amend Section VIII(A) accordingly. Granite State will, however, retain the right to require that customer-owned metering equipment meet all necessary standards of safety and

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reliability and that unobstructed access to such equipment for the purpose of meter reading and maintenance be preserved.

E. *Franchise Tax*

[6] After examining RSA 83-C and reviewing the record on this issue, it is our opinion that the State of New Hampshire should continue to recover franchise taxes based upon the same principles of gross revenues of utilities that currently govern utility collections. To the extent that

different entities, namely competitive suppliers, brokers and aggregators, may now collect a portion of those revenues, it is our view that those entities should bear the responsibility for collecting the associated franchise taxes. We recognize, however, that this issue may have to be resolved by the Department of Revenue Administration and perhaps ultimately the courts or the Legislature. In the meantime, we direct Granite State, and any other utility which submitted unbundled delivery service rates exclusive of franchise tax, to make the necessary adjustments.

F. *Indemnification Against Third-Party Stranded Costs*

[7, 8] We strongly believe that retail transmission tariffs should not require customers to indemnify and otherwise hold the Company harmless from any stranded costs resulting from such service. In our view, this condition will adversely affect customer participation in the Pilot. While the Commission recognizes the Company's concerns about the risk of litigation during the Pilot, we believe there are other avenues which could address these concerns. Accordingly, we direct New Hampshire utilities and Staff to explore such alternative mechanisms and report back no later than April 25, 1996.

G. *Retail Transmission Tariff Filings*

[9-11] We are concerned about the delay in the filing of retail transmission tariffs and the effect this may have on implementation of the Pilot. Paragraphs 15.0 and 15.2 of the Joint Recommendation state that Granite State's transmission affiliate shall file a retail network transmission tariff before March 1, 1996 to implement retail access for Granite State pilot customers. During the March 18, 1996 hearing, Granite State agreed to amend the Joint Recommendation and to file a retail point-to-point transmission tariff for the purpose of providing retail access to Pilot customers of other New Hampshire utilities. During the April 1, 1996 compliance hearing, Granite State stated that those transmission tariffs had not been completed and indicated that it would request a waiver from the FERC in order to provide retail access in time May 28, 1996 implementation date. In light of the fact that the Pilot can not proceed in the absence of transmission services, we direct transmission-owning utilities to inform the Commission by the close of business Monday, April 15, 1996 as to when they intend to make the necessary filings. After receipt of those notifications, we will initiate whatever actions are necessary to ensure that the Pilot moves forward.

H. *New Load and Supplier Notification*

During the April 1, 1996 hearing, Granite State witness, Peter Zschokke, was asked about his interpretation of the Commission's new load requirement and how and when competitive suppliers might obtain access to the information held by utilities on new accounts. Similar questions were also asked of other utility witnesses. It is our intention in the PSNH compliance filing order to provide more detailed guidance on the definition of new load for the Pilot and to establish guidelines relative to accessing information about new large customers who may be eligible to participate in the Pilot.

Based upon the foregoing, it is hereby

ORDERED, that Granite State shall make the modifications discussed herein to its compliance filing; and it is

FURTHER ORDERED, that Granite State shall file a revised compliance filing on or before

April 26, 1996.

By order of the New Hampshire Public Utilities Commission this twelfth day of April, 1996.

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ATTACHMENT 1

Dr. Sarah Voll
Executive Director
Public Utilities Commission
8 Old Suncook Road
Concord, N.H. 03301

April 11, 1996

Re: DR 95-250, Compliance filing changes

Dear Mr. McCluskey:

Granite State Electric (GSEC) submits the following changes to its compliance filing in the above-captioned case. These agreed to changes were reached after technical session discussions with New Hampshire Public Utilities Commission (PUC) Staff and were stated in the April 1 and 2, 1996 public hearing in the above-captioned case. GSEC also directs the Commission's attention to our letter of March 29, 1996, which identified areas where uniformity in utility compliance filings will improve the Pilot implementation.

Below are the changes to Exh 24, PTZ 11-GSEC's Implementation Plan:

1. At P 3 II(E). "In the event ..., the Pilot will continue under the rules set forth by the PUC. The obligations of participants in the Pilot will continue for the term of the Pilot unless otherwise ordered by the PUC."

2. At P 3 III(A)(6). Customers are required to return their ballot and indicate their supplier of choice 30 days before the customer's choice will be implemented.

3. At P 4 III(B)(2). Customers selected to participate in the Pilot who are within a GAC are required to return their ballot and indicate their supplier of choice. Customers will begin service from their chosen supplier immediately following the first meter read after notification to GSEC and confirmation by the supplier.

4. At P 4(IV) Second Paragraph. Replace the last sentence with "Once selected, the Customer must provide to GSEC, at least 30 days before the commencement of service, the following information:"

5. At P 4 IV (Note). Customers will remain on their current GSEC rate for service until an alternate supplier is chosen and the choice is implemented.

6. At P 6(D) GSEC will charge Suppliers all of the PUC approved costs of producing and communicating customer specific or area specific data.

7. At P 6(A)(3). At P6(A)(3). The stranded Cost charge equals the levels, by rate class, as set forth in the Joint Recommendation between New England Power company (NEP),GSEC and Staff, conditionally approved by PUC Order No. 22,029 (February 28, 1996), as modified by

NEP and GSEC's letter dated April 4, 1996 (approved by the Commission at its Commission meeting on April 12, 1996), which modification reflects PUC Order NO. 22,081 (March 29, 1996) relative to market price assumptions required to be used for determining Stranded Cost charges to pilot participants.

8. At P 10(VII)(E)(2). The reference to "75 kilowatt-hours" is replaced with a reference to "75 kilowatts."

9. At P 15(X)(B)(2)(c). Loss Adjustment Factor = 1.038 if a Primary service, and 1.069 if a Secondary service.

Respectfully submitted,

Susan Chamberlin
Legislative/Regulatory Affairs

cc: Service List

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Retail Competition Pilot Program, DR 95-250, Order No. 22,029, 81 NH PUC 120, Feb. 28, 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. 22,081, 81 NH PUC 237, Mar. 29, 1996.

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NH.PUC*04/12/96*[89112]*81 NH PUC 275*Retail Competition Pilot Program

[Go to End of 89112]

81 NH PUC 275

Re Retail Competition Pilot Program

Applicant: Public Service Company of New Hampshire

DR 95-250
Order No. 22,099

New Hampshire Public Utilities Commission

April 12, 1996

ORDER denying a motion by Freedom Energy Company for reconsideration of Order No. 22,081 (81 NH PUC 237, *supra*) in which the commission had approved an electric utility's proposal for implementing a pilot program for competitive electric services. Commission affirms the use of an assumed transaction cost of 0.37 cents per kilowatt-hour for determining retail market prices to represent the amount to be "backed out" of bundled rates in the advent of unbundled rates.

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1. RATES, § 321

[N.H.] Electric rate design — Unbundling requirements — Pursuant to pilot program for competition — Reliance on retail market-based pricing assumptions — Transaction costs incurred by competitive suppliers in making retail sales — Affirmation of calculation. p. 275.

BY THE COMMISSION:

ORDER

[1] This order addresses a Motion for Reconsideration filed by Freedom Energy Company (Freedom) relative to the assumed transaction costs which competitive suppliers will incur in order to serve Pilot participants. Specifically, Freedom seeks reconsideration of the Commission's decision in Order No. 22,081 (March 29, 1996) to assume transaction costs of 0.37 cents/kWh for purposes of calculating the assumed retail market prices during the Pilot. The asserted basis for Freedom's request is the oral testimony presented by Public Service Company of New Hampshire in this proceeding which suggested that transaction costs for suppliers will be much higher than 0.37 cents/kWh.

After considering Freedom's request and reviewing the record, we decline to revisit the issue of assumed transaction costs. In Order No. 22,081 we set forth the basis for our decision relative to this issue which we believe is supported by the record.

As part of our review of the utility compliance filings we intend to pay particular attention to level of charges for metering, billing and customer service to ensure that suppliers are not burdened with unreasonable costs.

Based upon the foregoing, it is hereby

ORDERED, that Freedom's Motion for reconsideration is DENIED.

By order of the Public Utilities Commission of New Hampshire this twelfth day of April, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Retail Competition Pilot Program, DR 95-250, Order No. 22,081, 81 NH PUC 237, Mar. 29, 1996.

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NH.PUC*04/12/96*[89113]*81 NH PUC 276*Retail Competition Pilot Program

[Go to End of 89113]

Re Retail Competition Pilot Program

Petitioner: Public Service Company of New Hampshire

DR 95-250
Order No. 22,100

New Hampshire Public Utilities Commission

April 12, 1996

ORDER clarifying that final guidelines established in Order No. 22,033 (81 NH PUC 130, *supra*) for a pilot program of retail electric competition did not constitute a final ruling on such. Accordingly, a petition for rehearing of that order is deemed moot, in that, in the absence of a final *ruling*, the matter is not yet ripe for appeal.

Commission reiterates that it does not expect to enter into a jurisdictional dispute with federal agencies over intrastate transmission services. It also reminds all parties that the complex issue of stranded costs, and the impact of the filed-rate doctrine thereon, has necessitated a separate investigatory proceeding.

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1. APPEAL AND REVIEW, § 9

[N.H.] Right to appeal — Orders subject to review — Necessity of final order — Final guidelines as not constituting final ruling — Mere guidelines as not ripe for appeal. p. 277.

2. ELECTRICITY, § 2

[N.H.] Commission jurisdiction — Over *intrastate* transmission facilities — No expected conflict with federal authorities. p. 277.

3. SERVICE, § 72

[N.H.] Commission jurisdiction — Electric services — Over *intrastate* transmission facilities — No expected conflict with federal authorities. p. 277.

4. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric service — Retail competition pilot program — Recovery of associated stranded costs — Complexity of issue as a factor — Deferral to separate proceeding. p. 277.

5. EXPENSES, § 120

[N.H.] Electric utilities — Stranded costs — Associated with retail competition pilot program — Complexity of issue as a factor — Deferral to separate proceeding. p. 277.

6. RATES, § 47

[N.H.] Commission jurisdiction — Limitations — Federally prescribed rates — Filed-rate doctrine — Effect on recovery of uneconomic costs of federally approved wholesale power contracts — Further consideration. p. 277.

7. EXPENSES, § 120

[N.H.] Electric utilities — Purchased power — Federally approved wholesale power purchase contracts — Uneconomic costs — But recovery under the filed-rate doctrine — Impact of transition to competition — Further consideration. p. 277.

8. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric — Retail competition pilot — Pilot design — Selection of participants — Individuals versus groups — Inclusion of retail customers of state's largest cooperative — Final guidelines — Affirmation. p. 277.

BY THE COMMISSION:

ORDER

Page 276

This order addresses a Motion for Rehearing (Motion) filed by Public Service Company of New Hampshire (PSNH) relative to Order No. 22,033 (February 28, 1996) which set forth the Commission's Final Guidelines for establishing a state-wide retail electric competition pilot program (Pilot). In Order No. 22,081 (March 29, 1996), the Commission conditionally approved a Joint Recommendation entered into by the Commission Staff and PSNH. The effect of that conditional approval was to defer final consideration of certain legal issues relative to PSNH's participation in the Pilot. We also expressed our view that "the Pilot is not the appropriate forum for stakeholders and other parties to deliberate, debate and ultimately litigate our views relative to such contentious issues." Order No. 22,081, p.11. By so doing, we adopted the approach in the Recommendation to "disengage" certain contentious issues from the Pilot by reserving final consideration of those issues for future restructuring proceedings.

PSNH's Motion seeks rehearing relative to a number of legal issues which we first addressed in the Preliminary Guidelines and which we briefly addressed in the Final Guidelines. As pointed out in Staff's written response, most of PSNH's rehearing requests can be easily disposed of through clarifications of Order Nos. 22,033 and 22,081.

A. Intrastate Transmission

[1-3] PSNH disagrees with the Commission's view that states, not federal authorities, have jurisdiction over intrastate retail transmission service. PSNH asks "that the Commission reconsider the necessity of taking final positions on the jurisdictional issue at this time." Motion, p.5. A rehearing request on this issue is unnecessary because we have taken no such final position in this docket, nor have we yet attempted to exercise any such jurisdictional authority. The Final Guidelines establish voluntary filing requirements. Contrary to PSNH's Motion, we have not issued a final ruling on this jurisdictional issue in this docket, and we have repeatedly articulated our resolve to implement the Pilot in a manner which does not compel a jurisdictional dispute with the Federal Energy Regulatory Commission (FERC).

B. Stranded Cost Recovery

[4, 5] PSNH next asks the Commission to modify Order 22,033 "to clearly and unequivocally

state that the issue of stranded cost recovery has been set aside for PSNH and other utilities that have reached an alternative Pilot Program mechanism [for the Pilot]." Motion p.6-7. We agree with Staff that rehearing on this issue is unnecessary because our conditional approval of the PSNH Recommendation is premised upon that very condition. We reiterate our ruling that any legal positions set forth in the Preliminary Guidelines, subsequent drafts and in the Final Guidelines relative to the issue of stranded costs do not constitute final Commission rulings and therefore the issue is not ripe for appeal at this time.

C. PSNH Rate Agreement

[6, 7] PSNH also seeks a similar clarification relative to any issues related to the Rate Agreement. Specifically, PSNH asks that the Commission indicate "that this issue is not ripe for decision at this time and that the parties to this docket who may disagree with the position taken in the Order will not be required to appeal the issue at this time." Motion, p.8. We agree with and grant this requested clarification.

D. Filed Rate Doctrine

[8] PSNH also requests a clarification and/or modification of the Order No. 22,033 to "indicate that the filed rate doctrine issue is no longer ripe and has been set aside." Motion, p.8-9. Again, we agree. In the Final Guidelines, we expressly stated that our position relative to this issue did not constitute a final determination as to how we will treat uneconomic costs associated with wholesale power contracts in a transition to full competition. Accordingly, we reiterate that our views relative to the filed rate doctrine are not a final determination of this issue and therefore the issue is not ripe for appeal.

E. Amended Partial Requirements Agreement (APRA)

PSNH next contends that "the Commission's opinion concerning the impact and restrictions of the APRA are neither binding nor are they precedential in any manner," but nonetheless requests that "the Order be modified by elimination of any findings or opinions concerning the APRA." Motion, p.9. In the Final Guidelines we expressed our view that the APRA does not bar the retail customers of the New Hampshire Electric Cooperative (NHEC) from participating in the Pilot. We continue to stand by that view and believe that it is an appropriate exercise of this Commission's jurisdiction. We took no position, however, relative to the appropriate allocation of any revenue losses to PSNH as a result of that participation. To the extent that the APRA provides PSNH with a remedy to offset any such revenue losses, we concur with PSNH that the appropriate forum to adjudicate that matter is with the FERC.

F. Implementation Date

Finally, PSNH states that the Commission "may wish to consider whether the [implementation] dates set in the Order are achievable." Motion, p.10. We continue to believe that the current date for implementation of the Pilot is achievable if PSNH and the other state electric utilities work diligently to file and seek approval of their transmission filings. We anticipate that such filings will be made here and at the FERC in the very near term in order for the Pilot to commence by May 28, 1996.

Based upon the foregoing, it is hereby

ORDERED, that PSNH's requests for clarification are GRANTED as set forth above; and it is

FURTHER ORDERED, that in light of such clarifications, PSNH's request for rehearing on such matters are rendered moot.

By order of the Public Utilities Commission of New Hampshire this twelfth day of April, 1996.

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. 22,081, 81 NH PUC 237, Mar. 29, 1996.

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NH.PUC*04/12/96*[89114]*81 NH PUC 278*Retail Competition Pilot Program

[Go to End of 89114]

81 NH PUC 278

Re Retail Competition Pilot Program

Applicant: New Hampshire Electric Cooperative

DR 95-250
Order No. 22,101

New Hampshire Public Utilities Commission

April 12, 1996

ORDER approving an electric cooperative's compliance filing for implementing a pilot program for competitive electric services. Commission addresses such plan components as implementation cost surcharges, estimates of hourly load, customer participation, load aggregation capabilities, and electronic transfers of billing data between competitive suppliers.

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1. RATES, § 260

[N.H.] Surcharges — Purpose — Recovery of incremental costs associated with implementing a retail competition pilot program — Electric cooperative. p. 279.

2. RATES, § 323

[N.H.] Electric rate design — Demand and load factors — Determination of hourly load — Reliance on figures of wholesale suppliers — Under pilot program for retail competition —

Electric cooperative. p. 279.

3. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric service — Pilot program for retail competition — Participation in pilot — Eligibility of customers of cooperative to participate. p. 279.

4. RATES, § 323

[N.H.] Electric rate design — Demand and load factors — Connected load — Aggregation of load — Under pilot program for retail competition — One-time aggregation submission charge — Electric cooperative. p. 280.

5. PAYMENT, § 17

[N.H.] Billing and metering — Transfers of billing data — Under pilot program for retail competition — Preference for "value added network" approach — Electric utilities. p. 280.

BY THE COMMISSION:

ORDER

I. INTRODUCTION

On March 15, 1996, New Hampshire Electric Cooperative, Inc. (NHEC) filed compliance tariffs to implement the Retail Competition Pilot Program (Pilot). According to the filing, the tariffs are submitted in compliance with the Final Guidelines (Order No. 22,033, February 28, 1996). The filing contains proposed unbundled rates and details of NHEC's Pilot implementation plan. NHEC submitted a revised filing on April 3, 1996.

Technical sessions on NHEC's filing were held March 26-27 and a hearing was conducted on April 4, 1996. NHEC and Staff presented oral testimony during that hearing.

II. COMMISSION ANALYSIS

A. *Pilot Implementation Costs*

[1] NHEC estimates that it will incur approximately $150,000 of incremental costs as a result of the Pilot. These costs consist of added legal and consulting expenses and the costs associated with customer notification and selection. NHEC proposes to recover these costs through a $0.00013/kWh surcharge on the bills of all customers over a two-year period. We approve the proposed surcharge subject to refund based on an audit of the actual costs to develop and implement the pilot.

B. *Franchise Tax*

In Order No. 22,097 relative to the compliance filing of Granite State Electric Company we stated that the Pilot should not affect the responsibility of utilities and suppliers for franchise taxes. We incorporate by reference our discussion in that Order relative to this issue.

C. *Hourly Load Estimates*

[2] The Final Guidelines require each utility to estimate the hourly loads of their customers participating in the pilot. NHEC proposes that its wholesale utility suppliers estimate the loads of NHEC's Pilot participants using the class load profiles that such utility suppliers use for their own Pilot customers. In Order No. 22,097 we set forth our view that utilities should utilize the same methodology for estimating the load of Pilot participants and to engage in technical sessions with Staff to seek consensus regarding this issue. We direct NHEC to seek the consent of the affected utilities regarding its proposal for load estimation during the upcoming technical session.

D. *NHEC's Participation in the Pilot*

[3] In the Final Guidelines we expressed our view that the Amended Partial Requirements Agreement (APRA) does not bar NHEC's customers from participating in the Pilot. We continue to stand by this view. We took no position on the relative rights and obligations of PSNH and NHEC under the APRA

with regard to how the revenue impact of such participation should be allocated. These issues should be resolved at the FERC. We strongly encourage PSNH and the NHEC to seek a negotiated resolution of this issue, and if necessary, to bring the matter before the FERC in a manner which allows NHEC's customers to participate in the Pilot.

E. *Aggregation Service Costs*

[4] NHEC proposes to offer aggregation services to its Pilot customers and to arrange power supplies for such customers through the issuance of an RFP. Staff testified that the proposed charge of $1,000.00 per power supply bidder is unreasonable in light of NHEC's existing relationship with its customers. According to Staff, this would give NHEC an unfair advantage over competing marketers and aggregators. We disagree with Staff on this issue. In our view the competition to supply Pilot participants will be sufficiently intense to diminish the alleged anti-competitive effect of NHEC's proposal.

F. *Electronic Data Transfer*

[5] NHEC has indicated its willingness to transfer billing data to competitive suppliers electronically, but did not specify the mechanisms which would be employed. In Order No. 22,097 we expressed our approval and strong preference for using the Value Added Network approach proposed by Granite State. We direct Staff to arrange a technical session to explore the possibility of requiring all utilities to adopt this approach.

Based upon the foregoing, it is hereby

ORDERED, that NHEC's proposed compliance filing is APPROVED as set forth above; and it is

FURTHER ORDERED, NHEC shall participate in the above-referenced technical sessions to be convened by Staff.

By order of the Public Utilities Commission of New Hampshire this twelfth day of April, 1996.

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. 22,097, 81 NH PUC 268, Apr. 12, 1996.

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NH.PUC*04/12/96*[89115]*81 NH PUC 280*Public Service Company of New Hampshire

[Go to End of 89115]

81 NH PUC 280

Re Public Service Company of New Hampshire

DR 95-214 et al.
Order No. 22,102

New Hampshire Public Utilities Commission

April 12, 1996

MOTION for rehearing of Order No. 22,078 (81 NH PUC 229, *supra*), in which the commission had denied reconsideration of several earlier orders approving special rate contracts negotiated by an electric utility and individual industrial customers; denied. The commission rules that because it had specifically treated the underlying motions for reconsideration as motions for rehearing, the instant motion for rehearing is duplicative and should be dismissed.

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1. PROCEDURE, § 32

[N.H.] Rehearing and reconsideration — Treatment of motions for reconsideration as motions for rehearing — Effect of denial of — Subsequent motions for rehearing as duplicative — Dismissal. p. 281.

BY THE COMMISSION:

ORDER

[1] On March 26, 1996 the New Hampshire Public Utilities Commission (Commission) issued Order No. 22,078 denying the Campaign for Ratepayers' Rights (CRR) Motions for Reconsideration in these dockets. In that order the Commission stated that we would treat the Motions for Reconsideration as Motions for Rehearing filed pursuant to RSA 541:3 (Supp. 1995). Order No. 22,078 at 5.

On April 4, 1996 CRR filed Motions for Rehearing to "ensure that its appellate rights are preserved . . ." in these dockets. CRR did not advance any substantive arguments in these motions.

Because we specifically treated the Motions for Reconsideration as Motions for Rehearings in Order No. 22,078 we find these motions duplicative and will, therefore, dismiss them.

Based upon the foregoing, it is hereby

ORDERED, that the Campaign for Ratepayers' Rights Motions for Rehearing are dismissed.

By order of the Public Utilities Commission of New Hampshire this twelfth day of April, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 95-205, Order No. 22,078, 81 NH PUC 229, Mar. 26, 1996.

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NH.PUC*04/12/96*[89116]*81 NH PUC 281*Interlakes Water and Sewer Company

[Go to End of 89116]

81 NH PUC 281

Re Interlakes Water and Sewer Company

DR 95-134
Order No. 22,103

New Hampshire Public Utilities Commission

April 12, 1996

ORDER allowing a water utility to withdraw its petition for a franchise to serve a mobile home park. Commission notes that the utility, which also owns the park, has changed its plans and no longer intends to bill for water service separate from monthly rents. Commission finds that although the utility technically fits the definition of a public utility, the commission should refrain from regulating it as such.

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1. PUBLIC UTILITIES, § 122

[N.H.] Regulatory status — Residential development — Mobile home park — As supplier of water service — Within technical definition of public utility — But traditional refusal of commission to regulate — Factors — No separate billing for water service — Charges incorporated into monthly rents. p. 283.

2. SERVICE, § 310

[N.H.] Meters and metering — Water service — In mobile home park — Park as supplier of water service — Installation of individual meters — Measurement for conservation purposes only — No separate billing for water service — Charges incorporated into monthly rents. p. 283.

3. FRANCHISES, § 54

[N.H.] Forfeiture or withdrawal — Factors — Change in applicant's plans — Desire to avoid regulation as public utility — Water system. p. 283.

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4. PROCEDURE, § 11

[N.H.] Dismissal without decision on merits — Factors — Withdrawal of petition — Consequent negation of interim franchise rights — Water utility. p. 283.

APPEARANCES: Interlakes Water and Sewer Company by James J. Bianco, Jr., Esq.; Manufactured Home Owners and Tenants Association of New Hampshire by Doris Levesque; Cloverleaf Association by Carolyn Sargent; Robert J. Frank, Esq. for Staff of New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On May 11, 1995, Interlakes Water and Sewer Company (Interlakes) filed with the New Hampshire Public Utilities Commission (Commission) a Petition for approval of a franchise and rates for water and sewer service to the Interlakes Mobile Home Park (Park).

The Park, located in Meredith, New Hampshire, consists of approximately 124 mobile or manufactured homes. The Park has been served by an underground water system supplied by a well on the Park premises, though it is now connected to the water system of the Town of Meredith. Interlakes' owner, Crosby Peck, has operated the Park since 1977.

The Commission, by a series of Orders of Notice, called for intervention and established a procedural schedule for consideration of an interim franchise, temporary rates, permanent franchise and permanent rates.

By Order No. 21,781 (August 8, 1995) the Commission granted the intervention requests of the Manufactured Home Owners and Tenants Association of New Hampshire (MOTA) and a

residents' group at the Park, Cloverleaf Association (Cloverleaf). The Office of Consumer Advocate is a statutorily authorized intervenor but did not participate in this case.

The Commission granted Interlakes an interim franchise by Order No. 21,848 (October 3, 1995), stating that pending full discovery and hearing on the permanent franchise request, Interlakes was not entitled to charge for water service. Any tenant who had paid a separate charge for water was to be notified and provided a refund.

Interlakes filed a franchise map and testimony on June 12, 1995 and further testimony and exhibits on July 5, 1995. Staff prefiled the testimony of Amanda O. Noonan and Douglas W. Brogan on October 12, 1995. Also on that date, Cloverleaf filed a statement in opposition to Interlakes' petition.

An element of Interlakes' initial proposal for franchise was that it had installed meters on each unit and intended to charge for water on an individually metered basis, separate from the monthly rent. After review of the Staff's testimony, Interlakes, on October 19, 1995, filed a request to withdraw its petition for franchise, stating it preferred to remain unregulated and would continue to include water service as part of the monthly rental charge. Interlakes represents that the meters would be used to track consumption but would not be the basis for billing. Interlakes also stated its belief that it was no longer necessary to have the October 26, 1995 hearing on the permanent franchise request.

The Commission indicated by secretarial letter that because an interim franchise had been granted and Interlakes was now operating as a public utility it could not withdraw its petition or otherwise abandon the franchise without Commission approval. A hearing on this issue and whether Interlakes should be regulated as a public utility was held on October 26, 1995. At that hearing, Interlakes represented that it would not charge for water.

In addition, during this period, negotiations were underway between Interlakes and the Town of Meredith regarding Town provision of water to the Park. On January 23, 1996, Interlakes submitted into the record information indicating that the Town had completed the steps needed to provide water to the Park. The plant needed to serve the Park's tenants is still

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owned and operated by Interlakes.

This order will address the request to withdraw the petition and the status of Interlakes.

II. POSITIONS OF THE PARTIES AND STAFF

A. *Interlakes*

As part of its initial efforts to become a public utility, Interlakes stated that: a) it had been providing water service in the Interlakes Mobile Home Park for approximately 18 years and now serves approximately 124 customers; b) it was not currently charging rates for such service; c) it installed meters in the fall of 1994; d) its current source of water was wells though it was negotiating with the Town of Meredith in order to tie into that system; e) it had a full-time manager in the Park who recently took the examination to be a certified operator; f) the system has had quality of service problems, both in adequacy of supply and water quality, but those

problems should be taken care of by its plan to replace a 20,000 gallon atmospheric tank by November 1, 1995; g) its planned capital projects will be funded through the available cash flow of the Park; and h) it was negotiating with the Town of Meredith with respect to the interconnection fee which the Town has proposed.

In the winter of 1995-1996, Interlakes reported to the Commission that the Town of Meredith was now providing water and sewer service to Park tenants. The new tank is in place and the Department of Environmental Services has found the system to be in compliance with its regulations.

B. *Cloverleaf and MOTA*

Cloverleaf opposed Interlakes' petition for permanent franchise until certain concerns were addressed. Cloverleaf's testimony noted problems with water residue and possible health risks as well as water quantity problems due to leaks and inadequate maintenance over the years. Cloverleaf took no position on the jurisdictional reach of the Commission.

MOTA acted as a support to Cloverleaf in the docket. At the October 26, 1995 hearing, MOTA took no position on the jurisdictional reach of the Commission but noted that other parks which supply water as part of the rental services are not regulated by the Commission as public utilities.

C. *Staff*

Staff initially expressed concerns about quality of service issues, noting numerous customer complaints and results of a customer survey. Staff also stated its concerns that Interlakes was not responsive to customers problems and appeared to have disdain for Commission regulations. Staff recommended Interlakes not be granted a permanent franchise.

Regarding the jurisdictional issue, Staff noted the quandary facing the Commission - the language of RSA 362:2 would appear to place such parks under the Commission's jurisdiction, but such parks have never been regulated as public utilities.

III. COMMISSION ANALYSIS

Interlakes first petitioned the Commission on May 11, 1995 seeking status as a public utility pursuant to RSA 362:2 and a franchise to serve the Park, pursuant to RSA 374:26. Interlakes installed individual meters on each mobile home site and intended to meter each tenant's usage and bill separately for that water usage at metered rates approved by the Commission.

During the course of the Commission's proceeding, Interlakes changed its plans to separately charge for water service, and instead stated it wished to withdraw its petition and remain unregulated. Meters already installed would be used to measure water usage for conservation purposes, but would not be a basis for billing.

In addition, during the fall of 1995, Interlakes approached the Town of Meredith, seeking to have the Park served with Town water. These negotiations were successfully completed and as of late January, 1996 Park tenants are now served with Town water but not charged individually by the Town for such.

[1-4] Interlakes' petition and subsequent

effort to withdraw that petition raises significant policy considerations regarding the role of the Commission and the purpose of our statutes. The language of RSA 362:2 defining a public utility reads, in pertinent part:

> The term "public utility" shall include every corporation ... owning, operating or managing any plant or equipment or any part of the same for the manufacture or furnishing of light, heat, sewage disposal, power or water for the public ...

Clearly the language would bring within our purview Interlakes and other park owners who provide water to their tenants. Interlakes owns and operates plant for the furnishing of water and sewer service to the public, that is, its tenants.

This does not necessarily resolve the question, however. There are instances in which an operation which technically could be construed as a public utility is not treated as such. For example, landlords who provide heat, light and water as part of the rent of an apartment clearly are providing utility service to the public, yet the Commission has never regulated these landlords as public utilities, nor do we believe the Legislature intended the Commission to do so. Liquified petroleum gas, better known as bottled gas or propane, is a form of utility service, but propane dealers have never been regulated in New Hampshire as public utilities.

The New Hampshire Supreme Court recognized that some operations, while technically within the language of RSA 362:2 are nevertheless not public utilities. In *Allied New Hampshire Gas Co. v. Tri- State Gas Co.*, 107 N.H. 306 (1966), the Court considered the Commission's longstanding practice of not regulating propane dealers and found that although the operations in question fell within a literal meaning of the statute, the Commission was justified in its interpretation of the statute not to regulate them. The Court noted, among other things, that the Commission had never regulated such operations, it confined its jurisdiction to distribution to an entire area rather than a single location, and that RSA 362:2 had been amended on two occasions without any effort to bring these unregulated operations under the Commission's jurisdiction. *Allied*, 107 N.H. at 308.

Applying the *Allied* analysis to the instant situation posed by mobile home parks that do not charge for water separately from the monthly rent charge leads us to conclude that we are justified in not regulating this park. The Commission has never regulated these providers of water service at mobile home parks. RSA 362:2 has been amended a number of times with no effort to bring such park operations within our jurisdiction. Moreover, even if these parks were technically within the meaning of a public utility, the Legislature has clearly manifested its intent that they not be treated like other public utilities because they are prohibited from charging customers for water system maintenance. *See* RSA 205-A:,IX. In view of the foregoing, we do not believe it is necessary to extend our jurisdiction to those owners of mobile/manufactured housing parks who provide water to tenants but who do not charge separately for water.

Because we see no need to assert jurisdiction in this case, we need not act on the original petition for franchise. We will consider Interlakes' petition withdrawn. Further, the interim franchise is no longer in effect. On the issue of refunds, Interlakes appears to have satisfied the conditions set forth in our previous order. We will, therefore, close this docket.

Based upon the foregoing, it is hereby

ORDERED, that the Commission finds no basis to assert jurisdiction over Interlakes Mobile Home Park; and it is

FURTHER ORDERED, that Interlakes' petition to operate as a public utility is withdrawn; and it is

FURTHER ORDERED, that the interim franchise granted to Interlakes is no longer in effect.

By order of the Public Utilities Commission of New Hampshire this twelfth day of April, 1996.

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EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Interlakes Water & Sewer Co., DE 95-134, Order No. 21,781, 80 NH PUC 525, Aug. 8, 1995. [N.H.] Re Interlakes Water & Sewer Co., DE 95-134, Order No. 21,848, 80 NH PUC 616, Oct. 3, 1995.

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NH.PUC*04/12/96*[89117]*81 NH PUC 285*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 89117]

81 NH PUC 285

Re New England Telephone and Telegraph Company dba NYNEX

DR 95-079
Order No. 22,104

New Hampshire Public Utilities Commission

April 12, 1996

ORDER approving a local exchange telephone carrier's proposed special Centrex service contract with the state and clarifying the commission's earlier denial of protective treatment for customer-specific usage data and contract terms cited therein. Commission notes that although taxpayer interests dictate disclosure so as to assure the integrity of state contracting practices, it is appropriate to provide confidentiality of the carrier's own incremental cost data, which it had had to submit as part of the contract approval process.

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1. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective treatment — Relative to special service contract — Denial of protective treatment as to customer-specific usage data relied upon —

Denial as to contract terms — Factors — State government as customer — Taxpayer interests as controlling — But grant of confidentiality as to underlying utility incremental cost data. p. 286.

2. SERVICE, § 152

[N.H.] Contracts — Special service arrangements — Between telephone carrier and state government — Disclosure versus protective treatment — Taxpayer interests as a factor — Disclosure of actual contract terms — Protective treatment of underlying carrier incremental cost data. p. 286.

3. RATES, § 566

[N.H.] Telephone rate design — Centrex service — Special rate contract — Between local carrier and state government — Two-component pricing — Basic commitment amount — Monthly service charge. p. 286.

BY THE COMMISSION:

ORDER

On March 23, 1995, New England Telephone and Telegraph Company (NYNEX) filed with the New Hampshire Public Utilities Commission (Commission) a special contract (No. 95-02) for providing Centrex service to the State of New Hampshire (the State). In support of its petition, NYNEX filed documentation describing the costs and revenues associated with the proposed contract. The special contract filing was accompanied by a Motion for Proprietary Treatment to exempt the special contract and supporting materials from public disclosure.

On April 11, 1995, the Commission received a letter from the State indicating that the special contract had been inadvertently released by the State to a company named Auditel. The State requested that the special contract remain proprietary despite the inadvertent release. Also on April 11, 1995, the Commission received a letter from NYNEX citing N.H. Admin. Chapter Puc 204.08 (f) and requesting that the relevant proprietary information that had been released or made public by unauthorized disclosure by anyone other than

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the party who sought its protection, continue to be subject to protection under Puc 204.08 (c).

On July 17, 1995 our Order No. 21,747 determined the confidentiality of a number of special contracts. We distinguished special contracts with the State from other special contracts, denying NYNEX's Motion for Proprietary Treatment of special contract No. 95-02 and stating that "(1) the taxpayers' interest in knowing how the state's revenues are spent, and (2) the fact that a state contract is approved in a public forum by the executive branch" tips the balancing test in favor of disclosure rather than non-disclosure.

[1, 2] On July 28, 1995, NYNEX filed a motion seeking clarification or, in the alternative, a reconsideration of Order No. 21,747, relative to the NYNEX incremental cost data submitted in the process of seeking approval of the special contract. We agree with NYNEX's arguments that protection of NYNEX's confidential cost data does not undermine the objective of fostering

taxpayer awareness of how the State's revenues are spent. We will grant NYNEX's motion for clarification and reconsideration of our order. We here explain that information which is not disclosed to the public as a result of consideration and approval in a public forum is entitled to confidential treatment as long as it otherwise conforms to the requirements of RSA 91-A:5(IV) and the relevant PUC administrative rules. With regard to the incremental cost data NYNEX submitted, we hold that the benefits of non-disclosure outweigh the benefit of public disclosure.

[3] The Commission first approved a special contract for Centrex service to the State of New Hampshire under special contract in 1988. 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.

In dockets DR 91-164 and DR 93-054, NYNEX filed, and we approved, entirely new contracts containing the amended terms for the same service. The contract currently before the Commission also contains amended terms for the same service, providing new pricing for analog growth lines. The proposed changes maintain the two element price structure, including a commitment amount and a monthly service charge for exchange access and system features. Exchange usage charges are subject to regulations and rates as specified in the tariff. In addition, the State must pay the Federal Communications Commission mandated End User Common Line charge.

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. 95-02.

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 *NISI*, that NYNEX's Special Contract No. 95-02 with theState of New Hampshire is approved; and it is

FURTHER ORDERED, that the incremental cost data NYNEX submitted in support of its special contract with the State for the provision of Centrex service shall be treated as confidential pursuant to N.H. Admin. Chapter Puc 204.07 and Puc 204.08; and it is

FURTHER ORDERED *NISI*, that NYNEX's Special Contract No. 95- 02 with the State 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. 95-02, 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 the State in Special Contract No. 95-02; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 1601.05, the Petitioner shall cause an attested copy of this Order *Nisi* to be published once in a statewide newspaper of

general circulation, such publication to be no later than April 19, 1996 and to be documented

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by affidavit filed with this office on or before April 26, 1996; and it is

FURTHER ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or file a written request for a hearing on this matter before the Commission no later than May 3, 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 10, 1996; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective May 13, 1996, 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 twelfth day of April, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New England Teleph. & Teleg. Co. dba NYNEX, DR 95-079, Order No. 21,747, 80 NH PUC 467, July 17, 1995.

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NH.PUC*04/12/96*[89118]*81 NH PUC 287*Office of Consumer Advocate

[Go to End of 89118]

81 NH PUC 287

Re Office of Consumer Advocate

DRM 92-111
Order No. 22,105

New Hampshire Public Utilities Commission

April 12, 1996

ORDER terminating a docket in which the commission had examined the need for special notice requirements for compliance filings. The commission asserts that its present notice procedures are adequate so that a rulemaking on such is not necessary.

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1. PROCEDURE, § 22

[N.H.] Notice and hearing — Necessity of notice — As to supplemental or further proceedings — As to compliance filings by utilities — Existing procedures as adequate — No

notice rules specific to compliance filings needed. p. 287.

2. RATES, § 649

[N.H.] Procedure — Hearing and notice — Notice process — As to compliance filings by utilities — Existing procedures as adequate — No separate notice rules specific to compliance filings needed. p. 287.

BY THE COMMISSION:

ORDER

[1, 2] On May 22, 1992 the Office of the Consumer Advocate (OCA) filed a petition for rulemaking with the New Hampshire Public Utilities Commission (Commission) pursuant to RSA 541-A:6, seeking amendments to N.H. Admin. Rule Puc Chapters 200 and 1600. The petition requested changes in the extent and nature of Commission notice to the public and to a utility's customers of rate schedules (N.H. Admin. Rule Puc 203.01) and utility tariffs filed in compliance with Commission orders (N.H. Admin. Rule Puc chapter 1600). The instant docket was opened as a vehicle for the Commission to hear any arguments that related to the issues of notice and compliance filings raised in the OCA's petition.

The Commission, as a matter of administrative practice, has addressed issues relating to the extent of public notice by requiring additional specificity in notices to the utility customers and the general public. It has also scheduled hearings on compliance filings in instances where there is uncertainty whether the rate schedules comply with the Commission's final order. Accordingly, we have met the objectives of the docket.

Based upon the foregoing, it is hereby

ORDERED, that the Commission close the above-captioned proceeding.

By order of the Public Utilities Commission of New Hampshire this twelfth day of April, 1996.

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NH.PUC*04/15/96*[89120]*81 NH PUC 288*Preliminary Investigation into Local Calling Areas (Extended Area Service)

[Go to End of 89120]

81 NH PUC 288

Re Preliminary Investigation into Local Calling Areas (Extended Area Service)

DRM 94-001
Order No. 22,107

New Hampshire Public Utilities Commission

April 15, 1996

ORDER terminating a proceeding in which the commission had been examining possible revisions to the state's existing structure for extended area telephone services (EAS). Commission finds that neither the community of interest nor the strictly geographic standard for determining EAS boundaries is optimum. Moreover, any increase in EAS capabilities would

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serve only to shift telephone traffic away from competitive toll markets which the commission has been working so hard to achieve. The commission also points out that both state and federal legislation, including the federal Telecommunications Act of 1996, require the development of local exchange competition and further growth of interexchange competition, with the entry of interexchange carriers into local markets and of local carriers into toll markets.

Accordingly, the commission concludes that any expansion of EAS would have an adverse impact on the intraLATA toll market and thus would be inconsistent with the provisions of the Act.

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1. SERVICE, § 445

[N.H.] Telephone — Exchange areas and boundaries — Extended area service (EAS) — Determination of EAS routes and limits — Based on community of interest or strict geographic standard — Discussion. p. 292.

2. RATES, § 575

[N.H.] Telephone rate design — Extended area service (EAS) — Factors affecting EAS routes and limits — Community of interest versus geography — Discussion. p. 292.

3. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Toll services — State and federal legislative mandates — Further opening of toll markets — Entry of interexchange carriers into intraLATA and local markets — Entry of local carriers into interexchange toll markets — Effect of inhibiting further expansion of extended area service. p. 293.

4. SERVICE, § 469

[N.H.] Telephone — Toll service — Lines and routes — Increased competition as a factor — Both inter- and intraLATA markets — As substitute for extended area service. p. 293.

5. SERVICE, § 445

[N.H.] Telephone — Exchange areas and boundaries — Extended area service (EAS) — Expansion of EAS as producing less competitive toll market — Telecommunications Act of 1996 as requiring greater toll and local competition — Expansion of EAS effectively proscribed by the Act. p. 293.

6. RATES, § 573

[N.H.] Telephone rate design — Extended area service (EAS) — No expansion of EAS structures — Factors — EAS as reducing toll market competition — Telecommunications Act of 1996 as requiring greater toll and local competition — Expansion of EAS effectively proscribed by the Act. p. 293.

BY THE COMMISSION:

ORDER

I. INTRODUCTION

In Order No. 20,916 (August 2, 1993) approving the Modified Stipulation and Agreement in DE 90-002, in which we considered the transition to intrastate toll competition, we approved the parties' agreement that the Commission evaluate the need to restructure existing Extended Area Service (EAS). 78 NHPUR 385 at para. 1.7 (1993). In September 1992, we stopped accepting petitions to consider expanding specific local calling areas, pending the outcome of this statewide local calling area docket.

On December 20, 1993, concerned by an apparent rise in consumer complaints regarding EAS, we opened DRM 94-001 by Secretarial letter, "to deal with the question of what, if any, changes should be made to the current local service calling areas." When we opened this docket, we directed our Staff to commence an

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investigation of the current status of Extended Area Service and the effects of various changes to EAS. The Secretarial letter asked the Local Exchange Companies (LECs) to cooperate with Staff as data collection commenced.

Our objectives for EAS were:

1. To provide uniform, equitable local calling areas consistently from exchange to exchange.

2. To provide individual customers with a choice of local calling areas in order to meet different calling area requirements.

3. To preserve monthly rates as much as possible for those customers who are satisfied with their local calling area.

4. To foster competition so that telecommunications options and services grow in New Hampshire.

II. INVESTIGATION

A. *Consumer Complaints*

The Commission's Consumer Assistance Department has logged numerous calls from customers who complained that certain toll calls should be "local" calls. In 1994 and 1995, the

number of calls per quarter were:

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

1994: Quarter 1 52
      Quarter 2 28
      Quarter 3 29
      Quarter 4 24

1995: Quarter 1 99
      Quarter 2 35
      Quarter 3 39
      Quarter 4 30
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Additionally, the Commission received numerous letters expressing similar concerns. The record of these calls and letters clearly emphasizes a concern on the part of certain customers that we should address the issue of EAS. Consumers are concerned about their telephone bills and toll call charges. In particular, consumers have expressed a desire to include larger metropolitan areas in their local calling area, to include contiguous exchanges or the area with which they have a community of interest in their local calling area, and to obtain non-toll access to emergency services. More recently, the desire to access the Internet by non-toll calls has prompted comments to the Commission.

We are also aware, however, that there are over 700,000 telephone access lines in New Hampshire and, therefore, the number of persons expressing concerns are a minority of the total number of New Hampshire customers. In addition, our experience with EAS petitions has shown that while a minority of persons might be interested in expanding a local calling area, the majority of customers reject the expansion when informed of the increase in basic flat rates which might be necessary to implement the expansion. See summary of petitioned exchanges that were polled (Attachment 1).

B. *Data Collected*

Because our decision to open this docket arose from our concern about continued customer complaints regarding EAS, we instructed Staff to focus its investigation on devising EAS plans which might rectify that situation while accomplishing other important telecommunications goals. Workable new EAS plans would depend on a clear understanding of the current calling patterns of customers throughout New Hampshire. Therefore, Staff's investigation began with extensive requests for data.

Data Requests to the LECs included gathering information about minutes of use, revenues and calling patterns on a route specific basis (originating exchange to terminating exchange) for a one month period.[1(24)] Collection of the data presented considerable effort on the part of the LECs and included technical sessions with the LECs' computer network specialists and Staff. The LECs were cooperative in responding to Staff's requests and the far- reaching data collected required editing, correction, collation and coordination to assimilate the data from various sources into one database which was sufficient to answer the complex questions raised by the docket. This effort required numerous unanticipated hours and, as a result, the anticipated timetable was amended

and the deadline for completion was often extended. The resulting database and analysis have proved to be comprehensive, detailed and extremely useful in our consideration of whether there is a need to restructure local calling areas in New Hampshire.

C. *Possible EAS Plans*

Staff evaluated several plans which were based on variations of two general approaches to EAS. One approach was the community of interest approach. The community of interest approach attempts to accommodate within EAS the locations of commonly utilized businesses and services such as schools, hospitals and local governments. The community of interest is identified by determining the frequency and distribution of calls made between exchanges currently reached by toll calls. This approach is used in our current EAS Guidelines, established in *Re: New England Telephone and Telegraph Company*, 67 NH PUC 475 (1982). The Guidelines (Attachment 2) define a community of interest as an average of 3 or more calls per customer per month with 40% of the customers making at least 2 calls per month.

The other general approach, the geographic approach, attempted to address the "neighbor calling neighbor" problem which occurs when exchange boundaries separate consumers who are literally next door to each other. The geographic approach assumes that consumers' community of interest can be accommodated by a selected mileage band or by contiguous exchange.

Utilizing both the community of interest and the geographic approaches, the following plans were considered:

1. Straight mileage band options:
a. originating rate centers to terminating rate centers;
b. originating exchange boundaries to terminating exchange boundaries;

2. Current EAS areas plus one additional "most frequently called" exchange;

3. Customer Choice: offering options of home exchange only, status quo EAS, or home exchange plus a mileage band;

4. Home exchange plus contiguous exchanges options:
a. excluding non-contiguous exchanges which are currently designated as EAS (toll free) routes;
b. including non-contiguous exchanges which are currently designated as EAS (toll free) routes;

5. Combination of the current EAS areas plus either contiguous exchanges or exchanges within a mileage band;

6. Home exchange only; and

7. Community of interest as indicated by usage characteristics reflected in the current EAS guidelines in use by the Commission.

III. COMMISSION ANALYSIS

A. *Evaluation of Plans*

Staff evaluated each plan in terms of the changes expected to occur, given the data collected. The data reflected the demand for telecommunications services and use of the network for a representative month in 1993 or 1994[2(25)] , based on toll prices in effect at that time. This

information provided insight into the possible effects of each plan. However, we were aware that any change in EAS would change the traffic patterns and revenue streams for the affected exchanges and customers. The stimulation of intrastate traffic expected to occur as a result of switching a toll route to an EAS route could lead to changes in the allocation of expenses between the interstate and intrastate jurisdictions. Switch costs are allocated by minutes of use between the state and interstate jurisdiction. An increase in local minutes caused by stimulation due to expanded EAS would allocate more switch costs to the state and less to the interstate jurisdiction. The relative percentage of interstate minutes is tripled for small telephone company cost recovery. When the relative percentage of interstate usage is reduced, the revenue received can be affected by a factor of three. Further, changes in the

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volume of traffic might necessitate changes to the hardware of the network, thus increasing costs. These changes in costs were not reflected in the data provided by the companies and, if significant, would escalate the increases in basic flat rates required if EAS were expanded. Any expansion of EAS diminishes the intrastate toll market and decreases the competitive pressures that are expected to lower toll rates, an important consideration in light of recent legislation passed at both the state and federal levels.[3(26)] Consequently, any change in EAS will affect all of the telephone consumers in New Hampshire, not merely those consumers whose EAS areas change.

[1, 2] To evaluate possible EAS plans, we considered each possible EAS plan's advantages and disadvantages in terms of solving problems for a particular group of consumers without significantly harming other consumers or the telephone companies (either Local Exchange Carriers or Inter-exchange Carriers). We found that no one plan could accomplish this. While some, such as a mileage-based plan, appear simple and are perceived as solving the "neighbor calling neighbor" problem, they also require consumer knowledge regarding the physical location of central offices and the air mileages between central offices. Further, they cannot be equitably applied, and do not solve the community of interest problem. Plans directed at the community of interest problem, such as a plan which would add one exchange to each exchange's local calling area based on frequency of calls, might address the community of interest issue for a majority of consumers in an exchange but would require consumers to accept that it is the town's or exchange's, and not the individual's, community of interest that is being addressed. Further, communities of interest shift over time as economic growth occurs and consumer demands change. A Customer Choice plan would have similar problems, including the difficulties of implementation, the difficulty of designing rates and estimating revenue shifts, and the increased risk of a large "true up" in the future.

The remaining plans (Current EAS plus Toll to Contiguous Exchanges; Current EAS Plus Toll within 12 miles; Home Exchange Only; and Community of Interest) were investigated using the data collected to quantify some of the possible effects of each plan. Due to the confidential nature of the data, we are compelled to discuss this information in a very general sense. With the Current EAS Plus Toll to Contiguous Exchanges, we found that the amount of current toll traffic involved would be relatively small but that the potential effect on independent telephone companies could be significant due to access and billing and collection revenues. Similarly, the

Current EAS Plus Toll within 12 miles would affect a relatively small amount of current toll traffic, though in some instances, it affected approximately 50% more than the Current EAS plus Toll to Contiguous Exchanges. This plan also could significantly affect the access and billing and collection revenues of the independent telephone companies. In addition, neither of these plans would solve community of interest complaints except for those which coincidentally fall within the geographic boundaries delineated. The effects of the Community of Interest plan are difficult to quantify because of the uniqueness of each exchange and because of the difficulty involved in determining whether the existing EAS guidelines are a correct means of defining community of interest.

The plan with the largest immediate traffic and revenue effect is the Home Exchange Only plan. By eliminating all toll-free calling to areas beyond the boundaries of the consumer's current exchange, the Home Exchange Only plan would immediately increase the size of the intrastate toll market and immediately decrease the local exchange market. It would alter drastically the telecommunications markets in New Hampshire. While this would stimulate competition in the toll market consistent with the spirit of recent legislation, we believe that the potential effect on consumers is too drastic to consider at this time.

In summary, none of the plans present net benefits for New Hampshire. Although each has advantages and disadvantages, the disadvantages appear to outweigh the advantages. All of the plans except the Home Exchange Only plan, which is unworkable for other reasons outlined above, would shift telephone traffic from the

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competitive toll market to what is now monopoly local exchange market.

B. *State and Federal Legislation*

[3] In July 1995, during the final phases of our EAS data analysis, the New Hampshire Legislature approved an amendment to RSA 374:22 which authorized local competition in areas served by telecommunications companies with more than 25,000 access lines. The legislation clearly indicates the state's commitment to expanding competition into local telecommunications markets. We are currently drafting the rules to govern such competition as mandated by the Legislature, to be in effect no later than December 31, 1996.

In February, 1996, Congress passed and the President signed Senate Bill 652, the Telecommunications Act of 1996 (the TAct). This sweeping legislation requires LECs throughout the country to open local calling to competition, and creates a way for the Regional Bell Operating Companies to enter the competitive interLATA market. The purpose of the TAct is to "promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies." The TAct is a complex document with many intertwined effects on every possible aspect of the telecommunications markets. The TAct directs us wherever possible to choose competition as the tool for sculpting telecommunications markets.

Section 253 of the TAct, which limits state and local governmental authority, first generally forbids any state from "prohibiting or having the effect of prohibiting the ability of any entity to

provide any inter- or intra-state telecommunications service." The same section then specifically delineates state authority to impose requirements necessary to preserve and enhance universal service, to protect public safety, to ensure continued quality of telecommunications services, and to safeguard the rights of consumers — as long as the requirements are imposed "on a competitively neutral basis." Taken together, we interpret these sections of the TAct as effectively prohibiting us from imposing requirements that will negatively affect or otherwise manipulate competition unless the requirements act to safeguard the rights of consumers, ensure continued quality of service, protect public safety, or preserve and enhance universal service. Expanding EAS would necessarily inhibit competition in the short run, by reducing the toll market before local competition is viable. Therefore, the TAct appears to preclude regulatory expansion of EAS, whether by rulemaking or by consideration of individual petitions under the EAS Guidelines.

C. *Conclusions*

[4-6] This investigation stage of DRM 94-001 has provided us with a wealth of information regarding the status quo of the telephone market in New Hampshire and the many changes and issues facing the telecommunications industry in general. We are concerned about making too many changes in telecommunications over a short period of time, a situation which could confuse and alienate customers.

One of our goals at the outset of this docket was to correct the perceived inequities in the current EAS arrangements. However, "equitable" in terms of local calling areas is a vague concept. The measures to determine what is equitable vary from the number of other telephone lines that can be accessed without incurring a toll charge to the distance from one's home or place of business to municipal boundaries or calling to the nearest metropolitan area. To impose any of the plans we considered on all of the telecommunications consumers in New Hampshire would not be in the public interest. The adjustment of EAS areas would more likely result in the creation of a new group of dissatisfied telecommunications consumers and would have an adverse impact on the intraLATA toll market.

In addition, EAS will be affected by the recent legislative enactments. Implementation of the Telecommunications Act of 1996 will occur over the next year. Further, we are required by the New Hampshire Legislature to

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adopt local competition rules by the end of 1996, a task which will change the landscape of local exchange. Moreover, we believe that across-the-board changes to local calling areas will create more problems than they solve, i.e., most people are probably happier with what they have than what they would receive and have to pay for under any of the plans for changing EAS. The potential for creating a negative effect for competition in the toll and local markets is too great. Thus, we will not try to engineer solutions to these problems now.

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. We interpret Section 253 of the Telecommunications Act as effectively prohibiting us from imposing requirements that will

negatively affect or otherwise interfere with competition unless the requirements act to safeguard the rights of consumers, ensure continued quality of service, protect public safety, or preserve and enhance universal service. If the result of using EAS guidelines would be the expansion of EAS areas, such guidelines would necessarily inhibit competition by reducing the toll market and expanding the local telecommunications market before local competition is viable. Our preliminary analysis of the Telecommunications Act leads us to conclude that expanding EAS is not consistent with Section 253 of the Telecommunications Act.

We find that the amended RSA 374:22-f, which affirms the State's commitment to expanding competition in the New Hampshire telecommunications market, supports our conclusion that relief for dissatisfied consumers should be sought by means other than EAS or any change to EAS.

We conclude that changes to EAS should not be instituted by regulation and that fostering competition is the higher public good at this time. We encourage the telecommunications companies to develop creative solutions to the EAS problems that exist, perhaps in the form of new optional calling plans.

We also conclude that the most responsive approach to the consumers' complaints regarding toll charges is to consider the means at our disposal for increasing competition in the intrastate toll market. In Order No. 20,864, the Commission reserved the right to open a presubscription docket at our discretion. Therefore, we will close this EAS docket and will commence a presubscription docket, thus advancing toward full competition as foreseen in DE 90-002. We will issue an Order of Notice requiring the LECs to file presubscription implementation plans for reasons that are more fully explained in that Order of Notice.

Based upon the foregoing, it is hereby

ORDERED, that DRM 94-001, Commission Staff Preliminary Investigation of Local Calling Areas (Extended Area Service), is hereby closed.

By order of the Public Utilities Commission of New Hampshire this fifteenth day of April, 1996.

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

ATTACHMENT 1

PETITIONED EXCHANGES THAT WERE POLLED TO EXPAND EAS

DOCKET NO.	ROUTE	INCREASE TO UNLIMITED RESIDENTIAL	% VOTES YES	% VOTES NO	% DID NOT RESPOND
83-377	Northwood-Concord	$2.28	27%	34%	39%
84-029	Danbury-Bristol	$1.57	30%	32%	38%
84-307	Hampton-Portsmouth	$3.49	12%	30%	58%
86-082	Chester-Manchester	$0.68	54%	13%	33%
89-084	Danbury-Bristol	$2.59	13%	15%	72%
90-114	Exeter-Portsmouth	$2.37	21%	30%	49%
90-163	Charlestown-Claremont	$2.92	26%	33%	41%

91-010	Wilton-Nashua	$9.10	08%	54%	38%
91-079	W. Chesterfield-Keene	$4.28	24%	27%	49%
91-136	Hancock-Antrim	$3.22	27%	32%	41%
	Hancock-Keene				
91-137	Lyme-Lebanon	$2.23	24%	28%	48%
	Enfield-W. Lebanon	$2.86	33%	19%	48%
	Enfield-Hanover				
92-013	Dunbarton-Manchester	$9.79	22%	49%	29%
92-025	Warren-Plymouth	$2.55	26%	24%	50%
92-106	Plainfield-Lebanon	$8.12	30%	26%	44%
92-107	Meriden-Hanover	$7.57	19%	26%	55%
	Meriden-W. Lebanon				

ATTACHMENT 2

New England Telephone Company

New Hampshire

ELS Expansion Guidelines

In compliance with the order in Docket DR82-70 New England Telephone will provide Extended Local Service (ELS) only where a strong community of interest exists and the net economic impact upon the Company is not adverse.

To facilitate the equitable administration of this policy, the following guidelines have been established regarding any petitions requesting Extended Local Service on a one-way basis:

(1) Subsequent to written notification by the Commission of such a petition, the Company shall undertake an analysis of the calling volume from the petitioning exchange to the petitioned exchange to determine whether a strong community of interest exists. A strong community of interest exists if the magnitude of calling from the petitioning exchange to the petitioned exchange equals or exceeds an average of 3.0 messages per customer per month, and 40% of the customers in the petitioning exchange make at least 2.0 calls per month to the petitioned exchange. The Company shall inform the Commission of the results of its calling volume analysis within 60 days of receipt of the written notification.

(2) If a review of this analysis by the Commission indicates that a strong community of interest does not exist, then the Commission will notify the petitioners that the petition has been dismissed and that ELS will not be provided. A summary of the Company's currently available optional services should accompany this notification.

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(3) If a review of the calling volume analysis by the Commission indicates that a strong community of interest does exist, the Commission will direct the Company to complete a study to determine the economic impact associated with the implementation of ELS on the petitioned route. The Company shall inform the Commission of the results of its study within 90 days of receipt of written notification that an economic study is required. If the results of the study indicate that the net economic impact is negative, the Company shall notify the Commission of the amount of the monthly ELS surcharge that would be assessed against the customers of the petitioning exchange in order to eliminate the negative economic impact.

(4) Following review and approval of this surcharge by the Commission, the customers of the petitioning exchange shall be polled as to whether or not they are in favor of the extended local service expansion with the surcharge. If more than 50% of the customers in the exchange respond favorably to the poll, the Commission will notify the petitioners that ELS will be implemented following the completion of the network rearrangements necessitated by the conversion to ELS. If less than 50% respond favorably the Commission will notify the petitioners that the petition has been dismissed and that ELS will not be provided. A summary of the Company's currently available optional services should accompany this notification.

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[TO BE SHOT - PAGE 2 0f 2]

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FOOTNOTES

[1]Most of the information collected is confidential information received under protective orders issued pursuant to RSA 91-A and N.H. Admin. Rule Chapter Puc 204.08.

[2]Each company provided information for a 30-day period in 1993 or 1994, chosen by the company as a representative period.

[3]See Section E below for a discussion of these recent enactments.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Generic Investigation into IntraLATA Toll Competition Access Rates, DE 90-002, Order No. 20,864, 78 NH PUC 283, June 10, 1993. [N.H.] Re Generic Investigation into IntraLATA Toll Competition Access Rates, DE 90-002, Order No. 20,916, 78 NH PUC 365, Aug. 2, 1993.

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NH.PUC*04/19/96*[89119]*81 NH PUC 288*Kearsarge Telephone Company

[Go to End of 89119]

81 NH PUC 288

Re Kearsarge Telephone Company

DR 96-080
Order No. 22,106

New Hampshire Public Utilities Commission

April 19, 1996

ORDER suspending a local exchange telephone carrier's proposed introduction of enhanced custom calling services.

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1. RATES, § 553

[N.H.] Telephone rate design — Enhanced custom calling services — Suspension — To allow for adequate investigatory period — Local exchange carrier. p. 288.

2. RATES, § 248

[N.H.] Schedules and procedure — Suspension — Of proposed service offering — To allow for adequate investigatory period — Enhanced custom calling services — Local exchange carrier. p. 288.

BY THE COMMISSION:

ORDER

[1, 2] On March 20, 1996, Kearsarge Telephone Company (KTC or Company) filed tariff pages proposing to offer Enhanced Custom Calling Services for effect April 22, 1996. In support of its filing, the Company filed forecasts of revenues and expenses associated with the proposed features.

Staff requires time to investigate the filing and material filed in support of the proposed tariff and therefore requested that the proposed tariff pages be suspended.

We have reviewed Staff's request and will suspend the proposed filing to allow a thorough review of the tariff filing and the accompanying supporting materials.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of Kearsarge Telephone Company are suspended:

NHPUC No. 7

Section 3 -

Second Revised Sheet 2

Original Sheets 2.1

First Revised Sheet 3

First Revised Sheet 3.1

Third Revised Sheet 4

First Revised Sheet 5

By order of the Public Utilities Commission of New Hampshire this nineteenth day of April, 1996.

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NH.PUC*04/19/96*[89121]*81 NH PUC 298*Dunbarton Telephone Company

[Go to End of 89121]

81 NH PUC 298

Re Dunbarton Telephone Company

DR 96-084
Order No. 22,108

New Hampshire Public Utilities Commission

April 19, 1996

ORDER suspending a local exchange telephone carrier's proposed introduction of new direct inward dialing, digital, and switched services, rates for which were designed to mirror those of the state's dominant local exchange carrier.

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1. RATES, § 553

[N.H.] Telephone rate design — New service offerings — Direct inward dialing, digital, and switched services — Mirroring of dominant carrier's rates — Suspension — To allow for adequate investigatory period — Local exchange carrier. p. 298.

2. RATES, § 248

[N.H.] Schedules and procedure — Suspension — Of new telephone service offerings — Direct inward dialing, digital, and switched services — To allow for adequate investigatory time — Local exchange carrier. p. 298.

BY THE COMMISSION:

ORDER

[1, 2] On March 25, 1996, Dunbarton Telephone Company (DTC or Company) filed tariff pages proposing to introduce Direct Inward Dialing (DID) Service, DSI 1.544 Megabits per second (Mbps) Digital Service and Switched 56 Kilobit per second (Kbps) Service for effect April 22, 1996. In support of its filing, the Company stated it was mirroring NYNEX rates for the proposed services in order to incur minimal costs. In addition, on April 19, 1996, the Company resubmitted tariff pages P.U.C. - N.H. No. 5, Section 3 Sheet Q-1 Original and Section 3, Sheet Q-3 Original, correcting cross-references which were inadvertently omitted from the initial filing.

Staff requires time to investigate the filing and material filed in support of the proposed tariff

and therefore requested that the proposed tariff pages be suspended.

We have reviewed Staff's request and will suspend the proposed filing to allow a thorough review of the tariff filing and the accompanying supporting materials.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of Dunbarton Telephone Company are suspended:

NHPUC No. 5

Section 3 - Sheets O-1, O-2, P-1, P-2, P-3, P-4, P-5, P-6, P-7, P-8, P-9, P-10, Q-1, Q-2, Q-3, Q-4, Q-5, and Q-6.

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By order of the Public Utilities Commission of New Hampshire this nineteenth day of April, 1996.

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NH.PUC*04/19/96*[89122]*81 NH PUC 299*Merrimack County Telephone Company

[Go to End of 89122]

81 NH PUC 299

Re Merrimack County Telephone Company

DR 96-081
Order No. 22,109

New Hampshire Public Utilities Commission

April 19, 1996

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

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1. SERVICE, § 433

[N.H.] Telephone — Proposal for advanced digital services and basic rate interface integrated services digital network (ISDN) service — Suspension — To allow for adequate investigatory period — Local exchange carrier. p. 299.

2. RATES, § 248

[N.H.] Schedules and procedure — Suspension — Of proposed service offerings — To allow for adequate investigatory period — As to advanced digital services and basic rate interface integrated services digital network (ISDN) service — Local exchange telephone carrier. p. 299.

BY THE COMMISSION:

ORDER

[1, 2] On March 21, 1996, Merrimack County Telephone Company (MCT or Company) filed tariff pages proposing to introduce Advanced Digital Services, Basic Rate Interface ISDN for effect April 22, 1996. In support of its filing, the Company filed incremental cost study support materials associated with the proposed features.

Staff requires time to investigate the filing and material filed in support of the proposed tariff and therefore requested that the proposed tariff pages be suspended.

We have reviewed Staff's request and will suspend the proposed filing to allow a thorough review of the tariff filing and the accompanying supporting materials.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of Merrimack County Telephone Company are suspended:

NHPUC No. 7
Part III - General, Section 1, Original
Pages 1 through 7

By order of the Public Utilities Commission of New Hampshire this nineteenth day of April, 1996.

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NH.PUC*04/22/96*[89123]*81 NH PUC 299*Sprint Communications Company of New Hampshire, Inc.

[Go to End of 89123]

81 NH PUC 299

Re Sprint Communications Company of New Hampshire, Inc.

DS 96-085
Order No. 22,110

New Hampshire Public Utilities Commission

April 22, 1996

ORDER authorizing an interexchange telephone carrier to introduce an inbound residential toll-free calling service, to modify the product name of its "FONCARD" offering, and to provide volume discounts for combined interstate/intrastate toll usage.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Tariff revisions — Renaming of "FONCARD" products — Introduction of inbound residential toll-free calling service — Volume discounts for combined interstate/intrastate toll usage — Interexchange telephone carrier. p. 300.

BY THE COMMISSION:

ORDER

[1] On March 25, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from Sprint Communications Company of New Hampshire, Inc., (Sprint) requesting authority to revise its tariff and introduce four new services for effect April 24, 1996.

The proposed revisions delete redundant text applicable to rate periods and change the product name of Instant FONCARD to Spree Instant FONCARD. In addition, the per call charges for Spree Instant FONCARD and Collector's Prepaid FONCARD service are being reduced.

The filing introduces the Most II, Sprint Sense Residential Toll Free Service, Residential Toll Free Service and MTV Spree FONCARD. The Most II provides volume discounts off the customer's combined interstate and intrastate Sprint service, FONCARD Service and Operator Service usage and surcharges. The Most II is an add-on to Sprint's interstate offering.

Sprint Sense Residential Toll Free Service and Residential Toll Free Service are inbound options for customers' local exchange access lines. MTV Spree FONCARD is a prepaid debit card which allows subscribers access to the music television (MTV) voicemail system and concert information line.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize Sprint to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

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

23rd Revised Page 1

1st Revised Page 7

1st Revised Page 8

3rd Revised Page 9

2nd Revised Page 11

1st Revised Page 11-A

2nd Revised Page 12

4th Revised Page 22

4th Revised Page 24

4th Revised Page 31

2nd Revised Page 35

1st Revised Page 35-A

4th Revised Page 47

Original Page 47.1

3rd Revised Page 60

1st Revised Page 61.1

Original Page 61.2

4th Revised Page 73-C

5th Revised Page 89

Original Page 89.3;

and it is

FURTHER ORDERED, that Sprint file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this twenty-second day of April, 1996.

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NH.PUC*04/22/96*[89124]*81 NH PUC 301*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 89124]

81 NH PUC 301

Re New England Telephone and Telegraph Company dba NYNEX

DS 96-087
Order No. 22,111

New Hampshire Public Utilities Commission

April 22, 1996

ORDER approving a local exchange telephone carrier's proposed introduction of new "8XX" codes for accessing toll-free numbers, given the rapid depletion of "800" numbers.

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1. SERVICE, § 468

[N.H.] Telephone — Toll service — Toll-free calling — New "8XX" codes to replace "800"

access codes — Depletion of available 800 numbers as a factor — Local exchange telephone carrier. p. 301.

BY THE COMMISSION:

ORDER

[1] On March 26, 1996, New England Telephone and Telegraph Company d/b/a NYNEX filed a petition to introduce 8XX toll free codes by an amendment to its tariff, for effect April 25, 1996.

This filing is administrative. No rates have changed. The proposed change would expand the term "800 Access Service" as used in NYNEX's Access Services Tariff to include any of the following Numbering Plan Areas (NPA): 800, 888, 877, 866, 855, 844, 833 and 822 as they become available to the industry.

This change addresses the rapid depletion of 800 numbers and reflects the telecommunications industry's agreement to deploy new Interchangeable Numbering Plan Areas (INPAs) to provide for 800 relief.

We find the proposed change to be in the public good. Therefore, the Commission will authorize NYNEX to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following page of NYNEX's Access Services tariff, NHPUC No. 79 is approved for effect as filed:

Section 6 - First Revision of Page 1

FURTHER ORDERED, that NYNEX file a properly annotated tariff page in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this twenty-second day of April, 1996.

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NH.PUC*04/22/96*[89125]*81 NH PUC 301*AT&T Communications of New Hampshire, Inc.

[Go to End of 89125]

81 NH PUC 301

Re AT&T Communications of New Hampshire, Inc.

DS 96-088
Order No. 22,112

New Hampshire Public Utilities Commission

April 22, 1996

ORDER authorizing an interexchange telephone carrier to revise its discount calling plans for its "PRO WATS/Plan Q" and "CustomNet" services.

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1. RATES, § 593.1

[N.H.] Telephone rate design — Toll service — Wide area telephone service (WATS) — Discount calling plans — "PRO WATS/Plan Q" and "CustomNet" services — Tariff revisions — Interexchange telephone carrier. p. 302.

Page 301

BY THE COMMISSION:

ORDER

[1] On March 27, 1996, the New Hampshire Public Utilities Commission received a petition from AT&T Communications of New Hampshire, Inc., (AT&T) requesting authority to revise AT&T PRO WATS/Plan Q and AT&T CustomNet, for effect April 26, 1996.

The filing revises PRO WATS/Plan Q to introduce a combined outward calling and inward calling discount option and specific rates for inward calling are being introduced. The additional period for outbound Schedule A rates is being reduced from 6 seconds to 1 second increments and the rate is reduced.

Revisions to the CustomNet tariff result in changes to rates. The rates for direct dial, Service Type 1 calls are being reduced. The rate for Plan A Inward Calling is reduced for rate period 1 and increased for rate periods 2 and 3.

In its filing, AT&T stated the revisions are being made in order to provide a tariff consistent with AT&T's interstate services which became effective on March 1, 1996.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize AT&T to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of AT&T's tariff, NHPUC No. 1 are approved for effect as filed:

Section 14
6th Revised Page 5
6th Revised Page 8;

and it is

FURTHER ORDERED, that the following pages of AT&T's tariff, NHPUC No. 4 are approved for effect as filed:

Table of Contents
6th Revised Page 7

Section 3
2nd Revised Page 8
3rd Revised Page 11
2nd Revised Page 12
2nd Revised Page 13
2nd Revised Page 14
Original Page 15;

and it is

FURTHER ORDERED, that AT&T file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this twenty-second day of April, 1996.

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NH.PUC*04/22/96*[89126]*81 NH PUC 302*Business Telecom, Inc.

[Go to End of 89126]

81 NH PUC 302

Re Business Telecom, Inc.

DS 96-082
Order No. 22,113

New Hampshire Public Utilities Commission

April 22, 1996

ORDER authorizing an interexchange telephone carrier to introduce six new toll or toll-free service plans aimed at business customers. The services include special telesales rates and a long-distance calling club.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — New service offerings — Targeting of business customers — Both toll and toll-free service plans — Special rates for telesales — Special rates for long-distance calling club members — Interexchange telephone carrier. p. 303.

BY THE COMMISSION:

ORDER

[1] On March 22, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from Business Telecom, Inc., (BTI) requesting authority to introduce six new services for effect April 22, 1996.

The six new services: Business Connections Long Distance, PhonePlus Telesales, Premiere 1 Telesales, 10833 Residential Service, Home Plus 100, and Long Distance Calling Club offer various rates and terms for toll and toll-free service.

We find the proposed changes to be in the public good. New services expand the choice of telephone services and foster competition in the New Hampshire intrastate toll market which allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize the introduction of Business Connections Long Distance, PhonePlus Telesales, Premiere 1 Telesales, 10833 Residential Service, Home Plus 100, and Long Distance Calling Club.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of BTI's tariff, NHPUC No. 1 are approved for effect as filed:

1st Revised Page 1

Original Page 56

Original Page 57

Original Page 58

Original Page 59

Original Page 60

Original Page 61;

and it is

FURTHER ORDERED, that BTI file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this twenty-second day of April, 1996.

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NH.PUC*04/22/96*[89127]*81 NH PUC 303*AT&T Communications of New Hampshire, Inc.

[Go to End of 89127]

81 NH PUC 303

Re AT&T Communications of New Hampshire, Inc.

DS 96-083
Order No. 22,114

New Hampshire Public Utilities Commission

April 22, 1996

ORDER authorizing an interexchange telephone carrier to increase the surcharges applicable to calling card calls and to clarify provisions for operator-assisted calling card calls.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Calling card calls — Increase in associated surcharges — Clarification of operator assistance plans — Interexchange telephone carrier. p. 303.

BY THE COMMISSION:

ORDER

[1] On March 25, 1996, the New Hampshire Public Utilities Commission received a petition from AT&T Communications of New Hampshire, Inc., (AT&T) requesting authority to revise and clarify sections in its tariff which address operator assistance on calling card calls for effect April 22, 1996.

The filing adds language to clarify the Class of Service section for "Customer Dialed and Operator Assisted" and "Customer Dialed and Operator Must Assist" types of calling. The service charge for "Customer Dialed and Operator Assisted" card calls and "Operator Dialed" card calls is being increased from $.80 to $2.25 which is identical to the interstate surcharge.

The surcharge for calling card calls billed to either a local exchange carrier (LEC) calling

card or a commercial credit card is being increased from $.80 to $1.00.

All revisions are being made to both the AT&T Commercial Long Distance Service tariff and the AT&T Long Distance Service (10288) tariff.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition.

Therefore, the Commission will authorize AT&T to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of AT&T's tariff, NHPUC No. 1 are approved for effect as filed:

Section 17

2nd Revised Page 5

1st Revised Page 6

1st Revised Page 8

1st Revised Page 9;

and it is

FURTHER ORDERED, that the following pages of AT&T's tariff, NHPUC No. 4 are approved for effect as filed:

Section 2

4th Revised Page 5

3rd Revised Page 6

6th Revised Page 14

4th Revised Page 15

6th Revised Page 16

5th Revised Page 17;

and it is

FURTHER ORDERED, that AT&T file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this twenty-second day of April, 1996.

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NH.PUC*04/22/96*[89128]*81 NH PUC 304*New Hampshire Electric Cooperative, Inc.

[Go to End of 89128]

81 NH PUC 304

Re New Hampshire Electric Cooperative, Inc.

DR 95-335

Order No. 22,115

New Hampshire Public Utilities Commission

April 22, 1996

ORDER denying rehearing of Order No. 21,958 (80 NH PUC 810) in which the commission had approved a power cost adjustment rate of 0.875 cents per kilowatt-hour for an electric cooperative. Commission affirms the method used to determine the cooperative's short-term avoided costs therein.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 13

[N.H.] Direct energy costs — Power cost adjustment rate — Factors affecting decrease in charge — Changes in wholesale supplier rates — Short-term avoided costs — Of supplier versus utility — Electric cooperative. p. 305.

2. COGENERATION, § 28

[N.H.] Rates — For purchases of power by electric cooperative from qualifying facilities — Energy rate component — Short-term avoided costs — Of wholesale supplier versus purchasing utility — Affirmation of calculation method. p. 305.

BY THE COMMISSION:

ORDER

On December 28, 1995, we issued Order No. 21,958 which approved proposed changes to the Power Cost Adjustment (PCA) of the New Hampshire Electric Cooperative (NHEC)

for the period of January 1, 1996 through June 30, 1996. The PCA is based upon NHEC's forecasted power cost recovery requirement for the given period. We approved NHEC's proposed rate of $0.00875 per KWh which was a decrease of $0.00676 per KWh, or 4.8% on NHEC's average retail revenue.

Although it was not a party to this proceeding, Public Service Company of New Hampshire (PSNH) filed a timely motion for rehearing pursuant to N.H. RSA 541:3, which grants standing to non-parties who are "directly affected" by administrative rulings to seek reconsideration. A movant for rehearing must demonstrate that he has suffered or will suffer injury in fact. *Appeal of Richards*, 134 NH 148 (1991).

In asserting that it will suffer injury, PSNH argues that the approved PCA is based upon an erroneous short term avoided cost assumption. Specifically, PSNH contends that NHEC's short term avoided cost should not be based upon the energy rate which NHEC pays to PSNH in its wholesale contract.[1(27)] PSNH asserts that NHEC's avoided costs should be based upon PSNH's

short term avoided costs which are lower than NHEC's avoided costs. According to PSNH, it will be harmed because the approved NHEC avoided cost methodology will result in more short term energy sales from Qualifying Facilities (QFs), which in turn will displace more of PSNH's sales to NHEC.

NHEC objects to PSNH's Motion, arguing that PSNH has failed to demonstrate that it has standing pursuant to RSA 541:3. Regarding the merits of PSNH's claim, NHEC contends that PSNH is attempting to advance the same legal theories which the Commission rejected in docket No. DR 94-160.[2](28)

[1, 2] After considering the arguments set forth in PSNH's Motion, we conclude that it would be inappropriate to consider modifying the methodology for establishing NHEC's short term avoided costs. Order No. 21,958 is consistent with previous Commission orders relative to setting NHEC's short term avoided cost. PSNH's arguments are essentially the same as those which we rejected in DR 94-160 in which we established NHEC's long term avoided costs methodology. Accordingly, we will deny the motion. Based upon the foregoing, it is hereby

ORDERED, that PSNH's Motion for Rehearing or Reconsideration is DENIED.

By order of the Public Utilities Commission of New Hampshire this twenty-second day of April, 1996.

FOOTNOTES

[1]That wholesale contract is known as the Amended Partial Requirements Agreement (APRA).

[2]In that case we approved competitive bidding as an appropriate methodology for NHEC to set its long-term avoided costs for QF purchases. We rejected an approach which would utilize PSNH's avoided costs as a proxy for those of NHEC. We found such an approach "inappropriate and analytically unsound" and concluded that "there was no testimony or other evidence submitted which would support a finding that the avoided costs of NHEC's wholesalers has any real relation to the long-term avoided costs of NHEC." Order No. 21,398 (October 25, 1994), p 9-10.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New Hampshire Electric Co-op., Inc., DE 94-004, Order No. 21,398, 79 NH PUC 590, Oct. 25, 1994. [N.H.] Re New Hampshire Electric Co-op., Inc., DR 95-335, Order No. 21,958, 80 NH PUC 810, Dec. 28, 1995. [N.H.Sup.Ct.] Re Appeal of Richards, 134 N.H. 148, 123 PUR4th 512, 590 A.2d 586, Apr. 24, 1991.

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NH.PUC*04/22/96*[89129]*81 NH PUC 306*EnergyNorth Natural Gas, Inc.

[Go to End of 89129]

81 NH PUC 306

Re EnergyNorth Natural Gas, Inc.

DR 95-189
Order No. 22,116

New Hampshire Public Utilities Commission

April 22, 1996

ORDER neither approving nor disapproving a natural gas local distribution company's 1995 least-cost integrated resource plan (LCIP), but instead, by stipulation, closing the instant LCIP proceeding on the condition that the company's next LCIP filing meet seven specific criteria.

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1. EXPENSES, § 126

[N.H.] Gas utility — Commodity or supply costs — Least-cost integrated resource plans (LCIPs) — Criteria for future filings — Plans modeled on electric LCIPs — Evaluations of both demand- and supply-side resources — Improvements in forecasting analyses — Local distribution company. p. 307.

2. GAS, § 7

[N.H.] Operating practices — Least-cost integrated resource plans (LCIPs) — Conditions for future submissions — Incorporation of electric LCIP models — Analysis of both demand- and supply-side resources — Improvements in forecasting techniques — Local distribution company. p. 307.

APPEARANCES: McLane, Graf, Raulerson and Middleton by Steven V. Camerino, Esq. for EnergyNorth Natural Gas, Inc.; Eugene F. Sullivan, III, Esq. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On June 30, 1995 EnergyNorth Natural Gas, Inc. (ENGI) filed its 1995 Least Cost Integrated Resource Plan (LCIP) with the New Hampshire Public Utilities Commission (Commission). By Order of Notice, the Commission scheduled a prehearing conference for October 24, 1995 to identify intervenors, set a schedule for the Commission's investigation and outline initial positions of the Parties and Staff. Though a statutorily authorized intervenor, the Office of Consumer Advocate did not participate in the docket. There were no other intervenors.

The Commission granted two requests for confidential treatment regarding ENGI's 1995 Avoided Cost Study and certain discovery materials related to gas supply contracts. *See* Order

Nos. 21,762 (July 20, 1995) and 21,921 (November 28, 1995).

Commission Staff (Staff) filed the joint testimony of George R. McCluskey and Kenneth E. Yasuda, Sr. on November 29, 1995. ENGI, on January 18, 1996 filed Rebuttal Testimony of Donald E. Carroll.

On December 11, 1995, Staff filed a Motion to Separate Proceedings, noting that ENGI had included conservation and load management (C&LM) programs as part of its LCIP. Staff asked the Commission to create a new docket involving ENGI's C&LM programs and not consider them further in this docket except to the extent they related to ENGI's planning process and determination of least cost options. ENGI concurred in the motion.

As a result of settlement discussions, on March 1, 1996 ENGI and Staff filed a Stipulation and Agreement (Stipulation) resolving all issues. The Commission heard testimony in support of the Stipulation on March 5, 1996. The Stipulation recommended that the Commission neither approve nor reject ENGI's 1995 LCIP but instead close the docket on the condition that ENGI comply with a number of agreements, as set forth in the Stipulation.

II. POSITIONS OF ENGI AND STAFF AND TERMS OF STIPULATION

Page 306

A. *ENGI*

Prior to the July filing, ENGI had been proceeding under a Letter Agreement to establish a least cost planning process, which was approved by the Commission in Order No. 20,706 (December 21, 1992) in Docket DE 92-044.

As part of its plan, ENGI stated that it did not seek approval of any particular option but instead, sought a Commission finding that ENGI's planning process was sound and was likely to result in the selection of best cost options, based upon information available at the time the resources are selected.

B. *Staff*

Staff's testimony recommended that gas utilities follow the LCIP filing and evaluation requirements used for electric utilities, with some modification to shorten the planning horizon to 10 years and replace the transmission report with a report on large distribution-related projects.

Staff questioned the accuracy of ENGI's demand forecast, and argued there should be a more systematic evaluation of alternative supply side resources, a greater emphasis on demand side resource assessments and less reliance on supply side resources.

C. *Stipulation*

[1, 2] The Stipulation recommends that the Commission neither approve nor reject ENGI's 1995 LCIP. Rather, the Commission should close ENGI's LCIP docket on the condition that ENGI's 1997 and subsequent LCIPs meet agreements in seven areas, which are more fully detailed in the Stipulation. The seven areas are:

1) planning guidelines that closely follow those for electric utilities (specifying,

among other things, a 10 year planning horizon, report on distribution-related gas projects rather than transmission, report on long term avoided supply costs which will form the basis of economic evaluation of demand side resources, all of which are subject to modification if there are changes in the natural gas industry);

2) planning criteria, delineating the criteria used in the 1997 plan, including among other things, a detailed description of the planning criteria used;

3) natural gas demand forecast (including the use of a longer historical period and an agreement to reexamine the specification of its forecast models if ENGI's price variables are not statistically significant);

4) supply side resources (including a chart displaying volumes and start and end dates for existing supply contracts, a description of each new supply side resource analyzed, analysis of the benefits and detriments of using futures and options contracts as gas management tools, description of ENGI's supply procurement strategies and its view of the proper balance of short and long term resources in its supply mix);

5) demand side resources (evaluation of demand side and supply side resources on an equivalent basis, definition of what ENGI considers the optimal level of demand side resources and analysis if ENGI concludes that less than the optimal amount of demand side resources would be in the public interest);

6) integration of supply side and demand side resources (which would be submitted for the purpose of assessing ENGI's resource planning process and which would identify those existing and uncommitted resources planned to meet forecasted demand, year by year, for the 10 year horizon); and

7) uncertainty over forecasts (by submitting high and low demand growth scenarios and addressing the impacts of a large shift of gas sales to transportation services).

III. COMMISSION ANALYSIS

Having reviewed the testimony and Stipulation, we are persuaded that the Stipulation is

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in the public interest and will approve it as filed. We recognize that integrated resource planning for gas utilities is in the early stages and that there will necessarily be a period in which gas utilities become familiar with our filing and review requirements and more importantly, with the analysis of demand side and supply side resources and forecasts of demand.

We will adopt the recommendations in the seven areas delineated in the Stipulation. As a result, we expect that the 1997 LCIP filing will provide a more detailed forecasting and analysis as required in a complete LCIP.

We note in reviewing this docket that Staff's Motion to Separate Proceedings has never received a ruling. We will grant the motion, and before closing this docket, transfer to a new docket all C&LM program materials. We instruct Staff, in consultation with ENGI, to ascertain which portions of this docket should be transferred to the new docket.

Based upon the foregoing, it is hereby

ORDERED, that the Stipulation and Agreement entered into between ENGI and Staff is APPROVED; and it is

FURTHER ORDERED, that Staff in consultation with ENGI shall transfer the appropriate C&LM materials to a new docket on ENGI's C&LM programs; and it is

FURTHER ORDERED, that ENGI's 1995 LCIP will be closed in accordance with the terms of the Stipulation and this Order.

By order of the Public Utilities Commission of New Hampshire this twenty-second day of April, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re EnergyNorth Natural Gas, Inc., DE 92-044, Order No. 20,706, 77 NH PUC 802, Dec. 21, 1992.

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NH.PUC*04/22/96*[89130]*81 NH PUC 308*Easton Telecom Services, Inc.

[Go to End of 89130]

81 NH PUC 308

Re Easton Telecom Services, Inc.

DE 95-349
Order No. 22,117

New Hampshire Public Utilities Commission

April 22, 1996

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

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1. CERTIFICATES, § 123

[N.H.] Telephone carrier — Intrastate intraLATA long-distance services — Interim authority — Assessment of competitive impacts — Exclusion of local exchange services. p. 308.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate intraLATA toll services — Interim authority — Assessment of competitive impacts — Exclusion of local exchange services. p. 308.

BY THE COMMISSION:

ORDER

[1, 2] On December 15, 1995, Easton Telecom Services, Inc. (ETS), an Ohio corporation, petitioned the New Hampshire Public Utilities Commission (Commission) for authority to do business as a telecommunications public utility in the State of New Hampshire (petition) pursuant to, *inter alia*, RSA 374:22 and RSA 374:26. ETS has demonstrated the financial, managerial and technical ability to offer service as conditioned by this order. The Commission previously approved numerous, similar petitions filed during the Trial Period, pursuant to the Modified Stipulation Agreement (Stipulation) in Docket No. DE 90-002, approved by

Order No. 20,916 (August 2, 1993). Our orders in those numerous dockets granted the petitioner(s) interim authority to offer intraLATA toll service, specifically excluding local exchange service, for the service territory of the entire State of New Hampshire, during the Trial Period, in order to allow the Commission to analyze competition during the two-year Trial Period.

Because the Trial Period identified by the Stipulation expired on September 30, 1995, we have explicitly clarified that the authority we had granted remains in effect until we specifically modify or revoke that authority, after analysis of the Trial Period. *See* Order No. 21,851 (October 3, 1995). Likewise, our grant of authority ordered herein remains in effect until we specifically modify or revoke that authority.

The public good is served by permitting such competition by telecommunications companies. The Commission permits competitive entry in order to foster competition in the New Hampshire intrastate toll market and to allow the Commission to analyze the effects of such competition.

The public should be provided an opportunity to respond in support of, or in opposition to this petition.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that ETS is granted interim authority to offer as a telecommunications public utility intraLATA toll service, specifically excluding local exchange service, for the service territory of the entire State of New Hampshire, subject to the following conditions:

1. The services shall be offered by approved tariffs.

2. The services shall be offered until the Commission orders otherwise.

3. ETS shall file tariffs for new services and changes in approved services (other than rate changes), with effective dates of no less than 30 days after the date the tariffs are filed with the Commission.

4. Within one business day of offering an approved service to the public at a rate different from its rates on file with the Commission, ETS shall notify the Commission of the change.

5. ETS is exempted from NH Admin. Rules, Puc 406.03 Accounting Records; Puc 407 Forms Required of All Telephone Utilities; and Puc 409 Uniform System of Accounts for Telecommunications Companies.

6. ETS shall maintain its book and records in accordance with Generally Accepted Accounting Principles.

7. ETS 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. ETS 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. ETS shall compensate the appropriate Local Exchange Company for all originating and terminating access used by ETS pursuant to NET Tariff N.H.P.U.C. 79, Switched Access Service Rate or its successors or its relevant equivalent contained in the tariffs of the Independent Local Exchange Companies.

10. New Service offerings filed for approval with the Commission shall be accompanied by tariff pages describing the service, rates and effective dates.

FURTHER ORDERED, that the authority granted herein remains in full force and effect until the Commission orders otherwise; and it is

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

FURTHER ORDERED, that ETS 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 April 29, 1996, and an affidavit proving publication shall be filed with the Commission on or before May 6, 1996; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, et seq. ETS 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 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, this Order *Nisi* shall be effective May 22, 1996, unless the Commission provides otherwise in a supplemental order issued prior to the effective date and it is

FURTHER ORDERED, that ETS shall file a compliance tariff with the Commission on or before May 22, 1996, in accordance with NH Admin. Rules, Puc 1601.01 (b).

By order of the Public Utilities Commission of New Hampshire this twenty-second day of April, 1996.

Notice of Conditional Approval of
EASTON TELECOM SERVICES, INC.

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

On December 15, 1995, Easton Telecom Services, Inc. (ETS), an Ohio corporation, filed with the New Hampshire Public Utilities Commission (Commission) a petition to do business as a telecommunications public utility in the State of New Hampshire, specifically to provide intrastate long distance telecommunications services.

In Order No. 22,117, issued in Docket No. DE 95-349, the Commission granted ETS conditional approval to operate as of May 22, 1996, subject to the right of the public and interested parties to comment on ETS 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 ETS's petition to do business in the State must be submitted in writing no later than May 13, 1996, and reply comments no later than May 20, 1996, to:

Dr. Sarah P. Voll
Executive Director and Secretary
Public Utilities Commission
8 Old Suncook Road
Concord, New Hampshire 03301-7319

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Generic Investigation into IntraLATA Toll Competition Access Rates, DE 90-002, Order No. 20,916, 78 NH PUC 365, Aug. 2, 1993. [N.H.] Re Long Distance North of New Hampshire, Inc., et al., DE 87-249, Order No. 21,851, 80 NH PUC 628, Oct. 3, 1995.

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NH.PUC*04/24/96*[89131]*81 NH PUC 310*Retail Competition Pilot Program

[Go to End of 89131]

81 NH PUC 310

Re Retail Competition Pilot Program

Applicant: Public Service Company of New Hampshire

DR 95-250
Order No. 22,118

New Hampshire Public Utilities Commission

April 24, 1996

ORDER approving as modified an electric utility's compliance filing for implementing a pilot program for competitive electric services. Commission addresses such plan components as billing procedures, franchise taxes, retail transmission tariffs, estimates of hourly load, and formation of a legally separate marketing affiliate through which to participate in the pilot.

Page 310

1. RATES, § 321

[N.H.] Electric rate design — Unbundling of rates — Under pilot program for retail competition — Proposed tariffs — Necessity of simplification — To allow for more effective participation by residential and small commercial customers. p. 313.

2. RATES, § 339

[N.H.] Electric rate design — Unbundling — Under pilot program for retail competition — Retail transmission tariffs — Structuring of tariff to have utility act as transmission billing agent — Compliance filings. p. 313.

3. RATES, § 323

[N.H.] Electric rate design — Demand and load factors — Estimations of hourly load — Development of uniform measurement standards — Under pilot program for retail competition. p. 313.

4. PAYMENT, § 17

[N.H.] Billings and collections — Under pilot program for retail electric competition — Transfers of billing data and monies — Value added network systems. p. 313.

5. INTERCORPORATE RELATIONS, § 1.1

[N.H.] Nature of relationship — Competitive provision of electric service — By dominant electric utility — Under pilot program for retail competition — Necessity of forming legally separate subsidiary or affiliate — Timing of regulatory approvals as a factor. p. 314.

6. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric service — Pilot program for retail competition — Means of competing — Through legally separate subsidiary or affiliate — Expeditious formation of distinct power marketing subsidiary. p. 314.

7. PAYMENT, § 17

[N.H.] Billings and collections — Under pilot program for retail electric competition — Willingness of utility to offer billing services — Special charges for billing transactions — Exclusion of pilot developmental costs from charge — Billing- related costs only. p. 315.

8. RATES, § 336

[N.H.] Electric rate design — Service or customer charges — Under pilot program for retail competition — Charges relating to billing services — Inclusion of billing-related transaction costs only — Exclusion of overall pilot developmental costs. p. 315.

9. SERVICE, § 320

[N.H.] Electric — Pilot program for retail competition — Switching of suppliers by pilot customers — Notice period — Rejection of 30-day period — Approval of five-day notice term. p. 315.

10. SERVICE, § 320

[N.H.] Electric — Pilot program for retail competition — Participant responsibilities — Customers versus competitive suppliers — Necessity of establishing affiliation with the New England Power Pool — Applicable only to suppliers, not customers. p. 316.

11. SERVICE, § 152

[N.H.] Applications for service — Under pilot program for retail electric competition — Simplification of form — To encourage participation — No customer certification requirements. p. 316.

12. RATES, § 147

[N.H.] Factors affecting reasonableness — Taxation — Franchise taxes — As component of unbundled rates under pilot program for retail competition — Electric services — Compliance filings. p. 316.

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13. EXPENSES, § 112

[N.H.] Franchise taxes — Treatment under pilot program for retail electric competition — Continued assessment based on gross revenues — Responsibility for collections and remittance — Actual service provider — Compliance filings. p. 316.

14. EXPENSES, § 120

[N.H.] Electric utility — Special costs — Associated with pilot program for retail competition — Customer claims arising out of participation — Impropriety of indemnification clause — Compliance filings. p. 316.

15. RATES, § 339

[N.H.] Electric rate design — Unbundling — Under pilot program for retail competition — Necessity of retail transmission tariffs — Expeditious development of tariffs — Negotiations with cooperative as a factor — Compliance filings. p. 317.

16. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric service — Pilot program for retail competition — Retail transmission as integral component — Development of associated tariffs — Compliance filings. p. 317.

17. RATES, § 166

[N.H.] Factors affecting reasonableness — Solicitation of business — New commercial or industrial load — Eligibility to participate in pilot program for retail electric competition — New load as relocating from out-of-state — Expansion of existing load if served through separate meter — Service to facilities not in use until after initiation of pilot — Compliance filings. p. 317.

18. RATES, § 322

[N.H.] Electric rate design — Load factors — Pilot program for retail competition — Participation eligibility — Large commercial or industrial load — New load as relocating from out-of-state — Expansion of existing load if served through separate meter — Service to facilities not in use until after initiation of pilot — Compliance filings. p. 317.

19. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric service — Pilot program for retail competition — Availability of customer names to competitive suppliers — Sharing of customer information — Monitoring by commission. p. 317.

20. RATES, § 321

[N.H.] Electric rate design — Under pilot program for retail competition — Wholesale power prices as starting point — Market price assumptions — Consideration of effects of extended nuclear plant outages — Updates as to wholesale power markets. p. 318.

BY THE COMMISSION:

ORDER

I. INTRODUCTION

On March 15, 1996, Public Service Company of New Hampshire (PSNH) filed tariffs and other submissions in compliance with Order No. 22,033 (Final Guidelines, February 28, 1996) relative to PSNH's participation in the retail electric competition pilot program (Pilot). The filing contains proposed unbundled rates, describes the unbundling process (including the development of unbundled retail transmission rates) and sets out a detailed Pilot implementation plan.

On March 29, 1996, the Commission issued Order No. 22,081 which partially approved a Joint Recommendation between PSNH and Staff. That order directed all New Hampshire electric utilities, including PSNH, to use certain class-specific retail market prices when developing unbundled rates for the Pilot.

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The assumed market prices adopted by the Commission have the effect of reducing the level of PSNH's unbundled stranded cost charges which were set forth in its Joint Recommendation with Staff. After technical sessions on March 22 and 25, hearings were conducted April 3-4, 1996. PSNH presented oral testimony during such hearings and a number of participants

cross-examined witnesses. During those hearings the Public Utility Policy Institute (PUPI) made an oral motion for the Commission to reconsider its decision allowing PSNH to compete in the Pilot through a division rather than through an affiliate. The New Hampshire Electric Cooperative (NHEC) orally requested that the Commission order PSNH to file unconditional retail transmission tariffs with the FERC and the Commission.

II. COMMISSION ANALYSIS

A. General Observations

[1, 2] We must begin by expressing our concern over the complexity of the delivery tariff submitted by PSNH. Although the Pilot will include large sophisticated customers who have the capability and resources to review and understand complex legal and technical transmission issues, most Pilot customers will have little experience or knowledge of such issues. We believe it is unrealistic to expect that residential and small commercial customers will be able to comprehend a forty-page document addressing issues about which even large customers know little.

One obvious way to simplify the tariff would be to include only those provisions which differ from those contained within existing bundled tariffs. It is possible to simply reference the provisions which are common to both types of service (bundled and unbundled). These include, but are not limited to: (a) line extensions, (b) harmful physical effects, (c) liability and indemnification, (d) underground service, and (e) company property.

An even better approach would be for PSNH to structure the tariff such that the company functions as a transmission billing agent for its Pilot customers. This is the approach submitted by Granite State and which we approved in Order No. 22,098. The advantage of this approach is that the retail transmission tariff can incorporate all of the complexity of existing wholesale transmission tariffs, but that retail customers will not be required to comprehend complex technical matters to which they have had little exposure.

Although we reiterate our strong preference for the approach adopted by Granite State, in light of the time constraints in the Pilot, we will allow PSNH to re-file a simplified delivery tariff consistent with this Order. We believe that it is unnecessary to include in the tariff terms and conditions which are common to those currently in existing bundled tariffs. The delivery tariff should simply reference those provisions.

[3] Another issue which warrants general discussion is the methodology for estimating hourly load for NEPOOL billing purposes. In Order No. 22,098 we decided that it would be inappropriate for utilities to employ more than one estimation methodology. We therefore directed Staff to arrange a technical session to explore ways for each of the other utilities to employ a single load estimation methodology. We expect that PSNH and the state's other franchised electric utilities will participate in those technical sessions and attempt to develop a common methodology.

[4] We favorably acknowledge PSNH's willingness to utilize an electronic system for the transfer of data and monies. As we stated in Order No. 22,098, value added network systems appear to have a significant advantage over more labor-intensive approaches, both with respect to cost and time saved. Consequently, such systems will help reduce transaction costs for

competitive suppliers, and ultimately customers, who participate in the Pilot. We direct PSNH to participate in the technical sessions convened by Staff to address this and related issues.

We turn now to several aspects of PSNH's filing which do not appear to comport with the requirements established in the Final Guidelines and related Commission orders. Before doing so, we return to an issue which was addressed extensively in Order No. 22,081 and which was

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the subject of extensive discussion and debate during the compliance hearings relative to PSNH.

B. PSNH Marketing Affiliate

In Order 22,081, we considered whether PSNH should be permitted to supply power at retail through its current corporate entity or through an affiliate. While expressing a strong preference for an affiliate, we permitted PSNH to participate in the Pilot through a division based upon its testimony that the Pilot could be delayed while PSNH sought all of the necessary regulatory approvals.

PUPI bases its reconsideration request primarily upon a March 27, 1996 filing by PSNH's parent, Northeast Utilities (NU), at the Securities and Exchange Commission (SEC).[1(29)] The filing seeks SEC approval for NU and its operating subsidiaries, including PSNH, to engage in a number of business activities which are outside of traditional electric utility practice. Among these proposed diversifications, NU requested authorization to:

> engage in the brokering, marketing, generation, production, transportation, transmission, distribution, storage and sale of energy (including but not limited to electricity or natural or manufactured gas) and "paper products" such as futures, hedges, load aggregations, fuel tolling, fuel conversions and other instruments expected to be required in a competitive energy marketplace...

Exhibit PSNH-29. NU and its affiliates requested SEC approval of its U-1 no later than June 1, 1996.

During the hearing, we granted Freedom's request to compel the production of all drafts of the U-1 filings as well as inter-office memorandum relative to the filing. PSNH thereafter produced several earlier drafts of the filings which suggested that NU was in the process of seeking regulatory approval to form an energy marketing affiliate prior to PSNH's testimony at the hearing. PSNH also submitted an inter-office memorandum which reflected the Company's anticipation that the Commission would require PSNH to form a separate marketing affiliate in order to participate in the Pilot. In the memorandum, it was suggested that "it would be time well spent if someone at NU began identifying and answering the issues in forming such an affiliate," and that "[NU should] consider drafting the needed papers and maybe even filing the SEC application, to get the clock started." Exhibit PSNH-33. According to PSNH, NU amended its U-1 application on April 5, 1996 to request approval to form a retail marketing affiliate solely for purposes of the Pilot. On April 17, 1996, this Commission sent a letter to the SEC and FERC urging prompt consideration of NU's filings and those of other New Hampshire utilities undertaking similar actions.

[5, 6] Based upon the foregoing events and upon further consideration, we believe that it is possible for PSNH and NU to obtain timely regulatory approvals to form a retail marketing affiliate to participate in the Pilot. Accordingly, we will condition PSNH's participation in the Pilot on the formation of such an affiliate. We anticipate that PSNH will diligently pursue such approvals.

As stated in the Final Guidelines, pursuant to RSA 366:3, PSNH must file with the Commission any affiliate agreements which it enters into for services provided during the Pilot. Any such agreement must specify the goods and services to be provided and the related pricing provisions. We direct PSNH to file such affiliate agreements as soon as they are finalized.

We acknowledge that PSNH or NU will need to seek regulatory approvals to establish a retail marketing affiliate, and that such approvals may not be received before the list of selected customers is made available to competitive suppliers. It is not our intention to disadvantage utility affiliates by allowing other competitive suppliers to market their services to Pilot customers while utility affiliates await regulatory approvals. If PSNH's necessary regulatory approvals appear not to be forthcoming in a timely manner, then the company can so inform the Commission and propose an alternative interim approach.

As a result of this decision, there is no need to address various implementation issues relating to PSNH's proposal to form a retail

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division within its current corporate structure.

C. GAC Selection Process

Since the compliance filing hearings, the City of Manchester filed comments relating to PSNH's proposed method of selecting Geographic Areas of Choice (GACs). We have directed Staff to work with PSNH and other interested parties to attempt to reach consensus relative to GAC selection procedures. Staff is directed to file a letter with the Commission's Executive Director no later than April 26, 1996 to report the status of those efforts.

D. Delivery Tariff Issues

1. *Reciprocity*

Section 5.2 of the revised filing states that delivery service will only be available to competitive power suppliers that own or operate transmission and distribution facilities if they agree to provide comparable delivery service to PSNH. Although we understand the objective of such a provision, it is not required by the Final Guidelines and it raises difficult legal questions which we believe are outside the scope of the Pilot. This issue should be raised within restructuring proceedings, and accordingly, we direct PSNH to eliminate Section 5.2 from its delivery tariff.

2. *Charges for Billing and Customer Services*

[7, 8] Pursuant to the Final Guidelines, competitive suppliers have the option to bill separately for power supply services, and franchised utilities may voluntarily offer such services.

In its compliance filing, PSNH indicated its willingness to offer billing services and it included preliminary estimates of the associated incremental costs.

Attachment G to the PSNH compliance filing sets forth two classes of billing cost estimates, developmental and transactional (i.e., variable). Included in the former category are the software and computer programming costs to perform the billing calculations and to transfer funds to a competitive supplier's bank account. The transactional costs include daily electronic fund transfer charges and related labor and accounting costs.

Although we recognize that more work needs to be done to convert cost estimates into proposed charges, we are nonetheless concerned about the magnitude of difference between PSNH's costs and Granite State's proposed rates. In its compliance filing, Granite State offered its "Complete" billing service for about $1.30 per month for residential customers and about $1.55 per month for large business customers. In contrast, PSNH anticipates developmental costs of about $600 per month per rate class per supplier and transaction costs of about $900 per month per supplier. Assuming three rate classes and one thousand customers per supplier, the above estimates indicate an average monthly charge of $2.70 per customer. Clearly, this charge would increase if the number of customers per supplier decreases. While large customers may find this charge tolerable, it is unlikely to be acceptable to small residential or commercial customers. A charge of $2.70 per month would be greater than the monthly transaction cost built into our assumed retail market prices. As a result, such a charge would reduce the likelihood that residential customers would receive the anticipated 10% bill savings.

Part of the reason for PSNH's apparent high billing costs is that it includes developmental costs whereas Granite State recovers those costs, consistent with the Final Guidelines, through an implementation cost surcharge applied to all customers. Absent developmental costs, PSNH's billing service charges appear to be more competitive than those of Granite State. Given the requirement that all customers contribute to the recovery of developmental costs, we direct PSNH to construct charges for billing services that reflect only the variable transaction costs.

3. *30-Day Notice Provision*

[9] The proposed tariff requires that Pilot customers give PSNH 30 days notice before switching suppliers. According to PSNH, such notice is necessary in order to inform NEPOOL

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about a shift in load responsibility. We believe that 5 working days is an adequate amount of time for PSNH to verify the information contained in the application and to inform NEPOOL of any changes. In order to minimize administrative burdens, Pilot customers will be permitted to switch suppliers no more than once per month.

4. *NEPOOL Membership*

[10] PSNH's proposed tariff and application for delivery service requires customers to arrange for their load to be included in the load of a NEPOOL member. We direct PSNH to remove this requirement from its proposed tariff and application. The Final Guidelines require suppliers to have a NEPOOL affiliation and to submit evidence of that affiliation in our registration process. It is the responsibility of the utility to estimate the customer's load and

assign it to the chosen NEPOOL member.

5. *Customer Application Form*

[11] In our view, the proposed application for delivery service is unnecessarily burdensome and should be simplified in a manner similar to the Granite State application. Suppliers or marketers should be responsible for providing the technical information such as receipt and delivery point locations. Customers should be required to provide only the basic information necessary to obtain delivery service.

We also believe that the proposed certification in Section 10.0 is unnecessary. We are concerned that such a requirement would discourage participation in the Pilot. Customers currently take bundled retail service according to the terms and conditions of approved tariffs which are made available to customers upon request. Even without written certification, PSNH and its customers are bound by those terms and conditions. We believe that Pilot participants should receive delivery service in the same manner.

6. *Ancillary Services*

Section 7.0 states that PSNH shall be permitted to amend its delivery tariff to include charges for ancillary services if it determines that such services are necessary to reliably serve a customer's load. We direct PSNH to remove this provision because it addresses issues unrelated to delivery service which have been adequately covered by the requirement that suppliers have a NEPOOL affiliation.

7. *Miscellaneous Charge*

Several parties inquired as to the status of PSNH's charges to recover, among other things, the cost of estimating hourly loads and the cost of assembling and transferring customer-specific load data. We will simply note that all charges levied by PSNH in the Pilot, or by any other franchised utility, must be approved by this Commission.

8. *Franchise Tax*

[12, 13] As noted in Order No. 22,098, it is our opinion that franchise taxes should continue to be recovered in the Pilot based upon gross revenues associated with the sale of power. To the extent that different entities, namely competitive suppliers, brokers and aggregators, will collect a portion of those revenues in the Pilot, it is our view that those entities should bear the responsibility for collecting and remitting the associated franchise taxes. We recognize, however, that franchise tax liability issues may have to be resolved by the Department of Revenue Administration and perhaps ultimately by the courts or the Legislature. In the meantime, PSNH's unbundled delivery service rates should reflect adjustments for franchise tax.

9. *Indemnification Requirement*

[14] In Order No. 22,098 we expressed our strong belief that Pilot customers should not be required to indemnify utilities for claims which arise out of participation in the Pilot. We believe that such a requirement will adversely affect customer participation in the Pilot. As we stated in Order 22,098, there are other avenues which should be explored to address these concerns. As with Granite State, PSNH should

explore alternative mechanisms with Staff's assistance.

E. Retail Transmission Tariff Filings

[15, 16] In Order No. 22,098, we expressed our concern about the delay in the filing of retail transmission tariffs and the effect this delay may have on implementation of the Pilot.[2(30)] On April 15, 1996, PSNH filed with the Commission a letter detailing the status of those filings. In it, PSNH stated its intent to file on April 19, 1996 an amendment to its network wholesale transmission tariff with Unitil to implement retail access for Concord Electric and Exeter and Hampton pilot customers. We were also notified that NUSCO will file on the same day an amendment to its point-to-point wholesale transmission tariff to implement retail access for Pilot customers of PSNH and those of other New Hampshire utilities. PSNH stated that it intends to file its retail delivery tariff with the FERC following the receipt of a written order from us either approving or requiring changes to the tariff. Finally, with respect to retail access for New Hampshire Electric Cooperative (NHEC) Pilot customers, PSNH proposes to make the necessary filing following the completion of negotiations with NHEC.

We reiterate our expectation that PSNH and the NHEC will seek a negotiated resolution of their differences in order to allow NHEC's customers to participate in the Pilot. As part of any such agreement, we would expect PSNH to submit an amendment to the wholesale FPPAC that leaves wholesale customers financially neutral during the Pilot.

F. New Load and Supplier Notification

[17, 18] In Order No. 22,098 we stated our intention to provide more detail on the definition of new load and to establish guidelines relative to accessing information. New load for purposes of Pilot eligibility shall be defined generally as new large commercial and industrial accounts established on or after March 1, 1996 that otherwise would be billed under the rate classes specified in Appendix D of the Guidelines. Customers who relocate from a different service territory within the state are ineligible. Although the Guidelines indicate that new load includes large commercial and industrial customers who "locate" in a franchise utility's service territory on or after March 1, 1996, loads associated with facilities which were under construction but not completed prior to that date are eligible to participate in the Pilot. It is not necessary for the actual facilities to be newly constructed. Out-of-state businesses that relocate to New Hampshire and occupy existing facilities shall qualify for participation in the Pilot as new load.

We wish to clarify the eligibility of customers with existing accounts as it relates to load growth. Load growth at existing customer locations shall not qualify as new load under the Pilot unless such load growth is attributable to the "backing-down" of customer-owned generation. New load associated with the extension or expansion of an existing facility shall qualify only if the extension or expansion is served through a separate meter. In the event that such new facilities are served through a separate meter, the customer is responsible for demonstrating that the load was not shifted from an existing account.

We shall require each franchised utility to inform prospective "new load" customers of their eligibility to participate in the Pilot. In addition, marketing affiliates of franchised utilities shall be prohibited from soliciting new load customers until the customers have been informed of the

Pilot and provided the opportunity to post their names and addresses on the Commission's Home Page.

G. Availability of Customer Information

[19] One issue raised during the hearings on Granite State's compliance filing which we did not address in Order No. 22,098 is the procedure for suppliers to access the list of Pilot customers who are selected to participate in the Pilot. Granite State believes that in order for the competition to be fair, customer information should be made available by the Commission to each registered supplier, including utility affiliates, simultaneously in a common electronic format. We agree. Each utility is hereby

directed to file with the Commission an electronic list of selected customer names, addresses and other information including customer-specific load and usage data.[3(31)] That information shall be submitted, no later than noon May 1, 1996, on 3.5 inch diskettes using the ASCII text file format with ";" as field delimiters. In addition, in order to ensure that all competitive suppliers have equal access to the information, utilities shall deliver to the Commission at least as many copies of the diskettes as there are registered suppliers listed on our Internet Home Page by the close of business April 30, 1996.

Franchised utilities are responsible for notifying customers that they have been selected and for distributing approved application forms.[4(32)] Selected customers are responsible for completing those forms and for returning them to the franchised utilities.

H. Retail Market Price Assumptions

[20] In Order No. 22,098, we expressed the concern that unforeseen developments in the wholesale power market could cause actual wholesale prices to significantly exceed those upon which our retail price assumptions were based. We specifically mentioned the impact on wholesale prices in the event that there are extended outages at NU's Millstone nuclear power plants. If wholesale prices increase substantially above the levels used in developing the assumed retail market prices, the ability of competitors to offer attractive prices will be jeopardized. In Order No. 22,081, we accepted the wholesale price estimates of PSNH witness, Frank Sabatino, as the basis for calculating the assumed retail market prices. In order to monitor market conditions, we will require PSNH to keep the Commission apprised of actual and projected developments in the wholesale power market as they occur. We direct PSNH to work with Staff to develop an appropriate reporting mechanism, including one which will address confidentiality concerns.

Based upon the foregoing, it is hereby

ORDERED, that PSNH shall modify its compliance filing as directed herein; and it is

FURTHER ORDERED, that PSNH shall file a revised compliance filing on or before May 1, 1996.

By order of the Public Utilities Commission of New Hampshire this twenty-fourth day of April, 1996.

FOOTNOTES

[1]This filing is an SEC Form U-1 Application/Declaration with Respect to Diversification Activities. *See*, Exhibit PSNH-29.

[2]The Unitil companies made the necessary filings with the Commission and the FERC on March 28, 1996.

[3]Utilities should submit time-of-use data, if available, for the most recent 12 months.

[4]Under no circumstances will a franchised utility be allowed to advertise the services of its marketing affiliate in the mailing which includes the application form.

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. 22,081, 81 NH PUC 237, Mar. 29, 1996. [N.H.] Re Retail Competition Pilot Program, DR 95-250, Order No. 22,098, 81 NH PUC 270, Apr. 12, 1996.

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NH.PUC*04/29/96*[89132]*81 NH PUC 319*Retail Competition Pilot Program

[Go to End of 89132]

81 NH PUC 319

Re Retail Competition Pilot Program

Applicants: Concord Electric Company; Exeter and Hampton Electric Company

DR 95-250
Order No. 22,119

New Hampshire Public Utilities Commission

April 29, 1996

ORDER approving as modified the compliance filings of two affiliated electric utilities for implementing a pilot program for competitive electric services. Commission addresses such plan components as stranded cost recovery, franchise taxes, retail transmission tariffs, and estimates of hourly load.

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1. RATES, § 321

[N.H.] Electric rate design — Unbundling of rates — Under pilot program for retail competition — Discount from bundled rates of 10% — As a participation incentive credit —

Compliance filings. p. 321.

2. RATES, § 332

[N.H.] Electric rate design — Special charges — Stranded cost charge — As result of pilot program for retail competition — To fund pilot-related participation incentive credit mechanism — Limited applicability to nonparticipants. p. 321.

3. EXPENSES, § 120

[N.H.] Electric utility — Stranded costs — Associated with pilot program for retail competition — Recovery via stranded cost charge — Limited applicability to nonparticipants. p. 321.

4. SERVICE, § 320

[N.H.] Electric — Pilot program for retail competition — Program elements — Retail transmission — Compliance filings. p. 322.

5. RATES, § 339

[N.H.] Electric rate design — Unbundling — Under pilot program for retail competition — Necessity of retail transmission tariffs — Utility as billing agent rather than direct supplier of transmission service — Compliance filings. p. 322.

6. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric service — Pilot program for retail competition — Retail transmission as integral component — Compliance filings. p. 322.

7. PAYMENT, § 17

[N.H.] Billing and metering — Under pilot program for retail competition — Transmission service component — Electric utility as billing agent rather than direct supplier. p. 322.

8. RATES, § 321

[N.H.] Electric rate design — Under pilot program for retail competition — Wholesale power prices as starting point — Market price assumptions. p. 323.

9. RATES, § 147

[N.H.] Factors affecting reasonableness — Taxation — Franchise taxes — As component of unbundled rates under pilot program for retail competition — Electric services — Compliance filings. p. 323.

10. RATES, § 323

[N.H.] Electric rate design — Demand and load factors — Estimations of hourly load — Development of uniform measurement standards — Under pilot program for retail competition. p. 323.

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11. EXPENSES, § 120

[N.H.] Electric utility — Incremental costs — Associated with implementing a pilot program

for retail competition — Recovery of developmental costs — Recovery of costs incurred in transferring billing data — Applicability of special charges to all customers — But no recovery of unsupported general administrative costs. p. 323.

BY THE COMMISSION:

ORDER

I. INTRODUCTION AND PROCEDURAL HISTORY

On March 15, 1996, Concord Electric and Exeter & Hampton Electric Companies (collectively, "Unitil" or "Unitil Companies") filed a Recommended Plan relative to their participation in the retail competition pilot program (Pilot). On March 20, 1996, Unitil filed a Joint Recommendation with the Office of the Consumer Advocate (OCA) which superseded the Recommended Plan filed March 15. On April 5, 1996, Unitil submitted three documents (Exhibits FJS-1, 2 and 3) which revised parts of its compliance filing. This order addresses the Joint Recommendation and related documents. A hearing relative to Unitil's proposal was conducted April 5, 1996 at which testimony was presented by witnesses for Unitil, the OCA and Staff.

II. POSITION OF THE PARTIES

A. *The Joint Recommendation*

1. Unitil and OCA

The Joint Recommendation presented by Unitil and the OCA is similar in format to filings which we conditionally approved for Granite State Electric Company (Granite State) (Order No. 22,098, April 12, 1996) and Public Service Company of New Hampshire (PSNH) (Order No. 22,118, April 24, 1996). As with these other utilities, the Unitil Joint Recommendation is designed to "disengage" the issues of stranded cost recovery and federal/state jurisdiction over retail transmission service. Exhibit Unitil-2, ¶ 3.0. The stated objectives of the Joint Recommendation are to (a) "... provide a reasonable solution which eliminates the issues of stranded costs and jurisdiction from this proceeding ... ", (b) "... provide incentives for Unitil's customers to participate in the Pilot," and (c) provide Unitil with "a fair opportunity to mitigate the net income effect of such incentive." Id. at ¶ 4.0.

The Joint Recommendation proposes unbundled charges and a "Participation Incentive Credit" (PIC) equivalent to approximately 10% of the bundled rates in effect for each customer class. The Joint Recommendation originally provided for an increase in the PIC to 15% on the condition that the Commission: (a) allows the additional incentive to be recovered from the Unitil's nonparticipating customers; and (b) requires the same or higher incentive level for PSNH. This provision for an increase in the PIC has since been withdrawn. The Stranded Cost Recovery Charges included in the unbundled rates were calculated by subtracting from current power supply charges an estimate of the market price of electricity for each class and the class-specific PIC.

In order to prevent cost shifting to non-participants through its Purchase Power Adjustment Charge (PPAC), Unitil proposes a Non- Participant Protection Adjustment (NPA). During the

hearing on this matter, Unitil's Senior Vice President, George R. Gantz, testified that the proposed adjustment provides a mechanism "which insures that the lost revenues from participants not be shifted to non- participants, but rather is paid for through future power supply savings in the form of net benefits of sales growth and net decreases in costs achieved through supplier renegotiations." Tr. p.15. Unitil alleges that its proposal accomplishes the Commission's objective of not requiring non-participating customers to shoulder the burden of uneconomic costs that can not be recovered from participating customers. Exhibit Unitil-1, Statement in Support of Recommendations

(Statement), p.4.

In addition to avoiding cost-shifting, Mr. Gantz testified that Unitil's proposal will provide it with the "same opportunity to mitigate lost revenues as the other utilities." Tr., p.15-20. Specifically, Unitil proposes a Mitigation Proceeds Credit (MPC) which is designed to offset all or part of the financial cost of the PIC. Exhibit Unitil-1, Original Page 26-D. The MPC would allow Unitil to retain 61% of power cost savings, up to the total amount of the PIC, which are realized during the Pilot from sales growth and from the renegotiation of power supply contracts. According to Unitil, the MPC is justified because its power supply arrangements are structured differently than a traditional vertically-integrated utility. It alleges that because its retail rates contain no fixed base power charges, "a mitigation mechanism needs to be created for the Pilot Program, in order to provide Unitil the same mitigation opportunities as exist for vertically integrated utilities in the state ... " Exhibit Unitil-1, Statement, p.5.

Under Unitil's proposal, Pilot participants within its service territory will be responsible for arranging transmission across the PSNH system to the interconnection points between Unitil and PSNH. The Joint Recommendation also includes a commitment by Unitil to file a transmission tariff with the FERC which will allow Pilot customers to transmit power across Unitil's transmission system to the distribution systems of Concord Electric and Exeter & Hampton.

The Joint Recommendation included Unitil's proposed unbundled rates based on estimated retail market prices. Those rates were revised April 5, 1996 (see Exhibit FJS-1) in order to be consistent with the Commission's decision in Order No. 22,081.

2. Staff

Staff argued that the so-called Non-participant Protection Adjustment (NPA) to Unitil's Purchased Power Adjustment Charge (PPAC) does not achieve its stated goal, namely to prevent shifting of power costs from participants to non-participants. According to Staff, the proposed NPA deprives non-participating customers of power cost savings which, under normal circumstances, would have accrued to their benefit. Unitil proposes to use these savings to fund its PIC. As a result, the Unitil Companies do not fund the incentives offered to Pilot customers. Those incentives are paid for by non-participating customers.

Staff testified that under the current PPAC mechanism any increase or decrease in costs is passed directly to customers. Consequently, Staff argued that the proposal to retain up to 61% of the power cost savings resulting from sales growth or contract renegotiation would unreasonably disadvantage non-participants. While Staff agreed that Unitil is structured differently from other

utilities, it argued that the Commission should focus on the rates paid by customers and not on how a particular company is structured. In this regard, Staff noted that while Unitil's rates are low by some standards, they are no lower than Granite State's and are higher than current market levels. In light of the fact that only 3% of Unitil's retail market is opened to competition, Staff recommended that the Commission allow Unitil to retain no more than 3% of any future power cost savings.

III. COMMISSION ANALYSIS

A. *Joint Recommendation*

We first address the Unitil-OCA Joint Recommendation. The stated objectives of the Recommendation are consistent with those which have been adopted by the state's other electric utilities.[1(33)] We agree that it is appropriate to defer our final consideration of the most contentious legal and policy issues relative to retail competition for purposes of implementing the Pilot. As we held in Order No. 22,118 in which we conditionally approved a joint recommendation of PSNH and Staff, we believe that it is more appropriate and in the public interest to deal with these issues in the context of industry restructuring proceedings. This approach is consistent with the Final Guidelines and it will allow the Pilot to be implemented expeditiously without delaying the restructuring proceedings which we anticipate opening in the near future.

[1-3] Many of the other terms and

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conditions in the Joint Recommendation are substantially similar to those which we approved for other utilities. The Joint Recommendation proposes unbundled transmission, distribution and customer service charges which are subject to our review and approval.[2(34)] It also proposes a 10% PIC, which is similar to that proposed by PSNH. Unitil will apply the PIC against the stranded cost recovery charge for Pilot customers. As with the state's other transmission-owning utilities, Unitil has agreed to file transmission tariffs with the FERC in order to implement retail access for the Pilot.[3(35)]

There is one fundamental difference between the Unitil-OCA Joint Recommendation and those which we have previously considered. While all utilities have effectively agreed to lower stranded cost charges in order to produce about the same level participation incentive for Pilot customers, none of the other utilities has proposed to fund the incentive through charges to non-participating customers.[4(36)]

Unitil contends that its proposed MPC does not assure it full recovery of any lost revenues due to the PIC; rather, Unitil argues that the mechanism will provide it with an equal opportunity to mitigate losses as that enjoyed by vertically integrated utilities.

Unitil also alleges that non-participants are protected from any cost-shifting through an adjustment to its PPAC. While the proposed NPA does indeed prevent some of the stranded costs associated with the Pilot from being shifted to non-participants through the PPAC, we agree with Staff that non-participants will shoulder some of the burden. Given the design of the MPC, we believe there is a high probability that Unitil will fully recover its Pilot-related

stranded costs and that non-participants will be required to contribute to that recovery. Accordingly, we will require Unitil to lower the 0.61 factor in its MPC to 0.03 to ensure that non-participants receive their proportionate share of any savings. With this change, we believe Unitil's Joint Recommendation will be on a par with the other recommendations that we approved in the Pilot.

B. *Retail Transmission Service*

[4-7] Unitil currently receives network transmission service over the PSNH system under a FERC approved wholesale tariff. Unitil proposes in its compliance filing to require competitive suppliers to contract for transmission on PSNH's system directly and to reduce its own use of transmission under the FERC approved tariff by an equal amount.

This approach is different from the approach used by Granite State and PSNH for transmission within New Hampshire. To simplify procedures for Pilot participants, Granite State and PSNH include transmission as an unbundled service and charge for that service on a simple kWh basis.

To eliminate unnecessary complications and administration during the Pilot, we believe PSNH should file an amendment to its network wholesale transmission tariff with Unitil (similar to the amendment filed by Granite State with the FERC) to implement retail access for Concord Electric and Exeter and Hampton Pilot customers. The amendment should allow PSNH to charge Unitil for retail transmission on the same basis as it charges for wholesale transmission. Unitil in turn should continue to charge its bundled and unbundled customers the same rate for network service as it does today.

More importantly, this approach avoids the need to adjust Unitil's transmission service billing determinants for Pilot load. Since most customers are not fitted with hourly metering equipment, Unitil or PSNH would have been forced to estimate the hourly loads of each customer in order to determine the necessary adjustment. In addition, requiring customers to contract directly with PSNH adds a level of complexity to the Pilot which we believe to be unnecessary.

For these reasons, we will direct Unitil to adopt the transmission service and pricing approach developed by Granite State. In short, we order Unitil to function as the billing agent for retail transmission service.

C. *Reciprocity*

Original Pages 40-H and I of Exhibit FJS-1 specify that unbundled delivery service will be made available to competitive suppliers that

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own or operate transmission or distribution facilities if they agree to provide comparable delivery service to Unitil. For the reasons stated in Order No. 22,118, we believe reciprocity issues are more appropriately addressed in industry restructuring proceedings and therefore we direct Unitil to eliminate this provision from its compliance tariff.

D. *Power Supply Contract*

[8] Mr. Gantz testified that Unitil filed with the FERC a proposed power supply contract for the Pilot under which Unitil Resources Inc. (URI), as well as any other competing supplier, will be able to obtain power supply services at market-based wholesale prices. Our review of the FERC filing reveals that URI will obtain wholesale power supplies from Unitil Power Company based on a formula rate which includes cost-based capacity, energy and administrative charges. Regardless of the fact that this rate will be available to all competing suppliers, we think that it would have been more appropriate if wholesale power prices were set by the market. This is the approach which Unitil alleged as the basis for its filing. Tr., p. 10. We recognize that the FERC has jurisdiction over the proposed power contract and we will await their decision on this matter.

E. *New Load and Supplier Notification*

In Order No. 22,098 we stated our intention to provide more detail on the definition of new load and to establish guidelines relative to accessing information. In Order No. 22,118 we clarified our "new load" guidelines and issued instructions to utilities regarding supplier notification of potential new accounts. Those new or revised guidelines apply to all franchised utilities.

Unitil notes that small as well as large commercial customers are served under some of the rate classes referenced in Appendix D of the Final Guidelines (i.e., New Load Criteria). Accordingly, it requests that we clarify the term "large" in our guidelines to mean loads in excess of 100 kW. We will grant Unitil's requested clarification.

F. *Franchise Tax*

[9] As noted in Order Nos. 22,098 and 22,118, it is our opinion that the State of New Hampshire should continue to recover franchise taxes based upon the same principles of gross revenues of utilities that currently govern utility collections. We recognize, however, that this issue may have to be resolved by the Department of Revenue Administration and perhaps ultimately the courts or the Legislature. In the meantime, Unitil's unbundled rates should reflect adjustments for franchise tax.

G. *Hourly Load Estimation and Data Transfer*

[10] In Order No. 22,098 we decided that it would be inappropriate for utilities in the state to employ more than one technique to estimate hourly loads for NEPOOL billing purposes. We therefore directed Staff to arrange a technical session devoted to estimation methods. It is clear to us that the Pilot can not be implemented in the absence of an agreement on how to estimate the load responsibility of competitive suppliers. We will therefore give the parties until May 10, 1996 to submit a common estimation methodology. If no agreement is reached, we will decide which method is the most appropriate for use by all utilities.

For the same reason, we will require all utilities to use a common data transfer method if consensus on this issue is not reached by May 10, 1996.

H. *Miscellaneous Charges*

[11] Schedule 1 of Exhibit FJS-2 addresses Unitil's proposed charges to recover, among other things, the cost of assembling and transferring customer-specific load data, the cost of administering the Pilot, and the costs of additional metering and communications equipment.

These charges were submitted pursuant to Section X.1(g) of the Final Guidelines.

We note at the outset that all charges in the Pilot must be approved by this Commission before they are effective. Unitil has proposed to recover certain developmental costs related to

the creation of customer usage files through charges applied to competitive suppliers. Unitil also proposes to charge suppliers for variable costs incurred in transferring customer billing data.

Section VIII(J)(1) of the Final Guidelines states that a utility may recover reasonable incremental costs directly related to serving Pilot customers from Pilot customers. Section VIII(J)(4) provides that reasonable costs of administering the Pilot are to be recovered from all customers. Accordingly, Unitil is first directed to book the above-mentioned developmental costs as Pilot administrative costs to be recovered from all customers. Second, we will allow Unitil to recover from suppliers the variable costs of transferring billing data, but will defer approving specific charges until the group on electronic data transfer completes its work and reports to the Commission.

Finally, we wish to express our surprise and concern over the estimated $500,000 in costs underlying Unitil's proposed administrative service charge. We will not approve any administrative charge until the Commission's Finance Department has audited the Pilot books of each utility and compared and contrasted the individual cost components.

Based upon the foregoing, it is hereby

ORDERED, that Unitil shall make the modifications discussed herein to its compliance filing; and it is

FURTHER ORDERED, that Unitil shall file a revised compliance filing on or before May 6, 1996.

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of April, 1996.

FOOTNOTES

[1]As stated above, we have conditionally approved the Joint Recommendations submitted by PSNH and Granite State.

[2]As will become more clear below, the proposed unbundled rates do not include charges to recover the cost of transmitting power across PSNH's transmission system.

[3]Although the Joint Recommendation does not expressly require Unitil to file such transmission tariff(s) here with the Commission, Staff requested such filings during the hearing and Unitil thereafter appropriately filed those tariffs with the Commission. See, Exhibit 8.

[4]We did find it appropriate to collect the incremental administrative costs associated with the Pilot from both participating and non-participating customers. Also, in Order No. 22,098 we authorized utilities to recover lost revenues associated with market price assumptions established by this Commission which turn out to be incorrect. But we have not authorized any utility to

collect Pilot-related stranded costs from non-participants.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Retail Competition Pilot Program, DR 95-250, Order No. 22,081, 81 NH PUC 237, Mar. 29, 1996. [N.H.] Re Retail Competition Pilot Program, DR 95-250, Order No. 22,098, 81 NH PUC 270, Apr. 12, 1996. [N.H.] Re Retail Competition Pilot Program, DR 95-250, Order No. 22,118, 81 NH PUC 310, Apr. 24, 1996.

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NH.PUC*04/30/96*[89133]*81 NH PUC 324*Rosebrook Water Company, Inc.

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81 NH PUC 324

Re Rosebrook Water Company, Inc.

DR 95-304, DR 96-069
Order No. 22,120

New Hampshire Public Utilities Commission

April 30, 1996

ORDER adopting a settlement agreement with respect to a water utility's proposed rate increase. The new rates provide for a 31% increase without any change in the utility's existing rate structure. The utility is authorized a return on equity of 10% which also represents a 10% overall return since the utility's entire capital structure is composed of equity. Additionally, a special rate contract with a large resort hotel, the Mount Washington Hotel, is

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extended for another year.

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1. RETURN, § 26.1

[N.H.] Factors affecting reasonableness — Capital structure — Effect of 100% equity capital structure — Same return on equity as on rate base — 10% authorized return — Water utility — Settlement. p. 326.

2. RATES, § 604

[N.H.] Water rate design — Meter and consumption charges — Retention of existing structure — Rejection of plan to reduce meter charge and increase consumption charge — Settlement. p. 326.

3. RATES, § 597

[N.H.] Water rate design — Special factors justifying increase — Required capital improvements — Installation of new well, corrosion control equipment, treatment plant, valve replacements, and additional hydrants — Settlement. p. 326.

4. RATES, § 249

[N.H.] Schedules and procedure — Effective date of new schedules — Bills rendered rather than service rendered basis — Water utility — Settlement. p. 326.

5. EXPENSES, § 92

[N.H.] Rate case expense — Two-year amortization period — Recovery via surcharge — Mitigating factors — Savings associated with forbearance from temporary rates — Settlement — Water utility. p. 326.

6. RATES, § 611

[N.H.] Water rate design — Service to hotel structures — Large resort hotel — Extension of special rate contract — Increase in fixed annual charge — Decrease in consumption charges for excessive usage. p. 327.

APPEARANCES: Mary Ellen Goggin, Esq. for Rosebrook Water Company, Inc., Eugene F. Sullivan, III, Esq. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On October, 26, 1995, Rosebrook Water Company, Inc. (Rosebrook) filed with the New Hampshire Public Utilities Commission (Commission) a petition for permanent rate increase which if granted would have increased annual revenues in the amount of approximately $28,137 or 40%. On December 20, 1995, the Commission, by Order No. 21,952 suspended the proposed tariff and scheduled a prehearing conference for January 23, 1996.

Included in the petition for a permanent rate increase were revenues associated with a revised draft special contract with the Mount Washington Hotel (MWH). On March 12, 1996 Rosebrook submitted to the Commission for approval an executed contract to take effect with the MWH on May 1, 1996. The revised special contract was assigned Docket No. DR 96-069. For the purpose of investigating the proposed rate increase the two dockets were consolidated.

At the duly noticed prehearing conference on January 23, 1996, the parties agreed to an expedited schedule in lieu of the imposition of temporary rates. A hearing on the merits was scheduled for April 2, and subsequently rescheduled to April 17, 1996. At the prehearing conference, Staff stated they would not object to recommending a permanent order approving rates on a "bills rendered" rather than a customary "service rendered" basis in this particular proceeding. This recommendation would limit rate case expenses associated with a

temporary rate proceeding while allowing the permanent rates to be effective for the first quarter of 1996.

II. POSITION OF THE PARTIES AND STAFF

A. *Rosebrook*

Rosebrook serves approximately 222 residential, 6 commercial and, by special contract, MWH. All are located in a limited area in the Towns of Carroll, Bethlehem and the unincorporated Township of Crawford's Purchase. All customers are provided water service on a metered basis.

In its prefiled testimony, Rosebrook sought to increase revenues by $28,137 as specified in its report of proposed rate changes. The rate design, as proposed, would have reduced the meter charge for a residential customer from $25.25 to $19.66 per quarter. Rosebrook proposed to increase the consumption charge from $.4934 per one hundred gallons to $.8291 per one hundred gallons. The Company also requested that the special contract with MWH be extended for another year commencing on May 1, 1996 through April 30, 1997. The revised contract would increase the fixed annual charge from $25,000 to $30,000 and reduce the consumption charge for water taken in excess of 25 million gallons from $2.00 per thousand gallons to $1.80 per thousand gallons.

B. *Staff's Position*

Staff presented testimony by Thomas M. Sculley, James L. Lenihan, Douglas W. Brogan, Amanda O. Noonan and Todd M. Bohan. Mr. Sculley's testimony, with a number of minor adjustments, approximated Rosebrook's revenue deficiency. Mr. Bohan's initial return on equity was 9.57%. Mr. Lenihan testified that the rate structure should not be altered as proposed but rather should maintain the basic allocations between customer charges and the consumption charge. He also stated that he had reviewed the terms and conditions of the proposed special contract with MWH and recommended that it be approved as submitted. Staff witnesses Noonan and Brogan made a number of recommendations concerning 1) engineering related expenses associated with the Safe Drinking Water Act, and 2) engineering studies and tariff revisions concerning identification of duties and responsibilities of both the utility and customers regarding maintenance and restoration of service line repairs.

III. SETTLEMENT AGREEMENT

[1] At the April 17, 1996 hearing on the merits, Rosebrook and Staff presented a Settlement Agreement (Agreement). The Agreement stipulated a rate base of $171,543 and a 10% return on equity. As Rosebrook's capital structure is 100% equity, the overall rate of return is also 10%. The parties agreed to proform the following adjustments to expenses: an additional $1,500 per year for engineering services; $3,000 per year for annual landscaping expenses to be incurred because of necessary service line repairs; and amortization of $1,500 of past landscaping repairs over five years, conditioned on payment of $3,000 to cover the portion of outstanding invoices due ratepayers.

[2, 3] Rosebrook and Staff agreed that Rosebrook's revenue requirement be $100,961 which represents an overall increase of 31.01% on an annual basis (corrected from the 41% increase as

specified in the Company's original report of proposed rate changes). Rosebrook and Staff agreed to retain the current rate structure which will result in an increase to both the consumption and meter charge of approximately 35%. They also agreed that Rosebrook be allowed to file a step adjustment to its permanent rates, effective upon completion of capital improvements to include: 1) a second well and related plant as mandated by the New Hampshire Department of Environmental Services (DES); 2) corrosion control equipment and treatment as mandated by the DES; 3) up to $10,000 in main line valve replacements; and 4) up to $5,000 in surge control, air relief valving and additional hydrants.

[4, 5] Staff and Rosebrook agreed to recommend to the Commission that these rates be effective for "bills rendered" on or after April 1, 1996 in consideration of Rosebrook's agreement not to proceed with its petition for

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temporary rates. They also agreed to recommend that Rosebrook be allowed to recoup rate-case expenses in the amount of $20,125 over a two year period by a surcharge on its bills. Rosebrook agreed to revise its tariff to provide the following: 1) clarification of the responsibility for maintenance (including repair of landscaping damage) for all service lines up to and including shut-off valve; 2) billing frequency as of April 1, July 1, October 1 and January 1; and, 3) the developer/builder's responsibility with respect to contributions in aid of construction shall be clarified regarding necessary easements and rights of way, etc. These revisions would be filed within sixty days of the date of the Commission's final order in this proceeding. Rosebrook also agreed to obtain and record, within sixty days, easements necessary to clarify its ownership of service lines, and submit to Staff engineering studies that will address valve replacements, fitting failures, surge protection, hydrants and air-relief valving. The agreement also required that Rosebrook submit quarterly production and consumption reports, including progress and attempts toward reducing the level of unaccounted for water.

IV. COMMISSION ANALYSIS

We have reviewed the filing and the Agreement entered into between Rosebrook and the Staff. We find the Agreement, including the net operating income of $17,154 on a rate base of $171,543 reflecting a 10% cost of equity on capital structure consisting of 100% equity, represents a revenue level that will provide adequate and reliable service. We will also approve the proforma adjustments to revenue associated with the engineering and landscaping expenses as specified in the stipulation. We find that the rate structure should retain the existing basic allocations, in that reducing the customer charge and increasing the consumption charge would have an adverse impact on those customers taking service on a greater portion of the year while reducing the burden on customers taking service on a limited number of days.

[6] We have also reviewed the special contract provisions and find the special circumstances to be consistent with the provisions of RSA 378:18 and that approval of such contract is in the public good. We find that the plant now in rate base is used and useful and investment in that plant was prudently incurred. We agree that Rosebrook should be allowed to file a one-time step adjustment to include those items as specified in the settlement.

In consideration of the Company's willingness to withdraw its petition for temporary rates

and the associated savings in rate- case expenses as well as Rosebrook and Staff's ability to adhere to an expedited schedule, we will for the purposes of this proceeding only, approve the recommendation that the permanent rate adjustment be applied on a "bills rendered" rather than a "service rendered" basis.

Finally, we will allow the rate-case expense to be surcharged over a period of two years as provided in the Settlement Agreement.

Based on the foregoing, it is hereby

ORDERED, that the agreement between Rosebrook and Staff be approved; and it is

FURTHER ORDERED, that the rate case expense be approved and may be surcharged without interest over two years; and it is

FURTHER ORDERED, that Rosebrook submit a properly annotated tariff with the Commission (*by 14 days from the date of issuance of this order*) in accordance with NH Admin. Rules, Puc 1601.01(b); and it is

FURTHER ORDERED, that the special contract with Mount Washington Hotel be approved as submitted.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of April, 1996.

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NH.PUC*04/30/96*[89134]*81 NH PUC 328*Public Service Company of New Hampshire

[Go to End of 89134]

81 NH PUC 328

Re Public Service Company of New Hampshire

DR 95-321
Order No. 22,121

New Hampshire Public Utilities Commission

April 30, 1996

ORDER approving as modified a proposed special rate contract negotiated by an electric utility and an industrial customer, American Tissue Mills of New Hampshire, Inc. Commission rejects arguments that recent state legislation allowing tariffed economic development rates forecloses continued use of special rate contracts.

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1. RATES, § 166

[N.H.] Factors affecting reasonableness — Solicitation or retention of business — Legislation prescribing preference for economic development rate tariffs — But no absolute prohibition on the use of special rate contracts — Electric utilities. p. 330.

2. RATES, § 211

[N.H.] Special rate contracts — Negotiations with individual customers — Continued viability — Provisions for tariffed economic development/business retention rates notwithstanding — Electric utilities. p. 330.

3. RATES, § 143

[N.H.] Schedules and procedure — Publication and notice — Of proposed special rate contracts — Sufficiency of notice period — No set time period — Reasonableness — Adequate time for discovery and preparation. p. 331.

4. CONSTITUTIONAL LAW, § 21

[N.H.] Equal protection — Treatment of all persons in even-handed, nondiscriminatory manner — Public interest as overall interest to be protected. p. 331.

5. RATES, § 166

[N.H.] Factors affecting reasonableness — Solicitation or retention of business — Special rate contract — To prevent relocation of industrial customer out-of-state — Protection of local jobs — Benefits to local economy from special rate contract — As justifying departure from tariffed economic development rates — Electric utility. p. 331.

6. RATES, § 333

[N.H.] Electric rate design — Demand and energy charges — As components of special rate contract with industrial customer — Short-term reductions in demand charges — Long-term discounts of energy rate — $40,000 advance from utility to customer — To be returned by customer if it elects early termination of the contract — Contract as part of business retention initiative. p. 331.

APPEARANCES: Gerald M. Eaton, Esq. on behalf of Public Service of New Hampshire; Edward L. Selgrade, Esq. on behalf of American Tissue Mill of New Hampshire; Michael W. Holmes, Esq. of the Office of Consumer Advocate on behalf of residential ratepayers; 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 November 15, 1995 Public Service Company of New Hampshire (PSNH), filed with the New Hampshire Public Utilities Commission (Commission), a seven-year special

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contract with American Tissue Mills of New Hampshire, Inc. (ATM-NH) pursuant to RSA 378:18. The filing included the special contract (the Contract), testimony, and a technical statement supporting the Contract with ATM-NH. In order to expedite Commission

consideration of the Contract, PSNH supplied the Commission with the information requested in the Checklist for Economic Development and Business Retention Special Contracts as outlined in docket DR 91-172.

The filing proposed an effective date of December 1, 1995, or upon the date of the Commission's order approving the Contract, though once approved the contract provides the same value as if the pricing went into effect on December 1, 1995.

On November 18, 1995, the Commission issued Order No. 21,924 granting the Motion for Protective Treatment regarding portions of the Technical Statement and supporting Testimony.

Because the General Court expressly set forth its preference for tariffed rates for business retention in 1995 N.H. Laws, Chapter 272 the Commission issued an Order scheduling a hearing on the merits of the matter for March 21, 1996. Order No. 22,050 (March 11, 1996). The order specified that ATM-NH and PSNH bore the burden of establishing that the discounted rates contained in PSNH's Business Retention (Rate BR) tariff were inadequate to provide the economies needed to keep the ATM-NH plant open, and therefore, that special circumstances justified a deviation from Rate BR.

On March 21, 1996, the Commission heard testimony and considered exhibits relevant to the contract offered by witnesses for PSNH and ATM-NH. The Commission granted confidentiality to PSNH's Technical Statement Supporting Special Contract No. NHPUC-126 (Exhibit 3), ATM-NH witness Steven C. Catalfamo's March 19, 1996 Pre-Filed Testimony and Exhibits (Exhibit 6), and ATM-NH witness Philip Lepore's March 19, 1996 letter to the Commission (Exhibit 7). Due to the proprietary nature of ATM-NH's competitively sensitive business strategy and results of operations information, the Commission also granted confidentiality to certain portions of the record

containing the cross-examination of ATM-NH's witnesses.

On March 29, 1996, PSNH and ATM-NH jointly filed a Post Hearing memorandum. On April 1, 1996, the OCA filed a Brief on behalf of residential ratepayers. The Commission Staff did not file a Brief in the proceeding.

II. POSITIONS OF THE PARTIES AND STAFF

A. *PSNH and ATM-NH*

PSNH and ATM-NH asserted that the economics of the Winchester facility necessitated its closure unless it received rates more favorable than those contained in Rate BR. Closure of the facility would result in the loss of 36 full-time jobs. With the special contract, PSNH and ATM-NH argued, the mill would become a relatively profitable, long-term production facility assuring continued employment with the possibility of expansion and the creation of more jobs. They further asserted the facility would provide long term economic value to the State's economy and PSNH's rates.

PSNH explained that the Contract contains unique pricing elements including a modification to short term demand charges and a long term discounted energy rate pricing formula. The pricing elements create customer savings in excess of those produced under the BR tariff. ATM-NH testified that the Winchester facility required immediate major structural

improvements and that a long term contract was necessary to ensure these investments in the structure were economic.

ATM-NH testified that it had analyzed the costs of producing its paper products at the Winchester facility against the costs of obtaining these same products in the wholesale paper market. The results of this analysis, according to ATM-NH, established that it was less expensive to purchase these products on the wholesale market than to produce the products at the Winchester facility if it continued to pay its current electric rates or were to receive rates under Rate BR.

ATM-NH also testified that it is currently

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negotiating for the purchase of five viable alternative facilities to the Winchester mill. ATM-NH testified that all of these sites would allow them to economically produce the paper products currently produced in Winchester because of lower electric costs at those facilities.

ATM-NH and PSNH asserted that these circumstances justify a departure from the general schedules of Rate BR in accordance with the prescribed standard contained in RSA 378:18.

B. *Office of the Consumer Advocate (OCA)*

The OCA made both procedural and substantive arguments in opposition to the proposed Contract. Procedurally, the OCA objected to the Commission scheduling a hearing on the merits without providing it an adequate opportunity to conduct discovery, and that RSA chapter 362-C and SB 168 (1995 N.H. Laws, Chapter 272) preclude the use of special contracts. The OCA further contends that allowing this special contract would deprive its clients, residential ratepayers, and also non- participating business customers equal protection under the law. Substantively, the OCA contends that the record does not support special circumstances justifying a departure from PSNH's general schedule Rate BR.

The OCA argued that it had been denied due process of law because of the manner in which the hearing was noticed and conducted. Specifically, the OCA contends that the Order of Notice issued on March 10, 1996 setting a hearing on the merits for March 21, 1996 did not provide it with an adequate opportunity to prepare its case for hearing, that the pre-filing of testimony on March 19, 1996 by ATM-NH deprived it of the opportunity to conduct adequate discovery, and that the Commission's failure to establish a procedural schedule providing for "discovery, technical sessions, OCA testimony and an opportunity to scope the issues" as requested at the March 21, 1996 hearing resulted in its inability to create an adequate record to support its position.

The OCA's position on the prohibition on special contracts contained in RSA chapter 362-C and 1995 N.H. Laws, Chapter 272 is set forth in detail in Order No. 22,078.

The OCA claims that the approval of this special contract deprives its clients equal protection of the laws. It asserts that special contracts could potentially result in higher rates to residential customers in some future rate proceeding, which would destroy the balancing of interests among customer classes provided in the Rate Agreement.

With regard to the actual contract, the OCA argues that ATM-NH has not demonstrated it is entitled to a special contract. In support of that position, the OCA contends there is no support in the record to substantiate ATM-NH's claim that it will abandon the Winchester facility but for the approval of the special contract. The OCA alleges the Winchester facility is a profitable concern which has returned double the capital invested by ATM-NH. Thus, ATM-NH qualifies for neither the special contract at issue herein nor Rate BR. The OCA concludes that a successful operation should not be granted a special contract without a showing that a net benefit to the State will ensue.

C. *Staff*

Staff took no position but sought to create a sufficient record on the issue of "free riding" for Commission analysis of the contract.

III. COMMISSION ANALYSIS

The issues before us are the procedural issues of whether special contracts for PSNH ratepayers are precluded by either or both RSA chapter 362-C and 1995 N.H. Laws, Chapter 272, and the due process and equal protection claims raised by the OCA, and the substantive issue relative to the public interest set forth in RSA 378:18.

[1, 2] While we recognize the Legislature declared that Business Retention tariffs are the preferred pricing mechanism to retain industrial ratepayers contemplating leaving the State due to high electric costs, the provisions in 1995 N.H. Laws, Chapter 272 do not preclude utilities from filing special contracts for business

retention purposes under RSA 378:18 when circumstances so warrant. Nor do we believe RSA chapter 362-C precludes such special contracts. We see no need to elaborate any further on either of these issues as we have fully set forth our position in Order No. 22,078. *Re Public Service Company of New Hampshire*, DR 95-205, DR 95-214, DR 95-230, DR 95-270, and DR 95-303 (March 26, 1996).

With regard to the OCA's contention that it has been denied procedural due process, we must,

> undertake a two-part analysis. First, we must determine whether the challenged governmental action concerned a constitutionally protected interest. If so, we proceed to determine whether the action was accompanied by the appropriate procedural safeguards.

0Berube v. Belheumer, 139 N.H. 562, 567 (1995).

For purposes of this analysis we will assume that PSNH would be allowed to recover the revenues "lost" under this contract from residential ratepayers during some hypothetical rate proceeding in the future, and that this case involves governmental action affecting a constitutionally protected property interest of residential ratepayers.[1(37)]

[3] The New Hampshire Supreme Court has held that "[p]arties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified." *Berube v. Belheumer*, 139 N.H. 562, 567 (1995). The New Hampshire Supreme Court

has further held that the opportunity to be heard must be given at a "meaningful time" in "a meaningful manner." *Quality Carpets, Inc. v. Carter*, 133 N.H. 254, 255 (1991)

The OCA does not contest the accuracy or the content of the notice provided, merely its timeliness and its failure to provide a discrete time frame to conduct discovery. We believe that the eleven days of notice provided the OCA was more than a sufficient period of time to prepare for this proceeding. The issues to be raised were not new to the OCA, as the OCA has raised issues relative to special contracts with PSNH on numerous occasions in the recent past. *See eg.* DR 95-205, DR 95-214, DR 95-230, DR 95-270, and DR 95-303. If the OCA sought to conduct discovery or pre-file testimony it was free to do so in that eleven day time period. In fact, the OCA could have presented testimony on the day of the hearing. If the OCA did not believe the time allowed was sufficient, it should have raised the issue before the actual hearing commenced. Finally, we left the record open with regard to those questions that could not be answered at the hearing.

Thus, we find the OCA was given a meaningful opportunity to be heard in a meaningful manner.

[4] Regarding OCA's concerns relative to equal protection, the equal protection clause of the fourteenth amendment requires that all persons within a jurisdiction be treated even-handedly. *Kerouac v. Town of Hollis*, 139 N.H. 554, 561 (1995). We do not believe the granting of the special contract herein would violate that standard provided we find it to be "just and consistent with the public interest."

[5, 6] With regard to the special contract itself, based on the record we find that ATM-NH would close its Winchester facility but for the special contract. We further find that the facility's closure would result in lost jobs to the State and lost sales of electricity to PSNH.

ATM-NH is owned by American Tissue Mills, Inc. (ATM). The testimony revealed that ATM is a closely held company which owns numerous paper production facilities at a number of locations throughout the United States. Testimony further revealed that ATM has remained a viable and profitable entity by focusing its decision-making on the profitability on the margin of each facility. That is, ATM does not focus on the fact that it has sunk costs at certain facilities, but rather, looks at the most profitable means of production even if that means closing a facility.

We found credible Mr. Catalfamo's testimony that ATM-NH's parent had located five facilities all of which could economically replace the Winchester facility. We cannot fully rely on this testimony in making our decision, however, because Mr. Catalfamo could not reveal anything about these facilities due to confidentiality agreements entered into as part

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of the negotiations to purchase the facilities. Thus, based on this testimony alone we could not conclude that the special contract is in the public interest because there would be insufficient support for the proposition that ATM-NH would close the Winchester facility but for the special contract.

This does not, however, end our analysis. As was pointed out above, ATM-NH testified that its parent company's decisions relative to the continued operation of any particular facility are

made on the margin. The evidence reveals that ATM could and would purchase the output of the Winchester facility on the wholesale market at a price lower than the Winchester facility's production costs.

Given this evidence, we have concluded that ATM-NH would close its Winchester production facility but for the special contract. Were this facility to close it would mean the loss of 36 full time jobs and the loss of electric load to PSNH. Thus, we have concluded the special contract should be approved because special circumstances exist which render departure from the general rates just and consistent with the public interest, particularly for the purpose of retaining these jobs and this electric load. We will, however, require two minor modifications to the contract.

The first concerns the provision in the contract that requires PSNH to advance $40,000 to ATM-NH for engineering studies. In response to questions from the bench, ATM-NH indicated that it would not oppose a condition that it return the $40,000 if it fails to live up to the terms and conditions of the contract. We will therefore direct the parties to amend the contract to reflect this provision.

Secondly, we note that PSNH has attempted to address the concerns raised in previous orders relative to the siting of cogeneration facilities in Article 8 of the contract. We have reviewed the transcript wherein Mr. Long testified concerning the intent of Article 8 and find that the language Article 8 does not adequately reflect his testimony. Tr. at 47-49.

Based on Mr. Long's testimony, Article 8 allows for the construction of a cogeneration facility on ATM-NH's property in Winchester and also allows ATM-NH to purchase heat or steam from the cogeneration facility even if it displaces some of ATM-NH's current electric load at its plant. Mr Long testified that Article 8, and therefore the contract, only prohibits the sale and purchase of power to current or future customers of PSNH from the cogeneration facility.

Obviously, the restriction on sales to future customers must be construed under the current regulatory regime, and therefore, would not apply to customers located outside of PSNH's current franchise area. Further we must assume Article 8 does not, and would not, in any way restrict lawful sales or purchases of power by a qualifying facility under the Public Utility Regulatory Policies Act of 1978 to a willing wholesale customer.

Because Article 8 is ambiguous relative to ATM-NH's ability to purchase the heat or steam output from a cogeneration facility, even if it reduces its power purchases through the use of this steam or heat, PSNH should refile the contract to reflect the intent stated in Mr. Long's testimony.

Based upon the foregoing, it is hereby

ORDERED, that PSNH Special Contract No. NHPUC-126 with ATM-NH is approved with the condition that the parties file an amendment attachment which attests that ATM-NH will repay $40,000 to PSNH if ATM-NH fails to maintain on-site operations at the Winchester mill for the full term of the special contract. It will be PSNH's responsibility to enforce the repayment by ATM-NH should the plant close; and it is

FURTHER ORDERED, that PSNH Special Contract No. NHPUC-126 with ATM-NH is approved with the additional condition that the parties file an amended contract clarifying the

ambiguity in Article 8.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of April, 1996.

FOOTNOTES

[1]We must emphasize that the Commission may or may not allow the recovery of such lost revenues by PSNH in some future rate proceeding. That is, we

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are under no legislative mandate to allow PSNH recovery of any revenue shortfall resulting from special contracts. Further, such an analysis presumes the continued application of traditional ratemaking methodologies in the future (subsequent to the fixed rate period of the Rate Agreement) which may not be the case. *See*, HB 1392 (1996). Finally, even if we were to allow the recovery of any revenue shortfall resulting from special contracts in a future rate proceeding, such revenue recovery may be restricted to the customer classes that received the special contracts.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 95-321, Order No. 22,050, 81 NH PUC 181, Mar. 11, 1996. [N.H.] Re Public Service Co. of New Hampshire, DR 95-205, Order No. 22,078, 81 NH PUC 229, Mar. 26, 1996.

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NH.PUC*04/30/96*[89135]*81 NH PUC 333*Keene Gas Corporation

[Go to End of 89135]

81 NH PUC 333

Re Keene Gas Corporation

DR 96-096
Order No. 22,122

New Hampshire Public Utilities Commission

April 30, 1996

ORDER approving a natural gas local distribution company's summer cost-of-gas adjustment filing, resulting in a rate of 5.38 cents per therm (a 4.3-cent decrease), attributable to the company's efforts to minimize propane supply costs.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 10

[N.H.] Direct energy costs — Cost-of-gas adjustment — Summer season — Factors affecting decrease — Minimization of propane supply costs — No locked in propane contracts — Local distribution company. p. 334.

APPEARANCES: John F. DiBernardo, 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, 1996, Keene Gas Corporation, (Keene or the Company), filed with the New Hampshire Public Utilities Commission (Commission) certain revisions to its tariff providing for a 1996 Summer Cost of Gas Adjustment (CGA), effective May 1, 1996.

A duly noticed public hearing was held at the Commission's office in Concord, New Hampshire on April 23, 1996.

II. POSITIONS OF KEENE AND STAFF

A. *KEENE*

Keene requests a CGA rate for the Summer period of $0.0538 per therm. The proposed CGA rate represents a $0.0430 per therm reduction over last Summer's CGA charge of $0.0968. Keene explained how the CGA rate was calculated and clarified the various projections made concerning the upcoming period. In particular, the Company has taken the position that the price of propane is currently too high and that the Company believes it is not in the best interest of ratepayers that it lock into any contracts at this time. Should the price of propane drop and become more favorable as anticipated, the Company may contract for gas to meet its remaining Summer period needs.

Other issues addressed during the hearing were the Company's approximately 6.5 percent unaccounted for gas rate, the status of Keene's leak reduction program, the fact that all

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customers now have temperature compensated meters, and that the Company continues to market itself in its franchise area.

B. *Staff*

Staff presented no testimony but indicated that it had reviewed the filing and did not oppose Keene's 1996 Summer CGA filing.

III. COMMISSION ANALYSIS

[1] After having reviewed the record, we conclude that Keene's 1996 Summer CGA rate is reasonable and consistent with its previous performance relative to minimizing propane gas

costs. Accordingly, we accept the Company's CGA filing.

With regard to the Company's lack of propane gas contracts for the upcoming Summer period, we accept the Company's rationale. However, we are concerned about the potential reversal in propane prices. We will therefore require the Company to file monthly status reports of its propane purchasing activities over the course of the Summer period until the Company locks into an adequate supply of propane gas that will meet its Summer period needs.

Based upon the foregoing, it is hereby

ORDERED, that Keene's Eighteenth Revised Page 27, superseding Seventeenth Revised Page 27, NHPUC No. 1 - Gas tariff of Keene Gas Corporation providing for a Summer 1996 Cost of Gas Adjustment of $0.0538 per therm for the period May 1, 1996 through October 31, 1996 is hereby approved; and it is

FURTHER ORDERED, that the Company shall submit monthly status reports of its propane purchasing activities over the course of the Summer period until the Company locks into an adequate supply of propane gas that will meet its Summer period needs; and it is

FURTHER ORDERED, that the over-/under-collection shall accrue interest at the Prime Rate reported in the *Wall Street Journal*. The rate is to be adjusted each quarter using the rate reported on the first date of the month preceding the first month of the quarter; and it is

FURTHER ORDERED, that should the monthly reconciliation of known and projected gas costs deviate from the 10 percent trigger mechanism, Keene shall file a revised CGA; and it is

FURTHER ORDERED, that Keene 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 thirtieth day of April, 1996.

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NH.PUC*04/30/96*[89136]*81 NH PUC 334*Northern Utilities, Inc., Salem Division

[Go to End of 89136]

81 NH PUC 334

Re Northern Utilities, Inc., Salem Division

DR 96-074
Order No. 22,123

New Hampshire Public Utilities Commission

April 30, 1996

ORDER approving a natural gas local distribution company's summer cost-of-gas adjustment filing, resulting in a rate of 21.77 cents per therm (a 12.94-cent decrease), attributable to the combined effects of more stable propane commodity prices, a slight prior-period overcollection,

and improved estimating techniques.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 10

[N.H.] Direct energy costs — Cost-of-gas adjustment — Summer season — Factors affecting decrease — More stable propane costs — Prior-period overcollection — Corrected estimating factors — Local distribution company. p. 335.

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 March 15, 1996, Northern Utilities, Inc. (Northern), filed with the New Hampshire Public Utilities Commission (Commission) its Salem Division's Cost of Gas Adjustment (CGA) for the Summer 1996 period. On April 18, 1996, Northern filed a revised CGA. There were no requests for intervention filed in this matter, and a duly noticed hearing was held on April 18, 1996.

II. POSITIONS OF NORTHERN AND STAFF

A. *Northern*

Northern requests a CGA rate for the 1996 Summer period of $0.2177 per therm. The March 15, 1996 filing had been adjusted to incorporate a revised summer period sales forecast and to reflect the latest propane price as reported in the Wall Street Journal. The revisions decreased the March 15, 1996 proposed rate of $0.2194 per therm to $0.2177 per therm, a reduction of $0.0017.

The Company testified that the proposed CGA rate represents a $0.1294 per therm decrease from last summer's CGA of $0.3471, a decrease attributed primarily to a $5,701 undercollection from 1994 recovered in the 1995 Summer CGA versus a $707 overcollection to be refunded during the upcoming 1996 Summer period. Northern conducted a bill impact analysis comparing the proposed CGA rate of $0.2177 per therm to last summer's CGA of $0.3471 per therm, which showed an 11 percent decrease for the average residential customer. The average monthly bill for residential heating customers would be $29.99 compared to last summer's average bill of $33.69, a decrease of $3.70 per month.

The originally filed summer sales forecast of 20,061 therms was based on faulty estimating factors and the current forecast of 15,033 therms used the appropriate estimating factors and is more reflective of past experience.

During cross examination and questions from the bench regarding competing propane dealers, the Company testified that Northern Propane, a Northern affiliate, is the sole supplier of the Salem customers. Retail propane suppliers own and maintain their own tanks and any other supplier wishing to serve the Salem customers would have to install new tanks. It is anticipated that these customers will eventually be converted to natural gas, although no estimate was made as to when that conversion might take place.

B. *Staff*

Staff presented no testimony but indicated that it had reviewed the filing and did not oppose Northern's revised 1996 Summer CGA filing.

III. COMMISSION ANALYSIS

[1] After having reviewed the record, we conclude that Northern's Salem Division 1996 Summer CGA is reasonable and consistent with its previous performance relative to minimizing gas costs. Accordingly, we accept the filing as revised and modified during the hearing.

Based upon the foregoing, it is hereby

ORDERED, that Northern's Ninth Revised Page 33 superseding Eighth Revised Page 33, NHPUC No. 1 - Gas tariff of Northern Utilities, Inc. providing for a Summer 1996 Cost of Gas Adjustment for the Salem Division of $0.2177 per therm for the period May 1, 1996 through October 31, 1996 is hereby approved; and it is

FURTHER ORDERED, that the over-/under-collection shall accrue interest at the Prime Rate reported in the *Wall Street Journal*. The rate is to be adjusted each quarter using the rate reported on the first date of the month preceding the first month of the quarter; and it is

FURTHER ORDERED, that should the monthly reconciliation of known and projected gas costs deviate from the 10 percent trigger mechanism, Northern shall file a revised CGA;

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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 thirtieth day of April, 1996.

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NH.PUC*04/30/96*[89137]*81 NH PUC 336*Northern Utilities, Inc., New Hampshire Division

[Go to End of 89137]

81 NH PUC 336

Re Northern Utilities, Inc., New Hampshire Division

DR 96-075
Order No. 22,124

New Hampshire Public Utilities Commission

April 30, 1996

ORDER approving a natural gas local distribution company's summer cost-of-gas adjustment filing, resulting in a rate of 1.10 cents per therm (a 3.32-cent increase), attributable primarily to the lack of any significant interstate pipeline supplier refunds.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 10

[N.H.] Direct energy costs — Cost-of-gas adjustment — Summer season — Factors affecting increase — Replacement of per-therm credit with rate mechanism — Lack of substantial refunds from interstate pipeline suppliers — Local distribution company. p. 337.

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 March 15, 1996, Northern Utilities, Inc., New Hampshire Division (Northern), filed with the New Hampshire Public Utilities Commission (Commission) its Cost of Gas Adjustment (CGA) for the 1996 Summer period. Accompanying its CGA filing was a Motion seeking protective treatment, which was granted March 26, 1996 in Order No. 22,072. On April 18, 1996, Northern filed a revised CGA. There were no requests for intervention filed in this matter, and a duly noticed hearing was held on April 18, 1996.

II. POSITIONS OF NORTHERN AND STAFF

A. *NORTHERN*

Northern requests a CGA rate for the 1996 Summer period of $0.0110 per therm. The March 15, 1996 filing had been updated to reflect the latest natural gas futures prices, increasing the proposed rate of $0.0084 per therm to $0.0110 per therm, an increase of $0.0026.

Northern testified that the proposed CGA rate represents a $0.0332 per therm increase over last Summer's CGA credit of ($0.0222), an increase attributed primarily to the absence of large interstate pipeline refunds included in prior CGA's. Northern conducted a bill impact analysis comparing the proposed CGA rate of $0.0110 per therm to last Summer's CGA credit of ($0.0222) per therm, which showed a 5.22 percent increase for the average residential customer. The average monthly bill for residential heating customers would be $23.79 compared to last summer's average bill of $22.61, an increase of $1.18 per month.

Northern also testified that Tennessee Gas Pipeline (TGP) has filed a stipulation and agreement in its rate case proceeding before the Federal Energy Regulatory Commission (FERC) which, if approved, would result in lower transportation rates and refunds for Northern.

Page 336

Northern does not expect FERC to issue a final order on the settlement until late spring or early Summer of 1997, and TGP will not issue refunds until after the final FERC order.

B. *Staff*

Staff presented no testimony but indicated that it had reviewed the filing and did not oppose Northern's revised 1996 Summer CGA filing.

III. COMMISSION ANALYSIS

[1] After having reviewed the record, we conclude that Northern's 1996 Summer CGA is reasonable and consistent with its previous performance relative to minimizing gas costs. Accordingly, we accept the filing as revised and modified during the hearing.

Based upon the foregoing, it is hereby

ORDERED, that Northern's Eighteenth Revised Page 32, Sheet No. 1 superseding Seventeenth Revised Page 32, Sheet No. 1, NHPUC No. 1 - Gas tariff of Northern Utilities, Inc. providing for a Summer 1996 Cost of Gas Adjustment for the New Hampshire Division of $0.0110 per therm for the period May 1, 1996 through October 31, 1996 is hereby approved; and it is

FURTHER ORDERED, that the over-/under-collection shall accrue interest at the Prime Rate reported in the Wall Street Journal. The rate is to be adjusted each quarter using the rate reported on the first date of the month preceding the first month of the quarter; and it is

FURTHER ORDERED, that should the monthly reconciliation of known and projected gas costs deviate from the 10 percent trigger mechanism, Northern shall file a revised CGA; and it is

FURTHER ORDERED, that Northern 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 thirtieth day of April, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Northern Utilities, Inc., DR 96-075, Order No. 22,072, 81 NH PUC 218, Mar. 26, 1996.

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NH.PUC*04/30/96*[89138]*81 NH PUC 337*S.E. MacMillan Construction Company

[Go to End of 89138]

81 NH PUC 337

Re S.E. MacMillan Construction Company

DE 96-003
Order No. 22,125

New Hampshire Public Utilities Commission

April 30, 1996

ORDER determining that a contractor had violated the state's "DigSafe" law in an incident in Seabrook that damaged a natural gas distribution company's underground gas facilities. The contractor is fined $300 accordingly.

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1. CONSTRUCTION AND EQUIPMENT, § 1

[N.H.] Digging and trenching performed by contractors — "Digsafe" law — Liability for damage to underground conduits — Civil penalties for violations of Digsafe law — Commission enforcement authority. p. 338.

2. FINES AND PENALTIES, § 5

[N.H.] Grounds for imposing — Damage to gas lines from contractor digging/trenching — Violations of state's "Digsafe" law. p. 338.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY AND
STATEMENT OF THE FACTS

Page 337

The New Hampshire Public Utilities Commission (Commission) enforces the provisions of the Underground Utility Damage Prevention System (Digsafe), pursuant to RSA 374:48-56. On August 28, 1995 the Commission's Safety Division issued Notice of Proposed Violation (NOPV) 95022 to S.E. MacMillan Construction Company (MacMillan) of Bangor, Maine, alleging a Digsafe violation on Boynton Lane, Seabrook on June 9, 1995 which caused damage to underground gas facilities of Northern Utilities, Inc. (Northern). MacMillan was under contract with the Town of Seabrook, New Hampshire in the summer and fall of 1995.

MacMillan was notified by certified mail of its opportunity to respond and contest the allegations within thirty days, and did so by letter dated September 13, 1995. The Safety Division sent out a new NOPV dated September 21, 1995 stating the corrected violation. No

response was received. On November 1, 1995, the Safety Division issued a Notice of Violation (NOV) by certified mail for this incident. In both the NOPV and NOV, the Safety Division recommended a $100 civil penalty for this incident. MacMillan did not respond.

On October 2, 1995, the Safety Division issued NOPV 95035 alleging a Digsafe violation on Walton Road, Seabrook on August 10, 1995 which also caused damage to Northern's underground facilities. Mr. MacMillan called the Commission Staff on October 9, 1995 questioning the NOPV. Staff on October 9, 1995 sent him a letter containing the Digsafe Law Rules and Regulations. Again, MacMillan did not respond. The Safety Division filed an NOV on November 8, 1995. Both the NOPV and NOV recommended a $200 civil penalty for the August 10th incident.

The Commission issued an order of notice calling for MacMillan to appear before the Commission on January 24, 1996 to address the two NOVs. Utility Analyst Robert Egan left telephone messages with MacMillan repeatedly in advance of the hearing but his calls were never returned. Jody Carmody of the Safety Division testified on January 24, 1996 to the many notices to MacMillan, the facts of the incidents, including reports of damage to Northern's facilities and the Safety Division's recommendations regarding civil penalties.

Because MacMillan has not responded to the Commission's notices, it is not possible to state its position regarding these violations. Mr. Braswell of Northern did note, however, that MacMillan has reimbursed Northern for the damage caused to underground gas facilities.

II. COMMISSION ANALYSIS

[1, 2] Having reviewed the testimony and documents regarding the two incidents in Seabrook, we find that MacMillan violated RSA 374:55,IV-a, in that it caused damage to Northern's underground facilities during his excavation work for the Town of Seabrook. RSA 374:55,IV-a authorizes a civil penalty up to $500 as well as the cost of repairs for an excavator's damage within the boundaries of marked facilities. We find the civil penalties recommended to be fair and appropriate in light of the facts of the case.

We order MacMillan to submit a certified check, payable to the State of New Hampshire, in the amount of $300 for Digsafe violations 95022 and 95035 within thirty days of the date of this order. Upon receipt of payment, we will close this docket. If MacMillan fails to pay the civil penalty as ordered, we will refer this matter to the New Hampshire Department of Justice, Office of Attorney General for further action.

Based upon the foregoing, it is hereby

ORDERED, that MacMillan violated RSA 374:55,IV-a on June 9, 1995 (95022), for which it is assessed a civil penalty of $100; and it is

FURTHER ORDERED, that MacMillan violated RSA 374:55,IV-a on August 10, 1995 (95035), for which it is assessed a civil penalty of $200; and it is

FURTHER ORDERED, that within thirty days of the date of this order, MacMillan shall remit to the Commission a certified check in the amount of $300 payable to the State of New Hampshire.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of April,

1996.

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NH.PUC*04/30/96*[89139]*81 NH PUC 339*Retail Competition Pilot Program

[Go to End of 89139]

81 NH PUC 339

Re Retail Competition Pilot Program

Applicant: Public Service Company of New Hampshire

DR 95-250
Order No. 22,126

New Hampshire Public Utilities Commission

April 30, 1996

MOTION by Freedom Energy Company to reopen the record from Order No. 22,081 (81 NH PUC 237, *supra*) as to base assumptions for wholesale market rates employed in approving an electric utility's recommended plan for implementing a pilot program for competitive electric services; denied. Although agreeing with movant that extended outages at the Millstone nuclear power plants are a cause for concern as to wholesale market prices, the commission finds that no actual adverse effect has yet been proven, such as would justify reopening of the record for a mere pilot program.

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1. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric service — Pilot program for retail competition — Base assumptions as to wholesale market prices — Effect of extended nuclear power plant outages — Not rising to level to warrant reopening of record. p. 339.

2. RATES, § 321

[N.H.] Electric rate design — Unbundling — Pursuant to pilot program for retail competition — Reliance on market-based pricing assumptions — Wholesale market rate for short-term transactions as starting point — Impact on wholesale rates of extended nuclear power plant outages — Not rising to level to warrant reopening of record. p. 339.

3. PROCEDURE, § 32

[N.H.] Reopenings — Upon allegations of changed circumstances — Necessity of prima facie evidence of. p. 339.

BY THE COMMISSION:

ORDER

On April 26, 1996, Freedom Energy Company (Freedom) filed a "Motion to Reopen Record and Motion for Immediate Hearing" (Motion). In its Motion, Freedom requests a hearing in order to address recent developments which Freedom alleges have caused wholesale rates to increase substantially above those which the Commission used as its base assumptions in Order No. 22,081 (March 29, 1996). More specifically, Freedom asserts that the recent shutdown of three nuclear facilities located in Connecticut which are owned by Northeast Utilities will cause wholesale market prices to increase beyond the levels stated in Order No. 22,081.

At its April 29, 1996 public meeting, the Commission directed interested parties to file responses to Freedom's request for expedited relief by noon on this date, April 30, 1996. Responses supporting Freedom's Motion were received from the Office of Consumer Advocate, Cabletron Systems, Inc., Enron Power Marketing, Inc., and the Public Utilities Policy Institute. Responses objecting to Freedom's request were received from Public Service Company of New Hampshire, Green Mountain Energy Partners, L.L.C., Unitil Service Corp., Working Assets, and Granite State Electric Company. Virtually all of the commenters who support Freedom's request also state that the Pilot should proceed according to its current schedule and that customer lists should be released to suppliers as planned on May 1, 1996.

[1-3] We share the concern expressed by Freedom and others that extended outages at the Millstone nuclear units could significantly

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increase wholesale prices in the region which in turn could adversely affect the ability of suppliers to offer competitively priced power to Pilot participants. In spite of these general concerns, it is not our intention to conduct emergency hearings to modify existing orders related to the Pilot unless a movant makes a sufficient factual showing that such relief is justified. After reviewing Freedom's request and the comments of other interested parties, we conclude that Freedom has made an insufficient showing to justify delaying the Pilot at this time. PSNH's objection included an affidavit from Frank P. Sabatino, PSNH's Vice President for Wholesale Marketing, in which Mr. Sabatino states that "wholesale market prices in New England are still consistent with [his] earlier testimony." Similarly, Unitil's letter of April 30, 1996 states that the Millstone outages have had a "negligible" impact on wholesale market prices for the month of May.

In the future, any requests for emergency relief should include prima facie evidence of the alleged underlying circumstances. Because Freedom has failed to support its request with sufficient evidence that the current wholesale market has changed dramatically due to the Millstone outages, we will deny Freedom's Motion without prejudice. Based on our decision, we will proceed with the current procedural schedule unless otherwise ordered.

Based upon the foregoing, it is hereby

ORDERED, that Freedom's Motion to Reopen Record and Motion for Immediate Hearing are DENIED WITHOUT PREJUDICE.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of April, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Retail Competition Pilot Program, DR 95-250, Order No. 22,081, 81 NH PUC 237, Mar. 29, 1996.

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NH.PUC*05/01/96*[89140]*81 NH PUC 340*One to One Communications, Inc.

[Go to End of 89140]

81 NH PUC 340

Re One to One Communications, Inc.

DE 96-098
Order No. 22,127

New Hampshire Public Utilities Commission

May 1, 1996

ORDER authorizing an interexchange telephone carrier to implement various tariff revisions so as to simplify its schedules concomitant with the carrier's corporate reorganization. The carrier will continue to provide basic inbound 800, outbound toll, calling card, and operator and directory assistance services.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Simplification of schedules — As part of a corporate reorganization — Continuation of calling card, inbound 800, and outbound toll services — Interexchange telephone carrier. p. 340.

BY THE COMMISSION:

ORDER

[1] On March 29, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from One to One Communications, Incorporated (One to One or Company) requesting authority to introduce a new tariff, One to One NHPUC No. 2, replacing the One to One NHPUC No. 1 tariff in its entirety.

The proposed tariff is being introduced as part of One to One's reorganization. In its petition, the company stated that it has simplified its operations, and therefore, is eliminating several products. The company will continue to offer an outbound toll product, an inbound toll-free

product, a prepaid calling card, operator and directory assistance.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize One to One to introduce its tariff, One to One NHPUC No. 2.

Based upon the foregoing, it is hereby

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

FURTHER ORDERED, that One to One file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this first day of May, 1996.

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NH.PUC*05/01/96*[89141]*81 NH PUC 341*Working Assets

[Go to End of 89141]

81 NH PUC 341

Re Working Assets

DR 96-099
Order No. 22,128

New Hampshire Public Utilities Commission

May 1, 1996

ORDER approving an interexchange telephone carrier's proposed tariff revisions, which would provide customers with an internet billing option and with access to 800 toll-free dialing via use of a personal identification number (PIN).

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1. RATES, § 582

[N.H.] Telephone rate design — Toll services — Tariff revisions — Offering of internet billing option — Offering of 800 toll-free dialing via use of a personal identification number (PIN 800 service) — Interexchange carrier. p. 341.

2. PAYMENT, § 19

[N.H.] Billings and collections — Introduction of internet billing option — As to toll telephone charges — Interexchange carrier. p. 341.

BY THE COMMISSION:

ORDER

[1, 2] On March 29, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from Working Assets requesting authority to introduce an internet billing option and PIN 800 service for effect May 1, 1996.

The internet billing option allows customers to choose to receive their Working Assets telephone bill via the internet.

PIN 800 service provides toll-free service to residential and commercial customers through the use of a 4 digit personal identification number.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize Working Assets to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of Working Assets' tariff, NHPUC No. 1 are approved for effect as filed:

4th Revised Page 1

3rd Revised Page 2

3rd Revised Page 9

2nd Revised Page 10

1st Revised Page 13

1st Revised Page 18;

and it is

FURTHER ORDERED, that Working Assets file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this first day of May, 1996.

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NH.PUC*05/01/96*[89142]*81 NH PUC 342*MCI Communications Corporation of New Hampshire

[Go to End of 89142]

Re MCI Communications Corporation of New Hampshire

DS 96-103
Order No. 22,129

New Hampshire Public Utilities Commission

May 1, 1996

ORDER approving an interexchange telephone carrier's proposed introduction of "HospitalityMCI" service, which provides members of the hotel industry with both switched and dedicated access for both outbound toll and inbound toll-free calling.

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1. RATES, § 585

[N.H.] Telephone rate design — Toll services — "HospitalityMCI" service for hotels and motels — Outbound toll and inbound toll-free calling options — Switched and dedicated access — Interexchange carrier. p. 342.

BY THE COMMISSION:

ORDER

[1] On April 2, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from MCI Communications Corporation of New Hampshire (MCI) requesting authority to introduce hospitalityMCI for effect May 1, 1996.

HospitalityMCI is a combined outbound toll and inbound toll-free product which offers applicable rates for switched and dedicated access. The service is targeted at the hospitality (e.g. hotel) industry.

We find the proposed changes to be in the public good. New services expand the choice of telephone services and foster competition in the New Hampshire intrastate toll market which allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize the introduction of hospitalityMCI.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of MCI's tariff, NHPUC No. 1 are approved for effect as filed:

47th Revised Page 1

26th Revised Page 3

32nd Revised Page 3.1

2nd Revised Page 3.2

13th Revised Page 4

1st Revised Page 44

Original Page 44.1;

and it is

FURTHER ORDERED, that MCI file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this first day of May, 1996.

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NH.PUC*05/01/96*[89143]*81 NH PUC 343*Pennsylvania Alternative Communications Inc. of New Hampshire

[Go to End of 89143]

81 NH PUC 343

Re Pennsylvania Alternative Communications Inc. of New Hampshire

DS 96-104
Order No. 22,130

New Hampshire Public Utilities Commission

May 1, 1996

ORDER authorizing an interexchange telephone carrier to introduce new "Unipak" service plans for inbound 800 and outbound toll business customers and for outbound toll residential customers. Minimum monthly usage as well as minimum subscription periods apply to business customers.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — "Unipak" services — Inbound 800 and outbound toll services — Separate offerings for business and residential customers — Minimum monthly usage charges and minimum subscription periods — Applicability to business customers — Interexchange telephone carrier. p. 343.

BY THE COMMISSION:

ORDER

[1] On April 2, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from Pennsylvania Alternative Communications Inc., requesting authority to introduce new services in the PAC of New Hampshire, Inc., (PACE) tariff for effect May 1, 1996.

The new services being introduced are Unipak Plus, Unipak 800 Plus and Resipak. Unipak

Plus is an outbound toll product offered for $.1395 per minute. There is a minimum monthly usage charge of $20 and a 13 month service period commitment.

Unipak 800 Plus is an inbound toll-free product offered for $.1495 per minute. There is a minimum monthly usage charge of $20 and a 13 month service period commitment.

Resipak is an outbound toll product offered primarily for residential customers. The minimum service period is 30 days. Day rates are $.1695, evening rates are $.1295 and night/weekend rates are $.1195. Calls are billed in six second increments after a 30 second minimum call duration.

We find the proposed changes to be in the public good. New services expand the choice of telephone services and foster competition in the New Hampshire intrastate toll market which allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize the introduction of Unipak Plus, Unipak 800 Plus and Resipak.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of PACE's tariff are approved for effect as filed:

2nd Revised Page 1

2nd Revised Page 3

2nd Revised Page 13

2nd Revised Page 14

2nd Revised Page 17

Original Page 19

Original Page 20

Original Page 21;

and it is

FURTHER ORDERED, that PACE file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this first day of May, 1996.

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NH.PUC*05/06/96*[89144]*81 NH PUC 344*Retail Competition Pilot Program

[Go to End of 89144]

81 NH PUC 344

Re Retail Competition Pilot Program

Applicant: Connecticut Valley Electric Company

DR 95-250

Order No. 22,131

New Hampshire Public Utilities Commission

May 6, 1996

ORDER conditionally accepting an electric utility's compliance filings under a new pilot program for competitive electric services, although the utility is still working on developing the open-access retail transmission tariffs required for the program. Given the utility's small size and the difference between its rate design and those of other electric utilities, the utility is not required to participate in the pilot-related load research program as are the other electric utilities. Moreover, the utility is allowed to cap at 4% the amount of new load subject to the pilot.

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1. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric service — Pilot program for retail competition — Associated load research program — Exemption from participation — Factors — Utility's small size — Extent of difference in rate design from other utilities. p. 345.

2. RATES, § 321

[N.H.] Electric rate design — Unbundling — Factors — Pilot program for retail competition — Necessity of open-access transmission — Actual provision of retail transmission service by utility's wholesale supplier — Development of special tariffs. p. 345.

3. SERVICE, § 320

[N.H.] Electric — Pilot program for retail competition — Applicability — Limits as to new load — Factors — Utility's small size. p. 345.

BY THE COMMISSION:

ORDER

I. INTRODUCTION AND PROCEDURAL HISTORY

This order addresses the compliance filing and request for confidential treatment of Connecticut Valley Electric Company (CVEC) relative to its participation in the Retail Competition Pilot Program (Pilot). *See*, Order No. 22,033 (Final Guidelines, February 28, 1996). On February 29, 1996, CVEC filed a request for confidential treatment for a record request of the Office of Consumer Advocate during the February 21, 1996 hearing on the Pilot.

After issuing the Final Guidelines, the Commission conditionally approved CVEC's proposed recommendations relative to its participation in the Pilot. Order No. 22,037 (March 4, 1996). CVEC filed its compliance filings on March 15, 1996. Following a technical session on March 20, 1996, CVEC agreed to modify several aspects of its filing which modifications are addressed below. These modifications are set forth in Exhibit CVEC-9 which is an April 1, 1996 letter from CVEC the Commission Staff. The Commission conducted a hearing on April 2, 1996 to address the issues raised in CVEC's compliance filings.

II. POSITION OF CVEC

During the hearing in this matter, CVEC offered the testimony of William J. Deehan, CVEC's Vice President of Rates and Economic Analysis. Mr. Deehan summarized the major components of the modified filing which are discussed below.

The original filing includes proposed delivery tariffs for each of CVEC's rate classes

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which incorporate unbundled rates, participation incentive credits, conservation surcharges and franchise tax charges. CVEC also included workpapers to support its proposed unbundled rates. CVEC's filing includes a description of proposed adjustments to its fuel adjustment mechanisms to ensure that non-participating customers are not charged for unrecovered power costs associated with the Pilot. These adjustments and supporting workpapers were supplemented during the hearing. *See*, Exhibit CVEC-9. During the hearing, Mr. Deehan indicated that CVEC was willing to calculate hourly load for Pilot customers in a manner similar to that which the Commission approved for Granite State Electric Company. *See*, Order No. 22,098 (February 28, 1996).

CVEC also requested an exemption from the Commission's requirement to include new load in the Pilot. According to CVEC, due to its small size, a single new large customer could double the size of the Pilot — from 3% to 6% — and increase the cost to CVEC proportionately.

CVEC also requested a waiver of the Final Guidelines' requirement to participate in a statewide load research project because it would produce data of little value to CVEC. According to CVEC, its rate designs are significantly different from those of the state's other electric utilities which would produce load profiles that do not reflect data obtained from the state-wide sample. CVEC contends that it should be able to use load research data obtained by CVPS during the early 1980's.

CVEC also has not completed its retail transmission filings and indicates its work on those filings is ongoing. CVEC informed the Commission by letter that it intended to file a retail transmission tariff with the NHPUC and the Federal Energy Regulatory Commission (FERC) by May 3, 1996. These tariffs are essential before selected customers can participate in the Pilot. CVEC proposed the following modifications to its compliance filing in a May 1, 1996 letter to the Commission:

1. an adjustment to its unbundled rates in order to incorporate the assumed retail market prices that the Commission established in Order No. 21,081;

2. a cap that limits the load served in the Pilot to 4% of CVEC's coincident load;

3. the price for billing data transfers will be limited to postage costs, and a commitment to participate in the working group to explore potential electronic data transfer systems;

4. a commitment to forward billing data to suppliers within two days after the company's office receives such data;

5. a commitment to participate in the hourly load estimation working group for

NEPOOL billing purposes; and

6. a commitment to serve as a "conduit" for CVPS transmission services; in particular, CVEC proposes to bill Pilot customers for retail transmission on a kWh basis such that the total revenues per class equal the total transmission cost for each class.

III. COMMISSION ANALYSIS

[1-3] We first address CVEC's request for an exemption from the requirement in the Final Guidelines for all of the state's electric utilities to participate in a load research program. We will grant CVEC's request on the grounds that its rate designs are significantly different than those of the other utilities.

Regarding CVEC's request to place limits on the new load requirement, we will allow the proposed 4% cap provided CVEC complies with the other conditions which we set forth below.

In previous orders we have directed Staff to establish working groups to standardize implementation procedures in two vital areas: electronic data transfer and load estimation methodologies. Unless CVEC requests an exemption with supporting evidence, we will require it to participate in the working groups which address these issues and implement common procedures which are agreed to by the other utilities or which are subsequently ordered by this Commission.

CVEC currently receives network transmission service as part of the bundled wholesale power tariff with CVPS. CVEC proposes in

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its May 1, 1996 letter to have CVPS provide unbundled retail transmission service to Pilot customers. In order to reduce the complexity of this service from a customer's standpoint, CVEC proposes to develop kWh charges for each rate class that recover the total transmission costs for each such class. This approach will avoid the need for CVPS to estimate hourly loads of Pilot customers for transmission billing purposes. It also avoids the need for customers to review and verify the accuracy of the load estimation process. Despite these advantages, it is unclear whether Pilot customers will receive the full benefits of load diversity in transmission service billings which will accrue if CVPS adopts the approach agreed to by PSNH and Granite State. Accordingly, we hold that any kWh charges developed for retail transmission service must reflect the benefits that would result if CVEC were the recipient of those transmission services.

There are several issues related to CVEC's implementation of the Pilot which we addressed in previous orders. Because we made generic decisions applicable to all utilities in the Pilot on these issues, we will not recount our analyses herein. Those issues include, but are not limited to the following:

1. Order No. 22,098 requires all utilities to incorporate franchise taxes in their unbundled rates;

2. Order No. 22,118, provides further guidance on the issue of new load; and

3. Order No. 22,118 requires the elimination of "reciprocity" provisions and excessive notification requirements in order for customers to switch suppliers.

We incorporate all such directives by reference herein.

Regarding CVEC's proposed modification to its FCA/PPCA in order to avoid cost-shifting to non-participating customers, we direct CVEC to submit testimony on this issue in its next FAC/PPCA filing.

We reiterate and incorporate herein our decisions in Order Nos. 22,118 and 22,119 regarding miscellaneous charges for the recovery of costs associated with (a) compiling and transferring customers load data, (b) Pilot administration, and (c) additional metering and communications equipment.

Finally, we grant CVEC's unopposed request for confidential treatment of February 21, 1996 on the grounds that it is confidential commercial information subject to protection 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 shall modify its compliance filing as set forth in this order and shall make the appropriate revised filings no later than May 10, 1996; and it is

FURTHER ORDERED, that CVEC's Motion for Confidential Treatment is GRANTED.

By order of the Public Utilities Commission of New Hampshire this sixth day of May, 1996.

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. 22,037, 81 NH PUC 158, Mar. 6, 1996. [N.H.] Re Retail Competition Pilot Program, DR 95-250, Order No. 22,081, 81 NH PUC 237, Mar. 29, 1996. [N.H.] Re Retail Competition Pilot Program, DR 95-250, Order No. 22,098, 81 NH PUC 270, Apr. 12, 1996. [N.H.] Re Retail Competition Pilot Program, DR 95-250, Order No. 22,118, 81 NH PUC 310, Apr. 24, 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*05/06/96*[89145]*81 NH PUC 347*Public Service Company of New Hampshire

[Go to End of 89145]

81 NH PUC 347

Re Public Service Company of New Hampshire

DR 95-171
Order No. 22,132

New Hampshire Public Utilities Commission

May 6, 1996

ORDER accepting, as further modified, a compliance filing made by an electric utility with

respect to a proposed special rate contract with the University of New Hampshire, which contract had been rejected in Order No. 22,036 (81 NH PUC 155, *supra*). The commission still requires further revision to the contract's "sole source supplier" terms, but it is satisfied with those revisions to the original irrevocable eight-year term that now provide for early termination.

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1. RATES, § 211

[N.H.] Special rate contracts — Load retention agreement — Factors affecting acceptance — Modification of previously anticompetitive terms — Provisions for early termination — Removal of specific anticogeneration terms — Electric utility. p. 347.

2. MONOPOLY AND COMPETITION, § 21

[N.H.] Restraint of trade and anticompetitive practices — Special contracts — Terms encumbering customer's property or rights — Prohibitions on third-party power supplier bids — Further modification of "sole source supplier" terms — To prevent anticompetitive effects — Electric utility. p. 347.

3. MONOPOLY AND COMPETITION, § 21

[N.H.] Restraint of trade and anticompetitive practices — Special contracts — Effect of restrictive "sole source supplier" terms — Acquiescence by customer as a factor — Meeting of the minds — Electric service — Dissenting opinion. p. 348.

BY THE COMMISSION:

ORDER

Public Service Company of New Hampshire (PSNH), filed on March 20, 1996, revised copies of Special Contract No. NHPUC-116 between PSNH and the University of New Hampshire, Durham (UNH). NHPUC-116 was filed originally on June 13, 1995. On March 4, 1996, the Commission issued Order No. 22,036 which denied approval of NHPUC-116 based in part on the public policy implications of the contract arising from the prohibition of third parties from developing generation on UNH's property that would be used to displace PSNH sales. The Commission also found in Order No. 22,036 that the irrevocable eight year term of NHPUC-116 was no longer acceptable in light of the changes occurring in the electric utility industry. *See* Order No. 22,036 at 4 and 5. Based on its analysis, the Commission found that even though NHPUC-116 would bring benefits to UNH and PSNH, such anti-competitive provisions were far reaching; Special Contract NHPUC-116 therefore was denied. The revised filing of March 20, 1996 reflects changes by PSNH to comply with Commission Order No. 22,036.

[1, 2] NHPUC-116 continues to have a minimum term of eight years, but it now contains an early termination provision. Either party may terminate NHPUC-116 without penalty after sixty-months from the Effective Date upon six months' written notice. *Article 6 - Sole Supplier* has also been amended. It no longer contains the language that UNH "[s]hall not operate a generating facility nor shall it allow a third party to own or operate a generating facility on property it owns, acquires or controls at the Durham campus, for the purpose of selling the

power produced by such a facility to retail customers of Northeast Utilities' subsidiaries or

retail customers of Northeast Utilities' wholesale customers during the term of this Agreement." New language has replaced this language that allows third parties to site a generating facility on UNH property. *Article 6 - Sole Supplier*, section B. now states "In further consideration of the pricing provided herein, UNH agrees that if they elect to take steam or heat from an electric generation facility whose output is used to displace current sales or potential future sales by PSNH, the monthly credit reflected in this Agreement will terminate and UNH will be billed in accordance with the then current applicable Tariff rate and UNH will remain a full requirements customer for the remainder of the contract term."

The Commission has reviewed the language in revised NHPUC-116 and continues to find the *Article 6 - Sole Supplier* section contained in paragraph B unacceptable. Although it does not explicitly prohibit a third party from developing generation on UNH property, as a practical matter it has that effect given that a cogeneration facility would likely sell heat and steam to UNH and therefore would not locate nearby absent such sales.

PSNH, had it so chosen, could have focused on the benefits of NHPUC-116 to itself and UNH. Instead, PSNH is apparently attempting once again to protect itself from potential future competition through a special contract with a customer. Under the new *Article 6 - Sole Supplier* language, UNH is penalized should it use the steam or heat of a generating facility that sells its electricity not to UNH but any current or potential future customer of PSNH. The generating facility may or may not be located on UNH property.

Although we presently do not know whether this language in *Article 6* will in fact adversely affect potential alternative suppliers of electricity or customers, we are aware that the Legislature has passed HB 1392, which envisions a rapid move toward a more competitive electric industry. Good public policy dictates that we make decisions that balance the interests of all stakeholders as we move toward a more competitive industry. It is unfortunate that UNH is not yet receiving the benefits of NHPUC-116. In light of today's changing environment, while we are pleased that NHPUC-116 now contains a five-year early termination provision, the *Article 6 - Sole Source Supplier* language continues to step beyond the stated purpose of NHPUC-116 and is therefore unacceptable. We will therefore approve the contract conditioned on PSNH striking Article 6 B and making no other changes to the contract.

Based upon the foregoing, it is hereby

ORDERED, that Special Contract No. NHPUC-116 as revised on March 20, 1996 is APPROVED, subject to the condition that PSNH strikes Article 6 B and makes no other changes.

By order of the Public Utilities Commission of New Hampshire this sixth day of May, 1996.

Dissenting Opinion of
Commissioner Bruce B. Ellsworth

[3] I would approve the contract without the majority's conditions. I continue to hold that this contract is a result of the decision of two willing parties, and that the public good is satisfied by

approval of its provisions.

By its signature, UNH presumably understands, and willingly accepts, the constraints that would be placed upon it by *Article 6 - Sole Supplier*, section B.

I continue to find that the benefits of the proposed contract outweigh the consequences of other public policy issues.

Bruce B. Ellsworth
Commissioner

May 6, 1996

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 95-171, Order No. 22,036, 81 NH PUC 155, Mar. 4, 1996.

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NH.PUC*05/06/96*[89146]*81 NH PUC 349*Public Service Company of New Hampshire

[Go to End of 89146]

81 NH PUC 349

Re Public Service Company of New Hampshire

DR 95-173
Order No. 22,133

New Hampshire Public Utilities Commission

May 6, 1996

ORDER accepting, as further modified, a compliance filing made by an electric utility with respect to a proposed special rate contract with Keene State College, which contract had been rejected in Order No. 22,035 (81 NH PUC 152, *supra*). The commission still requires further revision to the contract's "sole source supplier" terms, but it is satisfied with those revisions to the original irrevocable eight-year term that now provide for early termination.

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1. RATES, § 211

[N.H.] Special rate contracts — Load retention agreement — Factors affecting acceptance — Modification of previously anticompetitive terms — Provisions for early termination — Removal of specific anticogeneration terms — Electric utility. p. 349.

2. MONOPOLY AND COMPETITION, § 21

[N.H.] Restraint of trade and anticompetitive practices — Special contracts — Terms

encumbering customer's property or rights — Prohibitions on third-party power supplier bids — Further modification of "sole source supplier" terms — To prevent anticompetitive effects — Electric utility. p. 349.

3. MONOPOLY AND COMPETITION, § 21

[N.H.] Restraint of trade and anticompetitive practices — Special contracts — Effect of restrictive "sole source supplier" terms — Acquiescence by customer as a factor — Meeting of the minds — Electric service — Dissenting opinion. p. 350.

BY THE COMMISSION:

ORDER

Public Service Company of New Hampshire (PSNH), filed on March 20, 1996, revised copies of Special Contract No. NHPUC-117 between PSNH and Keene State College (KSC). NHPUC-117 was filed originally on June 13, 1995. On March 4, 1996, the Commission issued Order No. 22,035 which denied approval of NHPUC-117 based in part on the public policy implications of the contract arising from the prohibition of third parties from developing generation on KSC's property that would be used to displace PSNH sales. The Commission also found in Order No. 22,035 that the irrevocable eight year term of NHPUC-117 was no longer acceptable in light of the changes occurring in the electric utility industry. *See* Order No. 22,035 at page 4 and 5. Based on its analysis, the Commission found that even though NHPUC-117 would bring benefits to KSC and PSNH, such anti-competitive provisions were far reaching; Special Contract NHPUC-117 therefore was denied. The revised filing of March 20, 1996 reflects changes by PSNH to comply with Commission Order No. 22,035.

[1, 2] NHPUC-117 continues to have a minimum term of eight years, but it now contains an early termination provision. Either party may terminate NHPUC-117 without penalty after sixty-months from the Effective Date upon six months' written notice. *Article 6 - Sole Supplier* has also been amended. It no longer contains the language that KSC "[s]hall not operate a generating facility nor shall it allow a third party to own or operate a generating facility on property it owns, acquires or controls at the Keene campus, for the purpose of selling the power produced by such a facility to retail customers of Northeast Utilities' subsidiaries or retail customers of Northeast Utilities'

wholesale customers during the term of this Agreement." New language has replaced this language that allows third parties to site a generating facility on KSC property. *Article 6 - Sole Supplier*, section B. now states "[I]n further consideration of the pricing provided herein, KSC agrees that if they elect to take steam or heat from an electric generation facility whose output is used to displace current sales or potential future sales by KSC, the monthly credit reflected in this Agreement will terminate and KSC will be billed in accordance with the then current applicable Tariff rate and KSC will remain a full requirements customer for the remainder of the contract term."

The Commission has reviewed the language in revised NHPUC-117 and continues to find the *Article 6 - Sole Supplier* section contained in paragraph B unacceptable. Although it does not explicitly prohibit a third party from developing generation on KSC property, as a practical matter it has that effect given that a cogeneration facility would likely sell heat and steam to KSC and therefore would not locate nearby absent such sales.

PSNH, had it so chosen, could have focused on the benefits of NHPUC-117 to itself and KSC. Instead, PSNH is apparently attempting once again to protect itself from potential future competition through a special contract with a customer. Under the new *Article 6 - Sole Supplier* language, KSC is penalized should it use the steam or heat of a generating facility that sells its electricity not to KSC but any current or potential future customer of PSNH. The generating facility may or may not be located on KSC property.

Although we presently do not know whether this language in *Article 6* will in fact adversely affect potential alternative suppliers of electricity or customers, we are aware that the Legislature has passed HB 1392, which envisions a rapid move toward a more competitive electric industry. Good public policy dictates that we make decisions that balance the interests of all stakeholders as we move toward a more competitive industry. It is unfortunate that KSC is not yet receiving the benefits of NHPUC-117. In light of today's changing environment, while we are pleased that NHPUC-117 now contains a five-year early termination provision, the *Article 6 - Sole Source Supplier* language continues to step beyond the stated purposes of NHPUC-117 and is therefore unacceptable. We will therefore approve the contract conditioned on PSNH striking Article 6 B and making no other changes to the contract.

Based upon the foregoing, it is hereby

ORDERED, that Special Contract No. NHPUC-117 as revised on March 20, 1996 is APPROVED, subject to the condition that PSNH strikes Article 6 B and makes no other changes.

By order of the Public Utilities Commission of New Hampshire this sixth day of May, 1996.

Dissenting Opinion of
Commissioner Bruce B. Ellsworth

[3] I would approve the contract without the majority's conditions. I continue to hold that this contract is a result of the decision of two willing parties, and that the public good is satisfied by approval of its provisions.

By its signature, Keene presumably understands, and willingly accepts, the constraints that would be placed upon it by *Article 6 - Sole Supplier*, section B.

I continue to find that the benefits of the proposed contract outweigh the consequences of other public policy issues.

Bruce B. Ellsworth
Commissioner

May 6, 1996

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 95-173, Order No. 22,035, 81 NH PUC 152, Mar. 4, 1996.

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NH.PUC*05/07/96*[89147]*81 NH PUC 351*Hanover Water Works Company

[Go to End of 89147]

81 NH PUC 351

Re Hanover Water Works Company

DR 95-236
Order No. 22,134

New Hampshire Public Utilities Commission

May 7, 1996

ORDER adopting settlement in a water utility rate case, under which the utility may increase rates and earn a rate of return of 8.18%, exclusive of a grant awarded the utility under the state's Chlorine Dioxide Disinfection Facility program. The utility is allowed to recover $27,543 in rate case expense, via a quarterly surcharge to be amortized over a one-year period.

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1. RATES, § 595

[N.H.] Water rate design — Authorization for increase — No change in existing rate structure — Adjustments to recognize receipt of state program grant — Settlement. p. 352.

2. RETURN, § 115

[N.H.] Water utility — Authorized rate of return of 8.18% — Settlement. p. 352.

3. SERVICE, § 473

[N.H.] Water — Equipment and facilities — Chlorine dioxide disinfection facilities — Receipt of state grant for. p. 352.

4. EXPENSES, § 89

[N.H.] Rate case expense — Allowance limited to costs actually incurred in preparing and litigating case — Exclusion of audit and annual report costs — Recovery via quarterly surcharge — One-year amortization period — Water utility. p. 352.

APPEARANCES: Stebbins, Bradley, Wood & Harvey by John Storrs Stebbins, Esq. for Hanover Water Works Company; E. Barclay Jackson, Esq. for the Staff of the New Hampshire Public

Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On October 16, 1995, Hanover Water Works Company (Hanover) filed with the New Hampshire Public Utilities Commission (Commission) a petition for permanent rate increase (Petition), along with supporting testimony and exhibits. The Petition requested an increase in revenues of $193,459 on an annual basis, an increase of 26.59% over current rates. Hanover did not request temporary rates. Hanover serves approximately 1500 customers in portions of the Town of Hanover, New Hampshire.

By order of notice, the Commission sought intervenors. The Office of Consumer Advocate (OCA) is a statutorily authorized intervenor but did not appear. There were no requests for intervention.

After discovery, Commission Staff (Staff) on February 15, 1996 prefiled testimony of Jane A. Emerson, Richard B. Deres and James L. Lenihan which, for Ms. Emerson and Mr. Deres, was amended on March 18, 1996 in light of information learned in further discovery exchanges.

Hanover received a grant in the amount of $31,585 from the State Department of Environmental Services (DES), which led Hanover to discuss with Staff a reduced request for permanent rates.

On April 9, 1996, Hanover and Staff filed a Settlement Agreement resolving all issues in the rate case (Settlement). The Commission heard testimony in support of the Settlement on April 9, 1996. No one testified in opposition to the Settlement.

II. DES GRANT AND IMPACT ON INITIAL POSITIONS

Page 351

Hanover had been notified by DES that it was likely to be a recipient of a Chlorine Dioxide Disinfection Facility grant, if the program were funded by the Legislature. On December 13, 1995 Hanover received a grant in the amount of $31,585. Hanover hopes this will be the first of 10 annual grants, for a total of $231,229, provided the Legislature continues to fund the program.

Hanover initially requested an increase of $193,459 in annual revenues, or 26.59% over current rates. With receipt of the DES grant, Hanover was able to adjust its proposed rate base, cost of debt and amount of interest expense.

Staff had initially stated the cost of capital should be 8.10% and recommended an increase in revenues of $114,785, or a 15.6% increase over current rates. These recommendations were no longer appropriate in light of the DES grant.

III. SETTLEMENT AGREEMENT

[1-4] The Settlement details all terms agreed to between Hanover and Staff, which are summarized herein.

Hanover and Staff agreed to: 1) rate base of $1,938,188; 2) net operating income of $61,222;

3) rate of return of 8.18%; 4) revenue requirement of $156,531; 5) 20.53% increase over current rates; and 6) no change in Hanover's current rate design. If the Legislature continues to fund the Chlorine Dioxide Disinfection program, Hanover will account for DES grants as Contributions in Aid of Construction.

Hanover agreed to file rate case information and on April 3, 1996 filed detailed information concerning its rate case expenses in this proceeding. Hanover initially sought $42,299. Staff reviewed the filing and by memorandum dated May 6, 1996 recommended that $27,543 be allowed as rate case expenses related to this docket. Staff's recommendation is based on a disallowance of certain costs which Hanover incurred in the preparation of dockets that have been closed or were withdrawn from further investigation and which were based on different test years unrelated to this rate case.

Staff recommended that certain costs associated with a Commission audit and preparation of Hanover's annual report to the Commission be excluded because these expenses are ordinary operating expenses more appropriately included in recurring costs. Finally, Staff recommended that the rate case expenses be collected by means of a surcharge on Hanover's bills for a period of one year. This would result in a total surcharge amount of $17.43 per customer over the course of the next year, or $4.36 per customer per quarter for four quarters.

The change in rates, if approved by the Commission, would be effective for service rendered on or after the date of the Commission's order.

IV. COMMISSION ANALYSIS

We have reviewed the Settlement and supporting testimony presented at the April 9, 1996 hearing and will approve the Settlement as filed. The terms will result in just and reasonable rates while providing Hanover a reasonable opportunity to earn a fair return on its investment. The Settlement, therefore, is in the public interest and will be approved, pursuant to RSA 378:7. Plant now included in rate base is used and useful and the investment in that plant was prudently incurred, in accordance with RSA 378:28.

Pursuant to the Settlement, the typical residential customer will see an increase of approximately $30 per year, from a $16.66 quarterly fixed charge and $.90/100 cubic feet usage charge (for a total of $145.84/year) to a $20.08 quarterly fixed charge and $1.084/100 cubic feet usage charge (for a total of $175/year). We note that Hanover's current rates have been in effect for six years.

We have reviewed Hanover's and Staff's rate case expense recommendations and will approve rate case expenses in the amount of $27,543, as recommended by Staff. We concur that expenses be limited to those amounts associated with the instant docket. The surcharge will be in addition to the rates stated above.

Based on the foregoing, it is hereby

ORDERED, that the agreement between Hanover and Staff be approved; and it is

FURTHER ORDERED, that rate case

expenses in the amount of $27,543 be approved as recommended by Staff and surcharged over a one year period without interest; and it is

FURTHER ORDERED, that Hanover submit a properly annotated tariff with the Commission within 14 days of the date of this order in accordance with NH Admin. Rules, Puc 1601.01 (b).

By order of the Public Utilities Commission of New Hampshire this seventh day of May, 1996.

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NH.PUC*05/07/96*[89148]*81 NH PUC 353*LDDS Communications, Inc.

[Go to End of 89148]

81 NH PUC 353

Re LDDS Communications, Inc.

DR 96-108
Order No. 22,135

New Hampshire Public Utilities Commission

May 7, 1996

ORDER approving an interexchange telephone carrier's plan to assess surcharges on those customers placing calls via the carrier's network but who do not have a billing account with the carrier. However, the carrier will delete surcharges associated with intrastate 800 service, since it is merely an add-on to interstate service.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Assessment of surcharges on customers without billing accounts — Elimination of surcharges for intrastate 800 service — Interexchange carrier. p. 353.

2. RATES, § 260

[N.H.] Surcharges — Telephone toll service — Applicability of surcharges to customers without billing accounts — Elimination of surcharges for intrastate 800 service — Interexchange carrier. p. 353.

BY THE COMMISSION:

ORDER

[1, 2] On April 10, 1996, the New Hampshire Public Utilities Commission (Commission)

received a petition from LDDS Communications Inc. (LDDS) requesting authority to clarify the application of operator services charges, add a per call surcharge for Casual Calling and delete 800 service recurring and non-recurring charges from the intrastate tariff.

Language clarifying operator service charges specifies when operator service charges and rates apply.

A per call surcharge is being added to calls placed by customers who use the LDDS network but who do not have a billing account established with LDDS. These calls will be billed by the local exchange carrier.

Recurring and non-recurring rates for 800 service have been deleted because the service is an add-on to interstate service and applicable charges are in the interstate tariff. Intrastate usage rates have not been revised or deleted.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize LDDS to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of LDDS' tariff, NHPUC No. 2 are approved for effect as filed:

7th Revised Page 1

6th Revised Page 1.1

1st Revised Page 55

1st Revised Page 79

Original Page 79.1

1st Revised Page 96

1st Revised Page 97

1st Revised Page 101

1st Revised Page 102

1st Revised Page 103

1st Revised Page 104

1st Revised Page 105.3

Page 353

1st Revised Page 105.4

1st Revised Page 105.5

1st Revised Page 105.6

1st Revised Page 105.7;

and it is

FURTHER ORDERED, that LDDS file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this seventh day of May, 1996.

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NH.PUC*05/07/96*[89149]*81 NH PUC 354*MCI Telecommunications Corporation of New Hampshire

[Go to End of 89149]

81 NH PUC 354

Re MCI Telecommunications Corporation of New Hampshire

DR 96-109
Order No. 22,136

New Hampshire Public Utilities Commission

May 7, 1996

ORDER approving an interexchange telephone carrier's various proposed tariff revisions which would modify "MCI Vision" offerings, add a minimum monthly account fee as well as volume discounts for "commercial dial one" service, and eliminate volume discounts from prepaid calling card plans.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll services — Tariff revisions — As affecting "MCI Vision" service — Introduction of minimum monthly account fee for certain services — Elimination of volume discounts for prepaid calling card service — Interexchange carrier. p. 354.

BY THE COMMISSION:

ORDER

[1] On April 11, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from MCI Telecommunications Corporation (MCI) requesting authority to revise its tariff for effect May 10, 1996.

The proposed revisions add language to the MCI 800 service description, grandfather

standard MCI Vision service to existing customers, revise the non-standard MCI Vision options, add a minimum monthly account fee and volume discount language to Commercial Dial One service and delete volume discounts from prepaid card service.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize MCI to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of MCI's tariff, NHPUC No. 1 are approved for effect as filed:

48th Revised Page 1

27th Revised Page 3

33rd Revised Page 3.1

3rd Revised Page 3.2

14th Revised Page 4

3rd Revised Page 35

4th Revised Page 53

16th Revised Page 54

5th Revised Page 55

4th Revised Page 55.1

Original Page 55.2

2nd Revised Page 59.5

1st Revised Page 59.6

7th Revised Page 59.8

1st Revised Page 59.8.1;

and it is

FURTHER ORDERED, that MCI file properly annotated tariff pages in compliance

with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this seventh day of May, 1996.

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NH.PUC*05/07/96*[89150]*81 NH PUC 355*Sprint Communications Company of New Hampshire, Inc.

[Go to End of 89150]

81 NH PUC 355

Re Sprint Communications Company of New Hampshire, Inc.

DS 96-114
Order No. 22,137

New Hampshire Public Utilities Commission

May 7, 1996

ORDER authorizing an interexchange telephone carrier to revise and/or rename its various "Sprint Sense FONCARD" offerings.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Tariff revisions — As to "FONCARD" service options — Interexchange telephone carrier. p. 355.

BY THE COMMISSION:

ORDER

[1] On April 12, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from Sprint Communications Company of New Hampshire, Inc., (Sprint) requesting authority to revise its tariff, for effect May 13, 1996.

The proposed revisions create a separate section under Sprint Sense for Sprint Sense FONCARD service, rename Sprint Sense FONCARD service to FONCARD Option A, Introduce Sprint Sense FONCARD Option B and delete text limiting Option M-2 FONCARD availability to Option B customers only.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize Sprint to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

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

24th Revised Page 1

1st Revised Page 58

5th Revised Page 73-C

Original Page 73-D;

and it is

FURTHER ORDERED, that Sprint file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this seventh day of May, 1996.

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NH.PUC*05/07/96*[89151]*81 NH PUC 355*Network Plus, Inc.

[Go to End of 89151]

81 NH PUC 355

Re Network Plus, Inc.

DR 96-110
Order No. 22,138

New Hampshire Public Utilities Commission

May 7, 1996

ORDER approving an interexchange telephone carrier's proposed tariff revisions, which would discontinue certain service offerings while introducing others. Distributed network service and software defined network service will be

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eliminated while switched access, dedicated access, and travel card services will be added.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll services — Tariff revisions — Elimination of certain service offerings — Introduction of other service offerings — Interexchange carrier. p. 356.

2. RATES, § 592

[N.H.] Telephone rate design — Toll services — Tariff revisions — Addition of both switched and dedicated access services — Upon the elimination of distributed network and software defined network services — Interexchange carrier. p. 356.

3. SERVICE, § 276

[N.H.] Discontinuance — Substitution of services as a factor — Elimination of distributed network and software defined network services — Introduction of both switched and dedicated access services — Interexchange telephone carrier. p. 356.

BY THE COMMISSION:

ORDER

[1-3] On April 11, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from Network Plus, Inc., (NPI) requesting authority to introduce a new tariff, NPI NHPUC No. 2, replacing the NPI NHPUC No. 1 tariff in its entirety, for effect May 13, 1996.

The proposed tariff is being introduced to incorporate revisions which change more than 50 percent of the existing tariff. NPI is discontinuing Distributed Network Service and Software Defined Network Service and introducing Switched Access, Dedicated Access and Travel Card services. NPI is adding to the tariff a new administrative section, Use, Cancellation by Customer and Interconnection, as well as making other administrative changes.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize NPI to introduce its tariff, NPI NHPUC No. 2.

Based upon the foregoing, it is hereby

ORDERED, that NPI's tariff, NHPUC No. 2 is approved for effect as filed.

FURTHER ORDERED, that NPI file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this seventh day of May, 1996.

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NH.PUC*05/07/96*[89152]*81 NH PUC 356*Lakes Region Water Company, Inc.

[Go to End of 89152]

81 NH PUC 356

Re Lakes Region Water Company, Inc.

DF 96-140
Order No. 22,139

New Hampshire Public Utilities Commission

May 7, 1996

ORDER authorizing a water utility to incur up to $23,750 in additional long-term debt, so as to finance the purchase of a four-wheel-drive tractor-loader-backhoe.

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1. SECURITY ISSUES, § 58

[N.H.] Incurrence of additional long-term debt — Purposes — Additions and betterments — Purchase of special tractor-loader-backhoe — Water utility. p. 357.

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BY THE COMMISSION:

ORDER

[1] On April 26, 1996 Lakes Region Water Company, Inc., (Lakes Region), a New Hampshire corporation with its principal place of business in Moultonboro, New Hampshire, filed with the New Hampshire Public Utilities Commission (Commission) a petition for approval of additional financing in the amount of $23,750 of long term debt, by the issuance of a new note to The CIT Group, with the term of 48 months, at a rate of 8.29%. Lakes Region represents that the financing will be used to purchase a 1995 Kobelco, model TLK 750 turbo four wheel drive tractor loader backhoe.

The Commission, having reviewed the filing and the Staff recommendation, finds the proposed financing of this debt is consistent with the public good.

Based upon the foregoing, it is hereby

ORDERED, that Lakes Region's petition for additional financing is approved, pursuant to RSA 369.1 for the purpose herein set forth.

By order of the Public Utilities Commission of New Hampshire this seventh day of May, 1996.

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NH.PUC*05/07/96*[89153]*81 NH PUC 357*American Business Alliance, Inc.

[Go to End of 89153]

81 NH PUC 357

Re American Business Alliance, Inc.

DE 96-029
Order No. 22,140

New Hampshire Public Utilities Commission

May 7, 1996

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

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1. CERTIFICATES, § 123

[N.H.] Telephone carrier — Intrastate intraLATA long-distance services — Interim authority — Assessment of competitive impacts — Exclusion of local exchange services. p. 357.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate intraLATA toll services — Interim authority — Assessment of competitive impacts — Exclusion of local exchange services. p. 357.

BY THE COMMISSION:

ORDER

[1, 2] On January 26, 1996, American Business Alliance, Inc. (ABA) a Pennsylvania corporation, petitioned the New Hampshire Public Utilities Commission (Commission) for authority to do business as a telecommunications public utility in the State of New Hampshire (petition) pursuant to, *inter alia*, RSA 374:22 and RSA 374:26. ABA has demonstrated the financial, managerial and technical ability to offer service as conditioned by this order. The Commission previously approved numerous, similar petitions filed during the Trial Period, pursuant to the Modified Stipulation Agreement (Stipulation) in Docket No. DE 90-002, approved by Order No. 20,916 (August 2, 1993). Our orders in those numerous dockets granted the petitioner(s) interim authority to offer intraLATA toll service, specifically excluding local exchange service, for the service territory of the entire State of New Hampshire, during the Trial Period, in order to allow the Commission to analyze competition during the two-year Trial Period.

Because the Trial Period identified by the Stipulation expired on September 30, 1995, we have explicitly clarified that the authority we had granted remains in effect until we specifically modify or revoke that authority, after analysis of the Trial Period. *See* Order No. 21,851 (October 3, 1995). Likewise, our grant of authority ordered herein remains in effect

until we specifically modify or revoke that authority.

The public good is served by permitting such competition by telecommunications companies. The Commission permits competitive entry in order to foster competition in the New Hampshire intrastate toll market and to allow the Commission to analyze the effects of such competition.

The public should be provided an opportunity to respond in support of, or in opposition to this petition.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that ABA is granted interim authority to offer as a telecommunications public utility intraLATA toll service, specifically excluding local exchange service, for the service territory of the entire State of New Hampshire, subject to the following conditions:

1. The services shall be offered by approved tariffs.

2. The services shall be offered until the Commission orders otherwise.

3. ABA shall file tariffs for new services and changes in approved services (other than rate changes), with effective dates of no less than 30 days after the date the tariffs are filed with the Commission.

4. Within one business day of offering an approved service to the public at a rate different from its rates on file with the Commission, ABA shall notify the Commission of the change.

5. ABA is exempted from NH Adman. Rules, Puc 406.03 Accounting Records; Puc 407 Forms Required of All Telephone Utilities; and Puc 409 Uniform System of Accounts for Telecommunications Companies.

6. ABA shall maintain its book and records in accordance with Generally Accepted Accounting Principles.

7. ABA 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. ABA 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. ABA shall compensate the appropriate Local Exchange Company for all originating and terminating access used by ABA pursuant to NET Tariff N.H.P.U.C. 79, Switched Access Service Rate or its successors or its relevant equivalent contained in the tariffs of the Independent Local Exchange Companies.

10. New Service offerings filed for approval with the Commission shall be accompanied by tariff pages describing the service, rates and effective dates; and it is

FURTHER ORDERED, that the authority granted herein remains in full force and effect until the Commission orders otherwise; and it is

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

FURTHER ORDERED, that ABA 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 May 14, 1996, and an affidavit proving publication shall be filed with the Commission on or before May 21, 1996; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, et seq. ABA 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 May 28, 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 June 4, 1996; and it is

FURTHER ORDERED, this Order *Nisi* shall be effective June 6, 1996, unless the

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Commission provides otherwise in a supplemental order issued prior to the effective date and it is

FURTHER ORDERED, that ABA shall file a compliance tariff with the Commission on or before June 6, 1996, in accordance with NH Adman. Rules, Puc 1601.01 (b).

By order of the Public Utilities Commission of New Hampshire this seventh day of May, 1996.

Notice of Conditional Approval of
AMERICAN BUSINESS ALLIANCE, INC.

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

On January 26, 1996, American Business Alliance, Inc. (ABA) a Pennsylvania corporation, filed with the New Hampshire Public Utilities Commission (Commission) a petition to do business as a telecommunications public utility in the State of New Hampshire, specifically to provide intrastate long distance telecommunications services.

In Order No. 22,140, issued in Docket No. DE 96-069, the Commission granted ABA conditional approval to operate as of June 6, 1996, subject to the right of the public and interested parties to comment on ABA 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 ABA's petition to do business in the State must be submitted in writing no later than May 28, 1996, and reply comments no later than June 4, 1996, to:

Dr. Sarah P. Voll
Executive Director and Secretary
Public Utilities Commission
8 Old Suncook Road
Concord, New Hampshire 03301-7319

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Generic Investigation into IntraLATA Toll Competition Access Rates, DE 90-002, Order No. 20,916, 78 NH PUC 365, Aug. 2, 1993. [N.H.] Re Long Distance North of New Hampshire, Inc., et al., DE 87-249, Order No. 21,851, 80 NH PUC 628, Oct. 3, 1995.

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[Go to End of 89154]

81 NH PUC 359

Re Granite State Electric Company

DR 95-169
Order No. 22,141

New Hampshire Public Utilities Commission

May 13, 1996

PETITION by electric utility for authority to increase rates by $2.56 million (4.04%); granted as modified pursuant to settlement, in the amount of $1.094 million (1.9%), with a lesser portion of the increase being allocated to general service customers than to residential and streetlighting customers.

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1. EXPENSES, § 114

[N.H.] Income taxes — Associated depreciation deductions — Deferred taxes — Deficiency in deferral reserve — Change from flow-through to accrual accounting — Effect of increase in book depreciation — Settlement — Electric utility. p. 362.

2. EXPENSES, § 70

[N.H.] Depreciation — Whole life method — Negative net salvage rate of 10% — Elimination of hazardous waste costs as a component — Settlement — Electric utility. p. 362.

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3. DEPRECIATION, § 50

[N.H.] Electric utility — Continuation of whole life method — Negative net salvage rate of 10% — Elimination of hazardous waste costs as a component for tax purposes — Settlement. p. 362.

4. EXPENSES, § 49

[N.H.] Employee pensions and welfare — Early retirement programs — Deferral of associated costs — Possible change to accrual accounting — Settlement — Electric utility. p. 362.

5. RATES, § 166

[N.H.] Factors affecting reasonableness — Solicitation of business — Economic development or business retention rates — Applicability only to manufacturing businesses — Settlement — Electric utility. p. 363.

6. RETURN, § 87

[N.H.] Electric utility — Overall cost of capital of 9.03% — Return on equity of 10% — Settlement agreement — Public disclosure of return terms. p. 363.

7. EXPENSES, § 42

[N.H.] Deficits under rate schedules — Difference between temporary rates and final rates — Waiver of right to recover via surcharge — Settlement — Electric utility. p. 363.

8. RATES, § 326

[N.H.] Electric rate design — Hours of use — Real-time "flex" rates — Short-term marginal cost pricing — Availability to large general service customers — Settlement. p. 364.

APPEARANCES: Peter J. Dill, Esq. for Granite State Electric Company; Kenneth E. Traum of Office of Consumer Advocate for residential ratepayers; Eugene F. Sullivan, III, Esq. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On July 19, 1995, Granite State Electric Company (GSEC) filed with the New Hampshire Public Utilities Commission (Commission) a petition for permanent rate increase (Petition) and request for temporary rates, along with supporting testimony and exhibits. The Petition requested a permanent annual revenue increase of $2.56 million, to be allocated differently among rate classes. The overall increase requested was 4.04%; the rate increase by class ranged from a low of 0.52% to a high of 9.01%. GSEC requested a temporary rate increase in the amount of 1.86% or $1.177 million in annual revenues.

By Order No. 21,840 (October 2, 1995), the Commission granted the request of the Business and Industry Association of New Hampshire (BIA) for limited intervention, solely in regard to GSEC's proposed economic development rates. The Office of Consumer Advocate (OCA) is a statutorily authorized intervenor.

On October 6, 1995 the Parties and Commission Staff (Staff) submitted an Offer of Settlement regarding temporary rates. After notice and hearing on October 10, 1995, the Commission approved the temporary rate Offer of Settlement by which GSEC received a temporary rate increase of $851,717 for bills rendered on or after November 1, 1995. The rate increases were 1.86% over current levels except in the case of the G-1 class, which was increased by 0.52% and the V class, which was increased by 0.68%. *See*, Order No. 21,888 (October 30, 1995).

On December 13, 1995, BIA filed a statement in support of GSEC's economic development rates.

OCA prefiled testimony of Kenneth E. Traum and Thomas S. Lyle on January 19, 1996. Also on this date Staff prefiled testimony

of Thomas C. Frantz, James R. Thyng and James J. Cunningham. Mr. Cunningham supplemented and revised his testimony on January 26, 1996 regarding GSEC's depreciation and federal income tax expenses. On February 23, 1996 Finance Director Eugene F. Sullivan, Jr. submitted testimony further supplementing Mr. Cunningham's previous filings regarding certain deferred tax items which should not have been included in rate base and revenue requirements.

On April 11, 1996, GSEC, OCA, BIA and Staff filed an Offer of Settlement (Settlement) resolving all issues in the rate case. The Commission heard testimony in support of the Settlement on April 11, 1996. No one testified in opposition to the Settlement.

II. POSITIONS OF THE PARTIES AND STAFF

A. *GSEC*

GSEC initially requested an increase of $2.56 million in revenues, an increase of 4.04% in rates overall. The increases allocated among classes, however, ranged from a low of 0.52% to a high of 9.01%.

GSEC testified that its actual return on common equity in 1992, 1993 and 1994 was 7.46%, 8.58% and 5.88% respectively. It proposed a return on common equity of 12%.

GSEC submitted a 1995 depreciation study which changed the depreciable lives on most of its plant and recommended, among other things, a net salvage rate of negative 15%.

GSEC proposed two economic development rates, one focused on job growth and the other on load growth. The job growth rate would be available to small businesses that had expanded their employee base by a certain percentage. The load growth rate would be available to large customers which were new to the state or existing large customers that had experienced incremental increases in load and for whom electricity costs were a significant percentage of expense.

GSEC also proposed a "flex" rate which would provide real time pricing for large customers. Under real time pricing, a large (Rate G-1) customer would be able to make energy decisions which reflect marginal energy prices on a daily basis.

B. *BIA*

BIA supported GSEC's proposal for economic development rates and is a signatory to the Settlement.

C. *OCA*

In the prefiled testimony of Mr. Traum, OCA supported a targeted lifeline rate, recommended adjusting GSEC's rate base due to anticipated growth and lower employee levels, recommended excluding employee bonuses and other incentives from rate base, and recommended that the cost of service for each class reflect the degree to which those customers are at risk of leaving the system. OCA also recommended that no particular class be allocated less than 75% or more than 125% of the overall percentage change subject to commission approval. Finally, with regard to responsibility for any shortfall in revenues due to economic

development rates, Mr. Traum recommended that GSEC be bound by the terms of the Commission's determination in its economic development rates proceeding commenced in response to 1995 legislation.

The prefiled testimony of Mr. Lyle recommended a return on common equity of 9.75% to 10% and an overall rate of return between 9% and 9.125%. OCA is a signatory to the Settlement.

D. *Staff*

The prefiled testimony of Mr. Frantz recommended a return on common equity of 8.75% and an overall rate of return of 8.43%.

The prefiled testimony of Mr. Thyng differed with GSEC's estimates of future Polychlorinated Biphenyl (PCB) related costs, questioned GSEC's negative 15% salvage rate and recommended tracking all distribution plant accounts separately rather than in aggregated categories.

The prefiled testimony of Mr. Cunningham

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recommended the following: a reduction in revenues based on removal of GSEC's hazardous waste reserves from rate base so that they would not earn a return on those reserves; adjustments to cash working capital and operating expenses to better reflect GSEC's operations; and maintenance of the current whole life depreciation methodology, existing depreciation lives for Structures and Improvements, and Staff's negative net salvage value.

Mr. Sullivan recommended further reductions in rate base. In his opinion, certain deferred tax debits amounting to $1.4 million were improperly included in rate base. He recommended removal of $.3 million deferred tax debits related to a three-year phase in of unbilled revenue and removal of $1.1 million deferred tax debits relating primarily to rate adjustment mechanisms that are fully recovered through reconciling adjustment clauses and, therefore, should not be included in base rates. The Finance Department's adjustments described above, coupled with Mr. Frantz's recommendations on rate of return, resulted in a reduction of $293,000 in annual revenues.

Staff is a signatory to the Settlement.

E. *Settlement*

The full terms of the Settlement are found at Exhibit 5, which consists of an 11 page settlement and 32 pages of attachments. Key terms are summarized below.

Under the Settlement GSEC will receive an increase of $1.094 million to its revenue requirement effective on or after November 1, 1995. The total increase is 1.90%, though it is not uniformly allocated. The increase to any particular class is capped at 2.38%, which is 125% of the total overall percentage change. Rate class increases range from a low of 0.79% (Rate G-1) to a high of 2.38% (Rate D, D-10, T, G-2, G-3, and Street Lighting). A typical residential customer using 500 kwh per month (Rate D) will see a monthly bill of $41.74, up $1.90 from the current bill of $39.84.

GSEC waives its right to surcharge customers for the difference between temporary rates and

permanent rates. Though filed for effect on or after November 1, 1995, the new rates will not be imposed until June 1, 1996.

The agreed upon overall cost of capital is 9.03%.

[1-3] GSEC accepts Staff's negative net salvage rate of 10%. For tax purposes, cost of removal of hazardous waste is not included in tax depreciation but is deducted in the year in which it is incurred. Prior to 1990, the Company had flowed through to customers its tax deductions for cost of removal, which contributed to a deficiency in the Company's reserve for deferred taxes. In 1990, the Company commenced the recognition of deferred taxes on such tax deductions. However, in recognition of the prior flow through accounting and the current deficiency in the reserve for deferred taxes, the currently agreed upon increase in book depreciation will be recovered from customers without any associated tax benefits. Therefore, the Company will not record any reversing deferred taxes on this increase in book depreciation until such time as the prior flow through of cost of removal tax benefits is fully recovered. The Company indicated it would set up a cost tracking mechanism to monitor the replenishment of the current deficiency in the reserve for deferred taxes referred to above.

In addition, GSEC agrees to maintain its current whole life depreciation methodology and to submit a new depreciation study with its next rate case filing. The Company agrees to survey other New Hampshire electric utilities' methodologies on accounting for gross salvage and cost of removal data and present its findings as part of its next depreciation study.

The Fuel and Purchased Power Clause Adjustment mechanism will be amended as of November 1, 1995 to reflect the collection of Franchise Tax obligations directly related to these factors in the reconciliation of costs with revenues.

[4] The inclusion of SFAS 106 deferrals (July 1993-July, 1998) and deferred early retirement costs in rate base is agreed by GSEC, OCA and Staff to be appropriate because these amounts have been funded by the company.

In the event GSEC seeks to change to accrual accounting for unbilled revenues, it will seek Commission approval prior to making said

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accounting change.

There are no costs regarding the Restructuring of Electric Utilities, Pilot Program on Retail Wheeling (DE 95-250) included in the Settlement. The Pilot Program is not a consideration in any aspect of the Settlement.

[5] The economic development rates are agreed to as filed, with the following changes: they will be amended to conform to the Commission's Order No. 21,895 limiting their applicability to customers whose primary Standard Industrial Classification (SIC) Code belongs to Manufacturing, Major Groups 20 - 39, as defined in the *Standard Industrial Classification Manual*, published by the United States Office of Management and Budget.[1(38)]

The experimental real time pricing "flex" rate is agreed to as filed. GSEC expects to market the program to 6 or 7 of its largest Rate G-1 customers.

Costs of the existing Service Extension Discount (SED) rate are not included in rates, as they are currently being reimbursed in full by GSEC's affiliated company, New England Power Company.

III. COMMISSION ANALYSIS

Having reviewed the Settlement and supporting testimony presented at the April 11, 1996 hearing, we find the terms to be acceptable and in conformance with RSA 378:28. Therefore we will approve the Settlement; however, we will make public the return on common equity.

[6] While we recognize that specifying the return on equity may be an issue which is sensitive to GSEC, we see no reason in this case to keep this information confidential. We have an obligation to ratepayers, shareholders and the general public to determine rates which are just and reasonable and which provide the utility with the opportunity to earn a fair return on its investment. Return on common equity is a necessary element of that analysis. Without specifying that component, we cannot meet our statutory obligation pursuant to RSA 378:28.

In any event, the return on common equity can be calculated by an analysis of the data provided in the Settlement. Exhibit 5, Attachment 1, includes an overall 9.03% rate of return on rate base of $38.588 million (Page 1 of 3, Footnote A). Attachment 1 also shows that 8.42% is included as the return on long-term debt of $16.0 million (Page 3 of 3, Footnote A) and that 6.57% is included for the return on short-term debt of $3.550 million (Page 3 of 3, Footnote A). Based on our analysis of this data, we can calculate that the amount of common equity in the Company's capital structure is $19.038 million and the return on common equity included in the Settlement is 10%. We find this return to be just and reasonable.

We note that GSEC's last rate case was concluded in September, 1992. GSEC has kept its rates comparatively low and taken steps in recent years to reduce its staff and expenses.

[7] Because GSEC is waiving its right to surcharge customers for the difference between temporary rates and permanent rates from the period of November 1, 1995 through May 31, 1996, the new rates will not actually be felt by customers until June 1, 1996. The approved rates will be used to determine the final unbundled rates which will be used for Granite State's Pilot Program Docket No. DR 95- 250.

The New Hampshire Jobs Rate Discount allows customers who increase their employment level by 5% from the previous year to receive a 10% discount for a two-year period on their base portion of their bill exclusive of any adjustment clause costs in effect. GSEC's second economic development program, New Hampshire Growth Rate Discount, is for eligible Rate G-1 customers who increase load by 100 kW of billing demand or 20,000 kWh per month. Eligible customers would receive a 30% discount off base rates for two years exclusive of adjustment clauses. GSEC states that both economic development rates exceed the incremental costs of serving new load and therefore no revenue request has been made to recover the difference between the discounted rates and the economic development rates in this proceeding. The April 23, 1996 revised tariff changes for GSEC's two economic development rates (i.e., New Hampshire Jobs Rate Discount and New Hampshire Growth Rate Discount) now meet the criteria we established in Order No. 21,895 and will be approved.

Consistent with our decision in DR 95-180, Public Service Company of New Hampshire's filing for Economic Development and Business Retention, however, we restate our position concerning our interpretation of RSA 378:11-a that the utility is not entitled to recover the difference between the regular tariffed rate and the economic development rate from other ratepayers. We note that pending legislation, if enacted into law, would direct us to change our interpretation of the revenue responsibility associated with economic development rates.

[8] The GSEC Flex rate will allow GSEC to reflect and customers to better utilize the information conveyed by short-term marginal cost pricing. The marginal energy price will be posted for customers one-day in advance for each hour of the day. Customers will then have the opportunity to change consumption based on the price forecast. This is a new and complex rate for customers and customers should be aware that they may not save money by enrolling in the program. Because the program is experimental for one year and because we believe it could add valuable insight to pricing in a more competitive marketplace, we will approve the FLEX rate for one year and direct GSEC to report to us at the end of the program year on the number of customers taking service under this rate and how successful GSEC believes the program has been.

It is our understanding that the SED rate will continue to be offered, and honored for those customers already taking service under that rate. Costs associated with the discount continue to be excluded from GSEC's expenses, which is consistent with a prior settlement agreement and Commission directive.

We appreciate the efforts of GSEC, OCA, BIA and Staff to work together to develop a comprehensive settlement encompassing a large number of issues during a particularly busy time for all those involved in the electric industry.

Based upon the foregoing, it is hereby

ORDERED, that the Settlement entered into between the Parties and Staff for a permanent rate increase of $1.094 million effective for usage on and after June 1, 1996 is approved; and it is

FURTHER ORDERED, that GSEC's two economic development rates, the Jobs Rate Discount and the Growth Rate Discount, as well as the experimental real-time pricing FLEX Rate and the rate design incorporated in the Settlement are approved; and it is

FURTHER ORDERED, that compliance tariffs be filed within 15 days of this order.

By order of the Public Utilities Commission of New Hampshire this thirteenth day of May, 1996.

FOOTNOTES

[1]On April 23, 1996, GSEC filed a letter with attachments that included, among other things, revised tariff pages for its proposed New Hampshire Growth Rate Discount program and its New Hampshire Jobs Rate Discount program that GSEC believes conforms with Commission Order No. 21,895. GSEC also removed language in its tariff pages that refers to whether electricity is a significant portion of a customer's total operating costs.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Granite State Electric Co., DR 95-169, Order No. 21,888, 80 NH PUC 697, Oct. 30, 1995. [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.

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NH.PUC*05/13/96*[89155]*81 NH PUC 365*Retail Competition Pilot Program

[Go to End of 89155]

81 NH PUC 365

Re Retail Competition Pilot Program

Applicant: Public Service Company of New Hampshire

DR 95-250
Order No. 22,142

New Hampshire Public Utilities Commission

May 13, 1996

ORDER authorizing an electric utility to proceed to participate in a pilot program for competitive electric services even though the utility had not yet established the legally and functionally

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separate affiliate mandated for such in Order No. 22,118 (81 NH PUC 310, *supra*). Instead, the commission accepts the utility's plan to use a separate "team" of employees to oversee the new marketing program, which team at all times will be completely separated from the utility's other retail activities and will be subject to a strict code of conduct. However, the utility still is required to pursue formation of a separate subsidiary or affiliate as expeditiously as possible.

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1. INTERCORPORATE RELATIONS, § 1.1

[N.H.] Nature of relationship — Competitive provision of electric service — By dominant electric utility — Under pilot program for retail competition — Necessity of forming separate subsidiary or affiliate — Participation in pilot pending regulatory approvals for new affiliate — Marketing through separate "team" of employees used exclusively for pilot program functions — Monitoring and controls of team activities. p. 366.

2. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric service — Pilot program for retail competition — Means of competing — Through separate "team" of employees for the interim — Necessity of expeditious formation of distinct power marketing subsidiary or affiliate for the long-term. p. 366.

BY THE COMMISSION:

ORDER

I. INTRODUCTION

This order addresses a request by Public Service Company of New Hampshire (PSNH) relative to the terms and conditions under which it will be permitted to market and sell power to Pilot customers. Briefly, the procedural history of this matter is as follows.

In the Final Guidelines for the Pilot, the Commission expressed a strong preference for requiring franchise utilities to form legally separate retail affiliates in order to participate in the Pilot as competitive suppliers. Order No. 22,081 (February 28, 1996). Subsequent to that order, hearings were held before the Commission relative to a joint recommendation entered into by Staff and PSNH. During those hearings PSNH presented extensive testimony regarding the difficulties associated with the formation of such an affiliate. Specifically, PSNH alleged that it would have to obtain the consent of its lenders before seeking regulatory approvals from the U.S. Securities and Exchange Commission (SEC) and the Federal Energy Regulatory Commission (FERC). According to PSNH, there was significant potential for extensive delays in obtaining such consents and approvals. Based upon that testimony the Commission allowed PSNH to operate as a supplier in the Pilot through a functionally distinct division within the PSNH operation.

After receiving new information, the Commission reconsidered its previous decision and prohibited PSNH from conducting retail marketing activities and making sales to Pilot customers through the PSNH organization. Order No. 22,118 (April 24, 1996). The Commission ruled that only a legally and functionally separate affiliate or subsidiary of PSNH could participate as a competitive supplier. The Commission recognized that it would be necessary for PSNH and/or its parent company, Northeast Utilities (NU), to seek regulatory approvals before it could form and operate such an affiliate. Based upon this recognition, the Commission indicated that it would entertain proposals to allow PSNH to participate in the Pilot pending such approvals.

In an April 23, 1996 letter to the Commission, PSNH indicated that SEC and FERC approvals would probably not be received before mid- June. PSNH presented a proposal under which it sought authority to "act as if the affiliate existed, on an interim basis," until such regulatory approvals were received. Specifically, PSNH proposed using a separate team to work on the Pilot whose members "would operate under a strict code of conduct that would ensure that competitively sensitive data is not shared." PSNH also proposed that power would be "transferred" to the separate team under the same terms and conditions as the wholesale contract that it would file with the FERC for approval of sales to its retail affiliate. After receiving all necessary regulatory approvals, PSNH indicated that it would assign all retail contracts to the

newly formed affiliate.

After receiving written comments, the Commission deliberated this matter at its May 6, 1996 public meeting.

II. COMMISSION ANALYSIS

[1, 2] We will allow PSNH to proceed according to the commitments set forth in its April 23, 1996 letter, which include the following terms and conditions: (a) the establishment of a separate team to work on the Pilot, the members of which are separated from PSNH's regulated retail activities; (b) the establishment of a code of conduct in order to ensure that competitively sensitive data is not shared with Pilot team members; (c) recorded transfers of wholesale power to the Pilot team at the same rates and under the same terms and conditions as the wholesale contract which PSNH has filed at the FERC; and (d) the establishment and implementation of accounting mechanisms to keep track of all costs associated with the work of the Pilot team. After PSNH or NU receives the necessary regulatory approvals from the SEC and FERC, which we expect it will seek diligently and as expeditiously as possible, PSNH must cease all Pilot-related marketing activities and all contracts with Pilot customers must be assigned to the retail affiliate.

In light of our decision, we direct PSNH to file with the Commission a list of the names, company affiliation(s) and titles of all employees who have been designated to participate in the Pilot team. During the time that the Pilot team operates, we expect that all such employees will work exclusively on the activities which will be assumed by the retail marketing affiliate for which regulatory approvals are pending. Under no circumstances should employees other than those designated as members of the Pilot team participate in the marketing and sales activities associated with the Pilot. We also direct PSNH to file with the Commission a written copy of the code of conduct which it has established for its employees relative to the separation of Pilot employees from other employees of PSNH's regulated activities. We direct PSNH to file such information by noon on May 15, 1996. Finally, as with other Commission orders, we reserve the right to reverse or modify this decision based upon new information or developing circumstances. Based upon the foregoing, it is hereby

ORDERED, that PSNH is authorized to market and sell power to Pilot customers, on an interim basis, under strict adherence to the terms and conditions set forth herein.

By order of the Public Utilities Commission of New Hampshire this thirteenth day of May, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Retail Competition Pilot Program, DR 95-250, Order No. 22,081, 81 NH PUC 237, Mar. 29, 1996. [N.H.] Re Retail Competition Pilot Program, DR 95-250, Order No. 22,118, 81 NH PUC 310, Apr. 24, 1996.

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NH.PUC*05/13/96*[89156]*81 NH PUC 367*Public Service Company of New Hampshire

[Go to End of 89156]

81 NH PUC 367

Re Public Service Company of New Hampshire

DR 96-077
Order No. 22,143

New Hampshire Public Utilities Commission

May 13, 1996

ORDER denying reconsideration of Order No. 22,045 (81 NH PUC 174, *supra*), in which the commission had refused to exclude from an electric utility's fuel and purchased power adjustment clause (FPPAC) proceeding issues relating to 1991 outages caused by mussel fouling at the Millstone nuclear station. Accordingly, a procedural schedule is adopted for the remainder of the FPPAC proceeding.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 12

[N.H.] Direct energy costs — Fuel and purchased power adjustment clause — Scope of proceeding — Accelerated procedural schedule — Review of extended, unplanned power plant outages — Particular to mussel fouling at the Millstone 3 unit — Affirmation — Electric utility. p. 369.

2. ELECTRICITY, § 4

[N.H.] Generating plant — Operating practices — Nuclear plant outages — Relative to the Millstone 3 unit — Consideration within fuel and purchased power adjustment clause proceeding — Affirmation. p. 369.

3. PROCEDURE, § 16

[N.H.] Discovery and inspection — Confidentiality — Of intercorporate agreement — Relative to certain nuclear plant operations and outages — No necessity of public disclosure. p. 369.

APPEARANCES: Gerald M. Eaton, Esq. for Public Service Company of New Hampshire; Dean, Rice and Howard by Mark W. Dean, Esq. for New Hampshire Electric Cooperative, Inc.; Michael W. Holmes, Esq. for Office of Consumer Advocate; Eugene F. Sullivan, III, Esq. for the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY AND

POSITIONS ON RECONSIDERATION

On March 11, 1996, Public Service Company of New Hampshire (PSNH) filed with the New Hampshire Public Utilities Commission (Commission) a petition for adjustment of rates pursuant to the Fuel and Purchased Power Adjustment Clause (FPPAC) for the period June 1, 1996 through December 31, 1996, along with supporting testimony and exhibits.

The Office of Consumer Advocate (OCA) is a statutorily authorized intervenor. The New Hampshire Electric Cooperative, Inc. (NHEC) sought late intervention, without opposition, which the Commission granted on April 18, 1996. There were no other requests for intervention.

Prior to making its FPPAC filing, PSNH filed a Motion to Amend Scope (Motion to Amend). In the Motion to Amend, PSNH argued that five issues should be deferred until a later proceeding: a 1991 outage due to mussel-fouling at Millstone 3, a 1991 outage due to service water system problems at Millstone 3, a 1995-6 refueling outage extension at Maine Yankee, issues involving the Sharing Agreement between PSNH and Northeast Utilities, and a reactor trip at Seabrook Station in January, 1996.

OCA and Commission Staff (Staff) both objected to portions of the Motion to Amend, arguing that the two 1991 Millstone outages should be considered in this docket.

The Commission, by Order No. 22,045 (March 11, 1996), granted PSNH's request to

defer the Maine Yankee extension, the Sharing Agreement issues and the Seabrook Station reactor trip and denied PSNH's request to defer the two 1991 Millstone outages.

On March 15, 1996, PSNH filed a Motion to Reconsider Order No. 22,045 (Motion to Reconsider) solely as it related to the service water system outage at Millstone 3. PSNH argued that the two Millstone outages were discreet occurrences and need not be dealt with together. Further, if PSNH were to prevail on a finding of prudence in the mussel-fouling outage, in its view there would be no reason for investigation of the service water system outage, in that the service water problem was discovered while the mussel- fouling problem was being addressed and did not cause further delay or economic harm. PSNH states in its motion that PSNH ratepayers in fact benefitted from a swap of power that occurred because of these two outages. Finally, PSNH stated it was not yet prepared to go forward on the service water issue, and would need an additional 30 days to prepare for hearings on this issue.

Staff, on March 20, 1996, objected to the Motion to Reconsider, arguing that because the outage occurred in 1991, there was a danger that witnesses and evidence would not be available. Further, Staff argued that to its knowledge PSNH had already developed testimony on this issue. OCA did not respond to the Motion to Reconsider.

The Commission, at its March 25, 1995 public session announced that it had considered the Motion to Reconsider and Staff's objection and would deny PSNH's Motion.

At the duly noticed prehearing conference on March 28, 1996, the Parties and Staff proposed a procedural schedule for the duration of the case, in light of the Commission's decision. The

schedule is as follows:

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

Staff and Intervenors fax data
requests to PSNH/NUSCO               March 29, 1996
Remaining data requests from
Staff and Intervenors, in
hand or fax (except for OCA
requests on Seabrook outages)         April 2, 1996
PSNH Testimony on service water
outage                               April 10, 1996
Additional OCA data requests on
Seabrook outages                     April 12, 1996
Responses to data requests           April 16, 1996
Staff and Intervenors data
requests on service water
outage                          April 17, 1996 noon
PSNH responses to OCA data
requests on Seabrook outages         April 23, 1996
PSNH responses on service
water outage                         April 24, 1996
Technical session/Oral data
requests                             April 25, 1996
PSNH Responses to oral data
requests propounded at
Technical session                    April 29, 1996
PSNH Updated exhibits filed          April 29, 1996
Staff and Intervenor testimony     May 6, 1996 noon
PSNH rebuttal testimony/
Statement of issues               May 10, 1996 noon
Hearing on the merits               May 14-16, 1996
Revised statement of issues            May 20, 1996
Briefs, if necessary                   May 27, 1996
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On April 4, 1996 PSNH filed a Motion for Protective Order regarding a confidential agreement reached between North Atlantic Energy Service Corporation, Northeast Utilities Service Company and Westinghouse Electric Corporation. In the Motion for Protective Order, PSNH asserts that the harms of disclosure outweigh the benefits of public disclosure and protective should be accorded pursuant to RSA 91-A:5,IV and N.H. Admin. Rules, Puc 204.08 The Staff concurred in the Motion; OCA took no position.

This order will address the procedural schedule, the Motion for Protective Order and the Motion for Reconsideration.

II. COMMISSION ANALYSIS

[1-3] We will accept the procedural schedule as a reasonable though extremely accelerated schedule for completion of this case. We will also grant PSNH's Motion for Protective Order, as the request demonstrates a basis for exemption from public disclosure pursuant to RSA 91-A:5,IV and N.H. Admin. Rules, Puc 204.08.

We do not find persuasive PSNH's arguments for reconsideration of our decision regarding the 1991 Millstone 3 outage related to the service water system. PSNH has for some time been on notice that this issue would be litigated, and in the most recent FPPAC proceeding, DR 95-220, we stated that we would address this outage in the next FPPAC. *See*, Order No. 21,849 (October 3, 1995). If PSNH believes it has testimony to support the claim that ratepayers

suffered no economic harm, and perhaps even benefitted as a result of the outage, it should present that evidence at the hearing on the merits. These arguments may be persuasive regarding our evaluation of imprudence and possible penalties, but have no bearing on whether the issue should be deferred to another date.

As we stated in Order No. 22,045, we are concerned about the staleness of evidence and availability and recollection of witnesses. With an outage that dates back to 1991, the concern is a very real one. We intend to complete our review of both the 1991 Millstone 3 outages as part of this proceeding. PSNH has stated no new information to cause us to reconsider this determination.

Based upon the foregoing, it is hereby

ORDERED, that the proposed procedural schedule is APPROVED; and it is

FURTHER ORDERED, that PSNH's Motion for Protective Order is APPROVED; and it is

FURTHER ORDERED, that PSNH's Motion to Reconsider is DENIED.

By order of the Public Utilities Commission of New Hampshire this thirteenth day of May, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 95-220, Order No. 21,849, 80 NH PUC 617, Oct. 3, 1995. [N.H.] Re Public Service Co. of New Hampshire, DR 96-077, Order No. 22,045, 81 NH PUC 174, Mar. 11, 1996.

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NH.PUC*05/13/96*[89157]*81 NH PUC 369*Public Service Company of New Hampshire

[Go to End of 89157]

81 NH PUC 369

Re Public Service Company of New Hampshire

DR 96-138
Order No. 22,144

New Hampshire Public Utilities Commission

May 13, 1996

MOTION by electric utility for confidentiality of certain portions of a special rate contract negotiated with Wausau Papers of New Hampshire; granted as to customer-specific usage data and conservation/load management initiatives cited therein.

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1. PROCEDURE, § 16

[N.H.] Discovery and inspection — Confidentiality — Relative to special rate contract terms — Granted as to customer-specific usage data relied upon therein — Granted as to commercially sensitive conservation/load management efforts — Benefits of nondisclosure as outweighing disclosure — Electric utility. p. 370.

Page 369

BY THE COMMISSION:

ORDER

On April 25, 1996, the 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 Wausau Papers of New Hampshire (Wausau) to provide rates and charges that make the cost of purchasing electricity from PSNH competitive with Wausau's generation alternatives. Concurrent with the special contract, PSNH filed a Motion for Confidential Treatment of portions of the contract and supporting materials (hereinafter collectively the Information). According to PSNH, the Commission Staff (Staff) neither opposed nor supported the motion prior to reviewing the special contract; the Office of Consumer Advocate also took no position.

In its motion PSNH argues that the Information should be afforded protective treatment because, using our analysis in *Re NET*, Order No. 21,731, 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, PSNH states that it provided the documents required in Puc 204.08(b)(1) and cited the statutory support required by Puc 204.08(b)(2). PSNH states that the Information consists of details of confidential commercial and financial information that is not general public knowledge and for which measures have been taken to prevent dissemination in the ordinary course of business, thus meeting the requirements of Puc 204.08(b)(4). PSNH further provides facts describing the benefits of non-disclosure, thus meeting the requirements of Puc 204.08(b)(3).

[1] We recognize that the detailed customer specific information regarding energy requirements, operations results, conservation and load management efforts and competitive position contained in the Information is critical to review of the special contract by the Commission and Commission Staff, as required by RSA 378:18. We also recognize that businesses engaged in discussions with regulated utilities are reluctant to disclose sensitive commercial and financial information if it is to become part of the public record.

PSNH has alleged that disclosure of the information would result in competitors of both PSNH and Wausau to use load information and commercial decision making criteria contained in the information to gain an unfair commercial advantage. In addition, harm to PSNH would result because disclosure would jeopardize its ongoing commercial relationship based on an understanding that financially sensitive information will be treated confidentially.

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 to PSNH of non-disclosure appear to outweigh the benefits to the public 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 PSNH's Motion for Confidential Treatment of portions of its special contract with Wausau and the supporting materials thereto, is GRANTED; and it is

FURTHER ORDERED, that this order is subject to reconsideration in the event that the Commission Staff or any party raises concerns and it is subject to the on-going right 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 thirteenth day of May, 1996.

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*05/13/96*[89158]*81 NH PUC 371*Granite State Long Distance, Inc.

[Go to End of 89158]

81 NH PUC 371

Re Granite State Long Distance, Inc.

DE 96-105
Order No. 22,145

New Hampshire Public Utilities Commission

May 13, 1996

ORDER granting an interexchange telephone carrier interim authority to offer intrastate message toll services.

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1. CERTIFICATES, § 123

[N.H.] Telephone carrier — Intrastate message toll services — Interim authority — Factors — Partial resale basis — Arrangements with affiliates — Exclusion of local exchange services. p. 371.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate message toll services — Interim authority — Exclusion of local exchange services. p. 371.

3. SERVICE, § 171

[N.H.] Telephone — Intrastate message toll services — Partial resale basis — Interim authority — Limits. p. 371.

4. RATES, § 584

[N.H.] Telephone rate design — Intrastate message toll services — Interim rate authority — Partial resale basis — Conditions — Prevention of cross-subsidies with affiliates. p. 371.

BY THE COMMISSION:

ORDER

On April 5, 1996, Granite State Long Distance, Inc. (GSLD), which is affiliated with Granite State Telephone, Inc., (GST) a New Hampshire public utility, and Yankee Telecom, Inc. (formerly known as Karlin Acquisition Corp.) a New Hampshire corporation, petitioned the New Hampshire Public Utilities Commission (Commission) for authority to provide certain intrastate interexchange services in the State of New Hampshire (petition) pursuant to, *inter alia*, RSA 374:22 and RSA 374:26. GSLD has demonstrated the financial, managerial and technical ability to offer service as conditioned by this order.

The Commission previously approved numerous petitions filed during the Trial Period, pursuant to the Modified Stipulation Agreement (Stipulation) in Docket No. DE 90-002, approved by Order No. 20,916 (August 2, 1993). Our orders in those numerous dockets granted the petitioner(s) interim authority to offer intraLATA toll service, specifically excluding local exchange service, for the service territory of the entire State of New Hampshire, during the Trial Period, in order to allow the Commission to analyze competition during the two-year Trial Period.

Because the Trial Period Identified by the Stipulation expired on September 30, 1995, we have explicitly clarified that the authority we had granted remains in effect until we specifically modify or revoke that authority, after analysis of the Trial Period. *See* Order No. 21,851 (October 3, 1995). Likewise, our grant of authority ordered herein remains in effect until we specifically modify or revoke that authority.

[1-4] Special circumstances differentiate GSLD's petition for authority to provide certain intrastate interexchange services in the State of New Hampshire from other intrastate toll providers previously approved by the Commission. As an affiliate of GST, a regulated local exchange carrier, GSLD has the potential for cross- subsidizing its competitive services by GST's regulated operations. However, Staff has concluded that the following two conditions should prevent such cross-subsidization.

1. GSLD has entered into an affiliated contract with GST whereby GST personnel will provide management, billing and collection, marketing and other services to the petitioner; and

2. GSLD has entered into a contract with an interexchange carrier (IXC), authorized to do business in the State of New Hampshire, from which the petitioner will resell intrastate telecommunications services.

The Support and Billing Services Agreement between GSLD and GST filed with the Commission is being investigated and will be the subject of a future order in DR 96-111. Staff has reviewed the agreement to determine the relationship between GST and GSLD and has concluded that a cross subsidy between the local exchange company (GST) and the intrastate toll reseller provider (GSLD) does not exist based on the affiliated contract.

In addition, GSLD's petition to provide intrastate message telecommunications services will not require the GST network to provide toll services, other than tariff access services. The IXC, as the underlying carrier, will be performing the toll function and therefore will be responsible for all tariff access charges due to GST. Staff's recommendation is founded on the ongoing presence of an authorized unaffiliated IXC between the local exchange company (GST) and the intrastate telecommunications service provider (GSLD). Absent the protection that an unaffiliated IXC provides, Staff would have opposed the petition as filed.

The public good is served by permitting such competition by telecommunications companies. The Commission permits competitive entry in order to foster competition in the New Hampshire intrastate toll market and to allow the Commission to analyze the effects of such competition.

The public should be provided an opportunity to respond in support of, or in opposition to this petition.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that GSLD is granted interim 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. GSLD 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, GSLD shall notify the Commission of the change.

5. GSLD is exempted from N.H. Admin. Rules, Puc 406.03 Accounting Records and Puc 407 Forms Required of All Telephone Utilities.

6. GSLD will be required to comply with PUC 409 Uniform System of Accounts for Telecommunication Companies.

7. GSLD 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. GSLD 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. GSLD shall compensate the appropriate Local Exchange Company for all originating and terminating access used by GSLD pursuant to NET Tariff N.H.P.U.C. 79, Switched Access Service Rate or its successors or its relevant equivalent contained in the tariffs of the Independent Local Exchange Companies.

10. New Service offerings filed for approval with the Commission shall be accompanied by tariff pages describing the service, rates and effective dates; and it is

FURTHER ORDERED, if GSLD changes its operations to provision toll which would require any additional use of the GST network or resources other than represented in the

petition or the Support and Billing Services Agreement, the petitioner is required to 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 nothing contained in this Order shall be construed to allow GSLD to operate outside of the conditions set forth in appropriate Local Exchange Company tariffs; and it is

FURTHER ORDERED, that GSLD 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 May 20, 1996, and an affidavit proving publication shall be filed with the Commission on or before May 27, 1996; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, et seq. GSLD 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 3, 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 June 10, 1996; and it is

FURTHER ORDERED, this Order *Nisi* shall be effective June 12, 1996, unless the Commission provides otherwise in a supplemental order issued prior to the effective date; and it is

FURTHER ORDERED, that GSLD shall file a compliance tariff with the Commission on or

before June 12, 1996, in accordance with NH Admin. Rules, Puc 1601.01 (b).

By order of the Public Utilities Commission of New Hampshire this thirteenth day of May, 1996.

Notice of Conditional Approval of
GRANITE STATE LONG DISTANCE, INC.

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

On April 5, 1996, Granite State Long Distance, Inc., (GSLD), which is affiliated with Granite State Telephone, Inc., filed with the New Hampshire Public Utilities Commission (Commission) a petition to provide intrastate interexchange telecommunications services in the State of New Hampshire.

In Order No. 22,145, issued in Docket No. DE 96-105, the Commission granted GSLD conditional approval to operate as of June 12, 1996, subject to the right of the public and interested parties to comment on GSLD 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 GSLD's petition to do business in the State must be submitted in writing no later than June 3, 1996, and reply comments no later than June 10, 1996, to:

Dr. Sarah P. Voll
Executive Director and Secretary
Public Utilities Commission
8 Old Suncook Road
Concord, New Hampshire 03301-7319

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Generic Investigation into IntraLATA Toll Competition Access Rates, DE 90-002, Order No. 20,916, 78 NH PUC 365, Aug. 2, 1993. [N.H.] Re Long Distance North of New Hampshire, Inc., et al., DE 87-249, Order No. 21,851, 80 NH PUC 628, Oct. 3, 1995.

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NH.PUC*05/14/96*[89159]*81 NH PUC 374*CCI Telecommunications of New Hampshire, Inc.

[Go to End of 89159]

81 NH PUC 374

Re CCI Telecommunications of New Hampshire, Inc.

DE 96-010
Order No. 22,146

New Hampshire Public Utilities Commission

May 14, 1996

ORDER authorizing a telecommunications carrier to proceed with plans to offer private line intrastate intraLATA service, as limited to nonswitched service only and as limited to that franchise territory assigned to the state's dominant local exchange carrier (NYNEX).

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1. CERTIFICATES, § 123

[N.H.] Telephone carrier — Provision of private line intrastate intraLATA services — As limited to nonswitched service — Geographical restrictions. p. 375.

2. SERVICE, § 433

[N.H.] Telephone — Provision of private line intrastate intraLATA services — Limitations — Nonswitched service only — Service within franchised area of dominant local exchange carrier only. p. 375.

APPEARANCES: Bartlett L. Thomas, Esq. for CCI Telecommunications of New Hampshire, Inc.; Victor D. DelVecchio, Esq. for NYNEX; J. Michael Joyal, Jr. for the City of Dover; Devine, Milliment & Branch by Frederick J. Coolbroth, Esq. on behalf of Granite State Telephone, Merrimack County Telephone, Contoocook Valley Telephone, Wilton Telephone, Hollis Telephone, Dunbarton Telephone, Northland Telephone, Bretton Woods Telephone and Dixville Telephone; Rothfelder Law Offices by Martin C. Rothfelder, Esq. on behalf of Union Telephone; Robert Glass, Esq. on behalf of MCI Metro Access Transmission Services; Ernest Carpenter for MedNet, E. Barclay Jackson, Esq. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On January 11, 1996, CCI Communications of New Hampshire (Continental) filed with the New Hampshire Public Utilities Commission (Commission) a Petition for Authority to Provide Telecommunications Services, along with supporting documents and a Motion for Interim authority. Continental is a subsidiary of Continental Cablevision which now provides cable television service to numerous communities in the State.

In response to an Order of Notice dated February 6, 1996, the following parties requested full intervenor status: New England Telephone and Telegraph (NYNEX), the City of Dover (Dover), Granite State Telephone, Merrimack County Telephone, Contoocook Valley Telephone, Wilton Telephone, Hollis Telephone, Dunbarton Telephone, Northland Telephone, Bretton Woods Telephone, and Dixville Telephone (the Independents); MCI Metro Access Transmission Services (MCI Metro), and Union Telephone Company (Union). MedNet Services (MedNet) requested limited intervention. Frontier Communications of New England, Inc. sought late

intervention but later withdrew its request.

At a prehearing conference held on February 27, 1996, Continental proposed to limit the instant docket to the issue of interim authority. Continental objected to the intervention of Union and the Independents. The Commission granted intervenor status to all requesting parties for the limited purpose of negotiating the scope of the docket at a technical session immediately following the prehearing conference. At the technical session the parties and Staff agreed to limit the scope of the docket to the issue of authority for Continental to provide services at the same level as that granted to MCI Metro in Docket No. DE 94-151 rather than

interim authority as had been proposed by Continental.

A second technical session was held March 12, 1996. The parties and Staff reached a stipulated agreement (Stipulation) which was presented to the Commission at a duly noticed public hearing on April 8, 1996. At the public hearing, the Commission granted intervenor status to NYNEX, the Independents, Dover, MCI Metro, and Union; MedNet was granted limited intervenor status.

By letter dated April 4, 1996, the Portsmouth Cable Commission (Portsmouth) notified the Commission that it wished to intervene due to concern that the Stipulation might affect the Portsmouth Franchise Agreement. During the hearing on April 8, 1996, Portsmouth withdrew its request to intervene but presented comments on the process.

At the April 8th hearing, the Commission ordered that the record remain open for further comments and for response from the Dover City Council, which was to meet on April 10th to vote formally on the Stipulation. By letter dated April 11, 1996, the City of Dover informed the Commission that it had authorized the City Manager to sign the Stipulation.

II. POSITIONS OF THE PARTIES AND STAFF

The parties and Staff agreed that Continental shall receive authority to provide telecommunications services in New Hampshire, limited by certain restrictions as to services, geographic area, and reporting requirements.

The parties and Staff agreed that Continental shall provide only point to point, intraLATA non-switched services between (i) interexchange carrier (IXC) points of presence (POPs), (ii) between end users and IXC POPs, and (iii) between end users.

The parties and Staff agreed that Continental's authority shall be limited geographically to NYNEX's local franchise territory. Expansion of this approved geographic area may only be accomplished by petition to the Commission pursuant to RSA 374:22 and other applicable law. In the event such a petition is filed, copies shall be served upon each party to this docket.

The parties and Staff agreed that, in addition to other statutory reporting requirements, for one year from the approval of the Stipulation, Continental shall report to the Commission quarterly as to certain technical information regarding circuits, fiber, number of customers, and interconnection charges so that the Commission can monitor effects, if any, on the telecommunications market. The reports will be accorded confidential treatment.

The parties and Staff agreed that, after the one year reporting period, any party to the Stipulation may submit in writing to the Commission, observations, conclusions, and recommendations.

The parties and Staff attached to the Stipulation a 31 page tariff for Continental, NH PUC No. 1.

III. COMMISSION ANALYSIS

[1, 2] The authority sought is specifically limited in scope to non-switched service and to a geographic area; Continental clearly recognizes its obligation to seek further Commission approval if it chooses to expand its operations.

After careful review of the record in this docket, we conclude that the conditions set forth in the proposed Stipulation are reasonable and in the public interest. As competition is advanced by the provisions of the Telecommunications Act of 1996, Continental may petition for a broader scope of authority. At present, we find that the citizens of New Hampshire may benefit from granting the limited authorization sought.

Based upon the foregoing, it is hereby

ORDERED, that Continental's petition for authority to provide telecommunications services, as detailed and limited in the Stipulation, is GRANTED; and it is

FURTHER ORDERED, that Continental shall file a compliance tariff with the Commission on or before June 13, 1996, in accordance with NH Admin. Rules, Puc 1601.02 (a).

By order of the Public Utilities Commission of New Hampshire this fourteenth day of May, 1996.

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NH.PUC*05/14/96*[89160]*81 NH PUC 376*Public Service Company of New Hampshire

[Go to End of 89160]

81 NH PUC 376

Re Public Service Company of New Hampshire

DR 96-113
Order No. 22,147

New Hampshire Public Utilities Commission

May 14, 1996

MOTION by electric utility for confidentiality of certain portions of a special rate contract negotiated with Unitrode Corporation; granted as to customer-specific usage data and business expansion plans cited therein.

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1. PROCEDURE, § 16

[N.H.] Discovery and inspection — Confidentiality — Relative to special rate contract terms — Granted as to customer-specific usage data relied upon therein — Granted as to customer-specific business expansion plans — Benefits of nondisclosure as outweighing disclosure — Electric utility. p. 376.

BY THE COMMISSION:

ORDER

On April 12, 1996, the 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 Unitrode Corporation (Unitrode) to provide for rates and charges which allow Unitrode to expand in Merrimack, New Hampshire and allow the existing manufacturing operations in Merrimack to remain a viable business opportunity. Concurrent with the special contract, PSNH filed a Motion for Confidential Treatment of portions of the contract and supporting materials (hereinafter collectively the Information). According to PSNH, the Commission Staff (Staff) neither opposed nor supported the motion prior to reviewing the special contract; the Office of Consumer Advocate also took no position.

In its motion PSNH argues that the Information should be afforded protective treatment because, using our analysis in *Re NET*, Order No. 21,731, 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, PSNH states that it provided the documents required in Puc 204.08(b)(1) and cited the statutory support required by Puc 204.08(b)(2). PSNH states that the Information consists of details of confidential commercial and financial information that is not general public knowledge and for which measures have been taken to prevent dissemination in the ordinary course of business, thus meeting the requirements of Puc 204.08(b)(4). PSNH further provides facts describing the benefits of non-disclosure, thus meeting the requirements of Puc 204.08(b)(3).

[1] We recognize that the detailed customer specific information regarding customer usage, costs, terms of service and expansion plans contained in the Information is critical to review of the special contract by the Commission and Commission Staff, as required by RSA 378:18. We also recognize that businesses engaged in discussions with regulated utilities are reluctant to disclose sensitive commercial and financial information if it is to become part of the public record.

PSNH has alleged that disclosure of the information would result in competitors of both PSNH and Unitrode to use load information, studies involving alternative sources, and other commercial decision making criteria contained in the information to gain an unfair commercial advantage. In addition, harm to PSNH would result because disclosure would jeopardize its ongoing commercial relationship based on an understanding that financially sensitive information will be treated confidentially.

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 to PSNH of non-

disclosure appear to outweigh the benefits to the public 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 PSNH's Motion for Confidential Treatment of portions of its special contract with Unitrode and the supporting materials thereto, is GRANTED; and it is

FURTHER ORDERED, that this order is subject to reconsideration in the event that the Commission Staff or any party raises concerns and it is subject to the on-going right 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 fourteenth day of May, 1996.

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*05/14/96*[89161]*81 NH PUC 377*LCI International Telecom Corporation

[Go to End of 89161]

81 NH PUC 377

Re LCI International Telecom Corporation

DR 96-117
Order No. 22,148

New Hampshire Public Utilities Commission

May 14, 1996

ORDER authorizing an interexchange telephone carrier to make various tariff revisions, including the reclassification of its calling card as a debit card and the renaming of 800 service as toll-free service.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Tariff revisions — Replacement of calling

card product with debit card — Renaming of 800 service as toll-free service — Interexchange telephone carrier. p. 377.

BY THE COMMISSION:

ORDER

[1] On April 16, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from LCI International Telecom Corporation (LCI) requesting authority to make various revisions to its tariff.

LCI is changing the name of LCI International Prepaid Calling Card to LCI International Prepaid Debit Card. The name of LCI 800 Service is being changed to LCI Toll Free Service and the name of Enhanced 800 Features to Enhanced 800/888 Features.

LCI is adding dedicated leased lines and DS-3 rates to Integrity. It is moving the Frame Plus Service description from a stand alone product into Integrity, Simply Guaranteed and Choice Virtual Network Service.

LCI is revising Promotional language and extending the LCI Home 800 promotion. Other administrative and rate revisions are proposed as well.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize LCI to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of LCI's tariff, NHPUC No. 3 are approved for effect as filed:

4th Revised Page 1 in lieu of 3rd

Revision 3rd Revised Page 2

3rd Revised Page 3 3rd Revised Page 3.1

Section 2 1st Revised Page 8 1st Revised Page 10 Original Page 10.1 1st Revised Page 16 1st Revised Page 17 1st Revised Page 19 1st Revised Page 22

Section 3 2nd Revised Page 4.1 in lieu of 1st

Revision 1st Revised Page 4.2 1st Revised Page 39 2nd Revised Page 40

Section 4 1st Revised Page 2 2nd Revised Page 10 1st Revised Page 13 Original Page 13.1 1st Revised Page 16 Original Page 16.1 1st Revised Page 18 1st Revised Page 20 1st Revised Page 21 1st Revised Page 23 1st Revised Page 24 Original Page 27.1 Original Page 27.2;

and it is

FURTHER ORDERED, that LCI file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this fourteenth day of May, 1996.

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NH.PUC*05/14/96*[89162]*81 NH PUC 378*GTE Card Services, Inc.

[Go to End of 89162]

81 NH PUC 378

Re GTE Card Services, Inc.

DR 96-120
Order No. 22,149

New Hampshire Public Utilities Commission

May 14, 1996

ORDER authorizing an interexchange telephone carrier to institute charges for a new call assistance service associated with the use of a calling card, which charge would apply when a customer seeks assistance to complete a call. Term limits also are imposed on prepaid calling cards.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Calling card offerings — Charges for associated call assistance service — Term limits or expiration dates for prepaid calling cards — Interexchange telephone carrier. p. 378.

BY THE COMMISSION:

ORDER

[1] On April 17, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from GTE Card Services, Inc., (GTE) requesting authority to revise its tariff for effect May 17, 1996.

Revisions include the addition of Card Service Call Assistance. Card Service Call Assistance applies when customers request assistance to complete a call in lieu of dialing the call themselves. The charge is $.99 for up to three minutes of use for each call placed using Card Service Call Assistance.

In addition, language has been added to the prepaid card service to identify that a prepaid

calling account shall expire on the date

Page 378

specified on the card or 180 days after the date or first use or recharge. Available balances may be extended for an additional 180 days if the customer requests.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize GTE to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of GTE's tariff, NHPUC No. 1 are approved for effect as filed:

1st Revised Page 2

1st Revised Page 7

1st Revised Page 12

1st Revised Page 13

1st Revised Page 14;

and it is

FURTHER ORDERED, that GTE file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this fourteenth day of May, 1996.

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NH.PUC*05/14/96*[89163]*81 NH PUC 379*AT&T Communications of New Hampshire, Inc.

[Go to End of 89163]

81 NH PUC 379

Re AT&T Communications of New Hampshire, Inc.

DS 96-132
Order No. 22,150

New Hampshire Public Utilities Commission

May 14, 1996

ORDER authorizing an interexchange telephone carrier to implement flat, nontime- or distance-sensitive pricing for "UniPlan" service for inbound 800, outbound toll, and calling card

calling.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — "UniPlan" service — Institution of flat rates — Rates insensitive to time and distance — Applicability — Calling card calls — Inbound 800 service — Outbound toll service — Interexchange telephone carrier. p. 379.

BY THE COMMISSION:

ORDER

[1] On April 19, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from AT&T Communications of New Hampshire, Inc., (AT&T) requesting authority to introduce a Flat Rate Pricing Option for AT&T UniPlan service for effect May 20, 1996.

Flat Rate Pricing Option (FRPO) introduces postalized usage rates for inbound (toll-free), outbound (toll) and calling card calls for AT&T UniPlan service. Postalized usage rates are insensitive to time and distance. The service is an add-on to interstate service which became effective on November 16, 1995.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize AT&T to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of AT&T's tariff, NHPUC No. 1 are approved for effect as filed:

Table of Contents

1st Revised Page 21

Section 19

Original Page 12

Original Page 13

Original Page 14

Original Page 15;

and it is

FURTHER ORDERED, that AT&T file properly annotated tariff pages in compliance with

this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this fourteenth day of May, 1996.

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NH.PUC*05/14/96*[89164]*81 NH PUC 380*QCC, Inc.

[Go to End of 89164]

81 NH PUC 380

Re QCC, Inc.

DE 96-046
Order No. 22,151

New Hampshire Public Utilities Commission

May 14, 1996

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

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1. CERTIFICATES, § 123

[N.H.] Telephone carrier — Intrastate intraLATA long-distance services — Interim authority — Assessment of competitive impacts — Exclusion of local exchange services. p. 380.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate intraLATA toll services — Interim authority — Assessment of competitive impacts — Exclusion of local exchange services. p. 380.

BY THE COMMISSION:

ORDER

[1, 2] On February 13, 1996, QCC, Inc., a Nevada corporation, petitioned the New Hampshire Public Utilities Commission (Commission) for authority to do business as a telecommunications public utility in the State of New Hampshire (petition) pursuant to, *inter alia*, RSA 374:22 and RSA 374:26. QCC, Inc. has demonstrated the financial, managerial and technical ability to offer service as conditioned by this order. The Commission previously approved numerous, similar petitions filed during the Trial Period, pursuant to the Modified Stipulation Agreement (Stipulation) in Docket No. DE 90-002, approved by Order No. 20,916 (August 2, 1993). Our orders in those numerous dockets granted the petitioner(s) interim authority to offer intraLATA toll service,

specifically excluding local exchange service, for the service territory of the entire State of New Hampshire, during the Trial Period, in order to allow the Commission to analyze competition during the two-year Trial Period.

Because the Trial Period identified by the Stipulation expired on September 30, 1995, we have explicitly clarified that the authority we had granted remains in effect until we specifically modify or revoke that authority, after analysis of the Trial Period. *See* Order No. 21,851 (October 3, 1995). Likewise, our grant of authority ordered herein remains in effect until we specifically modify or revoke that authority.

The public good is served by permitting such competition by telecommunications companies. The Commission permits competitive entry in order to foster competition in the New Hampshire intrastate toll market and to allow the Commission to analyze the effects of such competition.

The public should be provided an opportunity to respond in support of, or in opposition to this petition.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that QCC, Inc is granted interim authority to offer as a telecommunications public utility intraLATA toll service, specifically excluding local exchange service, for the service territory of the entire State of New Hampshire, subject to the following conditions:

1. The services shall be offered by approved tariffs.

2. The services shall be offered until the Commission orders otherwise.

3. QCC, Inc. shall file tariffs for new services and changes in approved services (other than rate changes), with effective dates of no less than 30 days after the date the tariffs are filed with the Commission.

4. Within one business day of offering an approved service to the public at a rate different from its rates on file with the Commission, QCC, Inc. shall notify the Commission of the change.

5. QCC, Inc. is exempted from NH Admin. Rules, Puc 406.03 Accounting Records; Puc 407 Forms Required of All Telephone Utilities; and Puc 409 Uniform System of Accounts for Telecommunications Companies.

6. QCC, Inc. shall maintain its book and records in accordance with Generally Accepted Accounting Principles.

7. QCC, Inc. 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. QCC, Inc. 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. QCC, Inc. shall compensate the appropriate Local Exchange Company for all originating

and terminating access used by QCC, Inc. pursuant to NET Tariff N.H.P.U.C. 79, Switched Access Service Rate or its successors or its relevant equivalent contained in the tariffs of the Independent Local Exchange Companies.

10. New Service offerings filed for approval with the Commission shall be accompanied by tariff pages describing the service, rates and effective dates; and it is

FURTHER ORDERED, that the authority granted herein remains in full force and effect until the Commission orders otherwise; and it is

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

FURTHER ORDERED, that QCC, Inc. 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 May 21, 1996, and an affidavit proving publication shall be filed with the Commission on or before May 28, 1996; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, et seq., QCC, Inc. 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 4, 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 June 11, 1996; and it is

FURTHER ORDERED, this Order *Nisi* shall be effective June 13, 1996, unless the Commission provides otherwise in a supplemental order issued prior to the effective date and it is

FURTHER ORDERED, that QCC, Inc. shall file a compliance tariff with the Commission on or before June 13, 1996, in accordance with NH Admin. Rules, Puc 1601.01 (b).

By order of the Public Utilities Commission of New Hampshire this fourteenth day of May, 1996.

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Notice of Conditional Approval of
QCC, Inc.

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

On February 13, 1996, QCC, Inc., a Nevada corporation, filed with the New Hampshire Public Utilities Commission (Commission) a petition to do business as a telecommunications public utility in the State of New Hampshire, specifically to provide intrastate long distance telecommunications services.

In Order No. 22,151, issued in Docket No. DE 96-046, the Commission granted QCC, Inc. conditional approval to operate as of June 13, 1996, subject to the right of the public and interested parties to comment on QCC, Inc. 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 QCC, Inc.'s petition to do business in the State must be submitted in writing no later than June 4, 1996, and reply comments no later than June 11, 1996, to:

Dr. Sarah P. Voll
Executive Director and Secretary
Public Utilities Commission
8 Old Suncook Road
Concord, New Hampshire 03301-7319

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Generic Investigation into IntraLATA Toll Competition Access Rates, DE 90-002, Order No. 20,916, 78 NH PUC 365, Aug. 2, 1993. [N.H.] Re Long Distance North of New Hampshire, Inc., et al., DE 87-249, Order No. 21,851, 80 NH PUC 628, Oct. 3, 1995.

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NH.PUC*05/17/96*[89165]*81 NH PUC 382*Public Service Company of New Hampshire

[Go to End of 89165]

81 NH PUC 382

Re Public Service Company of New Hampshire

DR 94-300 et al.
Order No. 22,152

New Hampshire Public Utilities Commission

May 17, 1996

ORDER denying rehearing of Order No. 22,052 (81 NH PUC 185, *supra*) in which the commission had declared its authority to assess the "best efforts" of an electric utility in the course of mandated renegotiation of certain power purchase agreements with wood-fired small power producers.

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1. COGENERATION, § 17

[N.H.] Contracts — Power purchase agreements — As between electric utility and wood-fired small power producers — Renegotiation process — Commission authority to

evaluate utility's "best efforts" — Review of best efforts separate from review of new settlement agreements. p. 384.

2. CONTRACTS, § 7

[N.H.] Commission jurisdiction — As to renegotiated power purchase agreements — Assessment of "best efforts" in renegotiation process — Review of best efforts separate from review of new contract agreements per se. p. 384.

APPEARANCES: Gerald M. Eaton, Esq. for Public Service Company of New Hampshire; Brown, Wilson and Olson by Robert A. Olson for Bridgewater Power Company, Bio-Energy Corporation, Whitefield Power & Light Company, Hemphill Power & Light Company; Charles R. Neibling for New Hampshire Timberland Owners Association;

Henry G. Veilleux for New Hampshire Business and Industry Association (94- 300); Dean, Rice and Howard by Mark W. Dean, Esq. for New Hampshire Electric Cooperative, Inc. (94-300); Office of Consumer Advocate by Michael W. Holmes 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

Since the opening of Docket DR 94-300 in late 1994, the New Hampshire Public Utilities Commission (Commission) has been seeking resolution and review of negotiations between Public Service Company of New Hampshire (PSNH) and Bridgewater Power Company (DR 95-022), Bio-Energy Corporation (DR 95-247), Whitefield Power & Light Company and Hemphill Power & Light Company (DR 95-268). All four entities are wood burning small power producers (SPPs) with long term rate orders.

On December 21, 1995 PSNH filed a Motion for Consolidation of the four dockets, which the Commission granted at its public meeting on January 31, 1996. The Commission agreed to renotice the newly consolidated docket and allow additional time for intervention. The New Hampshire Timberland Owners Association had already moved to intervene and was granted full intervention status. The Commission also granted PSNH's requests for confidential treatment of the Settlement Agreements and Wood Project Power Purchase Contracts signed with Bridgewater Power Company, Bio-Energy Corporation, Whitefield Power & Light Company and Hemphill Power & Light Company, and ordered PSNH to file by February 2, 1996 a report regarding the status of its negotiations with Pinetree Power-Tamworth and Pinetree Power, Inc., two additional wood burning SPPs.

Also at that public meeting, the Commission requested memoranda addressing whether the consolidated docket should determine if PSNH has exercised its "best efforts" in these renegotiations. The best efforts obligation is imposed on PSNH by Section 12 of the Rate

Agreement between the State of New Hampshire and Northeast Utilities/PSNH.

PSNH filed a status report as required, which stated that the parties anticipated April 30, 1996 as "an outside date" for filing final contracts with the two Pinetree facilities. As of the date of this order, however, no such contracts have been filed with the Commission. PSNH did file Wood Project Power Purchase Contracts with Bridgewater Power Company, Bio-Energy Corporation, Whitefield Power & Light Company, and Hemphill Power & Light Company and accompanying Settlement Agreements on February 8, 1996.

PSNH, on February 5, 1996 filed a Motion to Limit Scope, arguing that best efforts should not be within this consolidated docket and challenged the Commission's jurisdiction to consider the issue. Commission Staff (Staff) and the Office of Consumer Advocate (OCA), on February 16, 1996, jointly objected to the Motion to Limit Scope.

The Commission denied PSNH's Motion to Limit Scope, and stated it intended to exercise its jurisdiction over the issue of best efforts in accordance with Section 12 of the Rate Agreement. *See*, Order No. 22,052 (March 12, 1996). It also asked that the Parties and Staff confer regarding a procedural schedule for the consolidated docket and if no agreement could be reached, to file proposed schedules for the Commission's consideration. On April 5, 1996 PSNH, Mr. Olson and Staff filed proposed procedural schedules. OCA joined in supporting Staff's proposal.

PSNH, on April 11, 1996 filed a Consolidated Motion for Clarification and Rehearing (Motion for Rehearing). There were no responses. This order will address the Motion for Rehearing, the proposals for a procedural schedule and other related issues.

II. MOTION FOR CLARIFICATION AND REHEARING

PSNH argues that Order No. 22,052 should be clarified to state that the Commission need not make a finding of best efforts but only

to state that the Settlement Agreements provide for the State of New Hampshire to waive any best efforts claim and further, clarify whether the Commission stated in Order No. 22,052 that it has the authority to investigate and adjudicate, or merely to investigate the actions of NU and/or PSNH with respect to existing power sales arrangements with the SPPs.

PSNH also argues that the issues should be reheard on six grounds: 1) the Commission has no authority to make a finding regarding best efforts; 2) the Commission has no jurisdiction on that issue because the Settlement Agreements are voluntary and do not address best efforts; 3) a letter of the Attorney General has been mischaracterized; 4) the Commission violated public policy by allowing adjudicative-type discovery procedures on one issue; 5) these adjudicative procedures violated due process and were arbitrary and capricious; and 6) the Commission is in error if it asserts jurisdiction to adjudicate the best efforts issue.

III. COMMISSION ANALYSIS

[1, 2] We have considered PSNH's request to clarify and reconsider Order No. 22,052 and will deny it. In order to proceed expeditiously to review the Settlement Agreements reached with these four SPPs, however, we will move the best efforts inquiry to a separate docket. We have

opened Docket 96-148 to review whether PSNH has exercised its best efforts pursuant to Section 12 of the Rate Agreement.

By Order of Notice issued May 10, 1996, we have scheduled a June 5, 1996 prehearing conference in DR 96-148, the best efforts docket. Our proposed procedural schedule, delineated in full in the Order of Notice, calls for discovery through the summer and early fall and hearings on the merits on October 15 through October 18, 1996. The docket will address whether PSNH exercised its best efforts in negotiations with the eight wood burning facilities and five hydropower plants identified in the Rate Agreement.

In response to the Motion for Rehearing, we will take the arguments in order as PSNH presented them.

We find no basis to clarify Order No. 22,052, as PSNH is essentially asking, in the form of a clarification, for a contrary ruling. As stated in Order No. 22,052, we believe we have jurisdiction to make a finding of best efforts under the Rate Agreement. To the extent such was not clear in the order itself, our authority extends to both the investigation and adjudication of that issue. That the Settlement Agreements may state otherwise does not alter our authority.

We find no basis to rehear the matter on any of the six grounds argued by PSNH: 1) as stated above, the Commission has the authority to make a finding regarding best efforts, and PSNH has presented no new argument on this question to warrant rehearing; 2) the authority to determine best efforts does not arise from the Settlement Agreements, thus the language of those Agreements cannot alter the authority stated in the Rate Agreement; 3) while we do not necessarily agree that the letter of the Attorney General was mischaracterized in Order No. 22,052, we will not rehear the matter but will entertain further discussion of this issue in the docket on best efforts; 4 and 5) our discovery procedures do not violate public policy or due process, nor are they arbitrary and capricious, and after years of participating in the discovery process, it is disingenuous for PSNH to assert this argument at this time; and 6) because we find we have the authority to determine if PSNH has exercised best efforts, we reject PSNH's argument that such a conclusion is in error.

We have consistently stated our intention to review PSNH's efforts in these renegotiations. *See, e.g.*, Order No. 21,173 (March 24, 1994) in DR 93-179, in which we stated we were reserving our rights to consider best efforts pursuant to Section 12 of the Rate Agreement. There have been numerous discussions at previous procedural hearings as well as hearings on the merits regarding the hydropower and wood burning plants on the matter of the best efforts determination, and at no point did PSNH challenge our authority on this issue.

Finding no compelling argument or factual basis on which to rehear the matter, we will deny the Motion for Rehearing. If any of these substantive issues are raised in the best efforts docket, we will address them further at that

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time.

Regarding the schedule for completion of this consolidated docket, we received proposals from PSNH, the SPPs and Staff. OCA concurred in Staff's proposal. The three schedules were

not significantly different, and all presumed at least the possibility that best efforts would be included.

Because we have decided to remove the best efforts analysis from this docket and proceed with the issue in a separate proceeding, none of the schedules proposed can be adopted in their entirety. Taking many of the elements of those proposals, we have developed a schedule for hearings on these four Settlement Agreements in September, 1996. We see no need for a further prehearing conference.

The procedural schedule shall be as follows, unless modified by the Commission upon motion of one or more of the Parties or Staff:

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

PSNH/SPP testimony and exhibits	May 30, 1996
Staff1, Staff2, Intervenor data requests on PSNH/SPPs, served on a rolling basis	
1(39)	June 27, 1996
PSNH/SPP data responses, on a rolling basis	July 11, 1996
Staff1, Staff2, Intervenor testimony	August 1, 1996
PSNH/SPP data requests on Staff1, Staff2, Intervenors, served on a rolling basis	August 15, 1996
Staff1, Staff2, Intervenor data responses, on a rolling basis	August 29, 1996
Rebuttal testimony, if necessary (all participants)	September 5, 1996
Settlement conference	September 10, 1996
Settlement conference	September 12, 1996
File Settlement Agreement if any	September 13, 1996
Hearing on the merits	September 18-19, 1996
Briefs, if necessary	October 3, 1996

Based upon the foregoing, it is hereby

ORDERED, that PSNH's Motion for Clarification and Rehearing is DENIED though we have removed the best efforts question from the scope of this docket; and it is

FURTHER ORDERED, that the issue of PSNH's best efforts in these renegotiations shall be addressed in Docket DR 96-148; and it is

FURTHER ORDERED, that the procedural schedule delineated above is ADOPTED, unless otherwise modified by Commission order.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of May, 1996.

FOOTNOTES

[1]We will adopt the use of Staff1 to designate the Commission Staff who did not participate in the settlement negotiations and Staff2 for the Commission's Chief Economist Thomas C. Frantz who, with Assistant Attorney General Wynn E. Arnold, participated in the negotiations on behalf of the State of New Hampshire.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 93-179, Order No. 21,173, 79 NH PUC 181, Mar. 24, 1994. [N.H.] Re Public Service Co. of New Hampshire, DR 94-300, Order No. 22,052, 81 NH PUC 185, Mar. 12, 1996.

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NH.PUC*05/17/96*[89166]*81 NH PUC 386*Northern Utilities, Inc.

[Go to End of 89166]

81 NH PUC 386

Re Northern Utilities, Inc.

DR 96-089
Order No. 22,153

New Hampshire Public Utilities Commission

May 17, 1996

ORDER adopting procedural schedule relative to a natural gas local distribution company's proposed special transportation service contract with the University of New Hampshire and a system expansion plan for serving the towns of Durham and Madbury.

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1. RATES, § 384

[N.H.] Gas rate design — Transportation service — Proposed special contract with university — Procedural schedule for reviewing — Local distribution company. p. 386.

2. SERVICE, § 199

[N.H.] Extensions — Gas local distribution company — Proposed system expansion plans — For service to two municipalities — — Procedural schedule for reviewing — Scope of issues. p. 386.

BY THE COMMISSION:

ORDER

[1, 2] On March 28, 1996, Northern Utilities, Inc. (Northern) filed with the New Hampshire Public Utilities Commission (Commission) a petition for approval of (1) a firm gas transportation agreement (Special Contract) between Northern and the University of New Hampshire (UNH) and (2) the financial analyses in support of plans to extend natural gas service to the Towns of Durham and Madbury, New Hampshire.

The Commission set a prehearing conference for May 7, 1996, set a deadline for intervention requests and prefiled testimony, and required the Parties and Commission Staff (Staff) to summarize their positions with regard to the filing for the record.

Apart from the Office of Consumer Advocate (OCA), which is a statutorily recognized intervenor, no other individuals petitioned to intervene in this docket.

At the prehearing conference Northern, the OCA, and Staff agreed to the following procedural schedule:

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

Responses to the Oral Data Requests 05/10/96
Propounded at the 1st
Technical Session
Data Requests by Staff and the OCA  05/16/96
Company Data Responses              05/30/96
Technical Session #2                06/04/96
Testimony by Staff and the OCA      06/26/96
Data Requests from Northern         07/10/96
Data Responses to Northern          07/25/96
Settlement Conference               07/31/96
Hearing                             08/07/96
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Also at the prehearing conference, in accordance with the Order of Notice, Northern stated that it intended to demonstrate that the Special Contract with UNH is just and reasonable and the approval of it is in the public good. Northern further stated that it is seeking Commission review and approval of the financial analyses underlying the non-UNH portion of its proposed expansion into the Towns of Durham and Madbury, but is in no way seeking pre-approval in this proceeding of any capital investments (from both the UNH and non-UNH expansions) for inclusion into rate base.

The OCA stated that it was investigating the filing and had two major areas of concern. The first centers on whether the non-UNH portion of the expansion is cost-justified, an issue being raised mainly because of the saturation

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assumptions employed by Northern. If the number of customers added from Durham and Madbury does not justify the expansion, other ratepayers will be paying for a portion of this expansion project. The OCA's second area of interest is to explore whether system expansion at

this time is appropriate, given Northern's longer term capacity questions.

Staff stated that the issues it intended to review were set out in the Order of Notice: 1) the general methodology employed to assess major capital expenditures to expand Northern's distribution system; 2) the impact of the filing on current Northern ratepayers; 3) the role of special contracts; and 4) compliance with the Natural Gas Pipeline Safety Act.

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 seventeenth day of May, 1996.

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NH.PUC*05/17/96*[89167]*81 NH PUC 387*Public Service Company of New Hampshire

[Go to End of 89167]

81 NH PUC 387

Re Public Service Company of New Hampshire

DR 96-133
Order No. 22,154

New Hampshire Public Utilities Commission

May 17, 1996

MOTION by electric utility for confidentiality of certain portions of a special rate contract negotiated with Portland Pipe Line Corporation; granted as to customer-specific usage data and business relocation and conversion alternatives cited therein.

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1. PROCEDURE, § 16

[N.H.] Discovery and inspection — Confidentiality — Relative to special rate contract terms — Granted as to customer-specific usage data relied upon therein — Granted as to customer-specific business relocation and conversion alternatives — Benefits of nondisclosure as outweighing disclosure — Electric utility. p. 388.

BY THE COMMISSION:

ORDER

On April 19, 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 Portland Pipe Line Corporation (Portland), which provides for rates and charges that make the cost of purchasing electricity from PSNH competitive with Portland's three cost-saving alternatives. Concurrent with the special contract, PSNH filed a Motion for Confidential Treatment of certain customer specific information contained within the contract and supporting Technical Statement and Testimony (hereinafter collectively the Information). According to PSNH, the Commission Staff (Staff) neither opposed nor supported the motion prior to reviewing the special contract; the Office of Consumer Advocate also took no position.

In its motion PSNH argues that the Information should be afforded protective treatment because, using our analysis in *Re NET*, Order No. 21,731, 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, PSNH states that it provided the documents required in Puc 204.08(b)(1) and cited the statutory support required by Puc 204.08(b)(2). PSNH states that the Information consists of details of confidential commercial and financial information that is not general public knowledge and for which measures have been taken to prevent dissemination in the

ordinary course of business, thus meeting the requirements of Puc 204.08(b)(4). PSNH further provides facts describing the benefits of non-disclosure, thus meeting the requirements of Puc 204.08(b)(3).

[1] We recognize that the detailed customer specific data contained in the Information regarding Portland's load, costs, and relocation and conversion alternatives is critical to review of the special contract by the Commission and Commission Staff, as required by RSA 378:18. We also recognize that businesses engaged in discussions with regulated utilities are reluctant to disclose sensitive commercial and financial information if it is to become part of the public record.

PSNH has alleged that disclosure of the information would result in competitors of both PSNH and Portland using load information, studies involving alternative sources, and commercial decision making criteria contained in the information to gain an unfair commercial advantage. In addition, harm to PSNH would result because disclosure would jeopardize its ongoing commercial relationship based on an understanding that financially sensitive information will be treated confidentially.

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 to Portland and PSNH of non-disclosure appear to outweigh the benefits to the public 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 PSNH's Motion for Confidential Treatment of portions of the contract and supporting Testimony and Technical Statement is GRANTED; and it is

FURTHER ORDERED, that this order is subject to reconsideration in the event that the Commission Staff or any party raises concerns and it is subject to the on-going right of the Commission to reconsider this order in light of RSA 91-A, should circumstances so warrant.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of May, 1996.

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*05/17/96*[89168]*81 NH PUC 388*Public Service Company of New Hampshire

[Go to End of 89168]

81 NH PUC 388

Re Public Service Company of New Hampshire

DR 96-121
Order No. 22,155

New Hampshire Public Utilities Commission

May 17, 1996

MOTION by electric utility for confidentiality of certain portions of a special rate contract negotiated with Osram Sylvania, Inc.; granted as to customer-specific usage data and business relocation alternatives cited therein.

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1. PROCEDURE, § 16

[N.H.] Discovery and inspection — Confidentiality — Relative to special rate contract terms — Granted as to customer-specific usage data relied upon therein — Granted as to customer-specific business relocation alternatives — Benefits of nondisclosure as outweighing disclosure — Electric utility. p. 389.

BY THE COMMISSION:

ORDER

On April 17, 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 Osram Sylvania, Inc.

(Osram). The contract supercedes PSNH's existing contract with Osram and provides for a lower rate for new life testing load above the existing life testing load for increased production of its High Intensity Discharge lamps at its Manchester facility. Osram asserts, and PSNH agrees, that absent the Contract Osram will locate the new life testing at its facility in Canada.

Concurrent with the special contract, PSNH filed a Motion for Confidential Treatment of certain customer specific information contained within the special contract and supporting testimony (hereinafter collectively the Information). According to PSNH, the Commission Staff (Staff) neither opposed nor supported the motion prior to reviewing the special contract; the Office of Consumer Advocate also took no position.

In its motion PSNH argues that the Information should be afforded protective treatment because, using our analysis in *Re NET*, Order No. 21,731, 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, PSNH states that it provided the documents required in Puc 204.08(b)(1) and cited the statutory support required by Puc 204.08(b)(2). PSNH states that the Information consists of details of confidential commercial and financial information that is not general public knowledge and for which measures have been taken to prevent dissemination in the ordinary course of business, thus meeting the requirements of Puc 204.08(b)(4). PSNH further provides facts describing the benefits of non-disclosure, thus meeting the requirements of Puc 204.08(b)(3).

[1] We recognize that the detailed customer specific data contained in the Information regarding Osram's load, costs, and location alternatives is critical to review of the special contract by the Commission and Commission Staff, as required by RSA 378:18. We also recognize that businesses engaged in discussions with regulated utilities are reluctant to disclose sensitive commercial and financial information if it is to become part of the public record.

PSNH has alleged that disclosure of the information would result in competitors of both PSNH and Osram using load information, studies involving alternative sources, and other commercial decision making criteria contained in the information to gain an unfair commercial advantage. In addition, harm to PSNH would result because disclosure would jeopardize its ongoing commercial relationship based on an understanding that financially sensitive information will be treated confidentially.

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 to Osram and PSNH of non-disclosure appear to outweigh the benefits to the public 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 PSNH's Motion for Confidential Treatment of portions of its special contract with Osram and the supporting testimony, is GRANTED; and it is

FURTHER ORDERED, that this order is subject to reconsideration in the event that the Commission Staff or any party raises concerns and it is subject to the on-going right of the Commission to reconsider this order in light of RSA 91-A, should circumstances so warrant.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of May, 1996.

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*05/17/96*[89169]*81 NH PUC 390*Public Service Company of New Hampshire

[Go to End of 89169]

81 NH PUC 390

Re Public Service Company of New Hampshire

DR 96-068
Order No. 22,156

New Hampshire Public Utilities Commission

May 17, 1996

MOTION by electric utility for confidentiality of certain portions of a special rate contract negotiated with Isaacson Structural Steel, Inc.; granted as to customer-specific usage data, conservation/load management programs, and cogeneration alternatives cited therein.

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1. PROCEDURE, § 16

[N.H.] Discovery and inspection — Confidentiality — Relative to special rate contract terms — Granted as to customer-specific usage data relied upon therein — Granted as to customer-specific conservation/load management and cogeneration options — Benefits of nondisclosure as outweighing disclosure — Electric utility. p. 390.

BY THE COMMISSION:

ORDER

On March 12, 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 Isaacson Structural Steel, Inc. (Isaacson), which provides for rates and charges that make the cost of purchasing electricity from PSNH competitive with Isaacson's cogeneration alternative. Concurrent with the special contract, PSNH filed a Motion for Confidential Treatment of certain customer specific information contained within the Technical Statement filed in support of the contract (hereinafter collectively the Information). According to PSNH, the Commission Staff (Staff) neither opposed nor supported the motion prior to reviewing the special contract; the Office of Consumer Advocate also took no position.

In its motion PSNH argues that the Information should be afforded protective treatment because, using our analysis in *Re NET*, Order No. 21,731, 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, PSNH states that it provided the documents required in Puc 204.08(b)(1) and cited the statutory support required by Puc 204.08(b)(2). PSNH states that the Information consists of details of confidential commercial and financial information that is not general public knowledge and for which measures have been taken to prevent dissemination in the ordinary course of business, thus meeting the requirements of Puc 204.08(b)(4). PSNH further provides facts describing the benefits of non-disclosure, thus meeting the requirements of Puc 204.08(b)(3).

[1] We recognize that the detailed customer specific data contained in the Information regarding Isaacson's load and costs, cogeneration alternative, and conservation and load management efforts is critical to review of the special contract by the Commission and Commission Staff, as required by RSA 378:18. We also recognize that businesses engaged in discussions with regulated utilities are reluctant to disclose sensitive commercial and financial information if it is to become part of the public record.

PSNH has alleged that disclosure of the information would result in competitors of both PSNH and Isaacson using load information, studies involving alternative sources, and other commercial decision making criteria contained in the information to gain an unfair commercial advantage. In addition, harm to PSNH would result because disclosure would jeopardize its ongoing commercial relationship based on an understanding that financially sensitive information will be treated confidentially.

Under the balancing test we have applied in prior cases, *Re NET*, 74 NH PUC 307 (1989),

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Re Eastern Utilities Associates, 76 NH PUC 236 (1991) *et al.*, the benefits to Isaacson and PSNH of non-disclosure appear to outweigh the benefits to the public 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 PSNH's Motion for Confidential Treatment of portions of the Technical Statement supporting its special contract with Isaacson, is GRANTED; and it is

FURTHER ORDERED, that this order is subject to reconsideration in the event that the Commission Staff or any party raises concerns and it is subject to the on-going right of the

Commission to reconsider this order in light of RSA 91-A, should circumstances so warrant.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of May, 1996.

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*05/20/96*[89170]*81 NH PUC 391*American Express Telecom, Inc.

[Go to End of 89170]

81 NH PUC 391

Re American Express Telecom, Inc.

DE 96-115
Order No. 22,157

New Hampshire Public Utilities Commission

May 20, 1996

ORDER authorizing an interexchange telephone carrier to revise its calling card service tariffs, so as to eliminate associated directory assistance and to establish term limits or expiration dates for such prepaid cards.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Calling card offerings — Elimination of associated directory assistance — Setting of expiration dates for prepaid calling cards — Interexchange telephone carrier. p. 391.

BY THE COMMISSION:

ORDER

[1] On April 15, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from American Express Telecom, Inc., (AET) requesting authority to make various revisions to its tariff.

Proposed revisions include clarification that timing for each call ends when either party hangs up. A paragraph is being added to clarify when remedies set forth in the tariff apply.

AET is introducing card expiration dates for its prepaid card service and deleting directory assistance from it.

Promotional language is being introduced to allow AET to offer promotions after 7 days notice to the Commission.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize AET to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of AET's NHPUC tariff are approved for effect as of the date of this order:

2nd Revised Page 3 in lieu of 1st

Revision 1st Revised Page 13 1st Revised Page 19 1st Revised Page 21

Page 391

Original Page 22.1 2nd Revised Page 23 in lieu of 1st

Revision 1st Revised Page 24;

and it is

FURTHER ORDERED, that AET file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this twentieth day of May, 1996.

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NH.PUC*05/20/96*[89171]*81 NH PUC 392*Northern Shores Water Company

[Go to End of 89171]

81 NH PUC 392

Re Northern Shores Water Company

DR 95-223
Order No. 22,158

New Hampshire Public Utilities Commission

May 20, 1996

APPLICATION by water utility for authority to increase rates by $2,943 (124%); granted as modified, pursuant to settlement, in the amount of $2,428 (102.3%), applicable to both seasonal and year-round customers. The utility, with a capital structure of 100% equity, is authorized a return on equity of 10.29%. The impending acquisition of the utility by Tilton-Northfield Aqueduct Company is deemed not to be a factor, since the two systems will not be interconnected any time soon.

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1. RETURN, § 115

[N.H.] Water utility — Capital structure of 100% equity — Mirroring of overall return and return on equity — Rate of return of 10.29% — Settlement. p. 393.

2. RATES, § 597

[N.H.] Water rate design — Special factors — 20-year period since last rate increase — Move from annual to semi-annual billings — Incorporation of significant rate case expense surcharges — Justifiable increase of over 100%. p. 393.

3. EXPENSES, § 89

[N.H.] Rate case expense — Effect of 20-year gap since last rate case — Incurrence of significant costs — Recovery via semi-annual surcharge — Two-year amortization period — Water utility. p. 393.

4. SERVICE, § 310

[N.H.] Connections and instruments — Meters — Water utility — Effect of lack of water meters — Study as to possible sharing of municipally provided sewer meters. p. 394.

5. FRANCHISES, § 53

[N.H.] Amendment — Extension of temporary franchise — Water utility — Factors — Impending acquisition of utility by another utility — No objections from acquiring utility as to franchise — Unlikelihood of physical interconnection of the two systems. p. 394.

APPEARANCES: Stephen P. St. Cyr for Northern Shores Water Company; Jay C. Boynton, Esq. for Tilton-Northfield Aqueduct Company; E. Barclay Jackson, Esq. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On September 22, 1995, Northern Shores Water Company (Northern Shores) filed with

the New Hampshire Public Utilities Commission (Commission) a petition for permanent

franchise and permanent rate increase (Petition), along with supporting testimony and exhibits. The Petition requested an increase in revenues of $2,943 on an annual basis, an increase of 124% over both its current seasonal and year round rates. Northern Shores did not request temporary rates. Northern Shores serves 28 customers in an area of Tilton, New Hampshire that lies within the legislatively granted franchise for Tilton-Northfield Aqueduct Company (Tilton-Northfield).

By order of notice, the Commission sought intervenors. The Office of Consumer Advocate (OCA) is a statutorily authorized intervenor but did not appear. There were no requests for intervention. The Commission made Tilton-Northfield a mandatory party to the docket in light of its franchise. The Commission also offered the State of New Hampshire Department of Environmental Services (NHDES) and the Lochmere Village District the opportunity to comment on the Petition, in light of their involvement in the construction and operation of the Lochmere Village District which is in the vicinity of Northern Shores' franchise area. *See*, Order No. 21,902 (November 6, 1995).

Northern Shores has been operating under a temporary franchise since 1990, pursuant to Order No. 19,908 (August 8, 1990). The existing rates have been in effect since 1970. Northern Shores testified that Tilton-Northfield has been considering the purchase of Northern Shores but to date no agreement has been reached.

Commission Staff (Staff) on January 5, 1996 prefiled testimony of James L. Lenihan and Thomas M. Sculley.

On February 23, 1996 Northern Shores and Staff filed a Settlement Agreement resolving all issues in the rate case (Settlement). The Commission heard testimony in support of the Settlement on February 23, 1996. No one testified in opposition to the Settlement.

II. SETTLEMENT AGREEMENT

[1-3] The Settlement details all terms agreed to between Northern Shores and Staff, which are summarized herein.

Northern Shores and Staff agreed to: 1) rate base of $4,215; 2) cost of equity of 10.29% (for a company that is 100% equity); 3) operating expenses of $4,805; 4) revenue requirement of $5,239; 5) 102.3% increase over current rates; 6) rate case expenses of $2,270, to be surcharged over a two year period; 7) change from annual to semi-annual billing; and 8) issuance of a permanent franchise for Northern Shores.

The change in rates, if approved by the Commission, would be effective for service rendered as of January 1, 1996. Northern Shores has been operating under temporary rates since 1990 and technically could have requested that the new rates be applied to all bills since 1990. Rather than seek recovery of adjustment for six years under temporary rates, Northern Shores and Staff agreed to recommend an effective date for the new rates of January 1, 1996.

At the hearing on the Settlement, the Commission asked if Tilton- Northfield had a position regarding the request for permanent franchise, in that the legislature in 1887 granted Tilton-Northfield a franchise area that includes the area being served by Northern Shores. Laws of 1887, Chapter 165. The Commission's 1990 order granting Northern Shores a temporary franchise stated that Tilton-Northfield had not objected to Northern Shores' provision of water service to these 28 customers and the Commission was not aware of any opposition to Northern

Shores' continued operation. Because Tilton-Northfield was not present at the hearing, however, the Commission allowed Tilton-Northfield to supplement the record with a written statement regarding its current views on the franchise request.

On May 7, 1996, having received no response, the Commission granted Tilton-Northfield until May 15, 1996 to file written comments on the question of a permanent franchise for Northern Shores. The Commission stated that if Tilton-Northfield did not respond, it would assume that Tilton-Northfield did not object to the continued operation of Northern Shores.

On May 13, 1996 Tilton-Northfield and Northern Shores jointly filed with the Commission a letter stating that they had reached a

tentative agreement for the acquisition of Northern Shores by Tilton-Northfield and asked that any action on the instant docket be in the form of further temporary rates. The terms of the tentative agreement include a purchase price of $2,500, approval by the Commission, NHDES and Tilton-Northfield's bank, and consolidation of rates so that only one rate will be charged for all customers. Tilton-Northfield did not directly respond to the question of whether it objected to the grant of a permanent franchise to Northern Shores.

III. COMMISSION ANALYSIS

We have reviewed the Settlement and supporting testimony presented at the February 23, 1996 hearing and will approve the Settlement as filed. The terms will result in just and reasonable rates while providing Northern Shores a reasonable opportunity to earn a fair return on its investment. The Settlement, therefore, is in the public interest and will be approved, pursuant to RSA 378:7. Plant now included in rate base is used and useful and the investment in that plant was prudently incurred, in accordance with RSA 378:28.

Pursuant to the Settlement, the typical year round residential customer will see an increase of approximately $158.10 per year, from $115 annually to $273.10 annually, now to be collected in two billings of $136.55. For a seasonal customer, the increase will be approximately $122.34 per year, from $80 annually to $202.34 per year, now to be collected in two billings of $101.17. These totals include the surcharge of $40.54 for rate case expenses. Though the increase is significant, it is remarkable to note that Northern Shores' current rates have been in effect for over 20 years.

[4] Though the Settlement did not address metering concerns, at the hearing the Commission inquired as to metering of the system. Both Staff and Northern Shores testified that the Town of Tilton is now metering the Northern Shores area in order to provide municipal sewer service. At the Commission's request, Northern Shores agreed to submit a report by the close of 1996 detailing the status of metering and whether it would be possible for Northern Shores to access those meters for the purpose of measuring water usage and, ultimately to create a metered usage rate for water service.

We have reviewed the letter jointly filed by Northern Shores and Tilton-Northfield regarding their tentative agreement for the purchase of the system by Tilton-Northfield. Notwithstanding the request that the Commission limit its action in the instant docket to approval of further

temporary rates, we do not believe that RSA 378:27 Temporary Rates is intended to apply to rates granted at the conclusion of a rate case, however they may be altered following a future acquisition. Therefore the rates here approved will be permanent rates.

[5] Further, we note that evidence at the hearing on the Settlement indicated that Tilton-Northfield does not have distribution facilities in the area of Northern Shores and it would not be economically efficient in the near term for Tilton-Northfield to extend service to that area when there is already plant in existence serving those customers. Therefore, even if Northern Shores and Tilton-Northfield finalize their agreement, it is unlikely that the two systems will be interconnected soon and will rather continue to be operated separately. We will therefore address the merits of the agreement, including the proposed condition that the Tilton-Northfield rate be extended to the Northern Shores customers, in a separate docket when the agreement is finalized and filed with the Commission. Meanwhile we will extend Northern Shores' temporary franchise.

Based upon the foregoing, it is hereby

ORDERED, that the Settlement entered into between Northern Shores and Staff is APPROVED; and it is

FURTHER ORDERED, that Northern Shores shall report by December 31, 1996 the status of meters installed by the Town of Tilton and the feasibility of using those meters to measure water usage; and it is

FURTHER ORDERED, that Northern Shores 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 Northern Shores' temporary franchise is extended

Page 394

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pending the submission and approval of an executed purchase and sale agreement from Tilton-Northfield and Northern Shores.

By order of the Public Utilities Commission of New Hampshire this twentieth day of May, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Northern Shores Water Co., DE 90-055, Order No. 19,908, 75 NH PUC 545, Aug. 8, 1990. [N.H.] Re Northern Shores Water Co., DR 95-223, Order No. 21,902, 80 NH PUC 730, Nov. 6, 1995.

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NH.PUC*05/20/96*[89172]*81 NH PUC 395*New Hampshire Electric Cooperative, Inc.

[Go to End of 89172]

81 NH PUC 395

Re New Hampshire Electric Cooperative, Inc.

DR 96-107
Order No. 22,159

New Hampshire Public Utilities Commission

May 20, 1996

ORDER adopting procedural schedule relative to an electric cooperative's proposed 1996/97 demand-side management (DSM) programs. Commission notes that it is particularly important to address the cooperative's alternative fuel pilot, the consolidation of certain DSM measures, recovery of certain fixed costs associated with fuel switching, and underexpenditures of the last DSM budget.

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1. CONSERVATION, § 1

[N.H.] Demand-side management (DSM) — New program year — Proposed changes in DSM projects — Procedural schedule for reviewing — Electric cooperative. p. 395.

2. ELECTRICITY, § 4

[N.H.] Operating practices — Demand-side management (DSM) — New program year — Proposed changes in DSM projects — Procedural schedule for reviewing — Scope of issues — Alternative fuel and fuel switching factors — Recovery of lost fixed costs — Previous DSM underspending — Electric cooperative. p. 395.

BY THE COMMISSION:

ORDER

[1, 2] On April 8, 1996, the New Hampshire Electric Cooperative (NHEC) filed with the New Hampshire Public Utilities Commission (Commission) its Demand Side Management Programs proposal and supporting testimony for the Program Year July 1, 1996 through June 30, 1997.

By an Order of Notice issued April 24, 1996, the Commission scheduled a prehearing conference for May 10, 1996, 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 NHEC, 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.]

Data Requests by Staff and Intervenors	May 15, 1996
Company Data Responses	May 21, 1996
Testimony by Staff and Intervenors	May 28, 1996
Data Requests by the Company	May 31, 1996
Data Responses by Staff and Intervenors	June 5, 1996
Settlement Conference	June 10, 1996
Submission of Settlement Agreement if any	June 14, 1996
Hearing	June 18, 1996

Also at the prehearing conference, in accordance with the Order of Notice, the Parties and Staff stated their positions with regard to the filing. NHEC listed the programs by rate class which it proposes to implement in the 1996/97 program year. It then provided the proposed DSM surcharges by rate class and the effect on the average revenue per kilowatt hour by rate class.

The OCA stated that its issues were: 1) a concern that the DSM programs be consistent with HB 1392; 2) the long term avoided costs and Total Resource Cost ratios presented in the filing; and 3) the implementation of the Alternative Fuel Pilot Program.

Staff stated that it believed that the significant issues to be addressed in this proceeding are: 1) the implementation of the Alternative Fuel Pilot Program; 2) the consolidation of programs and whether they are cost effective on a stand alone basis; 3) the recovery of lost fixed costs on the fuel switching program; and 4) the underspending of the 1995/96 DSM program.

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 twentieth day of May, 1996.

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NH.PUC*05/20/96*[89173]*81 NH PUC 396*Merrimack County Telephone Company

[Go to End of 89173]

81 NH PUC 396

Re Merrimack County Telephone Company

DS 96-135

Order No. 22,160

New Hampshire Public Utilities Commission

May 20, 1996

ORDER approving a local exchange telephone carrier's proposed tariff for special promotional and market trial programs, subject to a 30-day notice period each time.

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1. RATES, § 532

[N.H.] Telephone rate design — Special promotional and market trial programs — Local exchange carrier. p. 396.

2. RATES, § 243

[N.H.] Schedules and procedure — Notice of filings — Minimum 30-day period — For special promotional and market trial programs — Local exchange telephone carrier. p. 396.

BY THE COMMISSION:

ORDER

[1, 2] On April 19, 1996, Merrimack County Telephone Company (Merrimack) filed a petition with the New Hampshire Public Utilities Commission (Commission) seeking to introduce a tariff to provide promotional and market trial programs, for effect May 20, 1996. On May 13, 1996, Merrimack filed a revision to the petition, revising the proposed language at the request of Commission Staff so that the language duplicated that used by other Local Exchange Carriers in their similar tariffs.

Merrimack will provide the Commission

Page 396

with advance notification of the time periods, locations, tracking plans and terms and conditions applicable to each promotional or market trial program. After review of the proposed promotion and/or market trial program by the Commission and the resolution of any objections or concerns raised by the Commission, the promotional and market trial programs will be implemented following thirty (30) days notice.

Staff has recommended the proposed tariff revision be approved. The introduction of this tariff for promotional or market trial programs will be consistent with such tariffs introduced by other LECs as is the thirty day notice period.

The Commission finds the proposed tariff revision to be in the public good because it allows Merrimack to introduce and promote new services with a minimum of delay.

Based upon the foregoing, it is hereby

ORDERED, that the following tariff page of Merrimack County Telephone Company is

approved:

NHPUC No. 7 - Telephone

Part I - General Regulations

Page 11

First Revision

Superseding Original

and it is

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

FURTHER ORDERED, that the above revision to NHPUC No. 7 be resubmitted as required by Puc 1601.05(k).

By order of the Public Utilities Commission of New Hampshire this twentieth day of May, 1996.

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NH.PUC*05/20/96*[89174]*81 NH PUC 397*Contoocook Valley Telephone Company, Inc.

[Go to End of 89174]

81 NH PUC 397

Re Contoocook Valley Telephone Company, Inc.

DS 96-136
Order No. 22,161

New Hampshire Public Utilities Commission

May 20, 1996

ORDER approving a local exchange telephone carrier's proposed tariff for special promotional and market trial programs, subject to a 30-day notice period each time.

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1. RATES, § 532

[N.H.] Telephone rate design — Special promotional and market trial programs — Local exchange carrier. p. 397.

2. RATES, § 243

[N.H.] Schedules and procedure — Notice of filings — Minimum 30-day period — For special promotional and market trial programs — Local exchange telephone carrier. p. 397.

BY THE COMMISSION:

ORDER

[1, 2] On April 19, 1996, Contoocook Valley Telephone Co., Inc. (Contoocook) filed a petition with the New Hampshire Public Utilities Commission (Commission) seeking to introduce a tariff to provide promotional and market trial programs, for effect May 20, 1996. On May 13, 1996, Contoocook filed a revision to the petition, revising the proposed language at the request of Commission Staff so that the language duplicated that used by other Local Exchange Carriers (LECs) in their similar tariffs.

Contoocook will provide the Commission with advance notification of the time periods, locations, tracking plans and terms and conditions applicable to each promotional or market trial program. After review of the proposed promotion and/or market trial program by the Commission and the resolution of any objections or concerns raised by the Commission, the promotional and market trial programs will be implemented following thirty (30) days notice.

Staff has recommended the proposed tariff revision be approved. The introduction of this tariff for promotional or market trial programs will be consistent with such tariffs introduced by other LECs as is the thirty day notice period.

The Commission finds the proposed tariff revision to be in the public good because it allows Contoocook to introduce and promote new services with a minimum of delay.

Based upon the foregoing, it is hereby

ORDERED, that the following tariff page of Contoocook Valley Telephone Co., Inc. is approved:

NHPUC No. 1 - Telephone

Part I - General Regulations

Page 10

Second Revision

Superseding First Revision

and it is

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

FURTHER ORDERED, that the above revision to NHPUC No. 1 be resubmitted as required by Puc 1601.05(k).

By order of the Public Utilities Commission of New Hampshire this twentieth day of May, 1996.

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NH.PUC*05/20/96*[89175]*81 NH PUC 398*Public Service Company of New Hampshire

[Go to End of 89175]

81 NH PUC 398

Re Public Service Company of New Hampshire

DR 96-144
Order No. 22,162

New Hampshire Public Utilities Commission

May 20, 1996

ORDER approving an electric utility's proposed nuclear plant decommissioning charge of 0.049 cents per kilowatt-hour, in accordance with the formula adopted for such in 1989.

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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. p. 399.

BY THE COMMISSION:

ORDER

I. *PROCEDURAL HISTORY*

On May 1, 1996, Public Service Company of New Hampshire (PSNH) filed a technical statement and attachments supporting its Nuclear Decommissioning Charge (NDC) calculation of $0.00049 per kWh. The NDC reflects a $0.00030 per kWh fixed revenue portion (Base) and a $0.00019 per kWh variable portion (Above Base). In this proceeding, PSNH proposes to collect the $0.00049 per kWh NDC effective June 1, 1996 for the twelve month period from June 1, 1996 through May 31, 1997.

The $0.00030 per kWh Base portion reflects costs which were approved in the Rate Agreement and are recovered within PSNH's

annual 5.5% automatic rate increases according to the schedule approved by the Nuclear Decommissioning Financing Committee (NDFC) in its Seventeenth Supplemental Order in Docket No. DF 87-1, June 2, 1989. The $0.00030 per kWh Base represents an increase of $0.00003 from the $0.00027 per kWh Base which was recovered for the months of December 1, 1995 through May 31, 1996 as part of PSNH's annual 5.5% automatic rate increases.

The proposed $0.00019 per kWh Above Base portion reflects an increase of $0.00001 per kWh over the Above Base amount approved, effective December 1, 1995 pursuant to Order No. 21,927 in DR 95-261. The Above Base element of the NDC reconciles and fully recovers all of PSNH's decommissioning costs most recently approved in the NDFC's Third Supplemental

Order in NDFC 93-1.

The $0.00001 per kWh increase results from a relatively larger increase approved Above Base costs under the Third Supplemental Order in NDFC 93-1 relative to PSNH's projected increase in retail sales for the same period. As a consequence of this larger increase in Above Base costs relative to expected higher sales, the proposed $0.00001 Above Base increase represents a $0.005 or 0.007% per month increase for a typical 500 kwh residential bill.

II. *COMMISSION ANALYSIS*

[1] The basic formula and methodology used by PSNH to calculate the NDC were first established in Commission Order No. 19,899 dated July 21, 1990 in Docket No. DR 90-019. Based upon the terms of the Rate Agreement, any additional nuclear decommissioning funding levels approved by the NDFC for PSNH are recoverable in retail rates. Since the Rate Agreement and the Commission's approval of the basic formula in Order No. 19,899, the calculation of the NDC has been revised pursuant to subsequent Commission Orders.

Our review in this proceeding indicates that PSNH has accurately calculated its proposed NDC for the effective period beginning June 1, 1996. We find that the NDC is appropriate, in the public good and consistent with the provisions of RSA 162-F:19,III.

Based upon the foregoing, it is hereby

ORDERED, that the revised nuclear decommissioning charge of $0.00049 per kWh, representing an increase of $0.00004 per kWh become effective for use by PSNH in retail customer bills rendered for meters read on or after June 1, 1996 and continue in effect through May 31, 1996, or until the Commission orders otherwise; and it is

FURTHER ORDERED, that compliance tariffs be filed within 15 days of the date of this order.

By order of the Public Utilities Commission of New Hampshire this twentieth day of May, 1996.

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. [N.H.] Re Public Service Co. of New Hampshire, DR 95-261, Order No. 21,927, 80 NH PUC 764, Dec. 1, 1995.

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NH.PUC*05/20/96*[89176]*81 NH PUC 399*New Hampshire Electric Cooperative, Inc.

[Go to End of 89176]

81 NH PUC 399

Re New Hampshire Electric Cooperative, Inc.

DE 96-106
Order No. 22,163

New Hampshire Public Utilities Commission

May 20, 1996

ORDER authorizing an electric cooperative to construct and maintain submarine power cables under Lake Winnipesaukee in Meredith for providing service to five customers on three islands.

Page 399

1. ELECTRICITY, § 6

[N.H.] Wires and cables — Power cables — Crossing of public waters as a factor — Underwater installation — For meeting island customers' service requests — Electric cooperative. p. 400.

2. CONSTRUCTION AND EQUIPMENT, § 5

[N.H.] Cable lines — Underwater conduits — Crossing of public waters as a factor — For meeting island customers' service requests — Electric cooperative. p. 400.

BY THE COMMISSION:

ORDER

[1, 2] On April 9, 1996, New Hampshire Electric Cooperative, Inc. (NHEC) filed with the New Hampshire Public Utilities Commission (Commission) a petition, pursuant to RSA 371:17, to install and maintain a submarine power cable under the public waters of Lake Winnipesaukee in the Town of Meredith, New Hampshire. The cable will supply electric power to Six Mile Island as requested by Mr. Richard Cross, Ms. Ellen McCormick, and Six Mile Island L.L.C; to Little Six Mile Island as requested by Mr. and Mrs. Martin Mardis; and to Far Ozone Island as requested by Mr. and Mrs. Peter Hare. All three islands are located on Lake Winnipesaukee in the Town of Meredith.

Electric service will consist of a radial supply circuit extending one span from an existing overhead service pole on Bear Island, crossing approximately 4,800 feet to Six Mile Island at subsurface depths averaging 96 feet, crossing approximately 1,380 feet to Little Six Mile Island at subsurface depths averaging 50 feet, and then crossing approximately 660 feet to Far Ozone Island at subsurface depths averaging 50 feet. The 1/0, 15 KV submarine electric cable will be operated at 7,200 volts.

In order to provide this service, NHEC must maintain this submarine cable through public waters, which are defined by RSA 371:17 as "all ponds of more than ten acres, tidewater bodies, and such streams or portions thereof as the Commission may prescribe." NHEC's crossing of a portion of Lake Winnipesaukee therefore involves the crossing of public waters.

NHEC has obtained and filed with the Commission copies of all applicable permits, licenses, easements and rights of ways including Permit 96-193, issued by the Wetlands Board, Department of Environmental Services. NHEC has attested, and Staff agrees, that the construction of the crossing must meet or exceed the requirements of the 1993 National Electric Safety Code as well as all other applicable safety standards.

The Commission finds such a crossing necessary for NHEC to meet its obligation to provide electric service within its authorized franchise area, thus being in the public good.

The public should be offered the opportunity to respond in support of, or in opposition to, said petition.

Based upon the foregoing, it is hereby

ORDERED *Nisi*, that NHEC is authorized, pursuant to RSA 371:17, *et. seq.*, to install and operate submarine cables beneath Lake Winnipesaukee, as well as all associated plant, as depicted on NHEC Staking Sheets for Work Order No. 527236, and other documentation on file with the Commission unless the Commission otherwise directs prior to the proposed effective date; and it is

FURTHER ORDERED, that all reconstruction hereafter performed shall conform to the requirements of the National Electric Safety Code and all other applicable safety standards in existence at that time; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 1601.05, the Petitioner shall cause a copy of this Order *Nisi* to be published once in a newspaper of general circulation in the area of Meredith, such publication to be no later than May 27, 1996, and to be documented by affidavit filed with this office on or before June 3, 1996; and it is

FURTHER ORDERED, that NHEC notify the Town of Meredith of this matter by serving a copy of this order on the Town Clerk by first-class mail postmarked no later than May 27,

1996, with said notification to be verified by affidavit filed on or before June 3, 1996; and it is

FURTHER ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or file a written request for a hearing on this matter before the Commission no later than June 10, 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 June 17, 1996; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective June 19, 1996, unless the Commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this twentieth day of May, 1996.

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NH.PUC*05/20/96*[89177]*81 NH PUC 401*New England Power Company

[Go to End of 89177]

81 NH PUC 401

Re New England Power Company

DE 96-018
Order No. 22,164

New Hampshire Public Utilities Commission

May 20, 1996

ORDER granting retroactive authorization to an electric utility's construction of an overhead transmission line over Pond Brook in Webster, which line had remained unlicensed inadvertently.

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1. ELECTRICITY, § 7

[N.H.] Wires and cables — Power cables — Crossing of public waters as a factor — Overhead transmission line — Inadvertently unlicensed line — Reconstruction to meet national electrical code standards. p. 401.

BY THE COMMISSION:

ORDER

[1] On January 12, 1996, New England Power Company (NEP), filed a petition pursuant to RSA 371:17 for the licensing of an existing 230,000 volt transmission line crossing over Pond Brook in Webster, New Hampshire. On May 13, 1996, NEP supplemented its filing with a copy of the permit issued to it by the State of NH Wetlands Board as requested by Staff. This crossing over Pond Brook in Webster was the subject of an earlier docket, DE 94-136, where NEP identified 3 existing aerial transmission lines which had never been licensed by this Commission. In its order in that proceeding (Order No. 21,457), the Commission approved 2 of the crossings and conditioned its approval of the third crossing (the Pond Brook crossing) upon the reconstruction of the transmission lines to meet the 1993 National Electrical Safety Code requirements. The reconstruction was to be completed no later than December 31, 1994. NEP filed a new petition for a water crossing license in January 1996 as reconstruction was not completed prior to the December 31, 1994 deadline.

In order to meet the requirements of service to the public, NEP must maintain electric transmission lines over and across certain public waters; those lines are an integral part of New England Power's interconnected transmission network. RSA 371:17 defines public water as "all ponds of more than ten acres, tidewater bodies, and such streams or portions thereof as the Commission may prescribe." The Commission prescribes this crossing to be over and across

public waters.

NEP has stated, and the Staff agrees, that the reconstruction of the crossing will meet or exceed the requirements of the 1993 National Electrical Safety Code as well as all other applicable safety standards.

The Commission finds such crossings necessary for NEP to meet its obligations to serve customers within its authorized franchise area, thus being in the public good.

The public should be offered the opportunity to respond in support of or in opposition to

Page 401

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said petition.

Based upon the foregoing, it is hereby

ORDERED *Nisi*, that NEP is authorized, pursuant to RSA 371:17, *et seq.*, to maintain and operate transmission lines over and across Pond Brook in Webster, New Hampshire; and it is

FURTHER ORDERED, that the current reconstruction project and all future reconstruction performed shall conform to the requirements of the National Electrical Safety Code and all other applicable safety standards in existence at that time; and it is

FURTHER ORDERED, that NEP provide written notification to the Commission within 20 days of completion of the reconstruction notifying the Commission that the reconstruction has been completed and attesting to the conformance of the reconstruction with the 1993 National Electrical Safety Code; and it is

FURTHER ORDERED, that should NEP not complete the reconstruction by December 15, 1996, it shall file notice with the Commission before December 31, 1996 stating that the reconstruction was not completed and the reasons why the reconstruction was not completed; 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 of Webster, such publication to be no later than May 27, 1996 and to be documented by affidavit filed with this office on or before June 3, 1996; and it is

FURTHER ORDERED, that NEP notify the Town of Webster of this matter by serving a copy of this order on the Town Clerk by first-class mail postmarked no later than May 27, 1996, with said notification to be verified by affidavit filed on or before June 3, 1996; and it is

FURTHER ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or file a written request for a hearing on this matter before the Commission no later than June 10, 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 June 17, 1996; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective June 19, 1996, unless the Commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this twentieth day of May,

1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New England Power Co., DE 94-136, Order No. 21,457, 79 NH PUC 680, Dec. 12, 1994.

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NH.PUC*05/28/96*[89178]*81 NH PUC 402*Retail Competition Pilot Program

[Go to End of 89178]

81 NH PUC 402

Re Retail Competition Pilot Program

Movant: UNITIL Corporation

DR 95-250
Order No. 22,165

New Hampshire Public Utilities Commission

May 28, 1996

ORDER dismissing as moot a motion for rehearing of Order No. 22,119 (81 NH PUC 319, *supra*) in which the commission had approved as modified the compliance filings of two affiliated electric utilities for implementing a pilot program for competitive electric services. Commission does clarify that the companies have the right to withdraw their recommended plan since the commission had adopted the filings only on a conditional basis.

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1. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric service — Pilot program for retail competition — Recommended

Page 402

implementation plan — Compliance filings — Acceptance by commission only as modified — Right of utility to withdraw plan. p. 403.

BY THE COMMISSION:

ORDER

This order will address the Unitil Companies' Motion for Rehearing which was filed on May 9, 1996. The UNITIL Companies (UNITIL) consist of Concord Electric Company and Exeter &

Hampton Company, two jurisdictional electric utilities which are required to implement a retail competition pilot program (Pilot) pursuant to Order No. 22,033 (February 28, 1996). That order set forth the Commission's Final Guidelines for the Pilot.

On March 29, 1996, UNITIL filed a request for clarifications, or alternatively rehearing, relative to the Final Guidelines and Order No. 22,033. In Order No. 22,097 (April 12, 1996) the Commission granted UNITIL's requested clarifications and noted that such relief rendered UNITIL's rehearing request moot. UNITIL has sought no further relief relative to Order No. 22,033. Rather, it seeks rehearing relative to Order No. 22,119 (April 29, 1996) wherein we conditionally approved a "joint recommendation" which UNITIL and the Office of Consumer Advocate (OCA) filed after we issued the Final Guidelines.[1](40) Staff filed a timely written objection to the UNITIL's rehearing request.

[1] UNITIL essentially asserts a legal right to receive approval of the joint recommendation which it filed after we issued a final order establishing the Final Guidelines for the Pilot. We disagree. The joint recommendation was presented by UNITIL voluntarily as an alternative to the compliance filings which are required by the Final Guidelines. UNITIL expressly reserved the right to withdraw the recommendation in the event that we did not approve it in "its entirety." Our conditional approval of the recommendation did nothing to disturb that right, and to the extent Order No. 22,119 was unclear, we herein acknowledge that UNITIL has the legal right to withdraw the recommendation. In the event that UNITIL exercises that right, or already has exercised that right, it shall be subject to the directives which are set forth in the Final Guidelines about which it has already sought and received all requested clarifications.

Based on the foregoing, we find it unnecessary to address the merits of UNITIL's rehearing request. Accordingly, we dismiss the motion as moot. We wish to note, however, that nothing in UNITIL's motion would cause us to reconsider our approval of the joint recommendation.

UNITIL is directed to inform the Commission in writing of whether it intends to withdraw its recommendation by the close of business on May 30, 1996. UNITIL's Pilot customers have a right to know the terms under which UNITIL intends to implement the Pilot. We also direct Staff to respond to UNITIL's record request by the close of business on May 30, 1996.

Finally, we note UNITIL's concern relative to the recoverability of costs which are stranded as a result of compliance with the Final Guidelines.[2](41) The Commission will entertain suggestions as to the appropriate accounting treatment to ensure that UNITIL has the ability to recover such costs in the event that it receives a favorable ruling relative to this issue in a future proceeding.

Based upon the foregoing, it is hereby

ORDERED, that UNITIL's Motion for Rehearing is DISMISSED; and it is

FURTHER ORDERED, that UNITIL shall notify the Commission's Executive Director in writing of whether it desires to withdraw the joint recommendation no later than May 30, 1996; and it is

FURTHER ORDERED, that Staff is directed to respond to UNITIL's record request by the close of business on May 30, 1996.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of

May, 1996.

FOOTNOTES

[1]On March 15, 1996 Unitil filed a Recommended Plan relative to their participation in the Pilot. On March 20, 1996, Unitil filed a Joint Recommendation with the Office of the Consumer Advocate (OCA) which superseded the Recommended Plan filed March 15.

[2]Unitil raised this concern in testimony which accompanied its revised compliance filing submitted May 6, 1996 in response to Order 22,119.

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. 22,097, 81 NH PUC 268, Apr. 12, 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*05/28/96*[89179]*81 NH PUC 404*Retail Competition Pilot Program

[Go to End of 89179]

81 NH PUC 404

Re Retail Competition Pilot Program

Petitioner: Green Mountain Energy Partners, L.L.C.

DR 95-250
Order No. 22,166

New Hampshire Public Utilities Commission

May 28, 1996

ORDER clarifying Order No. 22,098 (81 NH PUC 270, *supra*) and Order No. 22,118 (81 NH PUC 310, *supra*) as to the respective compliance filings of Granite State Electric Company and Public Service Company of New Hampshire for implementing a pilot program for competitive electric services. The clarification pertains primarily to notice required by a customer prior to switching electric suppliers under the pilot program.

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1. SERVICE, § 320

[N.H.] Electric — Pilot program for retail competition — Switching of suppliers by pilot customers — Notice period — Minimum of five business days before next scheduled meter reading date. p. 405.

2. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric service — Pilot program for retail competition — Switching of suppliers by pilot customers — Notice period — Minimum of five business days before next scheduled meter reading date. p. 405.

3. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric service — Pilot program for retail competition — Customer eligibility — As unaffected by customer's relocation within host utility's territory. p. 405.

4. RATES, § 166

[N.H.] Factors affecting reasonableness — Solicitation of business — New commercial or industrial load — Eligibility to participate in pilot program for retail electric competition — Eligibility unaffected by customer's relocation within host utility's area. p. 405.

5. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric service — Pilot program for retail competition — Customer eligibility — Residential space-heating customers — Inclusion in pilot program. p. 406.

BY THE COMMISSION:

ORDER

Page 404

This order addresses the Motion for Clarification filed by Green Mountain Energy Partners, L.L.C. (GMEP), relative to certain notice provisions within the Pilot compliance tariffs of several New Hampshire electric utilities. Specifically, GMEP requests clarification regarding the requisite notice period for customers to switch competitive suppliers and for suppliers to notify utilities of similar changes. This order also addresses miscellaneous implementation issues that apply to all jurisdictional electric utilities.

I. GMEP MOTION

GMEP notes that the Granite State Electric's compliance tariff approved by Order No. 22,098 requires a customer to provide certain information 30 days prior to commencement of electric service. GMEP believes that this requirement creates a 30 day notice period for switching suppliers. In contrast, in Order No. 22,118 we directed Public Service Company of New Hampshire (PSNH) to allow Pilot customers to switch suppliers within five working days of receiving written notification. Despite that directive, GMEP notes that the PSNH tariff submitted in compliance with Order 22,118 contains a provision requiring the customer to provide certain information at least 15 days prior to the customer's scheduled meter reading date before service competitive service can begin.

[1, 2] In order to eliminate uncertainty in this area, and to ensure that all utilities adopt a uniform approach to these notice issues, we will partially adopt the tariff modifications proposed by GMEP. Accordingly, we direct all electric utilities to make the following revisions and/or additions to their tariffs:

> In order for a Pilot customer to begin receiving power supplies from a chosen supplier, both the customer and the supplier shall notify the host utility in writing at least five (5) business days prior to the next scheduled meter reading date. If such notification is provided in a timely manner, the host utility shall be obligated to begin delivering power from the supplier to the Pilot customer on the next scheduled meter reading date. If such notice is furnished to the host less than five (5) business days prior to the next scheduled meter reading date, the utility has the option to delay the provision of delivery services until the following scheduled meter reading date.

Regarding GMEP's suggestion that suppliers should be required to notify host utilities of the impending conclusion of a power supply arrangement, we believe that such notification is unnecessary in many circumstances because customers and their suppliers will specify the duration of their supply arrangement when they request delivery service. If there is an unspecified term of service, delivery services should continue to be provided until further notification or until such time as it is determined that the load responsibility for that customer has shifted back to the host utility. If a Pilot customer has an unspecified term of service with a competitive supplier and thereafter seeks to switch to a different supplier, such customer must request new delivery service consistent with the notice provisions set forth above.

II. MISCELLANEOUS IMPLEMENTATION ISSUES

[3, 4] We will next address several issues which have arisen as a result of marketing activities in the Pilot. First, we have been asked to clarify whether Pilot customers retain their right to participate if they relocate within their host utility's service territory. Although it may have been unclear in the Final Guidelines, it has always been our intention to allow individually selected customers to retain the right to participate in the Pilot if they relocate within the same service territory of their host utility. This does not apply to customers who have been selected as part of a Geographic Area of Choice (GAC). If a Pilot customer within a GAC relocates, the right to participate accrues to any customer who subsequently occupies the premises vacated by the initial GAC customer.

In its compliance filing submitted in response to Order No. 22,118, PSNH requested authority to charge certain Pilot customers for the installation and operation of remote

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communications equipment. In the Final Guidelines, we stated that utilities could, in some circumstances, recover their incremental costs associated with providing certain services. We will allow PSNH to recover its incremental costs of purchasing and installing such equipment, but only after it furnishes workpapers detailing such costs and we are satisfied that the costs are appropriate.

[5] Finally, we address an issue related to the general residential load of PSNH's customers

who receive space heating service under Rate LCS. The issue has been raised as to whether such customers are precluded from participating in the Pilot as a result of taking service under this tariff. We have reviewed the LCS tariff and conclude that customers who take this service may participate in the Pilot by obtaining power from competitive suppliers in order to service their non-space heating load. Stated differently, the availability section of the tariff does not create an obligation on the part of LCS customers to purchase their remaining electric service needs from PSNH.

Based upon the foregoing, it is hereby

ORDERED, that all jurisdictional electric utilities shall make the foregoing modifications to their compliance filings by June 3, 1996.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of May, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Retail Competition Pilot Program, DR 95-250, Order No. 22,098, 81 NH PUC 270, Apr. 12, 1996. [N.H.] Re Retail Competition Pilot Program, DR 95-250, Order No. 22,118, 81 NH PUC 310, Apr. 24, 1996.

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NH.PUC*05/28/96*[89180]*81 NH PUC 406*Connecticut Valley Electric Company, Inc.

[Go to End of 89180]

81 NH PUC 406

Re Connecticut Valley Electric Company, Inc.

DF 96-151
Order No. 22,167

New Hampshire Public Utilities Commission

May 28, 1996

ORDER authorizing an electric utility to issue up to $1.25 million in short-term debt and up to $1.25 million in additional long-term debt, so as to improve its cash flow position.

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1. SECURITY ISSUES, § 98

[N.H.] Incurrence of additional debt — Issuance of short-term debt — Additions to long-term debt obligations — So as to smooth out revenue stream — Conditions — Infusion of equity from parent company — Electric utility. p. 406.

BY THE COMMISSION:

ORDER

[1] On May 10, 1996, Connecticut Valley Electric Company, Inc. (CVEC) filed a petition, in accordance with RSA 369:7, seeking approval of the extension of its $1.25 million short term credit facility, and of approval for additional long term debt financing in the amount of $1.25 million. In support of its petition, CVEC submitted the direct testimony and exhibits of Jonathan W. Booraem, Treasurer.

CVEC's current short term credit facility of $1.25 million, through First NH Bank, was last approved by the Commission in its Order No. 21,437, issued November 29, 1994. Previously, CVEC had received Commission approval for a $1.0 million credit line by Order No. 21,128 issued February 14, 1994 in DF 94-011. The current approval expires May 31,

1996, thus necessitating the instant petition. CVEC indicates that the credit facility of $1.25 million exceeds 10% of CVEC's net assets, thus requiring Commission approval. The interest rate remains the same as previously approved, i.e. prime rate less 0.25%. CVEC avers that the short term financing provides it with cash flow which assists in smoothing out the seasonality of its revenue stream, which is more heavily weighted toward the winter season. In addition, CVEC's relatively poor recent operating results have also forced a greater use of the short term credit facility.

CVEC currently has outstanding long term debt, also through First NH Bank, in the principal amount of $2.5 million. This debt was approved by the Commission in its Order No. 21,476, issued December 23, 1994 in DF 94-275. The instant petition seeks Commission approval for the First Amendment to the Note and Loan Agreement for an additional $1.25 million, bringing the total principal amount to $3.75 million. CVEC asserts that the additional borrowing is necessary since CVEC's total capitalization has remained nearly level at approximately $5.0 million for over ten years. In the last six years, CVEC's total construction of additional utility assets has exceeded its cash flow from depreciation by over $2.7 million. These factors, combined with CVEC's declining operating performance in recent quarters, has resulted in CVEC's inability to remain current on its accounts payable, particularly those to its parent, Central Vermont Public Service Corporation (CVPS).

Simultaneously with the proposed borrowing, CVPS has agreed to increase its equity investment in CVEC, having already infused $500,000 in April of this year. CVPS is committed to, and First NH Bank is requiring as a condition of additional borrowing, additional equity investments of over $1.3 million in CVEC over the next few years. At the time of closing of the proposed financing, CVPS will invest nearly $1.0 million of additional equity. In addition, CVEC has indicated that it is preparing a rate increase filing at this time, to address its poor operating performance resulting from its revenue deficiency.

The proposed additional borrowing in the instant petition, structured as an amendment to the Note and Loan Agreement approved in DF 94-275, calls for an interest rate of 8.25% until

December 27, 1996 on the entire principal balance of $3.75 million. At that time, and on that date thereafter during the term of the Note, the interest rate will continue to be adjusted to the prime rate then in effect. The maturity of the Note remains December 27, 1999, and can be renewed or extended by the Bank on or before May 31, 1999. Commission approval, of any such renewal or extension or of new borrowing, will be required at that time.

Based upon the foregoing, it is hereby

ORDERED, that CVEC is hereby authorized to accept the $1.25 million short-term credit facility through First NH Bank, under the terms and conditions as described herein; and it is

FURTHER ORDERED, that CVEC is authorized to accept the First Amendment to the Note and Loan Agreement, originally executed December 27, 1994, in order to increase the principal balance of its long term note from $2.5 million to $3.75 million, under the terms and conditions as described herein; and it is

FURTHER ORDERED, that CVEC provide the Commission with a copy of the loan agreements when executed; and it is

FURTHER ORDERED, that this authorization shall be effective as of the date of this Order.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of May, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Connecticut Valley Electric Co., Inc., DF 94-011, Order No. 21,128, 79 NH PUC 76, Feb. 14, 1994. [N.H.] Re Connecticut Valley Electric Co., Inc., DF 94-251, Order No. 21,437, 79 NH PUC 649, Nov. 29, 1994. [N.H.] Re Connecticut Valley Electric Co., Inc., DF 94-275, Order No. 21,476, 79 NH PUC 718, Dec. 23, 1994.

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NH.PUC*05/28/96*[89181]*81 NH PUC 408*Public Service Company of New Hampshire

[Go to End of 89181]

81 NH PUC 408

Re Public Service Company of New Hampshire

DR 96-076, DR 96-078
Order No. 22,168

New Hampshire Public Utilities Commission

May 28, 1996

ORDER disapproving an electric utility's proposed renegotiation of long-term rate agreements for purchases of power from two qualifying hydropower small power producers, Fiske Mill Hydro, Inc., and Steels Pond Hydro, Inc. The proposed renegotiation would provide the utility with a 5% reduction in rates payable in exchange for the utility's assignment of lien rights to third-party mortgagees, so as to allow the hydro projects to secure additional financing. However, the commission finds the rate reduction insufficient given that the existing rates are more than four times higher than the utility's avoided costs. Accordingly, the commission states that a 7% rate reduction is the minimum it would consider before approving the renegotiated contract.

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1. COGENERATION, § 17

[N.H.] Contracts — 30-year rate agreements — Proposed modification — Factors affecting rejection — Insufficient pricing concessions — Hydropower small power producers. p. 409.

2. COGENERATION, § 25

[N.H.] Rate design — Purchases from hydro small power producers — Utility's avoided costs as basis — Proposed renegotiation of rates — Rates as still far exceeding utility's present avoided costs — Rejection of proposed modification — Necessity of minimum 7% rate reduction. p. 409.

APPEARANCES: Gerald M. Eaton, Esq. on behalf of Public Service Company of New Hampshire; Richard Erickson, on behalf of Fiske Mill Hydro, Inc. and Steels Pond Hydro, Inc., Patrick Moast on behalf of the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On March 15, 1996 Public Service Company of New Hampshire (PSNH) filed petitions in dockets DR 96-076 and DR 96-078 with the New Hampshire Public Utilities Commission (Commission) requesting approval to modify Order No. 17,706 with Steels Pond Hydro, Inc. (Steels Pond) and Order No. 17,871 with Fiske Mill Hydro, Inc. (Fiske Mill) (jointly the Projects).

The proposed rate order modifications reflect price concessions by the Projects in return for lien concessions by PSNH. Specifically, the Projects offer 5% rate order price reductions to PSNH in exchange for PSNH's lien subordination and assignment of its rights to third party mortgages in order to allow the Projects to secure an additional financing of $1.3 million.

The Steels Pond Petition for Thirty-Year Rate Order was originally filed with the Commission on September 28, 1984 in DR 84-279 and approved in Order No. 17,306, on November 6, 1984. The Fiske Mill thirty-year rate order petition was originally filed with the Commission on June 19, 1985 in DR 85-224 and approved on September 26, 1985. Order No.

17,871. Both rate order approvals were granted contingent on a surety or a junior lien being given to PSNH to cover the "buy out" value at each of the sites.

In its March 15, 1996 petitions to the

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Commission, PSNH requested that the Commission schedule a hearing on its proposed modifications pursuant to RSA 365:28. In both petitions, PSNH states that it does not intend its position in the proposed Steels Pond and Fiske Mill rate order modifications to be precedential with regard to any position it may put forth in other proceedings with other parties.

Subsequent to the filing of the proposed rate order modifications in DR 96-076 and DR 96-078, Commission Staff (Staff) performed discovery about the purpose of the refinancings and scheduled a hearing which was duly noticed. The hearing was held at the Commission on April 18, 1996.

II. POSITIONS OF THE PARTIES AND STAFF

A. *PSNH*

At the Commission's April 18, 1996 hearing, PSNH testified that there was no additional cost to ratepayers through the proposals and that the full benefit of the 5% reduction to the prices in the rate orders would flow directly to ratepayers through PSNH's fuel and purchased power adjustment clause filings, (FPPAC).

PSNH affirmed that its precedent for the proposed 5% rate order price reduction is, first, the 5% rate order reduction approved in the DR 96-033 proceeding in which River Bend Hydro's modified rate order was transferred to Otter Lane Hydro, L.L.C. Order No. 21,190. The other basis for the proposed 5% reduction was the 7% price reduction in the renegotiated agreements between PSNH and five large hydro projects approved by the Commission in Order No. 21,190 in DR 94-002. Since there are approximately 60 small hydros with rate orders, PSNH stated it would welcome a blanket guidance policy by the Commission for use by PSNH in negotiating future price reductions with other small hydro facilities being paid under Commission rate orders. PSNH believes Commission direction will make the process more efficient and less costly.

B. *Fiske Mill & Steels Pond*

Richard Erickson testified on behalf of the Projects that the 5% price reductions for Steels Pond and Fiske Mill were reasonable and necessary for the refinancing.

In response to a bench request, Mr. Richard H. Ireland, Treasurer of Fiske Mill and Steels Pond, submitted a written response to the Commission on May 2, 1996 which stated that any rate order price reduction in excess of 5% would not enable the Projects to service its debt, and consequently, the bank would not make the loan.

C. *Staff*

Staff took no position but sought to create a sufficient record for the Commission to base its decisions regarding the proposed rate order proposal and to base its position regarding future small hydro rate order requests, including proposed rate order price reductions.

III. COMMISSION ANALYSIS

[1, 2] The issue before us is whether the proposed rate reduction is just and reasonable.

In this instance, we reject the proposed Fiske Mill and Steels Pond rate order modifications, finding that a 5% price reduction is inadequate, based on the testimony presented at the hearing regarding the high level of Fiske Mill and Steels Pond rate order prices. PSNH testified that the rate order price as modified will still be four times as high as PSNH's short term avoided costs. The modified rates are also considerably higher than PSNH's most recently approved long term avoided costs. We believe that Fiske Mill and Steels Pond small hydro rate order price reductions should be at least 7% based on prior Commission directives, including the renegotiated hydro agreements in Order No. 21,190 in DR 94-002.

We view a 7% price reduction to be the minimum for such small hydro rate order modifications. We retain the right to scrutinize future rate order modification filings within the context of current market conditions, competitively driven wholesale market opportunities, and revised avoided cost information.

Based on the foregoing, it is hereby

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ORDERED, that the proposed Fiske Mill and Steels Pond rate order modifications are rejected.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of May, 1996.

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 Steels Pond Hydroelectric Project, DR 84-279, Order No. 17,306, 69 NH PUC 646, Nov. 6, 1984.

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NH.PUC*05/28/96*[89182]*81 NH PUC 410*Consumers New Hampshire Water Company, Inc.

[Go to End of 89182]

81 NH PUC 410

Re Consumers New Hampshire Water Company, Inc.

DR 95-124
Order No. 22,169

New Hampshire Public Utilities Commission

May 28, 1996

ORDER adopting stipulation with respect to a water utility's proposed rate increase. The new rates provide for a 14.33% increase and an authorized return on equity of 10.25%. Certain of the utility's oversized mains are deemed to represent excess capacity, such that 80% of that plant is excluded from rate base as plant held for future use, but with provisions for its gradual addition to rate base over the coming years. Commission expresses concern as to the utility's high level of rates, but concludes that rejection of the proposed increase in its entirety would only worsen conditions for the utility and cause even higher rates down the road.

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1. RETURN, § 115

[N.H.] Water utility — Authorized return on equity of 10.25% — Explicit cost of short-term debt — Implicit cost of long-term debt — Stipulation. p. 413.

2. VALUATION, § 213

[N.H.] Property excluded from rate base — Overdevelopment and excess capacity — Plant held for future use — Oversized mains — Water utility — Exclusion of 80% of plant — Gradual addition of remainder over coming years — Stipulation. p. 414.

3. DEPRECIATION, § 81

[N.H.] Water utility — Depreciation reserve — Treatment of reserve deficiency — Amortization schedule — Stipulation. p. 414.

4. SERVICE, § 480

[N.H.] Water — Quality and purity — Treatment procedures — Flushing of mains — Customer notice and information requirements — Stipulation. p. 414.

5. RATES, § 145

[N.H.] Factors affecting reasonableness — Cost of service — Excessive costs — For management functions — Rendering rates among highest in state — Audit of management costs — As condition for approval of rate increase — Water utility. p. 415.

6. EXPENSES, § 76

[N.H.] Management costs — Excessive costs — Rendering rates among highest in state — Audit of management costs — As condition for approval of rate increase — Water utility. p. 415.

7. RATES, § 595

[N.H.] Water rate design — Retention of existing structure — Two rate classes — 30% differential between the two — No averaging of rates — Costs of service and economic

efficiency as factors — Mitigation of prior subsidization — Stipulation. p. 415.

APPEARANCES: Ransmeier and Spellman by Harold T. Judd, Esq. for Consumers New Hampshire Water Company, Inc.; Donahue, McCaffrey, Tucker and Ciandella by John J. Ratigan, Esq. for the Town of Hudson, New Hampshire; Leonard A. Smith, *pro se*; Representative Donald White, *pro se* (limited intervenor); Office of the Consumer Advocate by Thomas Lyle 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

Consumers New Hampshire Water Company, Inc. (Consumers) filed, on June 20, 1995, a petition for an overall increase in revenue of $1,205,783, or 23.1% over its current revenue level (Petition). The petition also proposed a "second step" increase to reflect changes in rate base, expenses and capital structure which would amount to an additional revenue increase of $348,803 or 5.39% over revenue levels proposed in the petition. The Commission, on July 17, 1995, issued Order No. 21,746 which suspended the proposed permanent rate schedule, established a prehearing conference for August 4, 1995, scheduled four evening hearings to be held in the Towns of Litchfield, Windham, Raymond, and Hudson to receive consumer comments on the petition, and proposed a procedural schedule to govern the remainder of the proceeding. The Office of Consumer Advocate (OCA) filed on July 19, 1995 a Motion to Dismiss Petition to Increase Rates or, In the Alternative, to Hold Further Proceedings in Abeyance, to which Consumers objected on July 27, 1995. Staff responded to the OCA's motion on July 31, 1995, to which Consumers also objected.

The Commission received requests for intervention by the Town of Hudson, Leonard Smith and Representative Donald Smith. Consumers filed an objection to the intervention request of Hudson. On August 4, 1995 a prehearing conference was held.

On August 28, 1995 the Commission issued Order No. 21,796, granting the intervention requests of Hudson, Leonard Smith, and Representative Donald White (limited intervention), and denying the OCA's request to dismiss the petition. Order No. 21,796 also clarified the scope of the proceeding by specifically including an analysis of whether certain property, identified in docket DR 89-224, 76 NH PUC 521 (1991), was found to be both prudently incurred and used and useful.

On September 5, 1995 Staff filed testimony of Jane A. Emerson with respect to the cost of equity.

On September 27, 1995, the OCA filed a Motion for Rehearing and Other Relief (OCA Motion) asking that the Commission rehear its decision to dismiss the petition or, in the alternative, order an extended procedural schedule and consider the Motion for Rehearing to be a new motion to dismiss.

On September 28, 1995 Consumers filed a Request for Clarification or, in the Alternative, Motion for Rehearing (Consumers Motion) seeking three clarifications or corrections of Order

No. 21,796: 1) page 1 incorrectly noted the date on which Consumers objected to a Staff motion; 2) page 4 incorrectly characterized Consumers' position on the prudence and used and useful analysis in the DR 89-224 order; and 3) Order No. 21,796 mischaracterized Consumers' interpretation of Order No. 20,196 as to whether the Commission had already ruled on the prudence of certain property in that case.

The OCA responded to Consumers' Motion on October 2, 1995, arguing that it was not clear what property had been found to be prudent in DR 89-224 and Consumers should present evidence on the prudence of all property emerging from that prior rate case. The OCA also argued that the requested corrections to the order raise new issues and are unnecessary. It

argued that Consumers Motion raised "new grounds which could have been raised before or grounds that are not new which were previously addressed in the Commission's order which has not been complied with" and urged the Commission to reject the Motion.

On October 4, 1995 Consumers objected to the OCA Motion, arguing that the case need not be dismissed, as well as to the OCA's October 2, 1995 response to the Consumers Motion. This led to the OCA's October 5, 1995 Motion for Relief which stated that Consumers had no right to file a response to the OCA's response under Commission rules and requested "relief which is just and equitable" without specifying the relief it sought.

Staff responded to the OCA Motion and Consumers Motion on October 5, 1995 but did not respond to the other filings.

On October 23, 1995 the Commission issued its Order No. 21,874 in which it 1) approved Consumers Motion of September 28, 1995 with respect to the drafting errors correction and the request for clarification regarding prudence; 2) denied the OCA Motion; and 3) approved the procedural schedule submitted, to which all but the OCA agreed.

On October 30, 1995 Consumers filed the Supplemental Testimony of Terry J. Rakocy regarding Excess Capacity and Used and Useful Analysis.

On or about November 15, 1995 the OCA, Hudson and Staff filed their second set of data requests, pursuant to the Commission approved schedule. For 27 of the OCA's data requests, Consumers provided only partial answers and, on November 20, 1995, objected to other portions of the data requests.

The OCA filed a Motion to Compel on November 29, 1995, asking the Commission to compel Consumers to respond in full to the 27 data requests. The OCA's motion, in which Hudson and Mr. Smith concurred, proposed an alternate set of data requests. Staff on December 8, 1995, concurred in part with recommendations to limit the request.

Consumers objected to the OCA's Motion to Compel on December 11, 1995, to which the OCA filed a reply on December 13, 1995. Consumers also objected to Staff's response on December 14, 1995.

On January 8, 1996, by Order No. 21,966, the Commission ordered Consumers to respond to the OCA's alternate data request with respect to plant arising from DR 89-224. However, it

required use of Exhibit TJR-16 rather than three property lists, and further limited the inquiry regarding plant which emerged from DR 89-224 to determine if that plant was used and useful in 1994, as opposed to whether it was used and useful from 1991 through 1994. The Commission also rejected the OCA's assertion that Consumers failed to meet its burden of proof pursuant to RSA 378:8, deferred the issue of refunds from 1991 onward until a greater record could be developed in the docket, and deferred the issue of rate case expenses until the conclusion of the docket.

On December 21, 1995, Consumers filed a Motion on Bonded Rates. Pursuant to RSA 376,III, the motion put the proposed increase into effect six months from the proposed effective date of Consumers' rate increase request, or January 20, 1996 in this case. The bond requires Consumers to pay the difference, if any, between the amounts collected under its proposed rate schedules and the amounts permitted by the schedule of permanent rates determined by the Commission. Consumers stated it would propose deferring the collection of 50% of the increase pending final approval by the Commission, but would not pursue this deferral approach if a challenge were filed with the Commission.

On December 27, 1995 the OCA filed its opposition to Consumers' Motion on Bonded Rates, stating it would further litigate the issue. On January 4, 1996 Hudson filed an Objection to Consumers' Motion on Bonded Rates.

On January 3, 1996 Consumers notified the Commission that because of the OCA's objection, it was withdrawing its proposal to defer recovery of 50% of rates under bond and instead would proceed with the full bonded rates for service rendered on and after January 20, 1996, once the Commission approved the bond. Consumers also stated that it would make refunds, if any, with interest at the prime interest rate as of the date of the final order, from the time each customer rendered a payment under

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bonded rates.

On January 4, 1996 Consumers filed a Motion to Approve Stipulation Regarding [the methodology for calculating) the Return on Common Equity. Neither Staff nor other Parties concurred with the motion. On January 22, 1996 the Commission notified the Parties that it would hear arguments with regard to the issue of Return on Common Equity as the first issue at the final hearings scheduled for March 14-22, 1996.

On January 18, 1996, the Commission issued Order No. 21,984 approving the form of the proposed bond, reasoning that RSA 378:6 does not authorize the Commission to reject the implementation of rates under bond so long as the form of the bond is acceptable. The Commission modified the proposed bond, ordering Consumers to track payments made under the bonded rate schedule on a customer specific basis so that any refunds would be so made, denied Hudson's request to evaluate its testimony before ruling on Consumers' Motion on Bonded Rates, and declined to further address the OCA's arguments in its request to dismiss the rate case petition or extend significantly the procedural schedule. The OCA had appealed Commission Order No. 21,796, in which it had ruled on these matters, to the New Hampshire Supreme Court. On January 3, 1996, the Supreme Court declined to accept the appeal.

Staff and intervenors filed direct testimony on January 15, 1996. On January 23, 1996 Consumers filed a Motion on Supplemental Testimony. On January 25, 1996, the OCA filed a Response to Consumers' Motion on the schedule for Supplemental Testimony. On January 26, 1996, Staff and Hudson concurred in Consumers' motion. On January 30, 1996 the Commission notified the Parties that it accepted the procedural schedule for supplemental testimony.

On February 2, 1996 the OCA filed a Motion to Reconsider Order Addressing Bonded Rates (Order No. 21,984) or, in lieu of such Reconsideration, to Certify Questions of Law to the New Hampshire Supreme Court. Consumers filed its executed Bond on February 2, 1996. Responses in opposition to the OCA Motion were received from both Staff and Consumers on February 6, 1996.

The OCA and Hudson filed Supplemental Testimony on February 6, 1996 and February 12, 1996, respectively.

On February 21, 1996 the Commission issued its Order No. 22,023 in which it denied the OCA Motion to Reconsider Order Addressing Bonded Rates or, in lieu of such Reconsideration, to Certify Questions of Law to the New Hampshire Supreme Court.

Staff and the Parties held properly noticed settlement discussions and reached agreement on all contested issues. The parties and Staff presented the Stipulation Agreement (Agreement) for the consideration of the Commission on March 18, 1996.

II. STIPULATION AGREEMENT

A. The Agreement presented by the Parties and Staff can be summarized as providing for an overall increase in revenue of $753,000, or 14.33% over the current revenue of Consumers of $5,254,661. Rate base is stipulated at $21,692,833, and the stipulated net operating income of $2,123,728 derives from an overall cost of capital of 9.79%. The Parties agree that, since the Company's submitted cost of service study supported the premise that the fire protection rates were already in excess of their cost of service, the rate increase imposed by the order implementing the Agreement is appropriately borne by water customers alone.

[1] B. The Parties and Staff agree that the overall cost of capital is based on a return on equity of 10.25%, and a cost of short term debt of 7.58%. The Parties and Staff agree that implicit from the overall cost of capital is a cost of long term debt of 9.96%. However, the method for the determination of the cost of long-term debt is not agreed upon.

C. The Parties and Staff agree that Consumers will decrease rate base by $133,044, resulting from adjustments to expenses for Tracy Lane, Dig-Safe, Well Cleaning and Testing, and Transportation. In addition, the Agreement resolves rate base treatment for certain oversized water mains identified in DR 89-224, plant additions made during 1990 through 1994, and 1995 plant additions as follows:

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[2] (1) The Parties and Staff agree to treat the oversized water mains identified in DR 89-224 as follows: All of the oversized mains are recognized as used and useful. The value of the oversized mains is $543,820, of which 80%, $435,056, is excluded from rate base. The excluded

80% is recognized as Plant Held for Future Use. It is eligible to be added to rate base in equal annual installments from 1995 through 2010. The equal annual installments have an undepreciated value of $27,191. The entire value of the oversized mains, $543,820, is to continue to be depreciated for ratemaking purposes. At the time of future rate increase petitions, the now excluded 80% will be included in rate base in amount equal to the sum of the eligible installments, less depreciation.

(2) The Parties and Staff agree that all of the 1990-1994 plant additions are prudent and used and useful. A portion of those plant additions, valued at $88,828, are considered oversized mains. The Agreement provides that 80% of that value, $71,062, is excluded from rate base and instead recognized as Plant Held for Future Use. It is eligible to be added to rate base in equal annual installments from 1995 through 2010. The equal annual installments have an undepreciated value of $4,441. The entire value of the 1990-1994 oversized mains, $88,828, is to continue to be depreciated for ratemaking purposes. At the time of future rate increase petitions, the now excluded 80% will be included in rate base in an amount equal to the sum of the eligible installments, less depreciation.

(3) The Parties and Staff agree that no 1995 plant additions shall be included in rate base for purposes of this docket.

[3] D. The Parties and Staff agree that a depreciation reserve deficiency of $737,138 will be amortized and collected as an annual expense through rates. The amortized rate for that and other agreed amounts and rates are as follows:

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

	Amount	*Rate*
Depreciation Reserve Deficiency	$ 737,138	$ 40,000
Property Tax Abatement Expenses	153,000	15,300
Depreciation Study	48,198	4,820
Cost of Service Study	4,293	429
Unitary Tax	31,193	3,119
Derry Wholesale Water	30,760	3,076
1995 Customer Survey	6,544	3,272

E. The Parties and Staff were able to resolve many disputes regarding expense items. Attachments H and I of the Agreement detail the adjustments agreed upon. The total amount of O & M Expenses was reduced by $644,105 resulting in a reduction of total expenses by $309,939 adjustments.

[4] F. The Parties and Staff agree that Consumers will provide the following services regarding water treatment:

(1) Notify customers when the chemical mix used for water treatment is substantially changed;

(2) Notify customers annually of the chemicals used for water treatment;

(3) Notify customers annually that information regarding chemicals used for water treatment is available upon request;

(4) Notify new customers, when they apply for service, of the chemicals used for water treatment and of the availability of information regarding the chemicals used for water treatment;

(5) Notify customers at least one week before any planned service interruptions or flushing of mains;

(6) Survey customers regarding concerns about the level of manganese in the water in certain portions of the system and develop plans, within two years, for improving treatment in those areas; and

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(7) Upon request and at no additional charge to the customer, remove a customer's meter and flush the service lines if the line will not clear after a water main is flushed or service is interrupted.

G. The Parties and Staff agree that the continuance and the amount of any rate differential between customer classes is a policy matter for the Commission to decide, given that the Commission consolidated the number of customer service classes in docket DR 89-224, Order No. 20,196, 76 NH PUC 521 (1991), on the basis of the positions presented by the Parties and Staff in written testimony. The Agreement states that Consumers and the OCA agree not to appeal the Commission's decision, and the Town of Hudson agrees not to appeal the Commission's decision unless the differential is reduced below the current differential.

III. COMMISSION ANALYSIS

Our most basic and important responsibility is to balance the interests of the utility with those of the customers. Under RSA 363:17-a, the Commission is legislatively empowered to be "the arbiter" between the two. *See Appeal of Public Serv. Co. of N.H.*, 122 N.H. 1062, 1077, 51 PUR4th 298, 454 A.2d 435 (1982). The utility's investment in plant and management services is made with a goal of providing quality service and producing a reasonable return. Customers' interests lie in obtaining quality service for a reasonable price. The two interests come together in the common goal of quality service, or, at the very least, continuous and acceptable service.

[5, 6] We are aware of Consumers' already high level of rates, which are higher than those of other subsidiaries of Consumers' parent corporation (the parent). This fact causes us concern for the Consumers' viability in the long term, that is, its ability to continue to provide service. Consumers' rates are among the highest in New Hampshire of the regulated water utilities. We are aware that still higher rates can lead customers to seek alternative sources of drinking water, such as private wells, thus leaving the system. Fewer customers could lead to higher rates for those remaining on the system and could create a so-called death spiral leading to the collapse of the company.

We have reviewed the Agreements, the written testimony of the Parties and Staff and the numerous comments of customers and interested parties, including those made at the hearings

held in the communities and those submitted in writing. We recognize that the Settlement Agreement is the result of lengthy and difficult negotiations and represents the best result possible under traditional ratemaking. Therefore, despite our deep concerns for the level of rates that Consumers will charge, we will approve the Agreement, subject to certain conditions, as reasonable and in the public good.

Staff and the OCA took issue with management costs claimed by Consumers and the Agreement does provide for some reduction in overall management expenses. Nonetheless, one of the specific areas of cost which concerns us is the level of expense incurred at the parent's headquarters and which is passed down to Consumers. We will therefore, as a condition of our approval of the Agreement, direct our Staff to conduct an audit of corporate costs and the management services contract between Consumers and the parent. The purpose of the audit is to ensure that all costs incurred are justifiable and necessary. If Staff's audit reveals that further reductions can and should be made, we will order that the Company's rates be correspondingly reduced. We will direct this report to be completed within 90 days from the date of this order. In addition, we call upon the Company to examine and develop new and creative ways to manage its costs and to avoid the necessity of further rate increases.

[7] The Parties and Staff requested the Commission to rule on the issue of Consumers' rate structure, specifically the rate differential currently existing between Consumers' rate classes. The rate differential was established under procedures laid out in Order No. 20,196 (the prior order), *Re Southern New Hampshire Water Company*, 76 NH PUC 521, 534-535 (1991). The procedures were created to mitigate significant subsidization resulting from Southern's (Consumers' predecessor) purchase of smaller, less than cost effective, water

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systems. As we stated in the prior order, "[T]he benefits of the policy (of encouraging larger systems to rescue smaller distressed systems) would be short-lived if existing customers are asked to pay substantial subsidies to rescue the customers of the smaller systems." *Id.* at 534.

Application of the procedures produced the tariff now in place, with essentially two classes showing a 30% rate differential. Consumers, which initially proposed reducing that differential by half, expressed its willingness to maintain the differential at 30%.

We are not persuaded by the record before us to abandon our analysis in the prior order. Now, as then, the issue of averaging rates in systems such as Consumers' involves complex policy considerations, including, *inter alia*, those of providing accurate price signals, promoting economic efficiency, and minimizing the risk of inappropriate subsidies between groups of ratepayers. We will therefore apply the same percentage increase to both classes of customers. Thus, there will be no change to the existing differentials, with the intended result that the actual, monetary, rate differences will change but that the percentage difference will remain the same.

Based upon the foregoing, it is hereby

ORDERED, that the Stipulation Agreement signed by the Parties and Staff on March 18, 1996, is approved subject to the condition contained herein; and it is

FURTHER ORDERED, that Staff shall conduct an audit of the corporate costs and the

management services contract between Consumers and the parent; and it is

FURTHER ORDERED, that Staff shall submit its audit findings within 90 days from the date of this order; and it is

FURTHER ORDERED, that the Commission reserves the right to modify Consumers' rates, if appropriate, to respond to Staff's findings.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of May, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Consumers New Hampshire Water Co., Inc., DR 95-124, Order No. 21,746, 80 NH PUC 465, July 17, 1995. [N.H.] Re Consumers New Hampshire Water Co., Inc., DR 95-124, Order No. 21,796, 80 NH PUC 545, Aug. 28, 1995. [N.H.] Re Consumers New Hampshire Water Co., Inc., DR 95-124, Order No. 21,874, 80 NH PUC 666, Oct. 23, 1995. [N.H.] Re Consumers New Hampshire Water Co., Inc., DR 95-124, Order No. 21,966, 81 NH PUC 4, Jan. 8, 1996. [N.H.] Re Consumers New Hampshire Water Co., Inc., DR 95-124, Order No. 21,984, 81 NH PUC 32, Jan. 18, 1996. [N.H.] Re Consumers New Hampshire Water Co., Inc., DR 95-124, Order No. 22,023, 81 NH PUC 101, Feb 21, 1996.

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NH.PUC*05/29/96*[89183]*81 NH PUC 416*New Hampshire Electric Cooperative, Inc.

[Go to End of 89183]

81 NH PUC 416

Re New Hampshire Electric Cooperative, Inc.

DR 95-209
Order No. 22,170

New Hampshire Public Utilities Commission

May 29, 1996

ORDER approving settlement as to modified demand ratchets of an electric cooperative, which modification had been required by Order No. 21,693 (80 NH PUC 343). However, other rate design changes required by that order are deferred pending resolution of a restructuring plan for the electric industry. (The other changes had pertained to expanding the availability of seasonal rates from residential customers alone to all customers, developing time-of-day rates for the primary general class, and establishing disconnection and reconnection charges.)

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1. RATES, § 333

[N.H.] Electric rate design — Demand charges — Ratchet in wholesale rates — Separate calculations for general service and primary general service customers — Cooperative association — Settlement. p. 417.

2. RATES, § 360

[N.H.] Electric rate design — Optional seasonal rates — For all customer classes — Postponement of expansion plan — Cooperative association — Settlement. p. 417.

3. RATES, § 326

[N.H.] Electric rate design — Optional time-of-day rates — For the "primary general" class — Postponement of implementation — Cooperative association — Settlement. p. 417.

4. RATES, § 308

[N.H.] Disconnection and reconnection charges — Electric service — Development of — Deferral of consideration of — Cooperative association — Settlement. p. 417.

APPEARANCES: Dean, Rice and Howard by Mark W. Dean, Esq. and Mark E. Howard, Esq. for New Hampshire Electric Cooperative, Inc.; Office of Consumer Advocate by Michael W. Holmes, Esq. for residential ratepayers; Robert J. Frank, Esq. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On August 2, 1996 the New Hampshire Electric Cooperative, Inc. (NHEC) filed with the New Hampshire Public Utilities Commission (Commission) a petition to implement rate design changes. The proposed changes were in conjunction with agreements reached and approved by Order No. 21,693 (June 20, 1995) in Commission docket DR 93-124, NHEC's last permanent base rate case.

The Office of Consumer Advocate (OCA) is a statutorily authorized intervenor and participated in all aspects of the docket. Hannaford Brothers Company requested full intervention, but later withdrew the request. There were no other requests for intervention.

The Town of Alton, on November 1, 1995, filed a letter stating it was opposed to any rate design change which would result in higher rates and urged the Commission to be wary of any rate increases under the guise of rate redesign.

After discovery, Commission Staff (Staff), OCA and NHEC reached a Settlement Stipulation (Settlement) on rate design implementation. The Commission heard evidence in support of the Settlement on May 9, 1996. No one testified in opposition to the Settlement.

II. SETTLEMENT TERMS

[1-4] DR 93-124 required NHEC to address four areas in its rate redesign: 1) develop

seasonal rates for all customers; 2) develop time of day rates for the Primary General class; 3) reflect the ratchet in the wholesale rate charged by PSNH; and 4) consider termination, disconnect and reconnect charges. NHEC's consultant Dennis R. Eicher filed testimony addressing these four areas.

Mr. Eicher developed a methodology for dealing with the ratchet in the wholesale rate imposed on NHEC by PSNH pursuant to the Amended Partial Requirements Agreement. The Settlement recommends adoption of that methodology as presented on pages 10 through 12 of his prefiled testimony. The treatment of the ratchet effect is as follows:

For the General Service class,

customers will pay the greater of the highest kilowatt (kW) demand during any 15 minute interval in the current monthly billing period or 50% of the highest kW demand during the preceding 11 months, provided the demand exceeds 250 kW.

For the Primary General Service class, customers will pay the greater of the highest kilovolt-ampere (kVA) demand during any 15 minute interval of the on-peak hours of the month, 50% of the highest kVA demand of the off-peak hours of the month, or 50% of the highest kVA demand during the preceding 11 months, provided the demand exceeds 250 kVA.

As stated in Mr. Eicher's prefiled testimony, the methodology was designed to comply with the Commission's directive to reflect PSNH's wholesale ratchet costs imposed on NHEC while mitigating the impact on the affected customers. By using the 250 kW and 250 kVA thresholds, only the largest customers will be affected. NHEC anticipates that approximately 26 customers exceed the 250 kW or kVA threshold and of those 26, 10 are likely to see their monthly billing demands increased.

The Settlement states that all other rate design changes proposed in Mr. Eicher's testimony are withdrawn. These had included 1) development of optional seasonal rates for all customers (at present only the Residential class has seasonal rates, which are optional); and 2) development of optional time of day rates for certain customers and redesign of those time of day rates already in existence. NHEC considered whether to introduce disconnect and reconnect charges, and determined it was appropriate not to do so at this time, given the potential for significant change in the industry due to restructuring efforts.

III. COMMISSION ANALYSIS

We have reviewed the Settlement and supporting testimony presented at the May 9, 1996 hearing and will approve the Settlement as filed. We find the methodology proposed by Mr. Eicher to be in conformance with the Stipulation reached and approved in DR 93-124 and to present a sound way to reflect the ratchet effect without undue impact on most customers. We should note that the ratchet methodology is designed to be revenue neutral.

In approving the Settlement, which withdraws the other rate design proposals, we reserve the right to return to those three issues and require further proposals by NHEC. We will not at this time, however, order NHEC to file additional tariff changes beyond the ratchet effect rate design discussed above.

Based upon the foregoing, it is hereby

ORDERED, that the Settlement entered into between NHEC, OCA and Staff is APPROVED; and it is

FURTHER ORDERED, that compliance tariffs be filed within 15 days of this order.

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of May, 1996.

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.

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NH.PUC*05/29/96*[89184]*81 NH PUC 418*Hanover Water Works Company

[Go to End of 89184]

81 NH PUC 418

Re Hanover Water Works Company

DR 95-236
Order No. 22,171

New Hampshire Public Utilities Commission

May 29, 1996

ORDER correcting the amount a water utility was authorized to recover in rate case expense in Order No. 22,134 (81 NH PUC 351, *supra*). The amount is increased from $27,543 to $28,943 so as to recognize $1,400 in settlement conference and hearing costs that had been inadvertently omitted from prior calculations.

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1. EXPENSES, § 89

[N.H.] Rate case expense — Amended allowance — To recognize previously omitted conference and hearing costs — Affirmation of recovery via quarterly surcharge — One-year

Page 418

amortization period — Water utility. p. 419.

BY THE COMMISSION:

ORDER

[1] On May 7, 1996, the Commission issued Order No. 22,134 approving a rate case settlement and addressing rate case expense recoupment for Hanover Water Works Company (Hanover).

In the original order, rate case expenses were approved in an amount of $27,542.97. Later analysis showed that an invoice of $1,400.00, representing costs associated with the settlement conference and the hearing, was inadvertently excluded from the amount recommended for recoupment. The amended total is $28,942.97.

As previously ordered, the rate case expenses will be collected by means of a surcharge on Hanover's bills for a period of one year. The amended total will result in a total surcharge amount of $18.32 per customer over the course of the next year, or $4.58 per customer per quarter for four quarters.

Based upon the foregoing, it is hereby

ORDERED, that the Staff's recommendation of rate case expenses in the amount of $28,942.97 to be collected by a quarterly surcharge of $4.58 per customer is adopted.

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of May, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Hanover Water Works Co., DR 95-236, Order No. 22,134, 81 NH PUC 351, May 7, 1996.

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NH.PUC*05/29/96*[89185]*81 NH PUC 419*Lakes Region Water Company, Inc.

[Go to End of 89185]

81 NH PUC 419

Re Lakes Region Water Company, Inc.

DF 95-263
Order No. 22,172

New Hampshire Public Utilities Commission

May 29, 1996

ORDER authorizing a water utility to issue up to $22,548 in additional long-term debt, so as to finance the purchase of two Ford trucks.

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1. SECURITY ISSUES, § 58

[N.H.] Incurrence of additional long-term debt — Purposes — Additions and betterments — Purchase of two trucks — Water utility. p. 419.

BY THE COMMISSION:

ORDER

[1] On September 20, 1995 Lakes Region Water Company, Inc., (Lakes Region), a New Hampshire Corporation with its principal place of business in Moultonboro, New Hampshire, filed with the New Hampshire Public Utilities Commission (Commission) a petition for approval of additional financing in the total amount of $22,548 of long term debt, by the issuance of two new notes. The first note will be to the Meredith Village Savings Bank, in the amount of $8,500, with the term of 36 months, at a rate of 8.75%. The second note will be to the Ford Motor Credit Corporation, in the amount of $14,048, with the term of 36 months, at a rate of 9.50%. Lakes Region represents that the financing will be used to purchase a 1993 Ford Ranger truck and a 1995 Ford F-150 truck.

The Commission, having reviewed the filing and the Staff recommendation, finds the financing of this debt is consistent with the

Page 419

public good. Lakes Region in the future shall request the approval of the Commission before entering into financing obligations, as set forth in RSA 369:1.

Based upon the foregoing, it is hereby

ORDERED, that Lakes Region's petition for additional financing is approved, pursuant to RSA 369:1 for the purpose herein set forth.

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of May, 1996.

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NH.PUC*05/29/96*[89186]*81 NH PUC 420*Consumers New Hampshire Water Company, Inc.

[Go to End of 89186]

81 NH PUC 420

Re Consumers New Hampshire Water Company, Inc.

Additional applicant: Town of Derry

DE 95-359
Order No. 22,173

New Hampshire Public Utilities Commission

May 29, 1996

ORDER approving a water utility's proposed sale and transfer of facilities and franchise authority to a municipal utility department. Commission also approves an extension of a wholesale water supply contract as between the two parties.

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1. FRANCHISES, § 50

[N.H.] Transfer — Factors affecting approval — Integration of service areas — Ability of acquiring entity — Transfer from public water utility to municipal utility. p. 423.

2. CONSOLIDATION, MERGER, AND SALE, § 21

[N.H.] Factors affecting approval — Rate considerations — Selling utility as having high rates — Acquiring entity as having lower rates — Transfer of water system from public utility to municipal utility — Integration of municipal's service areas. p. 423.

3. RATES, § 431

[N.H.] Municipally provided service — Wholesale service — Water supplies — Extension of existing contract term. p. 423.

4. RATES, § 625

[N.H.] Water rate design — Wholesale service — Supply of water by municipal utility to retail public utility — Extension of existing contract term. p. 423.

APPEARANCES: Larry S. Eckhaus, Esq. on behalf of Consumers New Hampshire Water Company, Inc.; Marc A. Pinard, Esq. on behalf of the Town of Derry; Donahue, Tucker & Ciandella by John J. Ratigan, Esq. on behalf of the Town of Hudson; the Office of Consumer Advocate by Thomas Lyle on behalf of Residential Ratepayers; and Eugene F. Sullivan, III, Esq. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On December 22, 1995 Consumers New Hampshire Water Company, Inc. (Consumers) and the Town of Derry (Derry) (collectively Petitioners) jointly filed with the New Hampshire Public Utilities Commission (Commission), a petition for approval of the transfer from Consumers to Derry certain utility assets and franchise rights in Derry. Consequently, the petition also requests authority for Consumers to permanently discontinue service by Consumers to the customers of Beacon Hill and Scobie Pond (Franchise Areas). The petition further requests approval of an amendment to the

wholesale water contract between Consumers and Derry; the amendments were made as part of the consideration for the transfers.

On February 23, 1996, the Commission issued an Order of Notice scheduling a Prehearing Conference for March 27, 1996, and a technical session to review the Petition and prefiled testimony. On March 1, 1996, the Town of Hudson (Hudson) Petitioned to Intervene in the proceeding. Consumers filed its Opposition to Hudson's petition on March 18, 1996, and prefiled Direct Testimony on March 20, 1996 pursuant to the Order of Notice.

The Commission held a duly noticed prehearing conference on March 27, 1996. At the prehearing conference the Commission granted full intervenor status to Hudson. The Office of Consumer Advocate (OCA) intervened pursuant to its statutory right. At the technical session, the Parties and Staff agreed that data requests by Staff and Intervenors would be filed by March 29, 1996 with Petitioners' responses due on or before April 12, 1996. By April 26, 1996, Staff was to indicate whether a hearing would be required.

Staff has reviewed the filing and data responses and based on that review has recommended Commission approval of the petitions.

II. BACKGROUND AND DESCRIPTION OF THE PROPOSED TRANSACTIONS

a. *Purchase and Sale Agreement*

By Commission Order No. 18,010 in Docket DE 85-354 in *Re Southern New Hampshire Water Company, Inc.*, 70 NH PUC 1070 (1985), the Commission granted to Consumers, formerly known as Southern New Hampshire Water Company, Inc., authority to operate as a public water utility in those areas of Derry referred to as Beacon Hill and Scobie Pond. These franchise areas were purchased, along with several other systems, from Policy Water Company. A description of the franchise area in metes and bounds for Scobie Pond is provided in *Re Policy Water Systems*, 67 NH PUC 978 (1982); a description of the franchise area in metes and bounds for Beacon Hill franchise is provided in *Re Southern New Hampshire Water Company, Inc.*, 76 NH PUC 5, 6 (1991).

The Scobie Pond and Beacon Hill franchise systems are interconnected to Derry's municipal water transmission and distribution system. Consumers purchases all water for service to its customers in these systems from Derry at Derry's retail rate for service within the boundaries of the Town.

Under the terms of the purchase and sale agreement, Consumers conveys to Derry the franchise rights and the physical assets of the water systems, including all structures, equipment, pipelines, utility service lines, shut-offs, meters and other assets, other than real property interests, located within such systems and necessarily required to operate such systems, together with Consumer's customer records, maps and other existing records pertaining to the system. Consumers will further provide Derry with easements for pipe located on property at the Scobie Pond system and transfer any existing easements, if any, for either system which are on the property of others.

In consideration for the utility assets and easements, Derry has agreed to pay a cash purchase price of five hundred and five thousand eight hundred dollars ($505,800.00) and to transfer to

Consumers a twelve inch (12") cast iron water pipe located in Londonderry that is now used to provide service to Consumers' Londonderry system. The pipe is valued by Derry at twenty-five thousand dollars ($25,000.00). In addition, Derry will provide such easements as may be required to operate and maintain the pipe.

Included in the Purchase Price are hydrant rental fees due and payable from Derry to Consumers. A portion of the Purchase Price is allocated to payment of the amount due and payable as of the closing date. Thereafter, Consumers has agreed not to charge Derry Hydrant Rental Fees for the two (2) hydrants located on Rocco Road in Derry. Said hydrants shall then only be used by Derry in the event of a fire and for no other purpose without prior written authorization from Consumers. Derry will also be responsible for the cost of maintaining, repairing and replacing said hydrants as well as any necessary mowing, clearing or snow-

plowing.

Consumers has agreed to refund to the Scobie Pond and Beacon Hill customers any additional payments made pursuant to the rates under bond in Docket DR 95-124 which are not subject to refund pursuant to a settlement or decision in that proceeding, assuming there is no outstanding balance owed to Consumers by the customer.

Derry is a municipal corporation, duly established and existing under RSA chapter 31, and operating a water department and waterworks within the Town of Derry. The water works serves approximately 3,270 customers and its assets consist of more than 52 miles of main, a four million gallon water storage tank and other facilities.

Seven years ago, Derry adopted a Master Water Plan (1989) which included the acquisition over time of existing water systems within the Town of Derry now served by privately owned and operated water utilities. *See, Re Southern New Hampshire Water Company, Inc.*, 74 NH PUC 148 (1989).

Derry has agreed to provide water utility service to customers within the Scobie Pond and Beacon Hill franchise areas at Consumers' rates in effect on January 19, 1996, before the imposition of rates under bond in Docket DR 95-124, Consumers' general rate case, and to continue those rates (subject to any increases affecting all of its other customers in Derry) until the purchase price has been paid in full. At that time the affected customers would pay the same rate then in effect for all other customers in Derry.

b. *Amendment to the Wholesale Water Contract*

Consumers has been purchasing water from Derry for sale within Consumers' Londonderry franchise area for more than ten (10) years pursuant to the Southern New Hampshire Water Company, Inc. Wholesale Water Contract (Contract) dated November 1, 1983. The Contract was approved by the Commission in Order No. 17,071 in Docket No. DR 84-5. *Re Town of Derry, Water Department*, 69 NH PUC 309 (1984); amended on June 9, 1993 and approved by the Commission in Order No. 20,920 in Docket DR 93-123, *Town of Derry/Southern NH Water Co.*, 78 NH PUC 421 (1993), amended on June 14, 1994 and approved by the Commission in Order No. 21,318 in *Town of Derry/Southern NH Water Co.*, Docket DR 93-134 (August 10, 1994).

The Contract is presently the only source of supply to a number of Consumers' Londonderry customers located east of Route 128. Although the Contract expired on December 31, 1995, Derry has agreed, by letter dated December 19, 1995, to continue providing service to Consumers at the current rate in anticipation of the Commission's approval of this Petition.

Consumers and Derry have attempted to negotiate a new long term arrangement for some time to supply water to Consumer's Londonderry customers. The parties have agreed to the sale of the Beacon Hill and Scobie Pond systems and the Amendment as a way to resolve a myriad of issues necessary to develop a comprehensive long term agreement and improve supply interconnections in southern New Hampshire. Consumers and Derry agreed to extend the amended Contract for a period of up to ten (10) years under terms and conditions contained in the Amendment.

Under the terms of the Amendment the rate charged for water delivered to Consumers will remain at $1.20 per hundred cubic feet subject to adjustment for any rate increases or decreases from Manchester Water Works (MWW) to Derry approved by the Commission as of the same date on which the increase or decrease charged by MWW is effective. Such increases or decreases will be on a dollar/ccf for dollar/ccf basis with no markup.

In addition, if, as a result of Consumers' consumption, Derry incurs Merrimack Source Development Charges (MSDC), pursuant to Derry's contract with Manchester Water Works (MWW), i.e. the "Derry Wholesale Water Contract," Consumers will utilize its allocations under its contract with MWW, i.e. the "Manchester Water Works -Southern New Hampshire Water Company Wholesale Water Agreement" and pay such charges. By letter dated December

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18, 1995, MWW endorsed this amendment.

Consumers also agreed to purchase all of the water which it supplies to its customers in Consumers' Londonderry franchise area east of Route 128 as established by the Commission in Docket No. DE 83-221 for a period of five (5) years ending December 31, 2000. Thereafter, and for the remaining term of the Contract, and any extensions thereof, Consumers shall not be restricted to Derry as its only source of water supply.

Consumers has also agreed to begin design and construction of an interconnection between its Londonderry system and either MWW or Consumers' Hudson/Litchfield Core system by December 31, 2000 with said construction to be completed by December 31, 2005. In the event either of these target dates are not achieved Consumers has agreed to pay Derry the difference between Derry's retail volumetric rate and the rate paid by Consumers in accordance with the terms of the Amendment. An escrow account will be established to provide security for this payment, subject to withdrawals by Consumers for any design, engineering and construction costs associated with the interconnection paid by Consumers. Either party may petition the Commission to resolve any disputes regarding non-completion or escrow withdrawals.

Consumers and Derry also agreed to petition the Public Utilities Commission for its approval of (a) rate(s) to be charged by Consumers to Derry Water Works (DWW) for water taken by DWW supplied by Consumers; and, (b) rates(s) to be charged by DWW to Consumers for water

taken by Consumers supplied by DWW, upon the completion of the interconnection.

At this time, Derry is the only available water supply for Consumers' Londonderry service area and, therefore, Consumers has concluded it is more economical for Consumers to continue to purchase water from Derry than to construct a connection to either the Hudson/Litchfield core or MWW. The required interconnection within ten (10) years, however, is consistent with Consumers' Master Plan. Consumers avers that continuation of the present wholesale water arrangement between Consumers and Derry is the present least cost alternative available for supplying water to Londonderry. In addition, Consumers contends the Amendment provision requiring an interconnection with either the Company's Hudson/Litchfield core or MWW within ten (10) years will strengthen the reliability of the regional water system in southern New Hampshire.

III. COMMISSION ANALYSIS

[1-4] The issues before us are whether the proposed transfers are in the public good, and whether the proposed amendment to the wholesale water contract is just and reasonable.

With regard to the proposed transfer of Consumers' assets and franchise rights in the Beacon Hill and Scobie Pond areas of Derry to Derry, RSA 374:30 provides in pertinent part that:

> [a]ny public utility may transfer its franchise works or system, exercised or located in this state, ... when the Commission shall find it will be for the public good and shall make an order assenting thereto, but not otherwise.

Thus, we must find that the proposed transfers would be for the public good. *Cf.*, RSA 38:3. Based on the record set forth above, we conclude that the proposed transfers are in the public good.

Because the Town of Derry currently owns and operates municipal water facilities throughout its municipal boundaries serving over 3,000 customers we are confident it possesses the managerial, financial and technical expertise to competently provide service to the customers of Scobie Pond and Beacon Hills. Moreover, we believe that a municipality will ensure the adequacy of service and reasonableness of rates to its citizens.

Furthermore, we recognize that Consumers' water rates are among the highest of those water utilities under our jurisdiction and continue to rise. Thus, we recognize the value of the proposed transfer to these ratepayers as

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they will eventually be provided service at the Town's rates.

With regard to Consumers' remaining customers, both of these systems were originally part of the Policy Systems and have been served under Consumers' "B" rate because they did not cover their total costs. Thus, Consumers' remaining customers will also benefit from this transfer.

We further find the proposed amendment to the wholesale water contract just and reasonable. We make this determination solely in recognition of the lack of alternatives available to Consumers' in supplying a number of its Londonderry customers with water. RSA 362:4, III (b).

Based upon the foregoing, it is hereby

ORDERED, that the transfer of assets and franchise rights in those areas of the Town of Derry known as Beacon Hill and Scobie Pond from Consumers New Hampshire Water Company, Inc. to the Town of Derry is in the public good and is, therefore, approved; and it is

FURTHER ORDERED, that the proposed Amendment to the Water Contract between the Town of Derry and Consumers New Hampshire Water Company, Inc. is hereby approved.

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of May, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Town of Derry, DR 94-134, Order No. 21,318, 79 NH PUC 441, Aug. 10, 1994.

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NH.PUC*05/30/96*[89187]*81 NH PUC 424*The Furst Group, Inc.

[Go to End of 89187]

81 NH PUC 424

Re The Furst Group, Inc.

DE 96-011
Order No. 22,174

New Hampshire Public Utilities Commission

May 30, 1996

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

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1. CERTIFICATES, § 123

[N.H.] Telephone carrier — Intrastate intraLATA long-distance services — Interim authority — Assessment of competitive impacts — Exclusion of local exchange services. p. 424.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate intraLATA toll services — Interim authority — Assessment of competitive impacts — Exclusion of local exchange services. p. 424.

BY THE COMMISSION:

ORDER

[1, 2] On January 11, 1996, The Furst Group, Inc. (TFG), a New Jersey corporation, petitioned the New Hampshire Public Utilities Commission (Commission) for authority to do business as a telecommunications public utility in the State of New Hampshire (petition) pursuant to, *inter alia*, RSA 374:22 and RSA 374:26. TFG has demonstrated the financial, managerial and technical ability to offer service as conditioned by this order. The Commission previously approved numerous, similar petitions filed during the Trial Period, pursuant to the Modified Stipulation Agreement (Stipulation) in Docket No. DE 90-002, approved by Order No.

20,916 (August 2, 1993). Our orders in those numerous dockets granted the petitioner(s) interim authority to offer intraLATA toll service, specifically excluding local exchange service, for the service territory of the entire State of New Hampshire, during the Trial Period, in order to allow the Commission to analyze competition during the two-year Trial Period.

Because the Trial Period identified by the Stipulation expired on September 30, 1995, we have explicitly clarified that the authority we had granted remains in effect until we specifically modify or revoke that authority, after analysis of the Trial Period. *See* Order No. 21,851 (October 3, 1995). Likewise, our grant of authority ordered herein remains in effect until we specifically modify or revoke that authority.

The public good is served by permitting such competition by telecommunications companies. The Commission permits competitive entry in order to foster competition in the New Hampshire intrastate toll market and to allow the Commission to analyze the effects of such competition.

The public should be provided an opportunity to respond in support of, or in opposition to this petition.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that TFG is granted interim authority to offer as a telecommunications public utility intraLATA toll service, specifically excluding local exchange service, for the service territory of the entire State of New Hampshire, subject to the following conditions:

1. The services shall be offered by approved tariffs.

2. The services shall be offered until the Commission orders otherwise.

3. TFG shall file tariffs for new services and changes in approved services (other than rate changes), with effective dates of no less than 30 days after the date the tariffs are filed with the Commission.

4. Within one business day of offering an approved service to the public at a rate different from its rates on file with the Commission, TFG shall notify the Commission of the change.

5. TFG is exempted from NH Admin. Rules, Puc 406.03 Accounting Records; Puc 407 Forms Required of All Telephone Utilities; and Puc 409 Uniform System of Accounts for Telecommunications Companies.

6. TFG shall maintain its book and records in accordance with Generally Accepted

Accounting Principles.

7. TFG 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. TFG 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. TFG shall compensate the appropriate Local Exchange Company for all originating and terminating access used by TFG pursuant to NET Tariff N.H.P.U.C. 79, Switched Access Service Rate or its successors or its relevant equivalent contained in the tariffs of the Independent Local Exchange Companies.

10. New Service offerings filed for approval with the Commission shall be accompanied by tariff pages describing the service, rates and effective dates.

FURTHER ORDERED, that the authority granted herein remains in full force and effect until the Commission orders otherwise; and it is

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

FURTHER ORDERED, that TFG 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 6, 1996, and an affidavit proving publication shall be filed with the Commission on or before June 13, 1996; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, et seq. TFG shall pay all

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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 20, 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 June 27, 1996; and it is

FURTHER ORDERED, this Order *Nisi* shall be effective July 1, 1996, unless the Commission provides otherwise in a supplemental order issued prior to the effective date and it is

FURTHER ORDERED, that TFG shall file a compliance tariff with the Commission on or before July 1, 1996, in accordance with NH Admin. Rules, Puc 1601.01 (b).

By order of the Public Utilities Commission of New Hampshire this thirtieth day of May,

1996.

Notice of Conditional Approval of
THE FURST GROUP, INC.

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

On January 11, 1996, The Furst Group, Inc. (TFG), a New Jersey corporation, filed with the New Hampshire Public Utilities Commission (Commission) a petition to do business as a telecommunications public utility in the State of New Hampshire, specifically to provide intrastate long distance telecommunications services.

In Order No. 22,174, issued in Docket No. DE 96-011, the Commission granted TFG conditional approval to operate as of July 1, 1996, subject to the right of the public and interested parties to comment on TFG 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 TFG's petition to do business in the State must be submitted in writing no later than June 20, 1996, and reply comments no later than June 27, 1996, to:

Dr. Sarah P. Voll
Executive Director and Secretary
Public Utilities Commission
8 Old Suncook Road
Concord, New Hampshire 03301-7319

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Generic Investigation into IntraLATA Toll Competition Access Rates, DE 90-002, Order No. 20,916, 78 NH PUC 365, Aug. 2, 1993. [N.H.] Re Long Distance North of New Hampshire, Inc., et al., DE 87-249, Order No. 21,851, 80 NH PUC 628, Oct. 3, 1995.

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NH.PUC*05/30/96*[89188]*81 NH PUC 426*Retail Competition Pilot Program

[Go to End of 89188]

81 NH PUC 426

Re Retail Competition Pilot Program

Petitioner: Public Service Company of New Hampshire

DR 95-250
Order No. 22,175

New Hampshire Public Utilities Commission

May 30, 1996

ORDER denying a motion for confidential treatment of the identity of "team" members selected by an electric utility for performing marketing functions related to the utility's participation in a pilot program for competitive electric services. The commission notes the utility's reluctance to establish a legally and functionally separate affiliate for such marketing activities, and finds that its approval of a separate "team" of

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employees to oversee the new marketing program did not mean that the identity of such personnel should not be disclosed.

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1. PROCEDURE, § 16

[N.H.] Discovery and inspection — Confidentiality — Under pilot program for retail electric competition — As to marketing activities of separate "team" of employees — Denial of confidentiality of identity of "team" members. p. 427.

2. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric service — Pilot program for retail competition — Related marketing activities — Through separate "team" of employees — Necessity of disclosure of identity of "team" members. p. 427.

BY THE COMMISSION:

ORDER

[1, 2] This order addresses the Motion for Confidentiality filed by Public Service Company of New Hampshire (PSNH) on May 15, 1996. PSNH requests an order from the Commission protecting from public disclosure the list of its "Pilot Team" members.[1(42)] According to PSNH, the identity of these employees constitutes both "confidential, commercially sensitive data" and "internal personnel data" which is exempt from disclosure pursuant to NH RSA 91-A:5,IV. We disagree and deny PSNH's request.

We first address PSNH's contention that the identities of employees assigned to the Pilot Team should be exempt from public disclosure because such information constitutes confidential personnel data. Pursuant to RSA 91-A:5,IV, an agency is not required to disclose "records pertaining to internal personnel practices."

The New Hampshire Supreme Court has determined that the exemptions in RSA Chapter 91-A should be read restrictively to further the purposes of the Right-To-Know Law. *See, Mans v. Lebanon School Bd.*, 112 N.H. 160 (1972). PSNH does not seek protective treatment for the standards of conduct which it has established for the Pilot Team employees; rather, it seeks to protect the identities of its Pilot Team members who must abide by those standards of conduct. It is therefore difficult to understand how a list of the Pilot Team employees could be deemed to

constitute "internal personnel practices" which are exempt from public disclosure. *Cf., Union Leader Corp. v. Fenniman*, 136 N.H. 624, 626 (1993) (documents compiled during internal investigation of police lieutenant leading to suspension constitute "quintessential example of internal personnel practice").

There is more merit to PSNH's argument that the employee list should be exempt from disclosure because it constitutes commercially sensitive information. It could be argued that the disclosure of this information provides useful information to competitive suppliers because it helps those suppliers to estimate the level of resources which PSNH has dedicated to Pilot marketing activities. Although we recognize that an order granting confidential treatment would avoid this result, we nonetheless find that the benefits of public disclosure outweigh those of nondisclosure. *See, Chambers v. Gregg*, 135 N.H. 478 (1992). PSNH is the only electric utility in the state that resisted our efforts to require the establishment of separate affiliates to engage in retail marketing activities. After establishing such an affiliate requirement for all jurisdictional utilities, including PSNH, we granted PSNH's request to establish a functionally separate interim "team" within the PSNH operation pending the receipt of regulatory approvals from the Federal Energy Regulatory Commission and the Securities and Exchange Commission. Order No. 22,142 (May 13, 1996). Before granting this request, we took into account PSNH's commitment to conduct its retail marketing activities according to the "letter and spirit" of commitments made in its April 23, 1996 letter to the Commission. In that letter, PSNH indicated that it would "act as if an

affiliate existed" pending the receipt of regulatory proposals and that the Pilot Team members "would operate under a strict code of conduct" to ensure that the Pilot Team does not have unfair access to competitively sensitive information. In light of the potential for PSNH to gain unfair market advantage in the Pilot, we believe that it is appropriate for interested members of public to know which employees of PSNH are subject to the "strict code of conduct" which has been established.

Finally, we note that Granite State Energy, Inc. (GSEnergy) willingly disclosed the identities of its retail marketing team. (See, May 14, 1996 letter to Dr. Sarah P. Voll from Gregory A. Hale). Although certainly not dispositive of the issue, GSEnergy's willingness to publicly disclose the identities of its own employees indicates that the commercial value of such information is somewhat less than PSNH suggests. Based upon the foregoing, it is hereby

ORDERED, that PSNH's Motion for Confidentiality is DENIED.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of May, 1996.

FOOTNOTES

[1]In Order No. 22,142 we required PSNH to file a list of the names, company affiliation(s) and titles all employees who are working on Pilot marketing activities.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Retail Competition Pilot Program, DR 95-250, Order No. 22,142, 81 NH PUC 365, May 13, 1996.

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NH.PUC*06/03/96*[89189]*81 NH PUC 428*Retail Competition Pilot Program

[Go to End of 89189]

81 NH PUC 428

Re Retail Competition Pilot Program

Petitioner: Enron Power Marketing, Inc.

DR 95-250
Order No. 22,176

New Hampshire Public Utilities Commission

June 3, 1996

ORDER adopting a proposed code of conduct relative to the marketing activities of utilities and other power suppliers participating in a pilot program for competitive electric services.

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1. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric service — Pilot program for retail competition — Means of competing — Marketing activities — Adoption of uniform code of conduct — Expulsion from pilot for anticompetitive conduct. p. 429.

2. INTERCORPORATE RELATIONS, § 1.1

[N.H.] Nature of relationship — Competitive provision of electric service — Under pilot program for retail competition — Necessity of forming legally separate subsidiary or affiliate — Use of well-known affiliate trade names acceptable — Assertions as to superiority of trade names unacceptable. p. 429.

3. MONOPOLY AND COMPETITION, § 21

[N.H.] Restraint of trade and anticompetitive conduct — Under pilot program for retail electric competition — Means of competing — Marketing activities — Through legally separate subsidiary or affiliate — Code of conduct — Use of trade names in marketing as issue. p. 429.

BY THE COMMISSION:

ORDER

This order addresses a Motion for Establishment of Uniform Standards of Conduct (Motion) filed by Enron Power Marketing, Inc. (Enron). Enron is a registered power supplier participating in the Pilot.

Enron proposes a "code of conduct" for all New Hampshire electric utilities that are participating in the Pilot. According to Enron, a uniform code of conduct is necessary because there is a "need for clear standards of conduct to govern the relationships and communications between the monopoly electric utilities and their competitive non-regulated affiliates." Enron alleges that its proposed code of conduct will provide clear guidelines against which utility behavior can be assessed during the Pilot. The proposed code of conduct is attached to this order as Attachment 1.

Enron's Motion is supported by Freedom Energy, LLC (Freedom), the Public Utilities Policy Institute, Cabletron Systems, Inc., and Granite State Taxpayers, Inc. Freedom supports the Enron proposal but argues that it does not go far enough. According to Freedom, the Commission should expressly state that it will not tolerate any anti-competitive practices during the Pilot and the penalty for any such conduct should be "expulsion" from the Pilot. Cabletron alleges that Public Service Company of New Hampshire (PSNH) has already committed abuses of its market power which warrant the imposition of civil penalties. Concord Electric Company and Exeter & Hampton also offered no objection to Enron's proposal and stated that they were already operating under principles which "substantially conform" to the Enron proposal. PSNH is the only party to object to any aspect of Enron's proposal.[1(43)]

[1-3] We believe that Enron's proposed code of conduct is reasonable and will adopt it without modification. Despite our unconditional approval of Enron's proposal, several items warrant additional comment.

PSNH disagrees with the wording of paragraph G of Enron's proposal (¶ 7.0 of Attachment 1) because it claims that the section could be interpreted to preclude utility affiliates from using trade names that are associated with its parent company, such as "PSNH Energy." We disagree with this interpretation. For the purposes of the Pilot, we have allowed utilities to permit their unregulated retail marketing affiliates to use names which suggest such an association.[2(44)] Thus, affiliate trade names such as "PSNH Energy," "Granite State Energy," and "Unitil Resources" are acceptable for the Pilot. What we find unacceptable are marketing activities that openly contend that customers will receive superior service or benefits from their regulated distribution utility if they select the utility's affiliated retail energy supplier.

Cabletron correctly points out certain marketing activities of PSNH that illustrate and heighten legitimate concern in this area. For instance, the PSNH Energy solicitation to Pilot customers contains numerous references to the regulated activities of PSNH, including statements that could be interpreted by customers as suggesting that its affiliation with PSNH enables PSNH Energy to provide more reliable power than its competitors. This is only one example which illustrates the concern, and we add that PSNH is not the only company whose marketing activities have raised these issues.

As we stated in the Final Guidelines, we do not intend to "police" the marketing activities of suppliers during the Pilot. Nevertheless, we expect all suppliers to conduct their business affairs in a manner that is consistent with state and federal law. As we move closer to full industry restructuring, issues related to market power and anti-competitive practices will become increasingly prominent. This Commission and other agencies will monitor and address those issues related to market power. Suffice to say, the Pilot has already revealed the need for increased vigilance in this area. We believe that Enron's proposed standards of conduct represent a reasonable approach for dealing with these issues in the Pilot.

Enron's last proposed standard of conduct warrants an additional comment. In the Final Guidelines, we indicated that the Commission's "resources ... would be available to resolve disputes between customers, utilities and competitive suppliers." Order No. 22,033, p. 29

(February 28, 1996). While we maintain our commitment to serve in that capacity, there is also merit in asking utilities to propose specific alternative procedures which could help resolve Pilot-related disputes in a fair and efficient manner.

Based upon the foregoing, it is hereby

ORDERED, that Enron's Motion for Establishment of Uniform Standards of Conduct is GRANTED.

By order of the Public Utilities Commission of New Hampshire this third day of June, 1996.

ATTACHMENT 1

STANDARDS OF CONDUCT FOR
NH PILOT PROGRAM

1.0 A New Hampshire electric utility shall not give an affiliate preference over a non-affiliate in processing a request by a customer for service.

2.0 A New Hampshire electric utility shall supply services and apply tariffs to non-affiliates in the same manner and shall uniformly enforce its tariff provisions.

3.0 A New Hampshire electric utility and/or its affiliates that are offering power to affiliates shall make the power available simultaneously to the market and all competitive suppliers on the same terms and conditions and at the same price.

4.0 A New Hampshire electric utility shall simultaneously make available to the market and all competitive suppliers any and all information it provides to affiliate competitive suppliers.

5.0 Employees of a New Hampshire who have responsibility for operation of the distribution system, such as receiving requests for power, purchasing power, or scheduling delivery, shall not be shared with an affiliate competitive supplier, and their offices shall be physically separated from the office(s) of the affiliate competitive supplier. Any shared facilities shall be fully and transparently allocated between the two entities. Separate books of account and records shall be maintained for each such affiliate.

6.0 A New Hampshire electric utility shall not condition the provision of any distribution

services on the purchase of power from an affiliate.

7.0 A New Hampshire electric utility shall not allow its affiliate(s) to utilize its name in any manner such that customers can reasonably imply from that use:

(a) that the distribution services provided by the electric utility are of a superior quality when power is purchased from an affiliate; or

(b) that the merchant services (for power) are being provided by the electric utility rather than the affiliate; or

(c) that the power purchased from a supplier may not be reliably delivered.

8.0 A New Hampshire electric utility shall establish and file with the Commission a dispute resolution procedure to address complaints alleging violations of these rules.

FOOTNOTES

[1]Specifically, PSNH objects to any requirement that it offer power to all market suppliers on the terms and conditions, and at the same price, as any power it transfers to its affiliate. See, Attachment 1, ¶ 3.0.

[2]We offer no opinion at this time on the propriety of unregulated entities using trade names which suggest an association with the activities of a regulated monopoly service during or after full industry restructuring.

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.

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NH.PUC*06/03/96*[89190]*81 NH PUC 431*Implementation of the Telecommunications Act of 1996

[Go to End of 89190]

81 NH PUC 431

Re Implementation of the Telecommunications Act of 1996

DE 96-177
Order No. 22,177

New Hampshire Public Utilities Commission

June 3, 1996

ORDER proposing timetables for the processing of requests for arbitration or for approval of settlements relative to transactions between incumbent local exchange telephone carriers and competing local exchange carriers.

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1. PROCEDURE, § 6

[N.H.] Enforcement proceedings — Telecommunications Act of 1996 — Commission review of requests for arbitration — Commission review of proposed settlements — Arrangements between incumbent local exchange telephone carriers and competing local exchange carriers — Schedule for processing. p. 431.

2. MONOPOLY AND COMPETITION, § 83

[N.H.] Telephone services — Local exchange competition — Pursuant to the Telecommunications Act of 1996 — Arrangements between incumbent local exchange telephone carriers and competing local exchange carriers — Commission review of requests for arbitration — Commission review of proposed settlements — Timetable for processing. p. 431.

BY THE COMMISSION:

ORDER

This order clarifies how the New Hampshire Public Utilities Commission (Commission) intends to fulfill its responsibilities with regard to agreements under the Telecommunications Act of 1996 (Act), to require certain information of the incumbent local exchange carrier (ILEC) about agreements, and to establish generic procedural schedules for the consideration of agreements and petitions.

Pursuant to the Act, states are responsible for reviewing agreements that have been reached between the ILEC and a prospective competing local exchange carrier (CLEC), mediating negotiations between the ILEC and the CLEC if so requested, and acting as an arbitrator between the ILEC and a CLEC if so requested. These responsibilities must be completed within abbreviated periods of time that are specified under the Act. In the case of a negotiated agreement, the Commission has 90 days within which to review the agreement once it has been filed. In the case of a petition for arbitration, the Commission has 30 days within which to consider an agreement adopted by arbitration. Overall the Commission has 9 months from the date on which the ILEC receives a bona fide request for interconnection, services or network elements, to take final action on a petition for arbitration that has not resulted in an agreement.

[1, 2] Pursuant to section 252 (a)(2) of the Act, any party negotiating an agreement may ask the Commission to participate in negotiation and to mediate any differences arising in the course of negotiation. We interpret this section of the law to apply to the first 135-160 days of the process, before we receive a petition for arbitration. Because of this time limitation, any such mediation would have to be completed within 160 days of the original request for interconnection, services, or network elements. In the event that the Commission receives such a request, we plan to respond as quickly as possible and to assign a person or persons to mediate between the parties. In order to meet these deadlines the Commission, in this order, is establishing generic schedules and making other provisions for the review of negotiated and arbitrated agreements.

The following schedule shall apply to any petition for arbitration submitted pursuant to section 252(b)(1) of the Act:

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

DAY 1     (DAY 135-160 overall) Petition for arbitration and
                                supporting documentation submitted

DAY 15    (DAY 150-175 overall) Technical Session/Prehearing
                                conference, motions for
                                intervention due

DAY 25    (DAY 160-185 overall) Response to petition due

DAY 30    (DAY 165-190 overall) Arbitration session begins

DAY 60    (DAY 195-220 overall) Submission of arbitrated agreement to
                                Commission

DAY 65-67 (DAY 200-227 overall) Hearings on arbitrated agreement

DAY 85    (DAY 220-245 overall) Final order of the Commission
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For the purposes of the schedule listed above the days in parentheses are the total days from the date a CLEC requests negotiations with the ILEC as provided for in the Act. The days listed at the beginning of each line are the days from the date a petition for arbitration is submitted to the Commission.

We also note that we view the result of the arbitration as being the arbitrated agreement, which may be either an agreement voluntarily reached by the parties through arbitration or it may contain terms and conditions imposed by the arbitrator in order to reach "agreement." If there are any unresolved issues which need to be arbitrated, the Commission shall consider the entire agreement to be subject to arbitration, including the issues that may have already been resolved. The Commission will not bifurcate the agreement into resolved and unresolved issues and place them on separate tracks; all issues associated with any one agreement shall be handled in one proceeding. This arbitrated agreement is subject to final review by the Commission within the time frames noted above. The hearing which the Commission holds on the arbitrated agreement will be in the nature of an oral argument; it will not be a hearing at which there will be testimony and cross examination. After reviewing the arbitrated agreement and holding the hearing included in the schedule listed above, the Commission may reject the arbitrated agreement or accept the arbitrated agreement, with the possibility that acceptance is conditioned on there being certain changes in the agreement. See section 252 (e)(1) & (2).

In the event that the CLEC and the ILEC reach a negotiated agreement, the Commission has 90 days to approve or reject the negotiated agreement from the date that it is filed with the Commission. The following schedule shall apply to the consideration of a negotiated agreement that has been filed with the Commission:

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[Graphic(s) below may extend beyond size of screen or contain distortions.]
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DAY 1     T{
Agreement and supporting documentation
filed with the Commission
T}

DAY 20    T{
Technical Session/Prehearing
Conference/Motions to Intervene due
T}

DAY 20-40 T{
Rolling data requests and responses
T}

DAY 45    T{
Testimony of any party opposing the
agreement filed
T}

DAY 50-52 T{
Hearings
T}

DAY 80    T{
Final order on agreement
T}
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The days specified in both schedules outlined above are subject to change by the Commission, particularly because some of these

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dates may fall on a weekend or holiday.

At the time a petition for arbitration or a negotiated agreement is submitted for review it shall be accompanied by all supporting documentation, including, as appropriate, prefiled testimony and any data to support the petition or agreement, a list of unresolved issues, the position of each of the parties with respect to those issues, and a list of any other issues discussed and resolved by the parties. The party submitting the petition to the Commission shall provide a copy of the petition and supporting documentation to the other parties, not later than the same day on which the petition is submitted to the Commission.

The Commission shall issue an order of notice and cause the notice to be published as soon as possible after the petition for arbitration or negotiated agreement is filed with the Commission, to insure that there is adequate notice of the proceeding to be conducted at the Commission. The Commission shall bill the cost of publication to the petitioner(s).

It may be necessary to limit the number of hearing days before the Commission on any one arbitrated agreement or negotiated agreement to not more than 2 hearing days. In order to meet the deadlines in the Act, the Commission reserves the right to limit cross examination, to waive oral testimony, to consolidate proceedings, to change the schedule, to limit intervention, and to take any other steps that are necessary to insure that the deadlines of the Act are met, including, but not limited to, assigning the hearings to a hearings examiner designated by the Commission.

In considering an arbitrated agreement the Commission shall utilize the standards for arbitration and the pricing standards provided in section 252 (c) and (d) of the Act and regulations promulgated pursuant to the Act. The Commission may reject an agreement for any

of the reasons described in section 252 (e) of the Act, or any other reason allowed by law and may require compliance with state standards and requirements in accordance with section 252 (e) (3) of the Act. In resolving any open issues or imposing conditions upon the parties to the agreement, the Commission shall: 1) ensure that such resolution and conditions meet the requirements of section 251 of the Act, including the regulations prescribed by the Federal Communications Commission pursuant to section 251; 2) establish any rates for interconnection, services, or network elements according to section 252(d) of the Act; and 3) provide a schedule for implementation of the terms and conditions by the parties to the agreement.

Every ILEC shall file with the Commission, within 10 days of the effective date of this order, a list of the companies that have requested interconnection, services or network elements, and the date on which the request was made. The ILEC shall notify the Commission of any such request which occurs after the effective date of this order within 10 days of such request being made. The ILEC shall also file with the Commission, within 10 days of the effective date of this order, any preexisting or interim agreements of a similar nature, including but not limited to extended area of service agreements.

In the event that the ILEC files a generally available interconnection tariff, under the provisions of the Act the Commission must, unless the ILEC agrees to an extension, either complete its review of that tariff within 60 days or let the tariff take effect while the Commission continues its review. The Commission's review shall be conducted in accordance with section 252 (f)(2). In the event that the Commission receives such a tariff, it shall establish an expedited schedule for review to meet the deadline contained in the Act.

The Commission intends to hire such consultants as required to fulfill the Commission's obligations under the Act. Such consultants may act as arbitrator or mediator or advise the Commission or Staff, as the Commission deems appropriate. The costs of any such consultants will be assessed pursuant to RSA 365:37, II, or in such manner as allowed by law.

The Commission also wants to note that it interprets section 252 (e) (4) of the Act with regard to review of the Commission's actions, to preempt RSA 541 so that the Commission will not entertain any motions for rehearing pursuant to RSA 541:3 as part of these proceedings.

Based on the foregoing, it is hereby

Page 433

ORDERED *NISI*, that the foregoing requirements and schedules are imposed on any company seeking arbitration, mediation, or approval of agreements pursuant to the Telecommunications Act of 1996: and it is

FURTHER ORDERED, that the incumbent local exchange carrier is required to file within 10 days of the date of this order a list of the requests for agreements which it has received and the dates on which they were received; and it is

FURTHER ORDERED, that 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 7, 1996; and it is

FURTHER ORDERED, that all persons interested in responding to this order be notified that

they may submit their comments to the Commission no later than June 21, 1996; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective June 28, 1966 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 June, 1996.

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NH.PUC*06/03/96*[89191]*81 NH PUC 434*Concord Electric Company

[Go to End of 89191]

81 NH PUC 434

Re Concord Electric Company

Additional applicant: Exeter and Hampton Electric Company

DR 96-034
Order No. 22,178

New Hampshire Public Utilities Commission

June 3, 1996

ORDER adopting procedural schedule and noting the issues to be addressed in an electric utility group's 1996/1997 demand-side management program proceeding.

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1. ELECTRICITY, § 4

[N.H.] Operating practices — Demand-side management programs — Annual filing — Procedural schedule — Issues to be addressed. p. 435.

2. CONSERVATION, § 1

[N.H.] Affiliated electric utilities — Demand-side management programs — Annual filing — Procedural schedule — Issues to be addressed. p. 435.

APPEARANCES: Lebeuf, Lamb, Greene & MacRae by Paul B. Dexter, Esq. for Concord Electric Company and Exeter & Hampton Electric Company; Office of Consumer Advocate by Kenneth Traum for residential ratepayers; James Cunningham, Michelle Caraway and Todd Bohan for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On February 1, 1996, Concord Electric Company and Exeter & Hampton Electric Company (the Companies) filed with the New Hampshire Public Utilities Commission (Commission) their

Demand Side Management (DSM) Programs proposal for the program year July 1, 1996 through June 30, 1997.

By Order of Notice issued May 8, 1996, the Commission scheduled a prehearing conference for May 22, 1996, 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. The prehearing conference was subsequently rescheduled to May 24, 1996 at the request of counsel for the Companies. No party filed for intervention. The Office of the Consumer Advocate (OCA) is a statutorily recognized

intervenor.

[1, 2] At the prehearing conference, the Companies, the OCA 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.]

Data Requests by Staff & Intervenors  May 30, 1996
(faxed)

Company Data Responses to Written     June 6, 1996
& Oral Requests

Technical Session                    June 12, 1996
                                         1:30 p.m.

Testimony by Staff & Intervenors     June 14, 1996
(faxed)

Settlement Conference                June 17, 1996
                                         1:30 p.m.

Filing of Settlement Agreement       June 18, 1996

Hearing                              June 20, 1996
                                         2:00 p.m.
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Also at the prehearing conference, in accordance with the Order of Notice, the Parties and Staff stated their positions with regard to the filing.

The Companies stated that their proposed program changes are intended to reduce rates for both participants and non-participants in the DSM program. The DSM proposal describes significant changes to the residential program reflecting primarily a consolidation of individual programs from the prior period and an increased number of measures available. The DSM proposal also describes the Companies' attempt to reduce administrative costs by requesting reduced reporting requirements and changing its annual filing to a biennial filing with a yearly rate reconciliation.

The Companies also request to extend the implementation of their Comprehensive Efficiency Alternative Financing Pilot Program approved for implementation which is due to expire on December 31, 1996. Under the proposal the program would be extended through June 30, 1997 so as to be consistent with the program year for all other programs under review.

The OCA stated that it was generally supportive of the Companies' filing. The OCA stated that its concerns involve any impact on low income participants by the modifications to the DSM programs and whether the Companies' ratepayers would be supporting non-electric, efficiency opportunities.

Staff stated that it believed that the significant issues to be addressed in this proceeding are: 1) the Companies' request to modify the reporting requirements and the filing requirements; 2) the avoided costs used in the development of the filing; 3) the results of the Total Resource Cost ratios used to evaluate the cost-effectiveness of the programs; 4) the Companies' integration of the results of the current Monitoring and Evaluation Report in its DSM filing; 5) an evaluation of the performance results of the 1995/1996 program year; and 6) the details supporting the administrative costs of the 1996/1997 program budget.

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 third day of June, 1996.

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NH.PUC*06/03/96*[89192]*81 NH PUC 435*New England Telephone and Telegraph Company

[Go to End of 89192]

81 NH PUC 435

Re New England Telephone and Telegraph Company

DR 96-124
Order No. 22,179

New Hampshire Public Utilities Commission

June 3, 1996

ORDER agreeing that cost-study data listed in a special rate contract executed by a local exchange telephone carrier and the State of New Hampshire for the provision of Centrex, digital data, and frame relay services should be subject to protective treatment in that disclosure of such information could place the carrier and

its suppliers at a competitive disadvantage.

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1. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective treatment — Relative to special rate contract — Cost-study and customer-specific network design data — Competitive disadvantages of disclosure — Benefits of nondisclosure outweighing those of disclosure — Telecommunications

services. p. 436.

BY THE COMMISSION:

ORDER

On April 18, 1996, the 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 the State of New Hampshire for the provision of Centrex Service, Digital Data Service II, Superpath Service, Frame Relay Service and Toll Service. Concurrent with the special contract, NYNEX filed a Motion for Confidential Treatment of portions of the contract and supporting materials (hereinafter collectively the Information). The Commission Staff has taken no position regarding the motion and the Office of Consumer Advocate also takes no position.

In its motion NYNEX argues that the Information should be afforded protective treatment because, using our analysis in *Re NET*, Order No. 21,731, 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, NYNEX states that it provided the documents required in Puc 204.08(b)(1) and cited the statutory support required by Puc 204.08(b)(2). NYNEX states that the Information consists soley of details relating to pricing and cost study data underlying the special contract, thus meeting the requirements of Puc 204.08(b)(4). NYNEX further provides facts describing the benefits of non-disclosure, thus meeting the requirements of Puc 204.08(b)(3).

[1] We recognize that the detailed customer specific information regarding customer usage, costs and terms of service contained in the Information is critical to review of the special contract by the Commission and Commission Staff, as required by RSA 378:18.

NYNEX has alleged that disclosure of the Information would result in harm because the costing data for customer-specific components and equipment would likely be part of network designs developed by NYNEX in response to future requests for service. Release of the Information would, it is alleged, place NYNEX at a competitive disadvantage when proposing similar network solutions to other customers: it could be used as a bargaining lever. Release of the Information would jeopardize NYNEX's ongoing commercial relationship with its suppliers by making public information which has been kept confidential.

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) and *NET*, Order No. 21,731, dated July 10, 1995, the benefits of non-disclosure in this case appear to outweigh the benefits of disclosure to the public. In Order No. 21,731, we dealt specifically with special contracts with the State of New Hampshire, stating: "the balancing test would tip in favor of disclosure rather than non-disclosure. The differences affecting the balance are (1) taxpayers' interest in knowing how the state's revenues are spent, and (2) the fact that a state contract is approved in a public forum by the executive branch." *NET*, at pp. 26-27. In Order No. 21,789, dated July 19, 1995, we clarified our finding with regard to the state contract to keep the cost study confidential. Because NYNEX has limited its current request for confidential treatment to the cost study data, we will

grant the motion. We will keep confidential only the cost study data in Section 2A, pp. 1-12, 14, 15 and 17.

Based upon the foregoing, it is hereby

ORDERED, that NYNEX's Motion for Confidential Treatment of the costing portions of its special contract with the State of New

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Hampshire, and the supporting materials thereto, is granted; and it is

FURTHER ORDERED, that this order is subject to reconsideration in the event that the Commission Staff or any party raises concerns and it is subject to the on-going right of the Commission to reconsider this order in light of RSA 91-A, should circumstances so warrant.

By order of the Public Utilities Commission of New Hampshire this third day of June, 1996.

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. [N.H.] Re New England Teleph. & Teleg. Co. dba NYNEX, DR 95-069, Order No. 21,789, 80 NH PUC 533, Aug. 21, 1995.

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NH.PUC*06/03/96*[89193]*81 NH PUC 437*Key Communications Management, Inc., dba Discount Plus

[Go to End of 89193]

81 NH PUC 437

Re Key Communications Management, Inc., dba Discount Plus

DE 95-294
Order No. 22,180

New Hampshire Public Utilities Commission

June 3, 1996

ORDER denying an interexchange telephone carrier authority to offer intrastate long-distance services, due to its lack of response to questions raised as to its proposed tariffs.

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1. CERTIFICATES, § 76

[N.H.] Denial of — Factors — Deficient tariff proposals — Failure to respond to commission staff inquiries — Interexchange
telephone carrier. p. 437.

BY THE COMMISSION:

ORDER

[1] On October 20, 1995, Key Communications Management, Inc., d/b/a Discount Plus (DP), a Georgia corporation, petitioned the New Hampshire Public Utilities Commission (Commission) for authority to do business as a telecommunications public utility in the State of New Hampshire (petition) pursuant to, *inter alia*, RSA 374:22 and RSA 374:26.

Staff issued its written response to DP's petition on January 11, 1996, suggesting amendments to the petition including: tariff changes, filing additional financial information and filing evidence of registration with the Secretary of State, pursuant to RSA 374:25 IV. On April 8, 1996 DP filed amendments to its petition. However DP's April filing did not address Staff's specific (January) inquiry regarding the October 1995 filed financial information. On April 15, 1996 Staff called DP's counsel to discuss the inadequacy and non-responsiveness of their April 8, 1996 filing. Counsel agreed to file adequate and responsive amendments.

As of May 31, 1996, Staff has received no response and believes the petitioner has had reasonable opportunity to respond to the issues addressed in Staff's letter of January 11, 1996, and amplified by its telephone call of April 15, 1996. Accordingly, Staff recommends that DP's petition for Authority be denied, without prejudice.

We have reviewed the recommendation of Staff and concur that DP has received ample opportunity to cure the deficiencies in its petition but has chosen not to comply with Staff directives. We believe the petition as filed is not in the public good. We will therefore deny the petition of DP, without prejudice. DP may remedy the inadequacy of their filing in this docket by refiling an adequate petition and responsive amendments.

Based upon the foregoing, it is hereby

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ORDERED, that DP's petition for authority to offer service as a telecommunications public utility is denied, without prejudice.

By order of the Public Utilities Commission of New Hampshire this third day of June, 1996.

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NH.PUC*06/03/96*[89194]*81 NH PUC 438*Public Service Company of New Hampshire

[Go to End of 89194]

81 NH PUC 438

Re Public Service Company of New Hampshire

DR 96-077
Order No. 22,181

New Hampshire Public Utilities Commission

June 3, 1996

ORDER issuing a summary decision in an electric utility's fuel and purchased power adjustment clause (FPPAC) proceeding, approving an FPPAC credit of 0.722 cents per kilowatt-hour for bills rendered between June 1, 1996, and November 30, 1996.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 12

[N.H.] Direct energy costs — Fuel and purchased power adjustment clause — Summary decision — Approval of per-kilowatt-hour credit — Electric utility. p. 438.

BY THE COMMISSION:

ORDER

[1] Based on the record in this proceeding and the limited time available after Briefs were filed by the Parties and staff to draft a complete order establishing the Commission's position on the many issues before the Commission in this Purchased Power Adjustment Clause (FPPAC) proceeding, such order to be forthcoming, this order is being issued to allow PSNH to implement its FPPAC rate for the period commencing June 1, 1996 and ending November 30, 1996.

Based upon the foregoing, it is hereby

ORDERED, Public Service Company of New Hampshire shall implement a credit of $0.00722 per kwh in its Fuel and Purchased Power Adjustment Clause for all bills rendered on and after June 1, 1996 for the FPPAC period June 1, 1996 through November 30, 1996; and it is

FURTHER ORDERED, that the short-term avoided costs for the FPPAC period June 1, 1996 through November 30, 1996 are approved as filed.

By order of the Public Utilities Commission of New Hampshire this third day of June, 1996.

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NH.PUC*06/04/96*[89195]*81 NH PUC 438*New England Telephone and Telegraph Company

[Go to End of 89195]

81 NH PUC 438

Re New England Telephone and Telegraph Company

DR 96-073
Order No. 22,182

New Hampshire Public Utilities Commission

June 4, 1996

ORDER agreeing that cost-study data listed in a special rate contract executed by a local exchange telephone carrier and the City of Manchester for the provision of Centrex service should be subject to protective treatment in that disclosure of such information could place the carrier and its suppliers at a competitive disadvantage.

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1. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective treatment — Relative to special rate contract — Cost-study and customer-specific

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network design data — Competitive disadvantages of disclosure — Benefits of nondisclosure outweighing those of disclosure — Telecommunications services. p. 439.

BY THE COMMISSION:

ORDER

On March 14, 1996, the 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 the City of Manchester for the provision of Centrex Service. Concurrent with the special contract, NYNEX filed a Motion for Confidential Treatment of the cost section portion of the contract's supporting material (hereinafter the Information). Neither the Commission Staff nor the Office of Consumer Advocate has taken a position regarding the motion.

In its motion NYNEX argues that the Information should be afforded protective treatment because, using our analysis in *Re NET*, Order No. 21,731, 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, NYNEX states that it provided the documents required in Puc 204.08(b)(1) and cited the statutory support required by Puc 204.08(b)(2). NYNEX states that the Information consists of customer specific, competitively sensitive data relating to the cost data underlying the special contract, thus meeting the requirements of Puc 204.08(b)(4). NYNEX further provides facts describing the benefits of non-disclosure, thus meeting the requirements of Puc 204.08(b)(3).

[1] We recognize that the detailed customer specific information regarding customer usage and costs contained in the Information is critical to review of the special contract by the Commission and Commission Staff, as required by RSA 378:18.

NYNEX has alleged that disclosure of the Information would result in harm because the costing data for customer-specific components and equipment would likely be part of network designs developed by NYNEX in response to future requests for service. Release of the

Information would, it is alleged, place NYNEX at a competitive disadvantage when proposing similar network solutions to other customers as it could be used as a bargaining lever. Release of the Information would jeopardize NYNEX's ongoing commercial relationship with its suppliers by making public information which has been kept confidential.

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) and *NET*, Order No. 21,731, dated July 10, 1995, the benefits of non-disclosure in this case appear to outweigh the benefits of disclosure to the public. In Order No. 21,731, we dealt specifically with special contracts with the State of New Hampshire, stating: "the balancing test would tip in favor of disclosure rather than non-disclosure. The differences affecting the balance are (1) taxpayers' interest in knowing how the state's revenues are spent, and (2) the fact that a state contract is approved in a public forum by the executive branch." *NET*, at pp. 26-27. In Order No. 21,789, dated July 19, 1995, we clarified our finding with regard to the state contract to keep the cost study data confidential. A similar analysis can be applied to a special contract with the City of Manchester. Because NYNEX has limited its request for confidential treatment to the cost study data, we will grant the motion. We will keep confidential only the cost data.

Based upon the foregoing, it is hereby

ORDERED, that NYNEX's Motion for Confidential Treatment of the cost study data of its supporting material to the special contract with the City of Manchester is granted; and it is

FURTHER ORDERED, that this order is subject to reconsideration in the event that the Commission Staff or any party raises concerns and it is subject to the on-going right of the Commission to reconsider this order in light of RSA 91-A, should circumstances so warrant.

By order of the Public Utilities

Page 439

Commission of New Hampshire this fourth day of June, 1996.

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. [N.H.] Re New England Teleph. & Teleg. Co. dba NYNEX, DR 95-069, Order No. 21,789, 80 NH PUC 533, Aug. 21, 1995.

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NH.PUC*06/04/96*[89196]*81 NH PUC 440*EnergyNorth Natural Gas, Inc.

[Go to End of 89196]

81 NH PUC 440

Re EnergyNorth Natural Gas, Inc.

DE 96-001
Order No. 22,183

New Hampshire Public Utilities Commission

June 4, 1996

ORDER authorizing a natural gas local distribution company to deviate from rules requiring periodic testing of meters. The waiver is for a limited period, and allows the company to rely on statistical samplings rather than testing of each and every meter in service.

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1. SERVICE, § 284

[N.H.] Connections and instruments — Meter inspection and testing — Requirements and standards for periodic meter tests — Waiver — Reliance on statistical samplings rather than comprehensive individual meter tests — Natural gas local distribution company. p. 440.

BY THE COMMISSION:

ORDER

[1] On January 3, 1996, EnergyNorth Natural Gas Inc. (ENGI), pursuant to Puc 201.05, filed an application for a waiver of Puc 505.01-505.06, which prescribe the standards for conducting periodic testing of gas meters. ENGI requested that the Commission grant a waiver of the current rules and allow ENGI to implement defined alternative procedures based on statistical sampling. ENGI stated that existing rules do not account for technological improvements in meter accuracy or the transition from manufactured gas to natural gas. ENGI stated that operating efficiencies can be achieved by using the alternative statistical methodology. The proposed alternative procedure requires testing of a statistical sample of groups of similar meters which have been in service for a specified period of time. Subsequently, Northern Utilities and Keene Gas Corporation requested similar waivers.

On May 22, 1996, ENGI filed a motion to amend its application for waiver. ENGI developed the revisions to the proposed alternative in cooperation with ENGI, the Commission Staff (Staff) and the Office of Consumer Advocate (OCA).

On May 30, 1996, Staff, with concurrence from the OCA, recommended that the waiver be granted only in part. Staff cited the following in support of its recommendation to waive Puc 505.04(b): 1) ENGI has demonstrated that use of the proposed Statistical Sampling Plan will maintain the present high level of accuracy of meters and create operating efficiencies; 2) implementation of the defined alternative procedure for testing meters will immediately start to reduce costs for ENGI and ultimately its ratepayers; and 3) the Staff will take steps to monitor and evaluate actual data results over a trial period of three calendar years to assure the continuance of the present level of meter accuracy and testing.

Staff has opposed granting of waivers of the other sections of the rules, stating that all of the Puc 500 Rules for Gas Service are being reviewed and can be better addressed through the

rulemaking process.

The proposed waiver of Puc 505.04(b)

Page 440

maintains the standard of meter accuracy contained in our current rules while at the same time it will reduce costs to the company and consequently their customers. Therefore, after reviewing the merits of the recommendations set forth above, in accordance with Puc 201.05, we find that granting the temporary waiver to ENGI is in the public good.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that Application for Waiver of EnergyNorth to Rule Puc 505.04(b) related to periodic tests of meters in service is granted for a trial period for calendar years 1996 through 1998; and it is

FURTHER ORDERED, that during this trial period if it is determined that the Statistical Sampling Plan is not in the public good, the Commission may rescind the waiver; and it is

FURTHER ORDERED, that if it is determined that the Statistical Sampling Plan proves to be in the public good, the Commission will take action to adopt the Statistical Sampling Plan in the form of a rule change; and it is

FURTHER ORDERED, that ENGI implement the defined alternative procedure for Periodic Test Requirements set forth in Exhibit B of its May 22, 1996, Motion to Amend Application for Waiver of Rules Puc 505.01-505.06; 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 11, 1996 and to be documented by affidavit filed with this office on or before June 18, 1996; and it is

FURTHER ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or file a written request for a hearing on this matter before the Commission no later than June 25, 1996; and it is

FURTHER ORDERED, that Northern Utilities and Keene Gas Corporation will be addressed in separate proceedings; 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 2, 1996; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective July 4, 1996, 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 fourth day of June, 1996.

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NH.PUC*06/10/96*[89197]*81 NH PUC 441*Retail Competition Pilot Program

[Go to End of 89197]

81 NH PUC 441

Re Retail Competition Pilot Program

Respondent: Public Service Company of New Hampshire

DR 95-250
Order No. 22,184

New Hampshire Public Utilities Commission

June 10, 1996

MOTION by New Hampshire Electric Cooperative, Inc., to hold Public Service Company of New Hampshire in contempt for imposing a transmission service blockade on the cooperative's customers under a pilot program for competitive electric services; denied.

Commission finds that the dispute is part of a long-running debate on wholesale contract rates between the two and that it should be resolved by the Federal Energy Regulatory Commission, before whom a related complaint is now pending.

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1. SERVICE, § 320

[N.H.] Electric — Pilot program for retail competition — Eligibility for participation — Inclusion of customers of a cooperative — Alleged imposition of transmission service blockade as to cooperative customers — No finding of contempt — Resolution via wholesale rate complaint before the Federal Energy

Page 441

Regulatory Commission. p. 442.

2. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric service — Pilot program for retail competition — Parameters for participation — Inclusion of customers of a cooperative — Alleged imposition of transmission service blockade as to cooperative customers — No finding of contempt — Resolution via wholesale rate complaint before the Federal Energy Regulatory Commission. p. 442.

BY THE COMMISSION:

ORDER

This order addresses the Motion for Contempt and to Compel filed by the New Hampshire Electric Cooperative, Inc. (NHEC) on May 24, 1996.

[1, 2] NHEC's Motion seeks a Commission order that would direct Public Service Company

of New Hampshire (PSNH) to comply with Commission Order No. 22,081 relative to certain commitments made by PSNH to extend retail transmission service to all Pilot customers, including those of NHEC. NHEC argues that PSNH has imposed a "transmission blockade" by refusing to file transmission tariffs for the benefit of NHEC's customers which contain the same terms and conditions as those which apply to Pilot customers in other service territories. Specifically, NHEC contends that PSNH has improperly linked the availability of retail transmission services for NHEC's Pilot customers to the dispute over the wholesale power contract between NHEC and PSNH. The dispute relates generally to whether NHEC is contractually obligated to compensate PSNH for revenues that it may lose as a result of NHEC participation in the Pilot.[1](45)

PSNH disputes various assertions in NHEC's Motion and indicates that the transmission tariff it filed with the Federal Energy Regulatory Commission (FERC) would allow NHEC's customers to participate in the Pilot. PSNH also states that it has filed a complaint with the FERC seeking a resolution of the parties' wholesale contract dispute.[2](46) PSNH requests that the Commission deny NHEC's Motion and allow the FERC to resolve the matter.

After considering the circumstances and issues associated with NHEC's requested relief, and in light of the fact that PSNH has filed a complaint at FERC, we will deny NHEC's Motion without prejudice. We have directed our Staff to intervene in the aforementioned FERC proceedings initiated by PSNH relative to the Pilot. We strongly encourage PSNH and NHEC to continue to seek a negotiated resolution of their differences so that NHEC's customers can participate in the Pilot under the terms and conditions of the transmission tariffs that PSNH has filed with the FERC.[3](47)

Pending the outcome of the parties' dispute over the APRA, NHEC has the option to fund discounts to Pilot customers through a surcharge on its rates to non-Pilot participants. The decision whether to fund the Pilot in this manner is one which we believe is appropriately left to NHEC management and its members.[4](48) We note, however, that in order to implement this option the FERC must accept PSNH's transmission tariff filing which has not yet occurred.

Irrespective of whether NHEC elects to proceed under the tariff filed by PSNH, we direct it to immediately inform its Pilot customers of NHEC's current and anticipated implementation of the Pilot.

Finally, we direct PSNH and NHEC to provide the Commission with updates of any progress in its negotiations relative to this matter.

Based upon the foregoing, it is hereby

ORDERED, that NHEC's Motion for Contempt and to Compel is DENIED WITHOUT PREJUDICE.

By order of the Public Utilities Commission of New Hampshire this tenth day of June, 1996.

FOOTNOTES

[1]This would occur if NHEC's wholesale requirements decrease as a result of its Pilot customers

procuring power from competitive suppliers. NHEC and PSNH disagree over who bears the revenue impact of these decreased wholesale purchases under the parties' Amended Partial Requirements Agreement (APRA).

[2]These filings were made immediately after NHEC filed its Motion with this Commission.

[3]Although the Commission is unaware of the substance of any prior negotiations, it would seem obvious that NHEC and PSNH should endeavor to disengage their differences over the APRA from those associated with the Pilot. In our view, the parties should seek a practical outcome to permit NHEC's customers to participate in the Pilot; their pre-existing, more global differences are already the subject of separate litigation pending at the FERC.

[4]We note that if NHEC prevails at the FERC, its non-Pilot customers would likely receive a refund of any such surcharges.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Retail Competition Pilot Program, DR 95-250, Order No. 22,081, 81 NH PUC 237, Mar. 29, 1996.

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NH.PUC*06/10/96*[89198]*81 NH PUC 443*Retail Competition Pilot Program

[Go to End of 89198]

81 NH PUC 443

Re Retail Competition Pilot Program

Petitioner: Green Mountain Energy Partners, L.L.C.

DR 95-250
Order No. 22,185

New Hampshire Public Utilities Commission

June 10, 1996

ORDER granting a motion for confidential treatment of any customer-specific information obtained by electric utilities in the course of processing requests for service under a pilot program for competitive electric services.

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1. PROCEDURE, § 16

[N.H.] Discovery and inspection — Confidentiality — As to customer-specific usage and

load data — Obtained by host electric utilities — Pursuant to pilot program for retail competition. p. 443.

2. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric service — Pilot program for retail competition — Processing of service requests — Customer-specific information gleaned therein — Nondisclosure. p. 443.

BY THE COMMISSION:

ORDER

[1, 2] This order addresses a Motion for Confidential Treatment filed by Green Mountain Energy Partners (GMEP), L.L.C. on May 15, 1996 with the New Hampshire Public Utilities Commission (Commission). GMEP seeks an order that would prohibit host utilities in the Pilot from releasing certain customer-specific information which it obtains as a result of requests for transmission and distribution service under the Pilot. Specifically, GMEP seeks to protect (a) the identity of Pilot customers' competitive supplier, (b) all notifications to the host utility related thereto and (c) the aggregate load data of Pilot customers. GMEP argues that this information is proprietary competitively sensitive business information which is exempt from public disclosure pursuant to NH RSA 91-A:5,IV.

GMEP's motion is supported by the following parties: Cabletron Systems, Inc., EnerDev, Inc., New Hampshire Electric Cooperative, Inc., New Hampshire Retail Merchants Association, the Office of Consumer Advocate, Freedom Energy Company, L.L.C., and Enron Power Company.

Because the Commission is not in the possession of the information for which GMEP seeks protection, RSA 91-A is not applicable.

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However, we consider customer information to be private in nature and will order all host utilities to refrain from disclosing customer-specific information that they acquire during the course of the Pilot. Specifically, we order all host electric utilities to maintain the confidentiality of all customer-specific information that they obtain as a result of the receipt of requests for transmission and/or distribution services from Pilot customers, unless any such customer authorizes the company in writing to release the information. We note that this directive is consistent with the Final Guidelines as well as the current practice of utilities to protect customer information.

Based upon the foregoing, it is hereby

ORDERED, that all jurisdictional electric utilities shall maintain the confidentiality of all Pilot customer-specific information in accordance with our directive set forth in this order.

By order of the Public Utilities Commission of New Hampshire this tenth day of June, 1996.

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[Go to End of 89199]

81 NH PUC 444

Re Granite State Electric Company

DE 96-125
Order No. 22,186

Re Connecticut Valley Electric Company

DE 96-126
Order No. 22,186

Re New Hampshire Electric Cooperative, Inc.

DE 96-127
Order No. 22,186

Re Concord Electric Company

DE 96-128
Order No. 22,186

Re Exeter and Hampton Electric Company

DE 96-129
Order No. 22,186

New Hampshire Public Utilities Commission

June 10, 1996

ORDER adopting procedural schedule relative to data requests and responses in the course of an investigation into the reliability of the transmission and distribution facilities of various electric utilities, pending the onset of competition within retail electric markets.

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1. PROCEDURE, § 16

[N.H.] Discovery and inspection — Data requests and responses — Schedule for submission — In proceeding examining transmission and distribution reliability — Electric utilities. p. 445.

2. ELECTRICITY, § 1

[N.H.] System reliability issues — Transmission and distribution facilities — Investigatory proceeding — Timetable for associated data requests and responses. p. 445.

APPEARANCES: Carlos A. Gavilondo, Esq. on behalf of Granite State Electric Company; Kenneth C. Picton, Esq. on behalf of Connecticut Valley Electric Company; Dean, Rice and Howard by Mark W. Dean, Esq. on behalf of New Hampshire Electric Cooperative, Inc.; LeBoeuf, Lamb, Greene & MacRae by Meabh Purcell, Esq. on behalf of Concord Electric Company and Exeter & Hampton Electric Company; Deborah Barradale on behalf of EnerDev; Devine, Millimet & Branch by Frederick J. Coolbroth, Esq. on behalf of Public Service Company of New Hampshire; Michael D. Cannata, Jr. and Arthur C. Johnson for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

Page 444

I. PROCEDURAL HISTORY

The New Hampshire Public Utilities Commission (Commission) issued an Order of Notice on May 7, 1996 scheduling a Pre-hearing Conference on May 23, 1996. At the Pre-hearing Conference the Commission Staff (Staff) and representatives for each of the Companies that are parties to these dockets (Companies) agreed that each Company would be placed on the service list of each docket referenced above and that no motions to intervene by any of the Companies would be required. The Commission directed Staff to submit a report summarizing the May 23, 1996 Technical Session. Staff's report was filed on June 5, 1996.

[1, 2] At the Technical Session immediately following the Pre-hearing Conference Staff filed its first set of Data Requests with the Companies and it was agreed that the Companies would respond to those Data Requests by July 1, 1996.

The Companies and Staff agreed that copies of Data Responses to Staff in these dockets will be circulated to the Companies that are on the Service List, minus any data granted confidential treatment.

The Companies and Staff further agreed that after the Staff has reviewed the responses to the Data Requests, individual and parallel conferences and field inspections will be conducted with each of the Companies on a schedule which is to be determined.

The purpose of Staff's investigation is to establish a baseline of transmission and distribution reliability before the onset of competition. Staff intends to conduct its investigation and then submit to the Commission its recommendation as to what further action, if any, is needed in these dockets.

Based upon the foregoing, it is hereby

ORDERED, that the recommendations of the Companies and Staff establishing a procedural schedule for a first Data Request and Data Response and an informal investigation by Staff of the baseline of transmission and transmission reliability of each of the Companies, is adopted. By order of the Public Utilities Commission of New Hampshire this tenth day of June, 1996.

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[Go to End of 89200]

81 NH PUC 445

Re Walnut Ridge Water Company, Inc.

DE 94-182
Order No. 22,187

New Hampshire Public Utilities Commission

June 10, 1996

PETITION by water utility to expand its franchised service area to incorporate new developments in the towns of Atkinson and Plaistow; denied, where uncertainty remained as to actual construction of the developments.

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1. FRANCHISES, § 53

[N.H.] Amendment — Proposed expansion of franchised territory — Factors affecting denial — Indeterminate plans for new real estate developments — Passage of time since initial filing — Water utility. p. 446.

BY THE COMMISSION:

ORDER

On August 15, 1994, Walnut Ridge Water Company, Inc. (Walnut Ridge) filed with the New Hampshire Public Utilities Commission (Commission) a petition to expand its franchise area in the Towns of Atkinson and Plaistow, New Hampshire. The purpose of the request was to accommodate planned subdivisions in the respective Towns.

Commission Staff has made several oral and written requests for information to Walnut Ridge concerning the proposed Bryant Woods development in Atkinson and the proposed Timberview Estates development in Plaistow. Walnut Ridge, however, has not fully or timely responded to Staff's requests. Moreover, Walnut Ridge has indicated recently that the proposed

developments are still in the planning stages.

[1] Walnut Ridge has, to date, not provided sufficient information to support its petition and the passage of time since the filing suggests some uncertainty regarding the developments themselves. Accordingly, we deny the petition without prejudice and will allow Walnut Ridge to file a subsequent petition when more information is available and it is ready to proceed.

Based upon the foregoing, it is hereby

ORDERED, that Walnut Ridge's petition to expand its franchise area in the Towns of Atkinson and Plaistow, New Hampshire is denied without prejudice.

By order of the Public Utilities Commission of New Hampshire this tenth day of June, 1996.

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NH.PUC*06/10/96*[89201]*81 NH PUC 446*Merrimack County Telephone Company

[Go to End of 89201]

81 NH PUC 446

Re Merrimack County Telephone Company

DR 96-176
Order No. 22,188

New Hampshire Public Utilities Commission

June 10, 1996

ORDER authorizing a local exchange telephone carrier to extend its special contract with the local fire department in the Town of Sutton for emergency call conferencing service.

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1. RATES, § 553

[N.H.] Telephone rate design — Types of service — Emergency call conferencing service — For local fire department — Extension of special contract rates — Local exchange carrier. p. 446.

BY THE COMMISSION:

ORDER

[1] On April 19, 1996, Merrimack County Telephone Company (MCT) filed with the New Hampshire Public Utilities Commission (Commission) an extension of its Special Contract No. MCT-004 under which it proposed to continue the provision of Emergency Call Conferencing for the Fire Department of the Town of Sutton, New Hampshire.

The conferencing service contract is an extension of Special Contract MCT-004 which was initially approved by Commission Order No. 18,671, dated May 13, 1987. The contract has been extended annually since 1992. The terms, conditions and rates in the proposed extension are the same as those previously approved.

The service provided will be used for the provision of communications for the protection of life and property. We therefore find that the proposed extension is in the public good.

Based upon the foregoing, it is hereby

ORDERED, that the Extension of Special Contract No. MCT-004, between Merrimack County Telephone Company and the Town of Sutton for effect from April 21, 1996 until April 20, 1997 is approved.

By order of the Public Utilities Commission of New Hampshire this tenth day of June, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Merrimack County Telephone, DE 87-67, Order No. 18,671, 72 NH PUC 174, May 13, 1987.

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NH.PUC*06/10/96*[89202]*81 NH PUC 447*Sprint Communications Company of New Hampshire, Inc.

[Go to End of 89202]

81 NH PUC 447

Re Sprint Communications Company of New Hampshire, Inc.

DS 96-157
Order No. 22,189

New Hampshire Public Utilities Commission

June 10, 1996

ORDER authorizing an interexchange telephone carrier to revise its "FONCARD" offerings, to make such a calling card available even to nonsubscribers of other Sprint services. The carrier also is allowed to introduce a restricted toll service for those new customers who have no credit history or who have a poor credit record.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Tariff revisions — As to "FONCARD" service options — Elimination of subscription to other carrier services as a prerequisite for calling card purchases — Interexchange telephone carrier. p. 447.

2. SERVICE, § 470

[N.H.] Telephone — Toll service — Restrictions — Applicable to new subscribers with no or poor credit histories — Interexchange telephone carrier. p. 447.

BY THE COMMISSION:

ORDER

[1, 2] On May 15, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from Sprint Communications Company of New Hampshire, Inc., (Sprint) requesting authority to revise its tariff for effect June 14, 1996.

The proposed revisions include the introduction of Sprint Sense Stand-Alone FONCARD, a calling card for customers who do not subscribe to Sprint service. In addition, the proposed revisions delete dedicated access Real Solutions FONCARD usage rates because Real Solutions FONCARD is a switched access product.

Finally, Restricted Service is being introduced for new customers whose account is less than 90 days old and who do not have credit information available or have poor credit. Calls placed by customers on Restricted Service may be routed to a receivable operator if the customer has incurred significant pre-bill charges. The receivable operator will explain the reasons for Restricted Service and may request payment of the bill, a deposit, or proof that the customer incurred similar charges with another carrier and paid such charges in a timely manner.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize Sprint to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

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

27th Revised Page 1

Original Page 43.1

5th Revised Page 47

1st Revised Page 73-D

3rd Revised Page 103-D-1;

and it is

FURTHER ORDERED, that Sprint file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this tenth day of June, 1996.

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NH.PUC*06/11/96*[89203]*81 NH PUC 448*New England Telephone and Telegraph Company

[Go to End of 89203]

Re New England Telephone and Telegraph Company

DR 96-124
Order No. 22,190

New Hampshire Public Utilities Commission

June 11, 1996

ORDER approving a proposed special rate contract executed by a local exchange telephone carrier and the State of New Hampshire for the provision of Centrex, digital data, and frame relay services.

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1. RATES, § 566

[N.H.] Telephone rate design — Centrex service — Digital data and frame relay services — "Netsaver" toll service — Pricing under terms of special rate contract — State government as customer — Factors affecting approval — Incremental cost analyses — Existence of competition and alternative private branch exchange systems — Local exchange carrier. p. 448.

BY THE COMMISSION:

ORDER

On April 18, 1996, New England Telephone and Telegraph Company (NYNEX) filed with the New Hampshire Public Utilities Commission (Commission) a special contract (No. 96-6) providing primarily for Centrex and Netsaver toll service, but also Digital Data Services II (DDS II), Superpath, Frame Relay, and ISDN services to the State of New Hampshire (the State). In support of its petition, NYNEX filed a brief contract overview, and a cost analysis associated with the proposed contract.

The special contract filing was accompanied by a Motion for Proprietary Treatment to exempt the cost analysis from public disclosure. In Order No. 22,179 (June 3, 1996) the Commission granted NYNEX's Motion for Confidential Treatment.

[1] The Commission has approved several special contracts for Centrex service to the State of New Hampshire, most recently DR 91-164, DR 93-054, and DE 95-079. One 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.

NYNEX's cost analysis included an opportunity cost analysis. That is, NYNEX compared the contribution it would earn from providing Centrex, Netsaver and digital services 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 NYNEX had lost the bid.

As in an earlier contract, the changes maintain the two element price structure, including a

commitment amount and a monthly service charge for exchange access and system features. Exchange usage charges are subject to regulations and rates as specified in the tariff. In addition, the State must pay the Federal Communications Commission's mandated End User Common Line charge, as do other business customers.

NYNEX 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. These incremental costs are not necessarily equal to NYNEX's filed 1990 or 1993 Incremental Cost Study.

Staff recommends Commission approval of special contract No. 96-6. 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 *NISI*, that NYNEX's Special Contract No. 96-6 with the State of New Hampshire is approved; and it is

FURTHER ORDERED, that we clarify here that the administrative corrections to the cost analysis which NYNEX filed on June 7, 1996 (Section 2-A, pp. 1 and 3) are covered under our Order No. 22,179 which originally granted Confidential Treatment to *inter alia* Section 2-A pp. 1 and 3; 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. 96-6, the Commission may consider whether any changes should be made to the revenue requirements or cost studies as a result of the discounted rates afforded the State in Special Contract No. 96-6; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 1601.05, the Petitioner shall cause an attested copy of this Order *Nisi* to be published once in a statewide newspaper of general circulation, such publication to be no later than June 18, 1996 and to be documented by affidavit filed with this office on or before June 25, 1996; and it is

FURTHER ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or file a written request for a hearing on this matter before the Commission no later than July 2, 1996; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than July 9, 1996; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective July 11, 1996, 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 June, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New England Teleph. & Teleg. Co., DR 96-124, Order No. 22,179, 81 NH PUC 435, June 3, 1996.

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NH.PUC*06/12/96*[89204]*81 NH PUC 449*Public Service Company of New Hampshire

[Go to End of 89204]

81 NH PUC 449

Re Public Service Company of New Hampshire

DR 96-149
Order No. 22,191

New Hampshire Public Utilities Commission

June 12, 1996

ORDER adopting procedural schedule for considering the issue of "light loading" associated with purchases of small power production energy by an electric utility.

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1. RATES, § 322

[N.H.] Electric rate design — Load factors — "Light loading" — Associated with purchases of energy from small power production facilities — Determination and definition of light load — Procedural schedule for. p. 450.

APPEARANCES: Gerald M. Eaton, Esq. and M. C. Whitaker on behalf of Public Service Company of New Hampshire; Brown, Olson & Wilson by Bryan K. Gould, Esq. and Robert A. Olson on behalf of Bio-Energy Corporation, Bridgewater Power Company, L.P., Hemphill Power and Light Company, Pinetree Power, Inc., Pinetree Power-Tamworth, Inc. and Whitefield Power and Light Company; W. H. Wilson on behalf of Concord Regional Solid Waste District; Bossie, Kelly, Hodes & Buckley by Jay L. Hodes and W. Houser on behalf of

Wheelabrator Concord Company, L.P.; Orr & Reno by Jonathan A. Chorlian on behalf of Granite State Hydropower Association; Michael W. Holmes, Esq. on behalf of the Office of

Consumer Advocate; Eugene F. Sullivan III, Esq. on behalf of the Staff of the Public Utilities Commission.

BY THE COMMISSION:

ORDER

On May 14, 1996, the New Hampshire Public Utilities Commission (Commission) opened on its own motion a proceeding to address the issue of light loading as it pertains to the purchases by Public Service Company of New Hampshire (PSNH) of energy generated by Small Power Producers (SPPs). In its Order of Notice the Commission defined light loading as periods when base load generating units are supplying energy on the margin.

The Commission scheduled a prehearing conference for June 6, 1996, set a deadline for intervention requests, and called for initial positions of the Parties and Commission Staff (Staff).

At the Prehearing Conference, the Commission granted intervention to the following parties: PSNH, Bio-Energy Corporation, Bridgewater Power Company, L.P., Hemphill Power and Light Company, Pinetree Power, Inc., Pinetree Power-Tamworth, Inc. and Whitefield Power and Light Company (collectively, the Woodburning Facilities), Concord Regional Solid Waste District (Concord Regional), and Wheelabrator Concord Company, L.P. (Wheelabrator). The Office of Consumer Advocate is a statutorily recognized party.

The Commission deferred ruling on the Motion of Granite State Hydropower Association (GSHA) for Clarification or, In the Alternative, Intervention, while it considered GSHA's arguments regarding light loading as it applies to run of the river hydroelectric facilities.

[1] In accordance with the Order of Notice, the parties and Staff briefly stated their positions on the issues. Generally, there is disagreement on the definition of light loading (whether it is an "operational occurrence" or the periods when base load units supply energy on the margin), its applicability to run of the river hydroelectric facilities and the effect of the central dispatch role performed by NEPEX. The parties also disagreed on whether this matter could be resolved without a hearing. PSNH argued that a hearing was not needed while the OCA contended that an evidentiary record was necessary to resolve the definitional question concerning light loading.

The Commission established the following procedural schedule:

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

July 3, 1996  T{
Filing of Memorandum by PSNH regarding its
interpretation of the relevant statutes and Federal Energy
Regulatory Commission regulations, and whether its operations have
been consistent with that interpretation
T}

July 17, 1996 T{
Notice to the Commission by all Parties and Staff as
to whether they require discovery and submission of a proposed
discovery schedule and deadlines for filing reply memoranda
T}
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The Commission further indicated that it would allow PSNH to file a reply memorandum and that the Commission reserved the right to hold a hearing. The deadline for submission of PSNH's reply memorandum and hearing date (if any) will be set forth in a future order.

Finally, in response to GSHA, the Commission found that its findings in the instant docket could be precedential for other SPPs and stated that it would assure that the appropriate notice is provided.

Based upon the foregoing, it is hereby

ORDERED, that PSNH, the Woodburning Facilities, Wheelabrator and Concord Regional, are granted full intervention in this case; and it is

FURTHER ORDERED, that the proposed procedural schedule delineated above is approved; and it is

FURTHER ORDERED, that the Commission will notify all SPPs selling energy under Commission rate orders of this proceeding by serving copies of the Order of Notice and this Procedural Order by first class U.S. Mail; and it

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is

FURTHER ORDERED, any Party seeking late intervention in this proceeding shall submit to the Commission an original and eight copies of a Petition to Intervene with copies sent to the Parties and the Office of the Consumer Advocate on or before June 25, 1996, 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 PSNH serve its July 3, 1996 Memorandum on all Parties listed on the Service Lists by close of business June 26, 1996.

By order of the Public Utilities Commission of New Hampshire this twelfth day of June, 1996.

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NH.PUC*06/17/96*[89205]*81 NH PUC 451*Public Service Company of New Hampshire

[Go to End of 89205]

81 NH PUC 451

Re Public Service Company of New Hampshire

DR 95-068
Order No. 22,192

New Hampshire Public Utilities Commission

June 17, 1996

ORDER authorizing an electric utility to recover certain costs of complying with the emission control requirements of the Clean Air Act Amendments through its fuel and purchased power adjustment clause rate rather than through base rates. However, such recovery is limited to the

assumed cost of selective noncatalytic reduction technology for such rather than the actual cost of the selective catalytic reduction technology that was in fact employed by the utility.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 17

[N.H.] Indirect energy costs — Costs of compliance with Clean Air Act Amendments — Recovery via fuel and purchased power adjustment clause rates — Limits on recovery — Cost of selective noncatalytic reduction technology rather than of selective catalytic reduction technology — Electric utility. p. 456.

2. EXPENSES, § 120

[N.H.] Electric utility — Costs of compliance with Clean Air Act Amendments — Recovery via fuel and purchased power adjustment clause rates — Limits on recovery — Cost of selective noncatalytic reduction technology rather than of selective catalytic reduction technology — Aggregation of costs of all plants. p. 456.

3. ELECTRICITY, § 3

[N.H.] Generating plant — Emission controls — Clean Air Act Amendment requirements — Recovery of associated costs — Limits — Type of technology as a factor — Selective noncatalytic reduction versus selective catalytic reduction technology — Least-cost principles as determinative. p. 456.

APPEARANCES: Catherine E. Shively, Esq. and Gerald M. Eaton, Esq. on behalf of Public Service Company of New Hampshire; Mark W. Dean, Esq. of the law firm of Dean, Rice & Howard, P.A. on behalf of the New Hampshire Electric Cooperative, Inc.; Mary Ruel on behalf of the New Hampshire Department of Environmental Services Air Resources Division; Steven V. Camerino, Esq. of the law firm of McLane, Graf, Raulerson & Middleton on behalf of EnerDev, Inc.; The Honorable C. Jeanne Shaheen on behalf of New Hampshire Senate District 21; Michael W. Holmes, Esq. of the Office of Consumer Advocate on behalf of New Hampshire residential ratepayers; and Eugene F. Sullivan, III, Esq. on behalf of the Staff of the New Hampshire Public Utilities Commission.

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BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On March 9, 1995 Public Service Company of New Hampshire (PSNH) filed a request with the New Hampshire Public Utilities Commission (Commission) to recover the costs associated with its compliance with the Clean Air Act Amendments of 1990 (CAAA) through the Fuel and Purchased Power Adjustment Clause (FPPAC) pursuant to the Rate Agreement. Following a duly noticed prehearing conference on April 19, 1995, the Commission granted the intervention

request of the New Hampshire Electric Cooperative, Inc. (NHEC) and established a procedural schedule. Order No. 21,625 (April 24, 1995). The Office of the Consumer Advocate (OCA) is a statutorily authorized intervenor. A subsequent request for intervention by EnerDev, Inc. (EnerDev) was granted at the Commission's May 22, 1995 public meeting.

PSNH's May 25, 1995 request for protective order was granted by Order No. 21,695 (June 20, 1995). On July 28, 1995 PSNH filed a second motion for protective treatment, for its contract with Noell, Inc., which Commission Staff (Staff) had requested in discovery.

On September 11, 1995, Wynn E. Arnold, Assistant Attorney General for the State of New Hampshire, filed a letter and accompanying affidavit of Alan Kessler of Ernst & Young (Kessler affidavit). PSNH thereafter filed a letter stating its intention to mark four exhibits for use at the final hearing, among them the Kessler affidavit. NHEC filed a Motion *in Limine* on September 18, 1995 opposing PSNH's proposal to introduce the Kessler affidavit at the final hearing.

At a duly noticed hearing on September 20, 1995 the Commission heard arguments on NHEC's Motion *in Limine* and related issues. Senator Shaheen made a public statement opposing recovery of the full cost of the CAAA compliance project at Merrimack II. The Air Resources Division of the Department of Environmental Services, though not an intervenor, appeared in order to monitor this docket.

At that hearing, the Commission ruled that the October 4, 1995 hearing date would be used for a further prehearing conference to address a procedural schedule for the duration of this case.

According to a September 27, 1995 letter from Staff, the parties and Staff met to discuss the treatment of the Kessler affidavit. Agreement on use of the Kessler affidavit could not be reached; however, two alternative procedural schedules were proposed for Commission consideration, one to be used in the event the affidavit were ruled inadmissible, the other in the event the affidavit were ruled admissible. This letter was supplemented by a September 28, 1995 letter from OCA clarifying that it could not take a position on any agreement concerning Mr. Kessler until the Commission ruled on the admissibility of the affidavit.

On October 2, 1995 OCA filed a letter with the Commission asking that it refrain from ruling on the Motion *in Limine* at the Commission's public meeting but instead wait until it had heard further argument at the October 4, 1995 hearing. The Commission granted this request.

Also on October 2, 1995, PSNH filed a Motion Concerning Evidentiary Matters in which it offered to withdraw its request to introduce the Kessler affidavit if the Commission took administrative notice of Mr. Kessler's testimony in DR 93-092 and if a subpoena were issued to compel the attendance of Superior Court Judge Larry Smukler.

On October 4, 1995, the Commission heard further arguments from the Parties and Staff regarding the admissibility of the Kessler affidavit, new arguments concerning the request to subpoena Judge Smukler and take official notice of Mr. Kessler's testimony in DR 93-092, and proposed amendments to the procedural schedule.

On October 12, 1995 the Commission issued Order No. 21,860 denying the Motion *in Limine* and the request to subpoena Judge Smukler and granting the request to modify the procedural schedule. In that order the Commission also held that the Kessler affidavit would be considered admissible at the hearing on the

merits and granted PSNH's request to take official notice of Mr. Kessler's testimony in DR 93-092. The Commission adopted a procedural schedule for the remainder of the proceeding in the order.

On October 13, 1995 the OCA submitted a petition to the New Hampshire Supreme Court raising a number of questions concerning the participation of the Attorney General in the docket, the submission and consideration of the affidavit of Mr. Kessler, and the propriety of taking official notice of prior Commission transcripts. The Supreme Court denied that petition on November 7, 1995.

On October 27, 1995 PSNH submitted a letter to the Commission indicating that it was withdrawing its request to mark the Kessler affidavit as an exhibit. In that letter PSNH indicated that it believed the parties would have difficulty meeting the existing schedule and proposed that they meet on the scheduled hearing dates to conduct settlement discussions. The OCA responded to PSNH's letter saying that the only way PSNH could obtain a revised procedural schedule under Commission rules is to file a motion for rehearing. The letter then listed a number of things which the OCA believed the PSNH letter would accomplish without a hearing or proper Commission pleading.

On November 7, 1995 PSNH submitted a Motion to Strike the portions of the testimony of Staff and the OCA that did not relate to issues raised by the affidavit, on the grounds that they had the opportunity to raise those issues in their original testimony. In the alternative PSNH asked that the procedural schedule be amended to prepare rebuttal testimony. Staff, NHEC and the OCA filed objections to this motion.

On November 13, 1995 the OCA filed a Motion for Rehearing of Order No. 21,860, requesting the Commission to reconsider its decisions not to require the Attorney General to be a mandatory party, not to require Mr. Kessler to testify, and allowing the affidavit to be introduced.

On November 20, 1995 the Commission, at its Monday morning meeting, orally denied PSNH's Motion to Strike, granted its request to withdraw the affidavit, granted its request for extra time to submit rebuttal testimony, granted its request to use the dates scheduled for hearings for settlement discussions, changed the dates for the hearings, and denied the OCA's Motion for Rehearing. Order No. 21,949, detailing these rulings, was issued on December 19, 1995.

On November 28, 1995 PSNH submitted a Motion to Amend Procedural Schedule. Objections to this motion were received from the Staff, the OCA and NHEC. At its December 4, 1995 meeting the Commission denied PSNH's Motion to Amend Procedural Schedule.

Hearings were held on the merits of the request for recovery of the CAAA costs on December 5 and 6, 1995. PSNH, the OCA, NHEC, EnerDev, and the Staff all submitted briefs on January 26, 1996. The Commission deliberated the issues in this docket at its March 25, 1996 meeting.

II. POSITIONS OF THE PARTIES AND STAFF

A. *PSNH*

PSNH argued that its evaluation, selection and installation of selective catalytic reduction (SCR) technology to meet the CAAA Nitrogen Oxide (NOx) emission limitations applicable to Merrimack Unit II were prudent and that it is entitled to recover the costs of compliance from ratepayers in accordance with the terms of the "EA" component of the FPPAC clause of the Rate Agreement.

PSNH claimed that it had a short time within which to finalize and implement preliminary compliance plans. PSNH also claimed that limited testing and actual use of NOx control technology on cyclone fired boilers, like that used at Merrimack Unit II, required PSNH to consider and select options utilizing minimal data. Nonetheless, PSNH claimed, it relied upon its engineering expertise and knowledge and a lot of experience regarding the unit specific problems likely to be associated with installation of the available NOx control technology at Merrimack Unit II.

PSNH further claimed that the installation of SCR technology enabled it to keep Merrimack Unit II on line without the 70 MW unit

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derate associated with selective noncatalytic reduction (SNCR) technology, the alternative technology. In addition, according to PSNH, the installation of SCR not only kept Merrimack Unit II in operation, it also allowed it to meet future NOx emission limitations without incurring significant additional costs.

PSNH argued that Section 5(a)(v) of the Rate Agreement, the "EA" component of the Rate Agreement, and Paragraph 6(i) of the Joint Recommendations agreed to in DR 89-244 permit PSNH to recover prudently incurred costs of compliance with environmental orders, rules and laws which require capital expenditures of at least $20 million or an increase or decrease in annual expense of at least $2 million and that its costs met both of these thresholds. PSNH also argued that the parties to the Rate Agreement never intended that only those costs in excess of the $20 million capital expense threshold and the $2 million operating expense threshold would be recovered.

PSNH further argued that it would be inappropriate for the Commission to use the estimated, hypothetical capital costs associated with the installation of SNCR technology at Merrimack Unit II to determine if the thresholds have been met and noted that there is a substantial increase in ammonia costs and production cost penalty that accompany an assumption of SNCR technology.

PSNH also argued that recovery of capital expenditures through the "EA" component of the FPPAC clause should not terminate at the end of the fixed rate period, as suggested by the Staff.

In response to Staff's claim that the period for annual expenses begins on May 16th, the first effective date of PSNH's bankruptcy, PSNH argued that the Stipulation and Recommendations on Procedure and Scope in DR 92-050 provides for implementing FPPAC and base rate changes on June 1st. PSNH also argued against Staff's position that a one month adjustment was necessary to address a billing lag because the SCR technology was not actually put into use until

June 16, 1995, claiming that this position ignored FPPAC accounting practices.

Insofar as Merrimack Station book life is concerned, PSNH argued that 11 years is an appropriate remaining book life to use for Merrimack Station; that book life was established as a result of a depreciation study in 1986.

PSNH argued that CAAA compliance costs which it has withheld from the vendor can and will be reconciled in subsequent FPPAC filings. Even if they are subtracted from the total capital investment the total capital expenditures exceed the $20 million threshold.

PSNH concedes that the CAAA compliance revenue requirements should be adjusted to reflect the amounts paid by the Vermont Electric Cooperative (VELCO) for its entitlement in Merrimack Unit II. PSNH argued that although the Rate Agreement required it to renegotiate the VELCO contract, the market price of capacity has decreased since the Rate Agreement was entered into, making renegotiation a losing proposition for PSNH. The Company also argued that adjustment of the VELCO contract rates to reflect PSNH's current cost of capital, as suggested by Staff, as opposed to the FERC approved cost of capital was inappropriate.

B. *NHEC*

NHEC argued that the Commission should deny in its entirety PSNH's request for recovery of the CAAA compliance costs because none of those costs fall within the scope of the "EA" component of the Rate Agreement. NHEC pointed out that even PSNH has interpreted the "EA" component to include costs for environmental backfits which have been imposed by virtue of some government action. NHEC then argued that the costs for which PSNH was seeking recovery were not imposed by government mandate; they were instead incurred by PSNH through a voluntary agreement that resulted from a collaborative process. NHEC claimed that PSNH did not undertake any regulatory or administrative challenges to the emission standards, did not seek waivers of those standards, and did not exhaust its administrative remedies concerning the emissions standards. Consequently, according to NHEC, PSNH's "voluntary" actions should not entitle it to recovery of the costs which it incurred.

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C. *EnerDev*

EnerDev argued that PSNH should not recover the costs of SCR technology unless and until it demonstrates that the costs are necessary to comply with environmental standards, that the technology has in fact enabled PSNH to comply with those standards, and that the technology is the least cost option for achieving compliance. According to EnerDev, the emission standards were set for 1995, but no final standards, only a range, were established for 1999 and beyond; the actual requirements for 1999 will be set in the future. EnerDev claimed that there is a substantial possibility that the 1999 standards will be stricter than what PSNH hopes for and that SCR will likely be inadequate to meet lower standards. PSNH would therefore have to incur significant additional costs to attain compliance in 1999.

EnerDev also argued that because the 1999 standards have not been finalized, PSNH should only be allowed to recover the costs of complying with the 1995 emission standards. SNCR, not SCR, according to EnerDev, is the least cost means of complying with the 1995 standards and,

therefore, PSNH should only be allowed to recover such costs.

EnerDev argues that capital costs associated with environmental backfits mandated by environmental requirements may only be recovered, under the terms of the Rate Agreement, if the capital costs associated with the backfits exceed $20 million. Since the capital costs for complying with 1995 rules, i.e. SNCR technology, do not exceed $20 million, PSNH is not entitled to recovery of any costs associated with Merrimack Unit II. EnerDev argues that PSNH will have an opportunity to seek recovery if it can show that these costs meet the 1999 standards when they are established and if it shows they exceed applicable thresholds, are mandated by environmental requirements, were prudently incurred and are used and useful. EnerDev argued that allowing PSNH to recover the costs of SCR beginning in 1995 would reward PSNH and its shareholders for what EnerDev argued was a calculated effort to shift stockholder costs to ratepayers.

D. *OCA*

The OCA argued that the Attorney General was a necessary party to the proceedings and that since the Commission denied the request to make the AG a mandatory party, due process was denied.

The OCA also argued that before costs associated with pollution control equipment can be placed into FPPAC rates the property must be prudent and used and useful. In this case, according to the OCA, PSNH built a CAAA system to handle known 1995 emission standards and combined it with a larger investment which may or may not meet 1999 standards when they are developed. PSNH could have built a system to meet the 1995 standards, but instead it chose to build a bigger system than it needed. Consequently, the OCA argued, the Commission should reduce the rate base so that it only includes the amount attributable to the 1995 standards adjusted to what the SNCR methodology alone would have cost if cheaper, since in OCA's view it is just as effective at meeting 1995 standards. Moreover, according to the OCA, this amount should be booked for future purposes since it cannot be allowed in FPPAC because it is below the threshold allowed in the Rate Agreement. In 1999 a determination can be made as to whether SCR meets the CAAA standards that are then in effect.

The OCA also argued that since PSNH is guaranteed recovery of 31.3% of Merrimack Unit II's share from VELCO, determination of whether the $20 million threshold under the Rate Agreement has been met should be net of the VELCO share. Once this calculation is done, the OCA contends, the threshold is not met. Since the capital cost threshold has not been met, according to the OCA, PSNH is only entitled to recovery of all of the appropriate operating and maintenance expenses. The OCA also argued that it is not possible to recover both capital and annual expenses by meeting just one threshold or the other. The OCA argued that once the threshold is met recovery of annual costs are only on a going forward basis.

Since the SCR technology did not go into effect until June 16, 1995, the OCA claims recovery should only be calculated from that

date forward. In addition the OCA argues PSNH should not be allowed to recover monies that have been held back from vendors.

The OCA argued that New Hampshire ratepayers should receive the benefit of NOx credits and any credits must flow through FPPAC to the benefit of ratepayers.

E. *Staff*

Staff argued that there is no assurance that SCR technology at Merrimack II is capable of reaching the 1999 standards. Staff referred to the 1999 standards as "self imposed emissions levels," in large part because the 1999 standards resulted from a collaborative in which PSNH took part. Staff questioned whether it was even appropriate for Merrimack II to be included in the ozone attainment rule since the units are located outside of the non- attainment area.

Staff argued that the Commission should only allow recovery of costs through "EA" using the assumption that SNCR was employed at Merrimack II. In the event that SCR proves capable of meeting the 1999 standards, PSNH should at that time be allowed to recover its investment under the rate setting mechanism then in place. Staff indicated that it could not conclude that the use of SCR technology at Merrimack II was a prudent decision.

Staff went on to argue that because VELCO is responsible for bearing its pro-rata percentage of the annual capital costs and operating expenses of Merrimack II, these reimbursed sums should not be counted for the purpose of deciding whether the threshold under "EA" has been met.

In interpreting "EA" the Staff argued that prior PSNH testimony indicates that PSNH was willing to absorb the costs up to the $20 million and $2 million thresholds and therefore only costs over those amounts ought to be charged to ratepayers. Staff also argued that the plain reading of the descriptions of "EA" supports the conclusion that each type of expenditure, capital and expenses, is a discrete item to be analyzed separately. In addition Staff interprets the Rate Agreement to require that each environmental rule be handled separately and that the threshold for annual expenses has to be crossed on an annual basis. Staff argued as well that "EA" cost recovery ends at the termination of the fixed rate period in 1997 rather than at the termination of the Agreement in 2000.

Staff further argued that PSNH should have to refund the first month of costs collected during the June 1 - November 30, 1995 FPPAC period. Staff acknowledges that the computation date to be used for calculating base rate and FPPAC changes is June 1st, however, Staff bases its argument on the fact that the SCR technology was not used until June 16, 1995. Because PSNH bills in arrears and because of the provisions of RSA 378:30-a, the anti- CWIP law, PSNH should refund any compliance costs collected from ratepayers for the month of June 1995.

Staff also believed that PSNH overcalculated the annual amortization costs of the technology by continuing to use short book lives for the Merrimack units. Staff recommended that the Commission order PSNH to reevaluate the lives of the units.

Staff further argued that PSNH should not be allowed to recover from customers the monies it has not yet expended for the technology, i.e. what it has withheld from the vendors. In addition Staff argued that the Commission should impute PSNH's current overall cost of capital to the contract with VELCO and decrease ratepayer liability for SCR technology at Merrimack II. Staff also indicated that ratepayers should receive the benefits of all SO2 and NOx allowance credits or trading on either the state or federal level.

III. COMMISSION ANALYSIS

[1-3] Our analysis begins with DE 94-080, PSNH's Least Cost Integrated Resource Plan, and with Order No. 21,589, where we first faced the issue of CAAA technology for Merrimack Station. In that order we addressed whether PSNH's adoption of SCR technology for Merrimack II constitutes the least cost alternative to meet state and federal Clean Air Act requirements. We stated that the record supported a finding that PSNH reasonably considered the available alternatives, and that PSNH's study indicated that the installation of SCR

technology was the most economic means of complying with NOx emissions limits. We also said, however, that our decision should not be interpreted as pre-approval of the SCR project and that the scope of that proceeding was to review PSNH's planning processes. We noted that PSNH's decision rested on critical technical and regulatory assumptions regarding SCR technology and Phase II emissions standards. We said that cost recovery issues would be addressed in a separate proceeding. Order No. 21,589 at 21 and 22.

We continue to believe that it was appropriate to look only at the planning methodology in DE 94-080. The proceeding we are addressing today concerns those cost recovery issues which we deferred in that docket.

In this docket PSNH is asking that we approve recovery of the capital expenditure for SCR technology at Merrimack II in its entirety. Other parties to the docket and Staff have argued that PSNH is not entitled to recovery, or at least not full recovery. Having reviewed the state rules that require certain actions to comply with the CAAA, we note that those rules require that Merrimack II meet certain emissions limits in 1995. Env-A 1211.03(c) provides:

> "On and after May 31, 1995 each utility boiler with heat input rates of at least 50,000,000 BTU per hour shall comply with NOx RACT emission limits, or install the NOx RACT control technology, specified below. ... [f]or wet-bottom boilers firing coal...[f]or cyclone-fired boilers ... [w]ith a maximum net power output of more than 320 megawatts at any time after December 31, 1989, comply with the NOx RACT emission limits specified in Env-A 1211.03(d) and ... 1.40 lb. per million Btu based on a 24-hour calendar day average; or ... [i]nstall, operate and maintain selective non- catalytic reduction (SNCR) technology with a minimum normalized stoichiometric ratio (NSR) of 1:1; or ... [i]nstall, operate and maintain NOx RACT air pollution control equipment or an air pollution control process having equivalent or greater NOx removal efficiency as selective non-catalytic reduction (SNCR), approved by the division and EPA."

Env-A 1211.03(d) imposes some additional daily and yearly NOx emissions limits measured in tons between 1995 and 1999. From reviewing these rules it is clear that they specifically refer to the installation of SNCR technology in conjunction with meeting the 1995 limits. In fact the May 12, 1994 letter from the Director of the Air Resources Division to PSNH regarding the final rules indicates, at p. 2, that an amendment was made to Env-A 1211.03 concerning utility boilers to allow the alternative of installing SNCR technology and it says "[T]his amendment was made in response to information received on the ability of SNCR technology to reduce NOx emissions from units of this type." Exhibit 9, Attachment 10.

In addition, the rules require in 1999 that Merrimack II meet certain emissions limits which fall within a range, but which are subject to final determination by the Air Resources Director. More specifically, Env-A 1211.03(f) provides:

> "The director shall implement Phase II NOx emission limits for wet- bottom cyclone-fired utility boilers subject to Env-A 1211.03(d) no later than May 31, 1999. After that date, wet-bottom cyclone-fired utility boilers shall be limited at all times to the equivalent of the following NOx emission limits ... [f]or boilers firing coal ... 3.8 to a maximum of 15.4 tons of NOx per 24-hour calendar day, as determined by the director ... "

From these rules it is clear that we do not know at this point in time what the requirements will be for 1999 and whether the SCR technology which PSNH has installed will result in Merrimack II meeting those requirements. In our opinion PSNH has not met its burden of showing us by a preponderance of the evidence that it should be allowed to recover the costs for SCR technology at the present time. It is premature to allow SCR recovery since SCR was not necessary to comply with 1995 rules and since we will not know until 1999 whether SCR will meet the requirements imposed then. For this reason we adopt the recommendation of some of the parties to this docket that we only allow PSNH to recover the equivalent of SNCR

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technology and associated costs for now. In doing so we recognize, as PSNH indicated in its brief, that it may have a claim for what it referred to as "the substantial increase in ammonia costs and production cost penalty that accompany an assumption of SNCR technology" and will therefore allow PSNH to file a request for recovery of such expenses and allow the Staff and the other parties an opportunity to respond to that request. In the event that we find in 1999 that SCR technology works in bringing Merrimack II into compliance with the rules which are determined at that point in time, we will consider a request for full recovery of those costs.

Although we considered authorizing PSNH to establish a deferred asset account for the SCR capital expenditures as EnerDev suggested, in light of our decision to allow PSNH to recover the equivalent of SNCR expenditures we believe that the deferred asset account is unworkable. We will instead require PSNH to indicate to the Commission in its monthly FPPAC reconciliation reports the amount it is assuming for SNCR costs. The Commission will consider the recovery of the difference between SCR and SNCR costs once the 1999 requirements are in place and a determination has been made as to whether SCR is effective in meeting those requirements.

NHEC argued that we should not allow recovery for any of these expenditures claiming that they were not mandated because the requirements were established after a collaborative effort between PSNH, the Department of Environmental Services (DES) and a number of interest groups. We cannot agree with this argument. Regardless of what process was used to arrive at the final rules and who had input into that process, those rules were adopted pursuant to RSA 541-A by DES, the agency with the authority to make the final determination as to the substance of the rules. Moreover, once adopted the rules have the effect of law in New Hampshire. RSA 541- A:22. In addition, we believe that the collaborative approach to rulemaking worked very well in this instance, and such an approach should be encouraged rather than discouraged. *See*

RSA 541- A:38. Even more importantly, however, underlying the collaborative effort and the rules was the mandate of federal law, the CAAA.

We must also address a number of issues surrounding the interpretation of provisions of the Rate Agreement. The definition of "EA" in the Rate Agreement is critical to our resolution of these issues, since EA is a component of the FPPAC rate formula meant to allow for recovery of certain environment related costs incurred by PSNH. We believe that under the definition of EA in the Rate Agreement PSNH is entitled to recover the cost to amortize capital expenditures and the operational expenditures for mandated improvements required by CAAA as long as there is either a capital expenditure of at least $20 million or an increase or decrease in annual expense of at least $2 million. Therefore, PSNH should be allowed to recover the equivalent of the capital expenditure for SNCR at Merrimack II even though it would not exceed $20 million, because PSNH's annual expenses do exceed the $2 million threshold for annual expenses. The testimony concerning PSNH's annual expenses was contained in redacted materials.

The language at issue is in the definition of "EA" contained in Exhibit C to the Rate Agreement, where the FPPAC formula is contained. This definition reads as follows:

> `EA' Equals annual cost of environmental or safety backfits or fuel switching requiring capital expenditures of at least $20,000,000 or an increase or decrease in annual expense of at least $2,000,000 ...

Similarly, Section 5(a)(v) of the Rate Agreement says:

> the only changes to base rates. ... will be ones to adjust rates (A) for legislative or regulatory changes such as changes to federal or state tax laws or regulations or environmental orders, regulations, and laws, which require capital expenditures of at least $20,000,000 or an increase or decrease in annual expense of at least $2,000,000 ...

Use of the word "or" in both places indicates to us that the parties to the Rate Agreement

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intended recovery of all of the environmental backfit expenses, capital and operating, if one of the two thresholds is met. In other words, as we read this portion of the Rate Agreement, if a particular change to an environmental order, rule or law requires capital expenditures of at least $20 million or an increase or decrease in annual expense of at least $2 million, the Rate Agreement was intended to allow recovery of all of those expenses, provided, of course, that they are prudently incurred. Therefore, since PSNH has shown us that its annual operating expenses exceeded the threshold, we will allow PSNH to recover the full amount of the capital and operating expenses related to environmental backfits to meet the CAAA as noted herein.

Some of the parties suggested that PSNH should only be allowed to recover in excess of the $20 million and $2 million thresholds in the Rate Agreement because to do otherwise would create a "perverse incentive" to spend over those amounts even if the same could be accomplished for something less than the threshold. We cannot agree with this interpretation. If the parties to the Rate Agreement had intended that recovery under this provision be limited to expenses above the threshold, they could have clearly indicated so by using "in excess of" or similar words. In the absence of such language we cannot read such words into the Rate

Agreement and therefore we cannot interpret this section to provide recovery for only those amounts above the thresholds because to do so would contradict the plain language of the Rate Agreement. Insofar as the "perverse incentive argument" is concerned, we believe that it is our duty, and consequently that of our Staff, that we review any expenditures carefully to insure that they reflect the least cost alternative and that all of the costs for which recovery is sought were incurred prudently. This should avoid concerns over the "perverse incentive" created by the language of the Rate Agreement.

There was also an issue related to whether PSNH should be allowed to aggregate all CAAA costs for the purpose of determining whether they meet the threshold of the EA requirement. We believe they should be allowed to do so and that they should be allowed to recover CAAA compliance costs for Newington and Schiller Stations. In allowing this recovery, we are cognizant of Staff's argument that each environmental rule must be viewed discretely. Since we believe all of the amounts PSNH is seeking to recover in this docket are caused by the same environmental requirements under the CAAA, we see no reason to address that issue any further at this point in time.

PSNH's contract with the Vermont Electric Cooperative (VELCO) entitles VELCO to a 100 MW share of Merrimack II for 30 years. The contract further provides that VELCO is to proportionately reimburse PSNH for the capital and operating costs of Merrimack II. As a consequence of this we believe that PSNH's recovery of capital and operating expenses ought to be reduced by VELCO's proportionate share. PSNH has indicated in its brief that it concurs with this position. Unless there is a disagreement over the appropriate amounts by which to reduce the compliance costs to reflect the VELCO contract we will assume that this issue has been resolved. In light of our interpretation of "EA" as allowing for recovery of all of the capital and annual operating environmental backfit expenses if either of the thresholds is met, the counting of the VELCO share to reach the threshold is no longer an issue in this docket, though clearly PSNH should not be able to count toward the threshold any expenses which it cannot recover.

The issue concerning the appropriate cost of capital to use in determining VELCO's contribution to Merrimack II costs boils down to whether to use PSNH's current cost of capital, as Staff contends, or the one approved by the Federal Energy Regulatory Commission (FERC). Staff argues that PSNH had an obligation under Section 12 of the Rate Agreement to use its best efforts to renegotiate the Merrimack contract with VELCO and in light of its failure to do so claims that the Commission should impute PSNH's current overall cost of capital to the contract to decrease ratepayer liability for compliance costs. PSNH argues that there is a limited term remaining on the VELCO contract, a lack of incentive on VELCO's part to agree to any changes, a slim chance the FERC would

substantially reform the contract, and the probability that renegotiation of the contract would not result in an increase in the VELCO contribution. We believe that the fairest resolution of this issue, given PSNH's failure to exercise best efforts to renegotiate the VELCO contract as required under the Rate Agreement, is to require PSNH to impute its current overall cost of capital to the contract with VELCO and thereby decrease PSNH ratepayers' liability for SNCR technology at Merrimack II.

Related to the determination of the cost recovery there is an issue concerning the amount of time over which PSNH should amortize the expenditure for SNCR at Merrimack II. This depends on what the appropriate depreciation period is for Merrimack II and since we believe the only information in the record, i.e. the reference to the 1986 study by Stone and Webster Management Consultants, Inc. contained in the response to Q-Staff-032, is outdated, we will require PSNH to file a new depreciation study on Merrimack Station this study as part of the next FPPAC proceeding.

There was also the issue concerning whether PSNH ought to recover costs associated with the month of June of 1995, given the fact that the technology was not in use until June 16, 1995 and that PSNH bills in arrears. Under traditional accounting practices, FPPAC costs are recovered as they are incurred. Costs are incurred as of the date they are recorded on PSNH's books. In this case, Merrimack II costs were recorded on PSNH's books in June, 1995. Therefore, those costs are recoverable under FPPAC for bills rendered in June, 1995.

In light of our ruling allowing recovery of assumed costs for SNCR instead of actual SCR costs we do not see the need to address whether PSNH should be allowed to recover amounts which it has withheld from the vendor, though as a general proposition if the vendor has not been paid we see no reason to allow recovery.

Insofar as treatment of emissions allowance credits is concerned, we believe we should reserve judgment for another proceeding where the record is more fully developed.

Based upon the foregoing, it is hereby

ORDERED, that, insofar as capital expenditures for Merrimack II are concerned, PSNH is only allowed at this point in time to recover what it would have cost to install and operate SNCR technology; and it is

FURTHER ORDERED, that since PSNH exceeds the annual operating expense threshold under "EA" of the Rate Agreement, it may recover both capital and operating environmental backfit expenses caused by the Clean Air Act Amendments at this time; and it is

FURTHER ORDERED, that PSNH shall submit a depreciation study on Merrimack Station as part of the next FPPAC proceeding; and it is

FURTHER ORDERED, that PSNH impute to VELCO PSNH's current cost of capital to reduce ratepayer liability for Merrimack Station compliance costs.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of June, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DE 94-080, Order No. 21,589, 80 NH PUC 160, Mar. 27, 1995. [N.H.] Re Public Service Co. of New Hampshire, DR 95-068, Order No. 21,625, 80 NH PUC 223, Apr. 24, 1995. [N.H.] Re Public Service Co. of New Hampshire, DR 95-068, Order No. 21,860, 80 NH PUC 640, Oct. 12, 1995. [N.H.] Re Public Service Co. of New Hampshire, DR 95-068, Order No. 21,949, 80 NH PUC 791, Dec. 19, 1995.

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NH.PUC*06/17/96*[89206]*81 NH PUC 461*Cabletron Systems, Inc.

[Go to End of 89206]

81 NH PUC 461

Re Cabletron Systems, Inc.

Joint petitioner: Johnson Controls, Inc.

DR 95-095
Order No. 22,193

New Hampshire Public Utilities Commission

June 17, 1996

ORDER again asserting jurisdiction over intrastate retail wheeling by electric utilities and directing an electric utility, Public Service Company of New Hampshire, to provide a small power producer (SPP) with a rate quote for such wheeling service, as had been requested by the SPP, Independent Energy Corporation. Should the utility refuse to do so, it must indicate such refusal in writing, after which the commission will take further action.

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1. ELECTRICITY, § 2

[N.H.] Commission jurisdiction — Over intrastate retail wheeling — Approval of wheeling agreements and rates. p. 462.

2. RATES, § 90

[N.H.] Commission jurisdiction — Electric service — Retail wheeling — Intrastate transmission — Resolution of disputes — Affirmation of authority. p. 462.

3. RATES, § 339

[N.H.] Electric rate design — Retail wheeling — Intrastate transmission service — Compulsory service to certain small power producers — Requirement to submit wheeling rate quote. p. 462.

4. COGENERATION, § 14

[N.H.] Operating practices — Wheeling — Intrastate retail transmission service — Compulsory service to certain small power producers. p. 462.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On October 3, 1995, the New Hampshire Public Utilities Commission (Commission) issued Order No. 21,850 which held, *inter alia*, that NH RSA 362-A:2-a is a valid exercise of the police powers of the State of New Hampshire and is not preempted by the Federal Power Act of 1935 (FPA) or the Energy Policy Act of 1992 (EPACT). Under NH RSA 362-A, also known as the Limited Electrical Energy Producers Act (LEEPA), electricity generated by certain small power producers may be transmitted over the facilities of franchised electric utilities under certain circumstances. *See* NH RSA 362-A:2-a. We issued Order No. 21,850 in response to a Petition for Declaratory Ruling jointly filed by Cabletron Systems, Inc. and Johnson Controls, Inc. (Petitioners) after Public Service Company of New Hampshire (PSNH) refused to provide the Petitioners with the applicable rates, terms and conditions of wheeling services under NH RSA 362-A:2-a,II. Such refusal was based upon PSNH's belief that the aforementioned state statute was preempted by federal law.

PSNH filed a Motion for Rehearing pursuant to NH RSA 541:3 which the Commission denied on January 8, 1996. *See* Order No. 21,967. By letter dated January 30, 1996, Independent Energy Corporation (IEC) informed PSNH that it was interested in developing a cogeneration project in Merrimack, New Hampshire and that it had met with the Petitioners and other end users in this regard. The letter also requested that PSNH provide as soon as possible an estimate of the "wheeling (`transmission') rate for the foregoing transaction" and a brief description of all other terms which

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PSNH may believe to be applicable and appropriate.

PSNH responded to IEC's request by letter dated February 27, 1996 in which PSNH stated that it was unable to provide the requested estimates of retail wheeling rates, terms and conditions because the Federal Energy Regulatory Commission (FERC) and the Commission were "claiming jurisdiction over the identical service." PSNH further stated that it would be unable to comply with IEC's request "(u)nless and until this jurisdictional matter is resolved between the FERC and the NHPUC."

On April 2, 1996, the Petitioners filed a Complaint and Motion for Contempt (Complaint) requesting that the Commission investigate PSNH's refusal to provide IEC with estimated transmission and distribution rates for retail wheeling under LEEPA and in compliance with Order No. 21,850. The Petitioners further requested that the Commission take appropriate action including a finding of contempt accompanied by sanctions and penalties.

II. POSITIONS OF THE PARTIES

A. Petitioners

Petitioners' Complaint is made pursuant to NH RSA 365:1 and essentially asserts that PSNH has violated RSA 362-A:2-a and Order No. 21,850 by refusing to provide IEC with the requested transmission and distribution rates for retail wheeling. Petitioners also claim that such refusal constitutes a violation of the "essential facilities doctrine" embodied in Section 2 of the Sherman Act. In response to PSNH's contention that the Commission lacks jurisdiction over anti-trust claims, the Petitioners assert that the Commission is authorized to review such disputes under the

primary jurisdiction doctrine. Petitioners request that the Commission investigate the matters set forth in the Complaint and, after notice and hearing, take appropriate action, including a finding of contempt and imposition of penalties.

B. PSNH

PSNH argues that the Complaint should be dismissed because Order No. 21,850 merely ruled on the constitutionality of LEEPA and did not order PSNH to provide any information, rates or charges. PSNH further argues that the Commission lacks jurisdiction over the Petitioners' anti-trust law complaints and that there is no basis for a finding of contempt against PSNH as there has been no violation of any order or of any other statutory or administrative requirement.

III. COMMISSION ANALYSIS

[1-4] It is clear from the pleadings that there exists a dispute arising under LEEPA. Under NH RSA 362-A:5, the Commission is authorized to adjudicate such disputes when they arise between any parties. Thus, we are statutorily obligated to investigate this matter notwithstanding PSNH's arguments to the contrary.

NH RSA 362-A:2-a, I authorizes a limited producer of electrical energy to sell its produced electrical energy to not more than three purchasers other than the franchised electric utility. Based on information contained in the pleadings, we assume that IEC is a limited producer of electrical energy within the meaning of the aforementioned statute. As such, IEC is entitled to transmit its electrical output to its purchasers' facilities, however it must compensate the transmitter for all costs incurred in wheeling and delivering the current to the purchaser. NH RSA 362-A:2-a, II. The Commission must approve all such wheeling agreements and it "retains the right to order such wheeling and to set such terms for a wheeling agreement including price that it deems necessary." *Id.*

Based on the foregoing, we will order PSNH either to provide a wheeling rate to IEC or indicate in writing its refusal to do so within 30 days of the date of this order. Depending upon PSNH's election under this order, the Commission will initiate a hearing under NH RSA 362-a:2, III or take other appropriate action.

At this juncture, we find it unnecessary to address the Petitioners' anti-trust claims, however we expressly reserve the right to do so in future proceedings if necessary.

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Based upon the foregoing, it is hereby

ORDERED, that PSNH provide wheeling rates to IEC in accordance with the provisions of NH RSA 362:2-a, II within 30 days of the date of this order; and it is

FURTHER ORDERED, that in the event that PSNH refuses to provide the aforementioned wheeling rates it shall so inform IEC and the Commission in writing of its reasons for such refusal within 30 days of the date of this order.

By order of the New Hampshire Public Utilities Commission this seventeenth day of June, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Cabletron Systems, Inc., DR 95-095, Order No. 21,850, 80 NH PUC 620, 164 PUR4th 205, Oct. 3, 1995. [N.H.] Re Cabletron Systems, Inc., DE 95-095, Order No. 21,967, 81 NH PUC 6, Jan. 8, 1996.

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NH.PUC*06/17/96*[89207]*81 NH PUC 463*Public Service Company of New Hampshire

[Go to End of 89207]

81 NH PUC 463

Re Public Service Company of New Hampshire

DR 96-171
Order No. 22,194

New Hampshire Public Utilities Commission

June 17, 1996

MOTION by electric utility for confidentiality of certain portions of a special rate contract negotiated with Heidelberg Harris, Inc.; granted as to customer-specific usage data, conservation/load management programs, and cogeneration alternatives cited therein.

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1. PROCEDURE, § 16

[N.H.] Discovery and inspection — Confidentiality — Relative to special rate contract terms — Granted as to customer-specific usage data relied upon therein — Granted as to customer-specific conservation/load management and cogeneration options — Benefits of nondisclosure as outweighing disclosure — Electric utility. p. 464.

BY THE COMMISSION:

ORDER

On May 29, 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 Heidelberg Harris, Inc. (Heidelberg), which provides for rates and charges that make the cost of purchasing electricity from PSNH competitive with Heidelberg's cogeneration alternative. Concurrent with the special contract, PSNH filed a Motion for Confidential Treatment of certain customer specific information contained within the Technical Statement filed in support of the contract (hereinafter collectively the Information). According to PSNH, the Commission Staff (Staff) neither opposed nor supported the motion prior to reviewing the special contract; the Office of Consumer Advocate also took no position.

In its motion PSNH argues that the Information should be afforded protective treatment because, using our analysis in *Re NET*, Order No. 21,731, 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, PSNH states that it provided the documents required in Puc 204.08(b)(1) and cited the statutory support required by Puc 204.08(b)(2). PSNH states that the Information consists of details of confidential commercial and financial information that is not general public knowledge and for which measures have been taken to prevent dissemination in the ordinary course of business, thus meeting the

requirements of Puc 204.08(b)(4). PSNH further provides facts describing the benefits of non-disclosure, thus meeting the requirements of Puc 204.08(b)(3).

[1] We recognize that the detailed customer specific data contained in the Information regarding Heidelberg's load and costs, cogeneration alternative, and conservation and load management efforts is critical to review of the special contract by the Commission and Commission Staff, as required by RSA 378:18.

We also recognize that businesses engaged in discussions with regulated utilities are reluctant to disclose sensitive commercial and financial information if it is to become part of the public record.

PSNH has alleged that disclosure of the information would result in competitors of both PSNH and Heidelberg using load information, studies involving alternative sources, and other commercial decision making criteria contained in the information to gain an unfair commercial advantage. In addition, harm to PSNH would result because disclosure would jeopardize its ongoing commercial relationship based on an understanding that financially sensitive information will be treated confidentially.

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 to Heidelberg and PSNH of non-disclosure appear to outweigh the benefits to the public 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 PSNH's Motion for Confidential Treatment of portions of the Technical Statement supporting its special contract with Heidelberg, is GRANTED; and it is

FURTHER ORDERED, that this order is subject to reconsideration in the event that the Commission Staff or any party raises concerns and it is subject to the on-going right of the Commission to reconsider this order in light of RSA 91-A, should circumstances so warrant.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of June, 1996.

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*06/17/96*[89208]*81 NH PUC 464*MCI Telecommunications Corporation of New Hampshire

[Go to End of 89208]

81 NH PUC 464

Re MCI Telecommunications Corporation of New Hampshire

DS 96-164
Order No. 22,195

New Hampshire Public Utilities Commission

June 17, 1996

ORDER approving an interexchange telephone carrier's various proposed tariff revisions which would clarify "MCI Vision" offerings, change usage charges associated with credit card calls, and introduce service options targeted at specific customer groups.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll services — Tariff revisions and clarifications — As affecting "MCI Vision" service — Introduction of enhanced service options for certain target groups — Usage charges for credit card calls — Interexchange carrier. p. 464.

BY THE COMMISSION:

ORDER

[1] On May 17, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from MCI Telecommunications Corporation of New Hampshire (MCI) requesting authority to make various revisions

Page 464

to its tariff for effect June 17, 1996.

The proposed revisions include: 1) changes to the usage charges and surcharge sections in Option B (Credit Card); 2) the introduction of Option C (Advanced Option I for Small Business); 3) the introduction of Option D (MCI Flat Rate Plus); 4) textual changes to Option Q (MCI Vision) section to clarify the Vision Regional Program's Card usage charge and surcharge; and 5) various changes in Option Y (MCI MASTERS) to include government agencies.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize MCI to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of MCI's tariff, NHPUC No. 1 are approved for effect as filed:

50th Revised Page 1

27th Revised Page 2

28th Revised Page 3

34th Revised Page 3.1

4th Revised Page 3.2

15th Revised Page 4

4th Revised Page 27

5th Revised Page 28

1st Revised Page 29

1st Revised Page 30

Original Page 30.1

1st Revised Page 31

1st Revised Page 32

Original Page 32.1

16th Revised Page 54

2nd Revised Page 59.10;

and it is

FURTHER ORDERED, that MCI file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this seventeenth day of June, 1996.

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NH.PUC*06/17/96*[89209]*81 NH PUC 465*Public Service Company of New Hampshire

[Go to End of 89209]

Re Public Service Company of New Hampshire

DR 95-321
Order No. 22,196

New Hampshire Public Utilities Commission

June 17, 1996

ORDER denying rehearing of Order No. 22,121 (81 NH PUC 328, *supra*) in which the commission had approved as modified a proposed special rate contract negotiated by an electric utility and an industrial customer, American Tissue Mills of New Hampshire, Inc. Commission finds that the basis upon which the motion for rehearing relied was factually inaccurate.

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1. PROCEDURE, § 32

[N.H.] Rehearing — Factors affecting denial — Factual inaccuracies or flaws in alleged basis for rehearing — Failure of movant to review all evidence and revised data responses. p. 466.

APPEARANCES: Gerald M. Eaton, Esq. for Public Service Company of New Hampshire; Edward L. Selgrade, Esq. for American Tissue Mill, Inc.; 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

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I. PROCEDURAL HISTORY

On November 15, 1995, Public Service Company of New Hampshire (PSNH) filed with the New Hampshire Public Utilities Commission (Commission) a special contract with American Tissue Mill, Inc. of New Hampshire (ATM-NH) pursuant to RSA 363:18. On March 21, 1996, the Commission heard evidence on the special contract, including the testimony of Steven C. Catalfamo of ATM-NH. Mr. Catalfamo testified to a number of issues, including pricing of paper on the wholesale market. Because he did not have current price information on hand, he was asked to provide the information in writing, which was identified as Record Request No. 9.[1(49)]

ATM-NH filed its response to Record Request No. 9 on March 27, 1996. The information contained in the response contradicted certain representations in the original special contract filing and ATM-NH's testimony at the March 21, 1996 hearing. On March 28, 1996 ATM-NH revised that response, stating that Mr. Catalfamo had not reviewed the information before it was filed and when he did he found it to be inaccurate. The revised response to Record Request No. 9

accurately stated ATM-NH's situation regarding wholesale paper prices and was consistent with the original special contract representations and his testimony at the hearing.

The Commission approved the special contract, stating among other things that PSNH had demonstrated that ATM-NH would shut its Winchester facility and purchase paper products on the wholesale market absent the special contract. *See*, Order No. 22,121 (April 30, 1996).

The Office of Consumer Advocate (OCA), on May 30, 1996 filed a Motion for Rehearing of Order No. 22,121 pursuant to RSA 541:3. In the Motion for Rehearing, OCA asserts that because the response to Record Request No. 9 contradicted prior representations on the issue of wholesale paper prices, Order No. 22,121 should be reheard. The Motion for Rehearing made no mention of ATM-NH's revised response.

II. COMMISSION ANALYSIS

[1] We can only assume that OCA did not receive or did not review ATM-NH's revised response. The revised response is consistent with the original representations on this issue and continues to be compelling evidence supporting the need for a special contract. Because OCA's assertion is factually inaccurate, we will deny the Motion for Rehearing.

Based upon the foregoing, it is hereby

ORDERED, that OCA's Motion for Rehearing is DENIED.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of June, 1996.

FOOTNOTES

[1]The Commission granted this information confidential treatment pursuant to RSA 91-A and N.H. Admin. Rules, Puc 204.08.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 95-321, Order No. 22,121, 81 NH PUC 328, Apr. 30, 1996.

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NH.PUC*06/17/96*[89210]*81 NH PUC 466*Retail Competition Pilot Program

[Go to End of 89210]

81 NH PUC 466

Re Retail Competition Pilot Program

Applicant: Public Service Company of New Hampshire

DR 95-250

Order No. 22,197

New Hampshire Public Utilities Commission

June 17, 1996

MOTION by an electric utility for the convening of a technical session so as to discuss the ramifications of a recent Federal Energy Regulatory Commission (FERC) open access order

Page 466

with respect to the state's own pilot initiative for competitive electric services; denied as unnecessary. The state commission asserts that the utility will be held financially harmless should the FERC eventually approve transmission service rates on a permanent basis that are lower than the ones recently accepted on a temporary basis. Moreover, the state commission pledges to seek a waiver of certain FERC-mandated open access service requirements that would interfere with the state's own experimental retail wheeling programs.

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1. RATES, § 339

[N.H.] Electric rate design — Transmission service — Provided pursuant to a pilot program for retail competition — Effect of federally approved transmission tariffs — Temporary versus permanent tariffs — Waiver from certain federal wheeling requirements. p. 468.

2. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric service — Pilot program for retail competition — Transmission service as necessary component thereof — Federal versus state jurisdiction over retail wheeling — Waivers from certain federal open access requirements. p. 468.

3. ELECTRICITY, § 2

[N.H.] Commission jurisdiction — Federal versus state agencies — As to transmission and retail wheeling services — Under pilot program for retail competition — Effect of temporary federal approval of transmission tariffs — State-initiated waivers from certain federal open access requirements. p. 468.

BY THE COMMISSION:

ORDER

This order addresses the Motion of Public Service Company of New Hampshire (PSNH) for Convening of a Technical Session and for Other Relief (Motion). PSNH states that it has obtained the partial concurrence of Connecticut Valley Electric Company and the UNITIL Companies. PSNH filed the Motion on June 6, 1996 and at our June 10, 1996 public meeting we directed all interested parties to file expedited responses by June 11, 1996. Responses to PSNH's Motion were received by the Commission Staff (Staff), Enron Power Marketing, Inc., Granite State Electric Company and the Flatley Company. Freedom Energy, L.L.C., filed a letter

indicating that it would defer to Staff's position on this matter. The New Hampshire Electric Cooperative filed an objection to the "other relief" requested in PSNH's Motion.

The alleged basis for PSNH's Motion is a May 24, 1996 order from the Federal Energy Regulatory Commission (FERC) which approved, on a temporary basis, the transmission filings of Northeast Utilities Service Company (NUSCO).[1(50)] *See*, 75 FERC ¶ 61,207 (1996 WL 278247(F.E.R.C.)). In that order, FERC temporarily approved the PSNH/NUSCO retail transmission filings, but stated that after July 9, 1996, Pilot customers should receive transmission service under the *pro forma* tariff which FERC has directed all transmission-owning utilities to file as part of its recently issued Open Access Rule.[2(51)] According to PSNH, FERC's order will "subject [PSNH] to overlapping and conflicting regulatory requirements," which place the Pilot "in serious jeopardy." PSNH has indicated on numerous occasions that it is committed to the Pilot, but it has refused to allow its Pilot customers to begin purchasing power from competitive suppliers despite the FERC's temporary approval of its retail transmission tariffs.[3(52)]

In its Motion, PSNH points to a number of provisions in FERC's *pro forma* Open Access tariff which it indicates the parties to this proceeding have found "unacceptable." These provisions require: (a) customer deposit requirements, (b) certain application procedures, (c) minimum scheduling requirements, (d) ancillary

Page 467

services requirements, (e) certain billing options, (f) a single network tariff requirement, and (g) broad reciprocity provisions.[4(53)] According to PSNH, the solution to the foregoing problem is for this Commission to file a petition at the FERC requesting a waiver of Order 888's Open Access requirements.

PSNH also seeks clarification that the Commission will allow it to adjust its unbundled rates in the event that the FERC orders a refund to Pilot customers after a full review of the transmission charges in PSNH's proposed tariff. Essentially, this would simply require an adjustment to PSNH's stranded cost charge set by this Commission so that the sum of all unbundled charges equals the bundled tariff rate for each rate class.

[1-3] First, we will clarify our prior conditional approval of PSNH's Joint Recommendation with Staff. To allow PSNH to make adjustments to its stranded cost charge in the event that there are regulatory adjustments to its transmission or distribution charges is entirely consistent with the Joint Recommendation and our related orders. As PSNH correctly points out, any such adjustment will not change the overall charges to Pilot customers; it would simply require a reallocation of the unbundled components of PSNH's delivery tariff.

Next, we agree with PSNH that many provisions in the *pro forma* wholesale tariff which the FERC approved in Order 888 are unnecessary or inappropriate for purposes of implementing the New Hampshire retail Pilot. Although the FERC has asserted that it has exclusive jurisdiction over retail transmission services, it has also stated that it does not intend to interfere with state retail wheeling experiments.[5(54)] The New Hampshire Pilot is the product of enormous effort during the last year. All of our state's electric utilities have indicated a willingness to participate in the Pilot. Customers who have been selected for the Pilot are eager to begin taking service

from competitive suppliers. We have crafted the Pilot in a manner which accommodates the concerns of local interests, including those of our jurisdictional utilities. In the Open Access Rule, FERC stated that it would defer to state requests for variations from the FERC wholesale tariff to meet state concerns as long as the retail tariff is consistent with the FERC's open access policies and comparability principles. *See*, 61 Fed. Reg. 21,627. We believe that the timely and uninterrupted implementation of the New Hampshire Pilot exemplifies the exact type of state interest to which the FERC has indicated its intent to defer.[6(55)]

Based upon these considerations, we will seek a waiver of the stated requirements in the FERC's Open Access Rule. Accordingly, we have on this date forwarded a letter to FERC which outlines our concerns and requests a cooperative approach in handling the Pilot- related transmission filings. In that letter, we have also requested FERC to indicate its willingness to allow Pilot customers to continue to receive transmission services after July 9, 1996 under the same tariffs which the FERC temporarily approved in its May 24, 1996 order.

Although we have agreed to seek a "waiver" of the stated requirements in the Open Access Rule, we have done so only for the limited purposes of the Pilot. This request should not in any way be interpreted as modifying any positions which we have expressed previously relative to jurisdictional issues.

We agree with Staff and several other commenters that there is no need to schedule a technical session at this time. Instead, we direct our Staff to work with FERC Staff in order to implement a waiver of the Open Access Rule for the sole purpose of accommodating the New Hampshire Pilot Program.

In summary, we have granted PSNH's request for clarification which ensures that it will not be financially harmed in the event that the FERC ultimately approves lower transmission rates. We have also offered our agreement and support for PSNH's request to serve Pilot customers under the terms and conditions of the transmission filings which the FERC has already approved on a temporary basis. Based upon the foregoing, we direct PSNH to immediately provide Pilot customers access to competitive suppliers under the rates, terms and conditions of the tariffs filed with and approved by the FERC and this Commission.

Based upon the foregoing, it is hereby

ORDERED, that PSNH is directed to

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forthwith implement the Pilot consistent with this order.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of June, 1996.

17 June 1996
By Facsimile and Overnight Mail

The Honorable Lois D. Cashell
Secretary
Federal Energy Regulatory Commission

888 First Street, NE
Washington, D.C. 20426

RE: New Hampshire Retail Electric Competition Pilot Program NHPUC Docket No. DR 95-250

Dear Secretary Cashell:

The New Hampshire Public Utilities Commission (NHPUC) wishes to extend its appreciation for the prompt action that the Federal Energy Regulatory Commission (FERC) took relative to the retail transmission filings of various in and out-of-state electric utilities for the purpose of implementing the New Hampshire Retail Competition Pilot Program. 75 FERC ¶ 61,207 (May 24, 1996).

Although we were pleased that the FERC took expedited action, we write to request FERC's cooperation in seeking a mutually agreeable solution to a problem that could have significant consequences for the Pilot.

The May 24 1996 order issued by the FERC temporarily approved the transmission filings of Northeast Utilities Service Company, which is an affiliate of Public Service Company of New Hampshire, New England Power Company and its various affiliates, and those of Central Vermont Public Service Corporation on behalf of its subsidiary, Connecticut Valley Electric Company. The order temporarily approved the aforementioned tariffs, subject to a later order, that the FERC indicated would "address the reasonableness of the tariff rates, determine whether a hearing is appropriate, address the arguments of any intervenors, and provide rate schedule designations."

The order also expressed the FERC's expectation that after July 9, 1996, customers who are participating in the New Hampshire Pilot would begin taking service under the *pro forma* wholesale transmission tariffs mandated by FERC's Open Access Rule. This aspect of the order could disrupt or delay indefinitely the New Hampshire Pilot Program for the vast majority of the approximately 17,000 customers who already have been selected to participate.

It is our belief that utilities and Pilot customers should take uninterrupted transmission service under the tariffs which the FERC has temporarily approved. These retail tariffs are consistent with the policies and comparability principles reflected in the Open Access Rule.

The NHPUC has demonstrated a strong commitment to pro-competitive policies in the electric utility industry. The Pilot is the product of enormous effort by many parties, including our jurisdictional utilities. We believe that the Pilot will provide valuable insights which will assist us as we move toward a competitive environment which will provide retail choice for all New Hampshire customers.

The NHPUC also shares FERC's view that electric utility restructuring calls for heightened cooperation among state and federal regulators. The NHPUC strongly urges FERC to recognize these unique local concerns by informing the aforementioned utilities and transmission applicants that it has waived the stated requirements of the Open Access Rule for the limited purpose of facilitating retail transmission service for customers who participate in the New Hampshire Pilot Program.

Very truly yours,

Douglas L. Patch
Chairman

Bruce B. Ellsworth
Commissioner

Susan S. Geiger
Commissioner

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cc: Dr. Sarah P. Voll
NHPUC, Executive Director & Secretary
George McCluskey
NHPUC, Head of Electric Utility
Restructuring Division

FOOTNOTES

[1]NUSCO filed transmission tariffs on behalf of PSNH.

[2]*See*, 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 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036 (1996).

[3]We note that two of the state's electric utilities, Granite State Electric Company and Connecticut Valley Electric Company, have fully implemented the Pilot.

[4]PSNH also raises an issue concerning transmission to the UNITIL Companies (Concord Electric and Exeter & Hampton Companies). We address this issue separately in an order addressing those companies.

[5]We have joined the Michigan Public Service Commission in a Motion for Rehearing relative to the FERC's assertion in Order 888 that it has exclusive jurisdiction over the rates, terms and conditions of unbundled retail transmission service.

[6]In its final Open Access Rule, FERC stated that it strongly supports the efforts of states to pursue pro-competitive policies and that these jurisdictional issues call for "heightened cooperation" among federal and state regulators.

EDITOR'S APPENDIX

Citations in Text

[F.E.R.C.] Re 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, 75 FERC ¶ 61,080, 168 PUR4th 590, Feb. 24, 1996.

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NH.PUC*06/18/96*[89211]*81 NH PUC 470*Bottom Line Telecommunications of New Hampshire, Inc., dba Bottom Line Telecommunications, Inc.

[Go to End of 89211]

81 NH PUC 470

Re Bottom Line Telecommunications of New Hampshire, Inc., dba Bottom Line Telecommunications, Inc.

Additional applicant: BLT Technologies, Inc.

DE 95-354
Order No. 22,198

New Hampshire Public Utilities Commission

June 18, 1996

ORDER approving an intracorporate reorganization under which Bottom Line Telecommunications of New Hampshire, Inc., will merge into BLT Technologies, Inc.

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1. CONSOLIDATION, MERGER, AND SALE, § 23

[N.H.] Factors affecting approval — Economy and efficiency — No operational changes — Transparent effect as to subscribers — Compliance with standard of no net harm — Telecommunications carriers. p. 470.

BY THE COMMISSION:

ORDER

[1] The Petitioners, Bottom Line Telecommunications of New Hampshire, Inc. d/b/a Bottom Line Telecommunications, Inc. (BLT- NH) and BLT Technologies, Inc. (BLTT) (Petitioners), jointly filed with the New Hampshire Public Utilities Commission (Commission), on December 21, 1995, a petition (Petition) to transfer the authority to operate as a telecommunications utility in the State of New Hampshire held by BLT-NH to BLTT.

BLT-NH, a New Hampshire corporation,

was granted authority in DE 94-168, by Order No. 21,364 (September 20, 1994). BLT-NH was originally formed to comply with the domestic incorporation requirements in effect at that time. The 1994 amendment, RSA 347:25 IV (1994), exempted telecommunications carriers.

BLTT (f/k/a Bottom Line Technologies, Inc.) is the parent company of BLT-NH. BLTT has

fully registered with the Secretary of State. BLTT certifies it will comply with the terms of the Authority granted to BLT-NH in DE 94-168, all Commission rules, regulations and orders, and will assume BLT-NH's obligations.

All rates and services are unaffected as BLTT proposes to adopt the tariff of BLT-NH. The Petitioners anticipate no degradation in financial, management, or technical competence. The Petitioners intend to collapse the domestic corporation. The Petitioners anticipate their competitive capabilities will be enhanced by reduced overhead.

We find that the transfer from BLT-NH to BLTT of authority to transact business as a telecommunications public utility in the State of New Hampshire will result in no net harm, which is the standard by which we evaluate merger petitions. *See, Re Eastern Utility Associates*, 76 NH PUC 236 (1991). The transfer of control may in fact produce net benefits to BLT-NH's customers and ratepayers. We will, therefore, approve the Petition.

Based upon the foregoing, it is hereby

ORDERED, that the Petition to transfer control of BLT-NH to BLTT is granted; and it is

FURTHER ORDERED, that BLTT shall adopt the currently effective tariff of BLT-NH, by filing a title page; and it is

FURTHER ORDERED, that the Petitioner shall file a compliance tariff with the Commission within 30 days of this order, in accordance with N.H. Admin. Rules, Puc 1601.04(b).

By order of the Public Utilities Commission of New Hampshire this eighteenth day of June, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Bottom Line Telecommunications, Inc., DE 94-168, Order No. 21,364, 79 NH PUC 513, Sept. 20, 1994.

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NH.PUC*06/18/96*[89212]*81 NH PUC 471*Kearsarge Telephone Company

[Go to End of 89212]

81 NH PUC 471

Re Kearsarge Telephone Company

DR 96-054
Order No. 22,199

New Hampshire Public Utilities Commission

June 18, 1996

ORDER continuing the suspension of a local exchange telephone carrier's proposed tariff for the introduction of integrated services digital network services.

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1. SERVICE, § 449

[N.H.] Telephone — Special service — Integrated services digital network (ISDN) offerings — Local exchange carrier — Suspension of new features — Extension of suspension period. p. 472.

2. RATES, § 248

[N.H.] Schedules and procedure — Suspension — Of proposed service options — Extension of suspension period — Factors — Need for additional investigatory time — As to integrated services digital network (ISDN) offerings — Local exchange telephone carrier. p. 472.

Page 471

BY THE COMMISSION:

ORDER

[1, 2] On February 20, 1996, Kearsarge Telephone Company (Kearsarge) filed tariff pages proposing to introduce Integrated Services Digital Network (ISDN) services for effect March 22, 1996. In support of its filing, Kearsarge filed forecasts of revenues and expenses associated with the proposed features. On March 18, 1996, the Commission suspended the proposed tariff to allow a thorough review of the tariff filing and accompanying materials.

Kearsarge has been cooperating with Staff to provide additional information and to address concerns raised by Staff, including some modifications to language in the proposed tariff. This process is continuing at this time, therefore, Staff has requested that the filing be suspended to permit further time to complete the review.

We have reviewed Staff's request and will suspend the proposed tariff pages to allow the completion of the ongoing review.

Based upon the foregoing, it is hereby

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

NHPUC No. 7

Section 2 - Original Sheets 7-15

By order of the Public Utilities Commission of New Hampshire this eighteenth day of June, 1996.

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NH.PUC*06/18/96*[89213]*81 NH PUC 472*Granite State Telephone, Inc.

[Go to End of 89213]

81 NH PUC 472

Re Granite State Telephone, Inc.

Additional applicant: Granite State Long Distance, Inc.

DR 96-111
Order No. 22,200

New Hampshire Public Utilities Commission

June 18, 1996

ORDER affording protective treatment to a special service contract between a local exchange telephone carrier and an interexchange carrier, relative to provision by the local carrier of billing and collection services for the interexchange carrier.

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1. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective treatment — Of special service contract — For billing and collection services — Between local exchange and interexchange telephone carriers — Benefits of nondisclosure as outweighing those of disclosure. p. 473.

BY THE COMMISSION:

ORDER

On April 11, 1996, Granite State Telephone, Inc. (GST) and Granite State Long Distance, Inc. (GSLD) (collectively, GST) filed with the New Hampshire Public Utilities Commission (Commission), pursuant to RSA 366:3, an affiliate contract for Support and Billing Services to be provided by GST to GSLD. Concurrent with the affiliate contract, GST filed a Motion for Protective Order for the pricing terms contained in Attachment A of the Support and Billing Services Agreement (Agreement) (hereinafter the Information). At the time the

Motion was filed, neither the Commission Staff nor the Office of Consumer Advocate had taken a position regarding the motion and neither has since objected.

In its motion GST argues that the Information should be afforded protective treatment because, using our analysis in *Re NET*, Order No. 21,731, 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, GST states that it provided the documents required in Puc 204.08(b)(1) and cited the statutory support required by Puc 204.08(b)(2). GST states that the Information consists of competitively sensitive data as billing and collection services, for local exchange carriers, are

negotiated offerings of services for which alternatives are available, and, for toll providers, are major cost inputs for the provision of toll services in intensely competitive markets. The Information therefore meets the requirements of Puc 204.08(b)(4). GST further provides facts describing the benefits of non-disclosure, thus meeting the requirements of Puc 204.08(b)(3).

[1] We recognize that the pricing information for the billing and collection services contained in the Information is critical to review of the affiliate contract by the Commission and Commission Staff, as required by RSA 366:3.

GST has alleged that disclosure of the Information would result in harm because it would provide an unfair advantage to competing toll providers.

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) and *NET*, Order No. 21,731, dated July 10, 1995, the benefits of non-disclosure in this case appear to outweigh the benefits of disclosure to the public.

Based upon the foregoing, it is hereby

ORDERED, that GST's Motion for Protective Order for the pricing information in Attachment A of the Agreement is GRANTED; and it is

FURTHER ORDERED, that this order is subject to reconsideration in the event that the Commission Staff or any party raises concerns and it is subject to the on-going right 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 eighteenth day of June, 1996.

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*06/18/96*[89214]*81 NH PUC 473*Dial and Save of New Hampshire, Inc.

[Go to End of 89214]

81 NH PUC 473

Re Dial and Save of New Hampshire, Inc.

DS 96-166
Order No. 22,201

New Hampshire Public Utilities Commission

June 18, 1996

ORDER authorizing an interexchange telephone carrier to introduce a new service plan targeted

at qualifying business customers and to clarify that calls are billed in one-minute increments.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Special commercial service plans for qualifying business customers — Use of one-minute billing increments — Interexchange telephone carrier. p. 474.

BY THE COMMISSION:

ORDER

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[1] On May 21, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from Dial & Save of New Hampshire, Inc., (Dial & Save) requesting authority to introduce its Commercial Plan and revise language regarding billing increments, for effect June 20, 1996.

The Commercial Plan is available to business customers who meet Dial & Save's credit guidelines. The plan offers a month to month option as well as term commitments for toll, toll-free and credit card usage.

Language regarding billing increments is being added to clarify that unless otherwise stated, calls are billed in one minute increments.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize Dial & Save to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of Dial & Save's tariff, NHPUC No. 1 are approved for effect as filed:

2nd Revised Page 2

1st Revised Page 27

Original Page 39

Original Page 40

Original Page 41

Original Page 42

Original Page 43

Original Page 44

Original Page 45;

and it is

FURTHER ORDERED, that Dial & Save file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this eighteenth day of June, 1996.

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NH.PUC*06/18/96*[89215]*81 NH PUC 474*Public Service Company of New Hampshire

[Go to End of 89215]

81 NH PUC 474

Re Public Service Company of New Hampshire

DR 96-143
Order No. 22,202

New Hampshire Public Utilities Commission

June 18, 1996

ORDER agreeing that certain forecasted avoided-cost information contained in an electric utility's 1996 integrated least-cost resource plan filing should be subject to protective treatment in that disclosure of such information could place the utility at a competitive disadvantage upon restructuring of the electric industry.

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1. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective treatment — Relative to forecasted avoided-cost data — As part of an integrated least-cost resource plan filing — Competitive disadvantages of disclosure — Benefits of nondisclosure outweighing those of disclosure — Electric utility. p. 474.

BY THE COMMISSION:

ORDER

[1] This order addresses a Motion for Confidentiality filed by Public Service Company of New Hampshire (PSNH) on April 30, 1996 relative to its 1996 Integrated Least Cost Resource Plan (IRP) filed on the same date. PSNH requests an order which protects from public disclosure

certain information which accompanied its IRP filing. In its Motion, PSNH notes that recently enacted House Bill 1392 calls for the Commission to implement full

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retail competition no later than July 1, 1998. According to PSNH, information and data which support its fifteen year forecast of avoided costs could be used by its competitors "to know or to calculate PSNH's production costs for the foreseeable future." PSNH supports its request for protective treatment on RSA 91-A:5(IV) and NH Admin. Rules Puc 204.07 which exempts confidential commercial or financial information from the public disclosure requirements of the New Hampshire Right-to-Know Law. There were no objections filed to PSNH's Motion.

We recognize that the detailed information regarding PSNH's avoided costs is essential in order for Staff and the Commission to review PSNH's 1996 IRP as required by RSA 378:39. PSNH has made a sufficient showing, however, that such information could be used to its disadvantage by future competitors. 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 PSNH of non-disclosure in this case appear to 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 reconsideration in the event that the Commission Staff or any party raises concerns and it is subject to the on-going right 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 eighteenth day of June, 1996.

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NH.PUC*06/18/96*[89216]*81 NH PUC 475*Integrated Water Systems, Inc.

[Go to End of 89216]

81 NH PUC 475

Re Integrated Water Systems, Inc.

Additional applicants: Indian Mound Water Corporation; Consolidated Water Company, Inc.; Carleton Water Company Trust

DR 95-300, DR 95-331
Order No. 22,203

New Hampshire Public Utilities Commission

June 18, 1996

ORDER approving a proposed merger and franchise transfer as between various water utilities, under which Indian Mound Water Corporation would be sold to Integrated Water Systems, Inc.,

and Carleton Water Company Trust would be sold to Consolidated Water Company, Inc., which itself is affiliated with Integrated Water Systems. Although expressing some reservations as to the management abilities of Integrated, the commission notes that the present owners of both Indian Mound and Carleton have indicated a desire to cease utility operations. Accordingly, the change in ownership is approved, subject to certain new customer service and metering requirements.

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1. CONSOLIDATION, MERGER, AND SALE, § 18

[N.H.] Factors affecting approval — Desire of present owners to cease utility operations — Improvements in management by acquiring utility — Water utilities. p. 478.

2. CONSOLIDATION, MERGER, AND SALE, § 56.1

[N.H.] Terms and conditions — Service requirements — Institution of new customer service procedures — Managerial and engineering improvements — Installation of metering

Page 475

system — Merger of water utilities. p. 478.

3. SERVICE, § 310

[N.H.] Connections and equipment — Water utilities — Meters and metering — Necessity of — Pursuant to merger agreement. p. 478.

4. SERVICE, § 277

[N.H.] Discontinuance of service — Water utilities — Factors — Desire to cease utility operations — New owner via merger agreement. p. 478.

5. CONSOLIDATION, MERGER, AND SALE, § 13

[N.H.] Necessity of commission approval — Merger and franchise transfer proposal — Applicability to water utilities as much as to energy and telecommunications companies — No distinction between public utility and holding company as to necessity of authorization. p. 478.

APPEARANCES: Mary Ellen Goggin, Esq. for Integrated Water Systems, Inc. and Consolidated Water Company, Inc.; Joanne V. Hager for Locke Lake Colony Association; Eugene F. Sullivan, III Esq. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

Integrated Water Systems, Inc. (Integrated) operates a water utility in the Locke Lake Colony area of Barnstead, New Hampshire serving approximately 614 customers. Indian Mound Water Corporation (Indian Mound) operates a water utility in Ossipee serving approximately 77

customers.

On October 30, 1995, Integrated and Indian Mound jointly filed with the New Hampshire Public Utilities Commission (Commission) a petition for Indian Mound to disengage as a public utility and for Integrated to serve the franchise previously held by Indian Mound (Petition). The Petition was supplemented by testimony of Raymond H. Seeley on December 15, 1995.

The Indian Mound stock was transferred to Integrated in March of 1995 and Integrated has been operating the system since then. Correspondence between counsel for Integrated and the Commission evidenced a difference of interpretation of RSA 374:33 regarding utility transfer or acquisition of assets.

The Commission commenced its usual procedure for such a docket, holding on December 20, 1995 a prehearing conference to rule on intervention requests, identify likely issues and set a procedural schedule for completion of the case. The Office of Consumer Advocate (OCA) is a statutorily authorized intervenor but did not appear. The Commission, in Order No. 21,972 (January 9, 1996) granted the request of Locke Lake Colony Association (Locke Lake) for full intervention. There were no other intervenors.

During the early stages of discovery in the Integrated/Indian Mound docket, Consolidated Water Company, Inc. (Consolidated), which is owned and operated by the same principals operating Integrated, filed a petition to purchase the assets of Carleton Water Company Trust, a water utility serving approximately 295 customers in developments in Middleton, North Conway, Thornton and Tuftonboro, New Hampshire. The Petition was supplemented by testimony of Raymond H. Seeley on December 28, 1995.

On December 28, 1995, the Commission held a prehearing conference for Consolidated Water's request, after which it granted Locke Lake's intervention request. Order No. 21,971 (January 9, 1996). There were no other intervenors.

At the prehearing conference for Consolidated, the parties and Commission Staff (Staff) agreed that the two dockets be combined for further discovery and hearings and developed a combined procedural schedule with hearings on both petitions on February 28, 1996.

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On February 1, 1996, after discovery, Locke Lake prefiled testimony of Joanne V. Heger and Staff prefiled testimony of Douglas W. Brogan, Amanda O. Noonan and Mark A. Naylor.

Pursuant to an assented-to request to reschedule the hearings, the Commission heard evidence on the two petitions on April 30 and May 1, 1996.

II. POSITIONS OF THE PARTIES AND STAFF

A. *Integrated/Indian Mound and Consolidated*

Integrated, since May of 1995, has been operating the Indian Mound system. It now seeks a franchise to provide that service, while Indian Mound seeks authorization to disengage as a public utility. Integrated will continue to serve the Locke Lake customers without change and the rate base of the two systems would not be merged. Ultimately, Integrated intends to create a

holding company providing support to a number of separate utility operations, including Locke Lake, Indian Mound and the Carleton systems.

Integrated states it will operate a professional water management company that will provide the Indian Mound customers with improved service, given its experience. Economies of scale of a larger company will be to the benefit of both Indian Mound and the existing Integrated customers, though those benefits will not accrue immediately. There are a number of capital improvements Integrated identifies as being necessary within the coming years at Indian Mound, including upgrade of the pump house wiring and pumps, installing a new air compressor, and installing some curb stops and, eventually, metering.

Integrated interpreted RSA 374:33 not to require prior approval of the stock transaction and change in operations that occurred at Indian Mound. Mr. Seeley stated he had received advice of counsel that the statute did not apply to water utilities.

As to the petition regarding transfer of assets held by Carleton, Consolidated argues that it can provide improved service to the developments now served by Carleton, again based on its experience and size. It does not anticipate significant capital improvements to the system. It intends to contract with Mr. Carleton to provide assistance on an as-needed basis for all of its water operations.

B. *Locke Lake*

Locke Lake's prefiled statement notes its concern that the burdens of additional systems will result in a significant increase in staffing that will necessitate a rate increase for the Locke Lake customers. It argues Integrated's management has at times been inefficient and is concerned that these problems could be exacerbated by additional systems to operate. At the hearing, Ms. Heger testified that Integrated had made considerable improvement in its customer relations and took no position on the two petitions.

C. *Staff*

The three Staff witnesses stated serious reservations about the ability of Integrated to effectively manage the system it now operates, even before taking on new responsibilities. They recounted incidents of poor customer relations, failure to comply with orders of the Commission, lack of knowledge in the industry and poor judgment in some operational decisions. Witness Naylor recommended that, notwithstanding these problems, the franchise now held by Indian Mound should be transferred to Integrated, with conditions, given that Indian Mound no longer wishes to operate the system. Mr. Naylor also recommended a fine of $2,500 be imposed on Integrated and $2,500 to be split between the two former Indian Mound shareholders, for the failure to obtain Commission approval for the transfer of assets of Indian Mound prior to transfer, in accordance with RSA 374:33. In accordance with RSA 374:33-a, he recommended that costs incurred in the transaction be disallowed should Integrated seek them in a future rate case.

Witnesses Brogan and Noonan recommended against the transfer of the Indian

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Mound franchise to Integrated, given the severity of Integrated's operational and customer

service problems which they believe would be exacerbated by additional responsibilities.

All three Staff witnesses recommended that the Commission deny the petition for Consolidated's purchase of the Carleton assets. If the Commission were to approve the petitions, however, they recommended a number of conditions that should be imposed to improve customer relations and operations and maintenance.

III. COMMISSION ANALYSIS

[1-5] We have reviewed the testimony and considered Integrated's intentions to continue to expand and develop a holding company to provide support to Indian Mound, Carleton and Integrated and potentially to a number of other water utilities which it may purchase and operate. Because the two principals operating Integrated and Consolidated are the same, we will simply refer to them as Integrated. We understand that the names of the entities are expected to change soon, when the holding company structure is established.

While we have some reservations we will nonetheless grant both of Integrated's petitions. We are concerned by reports of Integrated's continued poor dealings with its customers and allegations of inefficient operations at Locke Lake. We note, however, that Integrated has made efforts to improve its operations and has made progress in bringing the Locke Lake system up to proper standards. We are also aware that the holders of the Indian Mound and Carleton franchises want to cease utility operations. We will, therefore, approve both petitions as being in the public good, provided Integrated complies with the following conditions recommended in Staff's testimony, as modified by the Commission.

Customer Service Issues

1. Integrated personnel must improve communications with office manager (e.g. radio in status of repairs during outages);

2. Customer phone calls must be documented with memos in a customer's file so that the next person speaking with customer has the most current information;

3. Mr. Seeley, Mr. Morerod and the office manager must attend seminars on customer relations and communications;

4. Customer service surveys must be conducted once a year for two years, then every other year, with a summary of survey results filed with Commission (Staff will assist in developing survey);

5. A comprehensive customer service policy must be developed, including a plan for implementation, within 60 days of this Order, for review and approval by the Commission (Staff to assist in providing examples or areas which ought to be addressed);

6. Integrated's principals must meet annually with Commission Staff to assess progress and discuss issues;

Financial Issues

7. Indian Mound records must be investigated by Integrated to determine if revenues have been booked properly and whether the availability charges have been billed;

Engineering Issues

8. Integrated must meet periodically on a contractual basis with an experienced water company of another firm experienced in water system design, operation and maintenance to obtain management, planning, engineering and general operational input;

9. Integrated personnel must attend at least one water industry meeting, seminar and/or course annually;

10. Within 45 days, Integrated must submit for Commission review and approval a detailed 2 year plan which identifies:

— firm under contract and anticipated nature, frequency and duration of contacts with that firm and estimated cost, in accordance with condition 8 above;

— meetings, seminars and courses to be attended, persons to attend and estimated

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cost, in accordance with condition 9 above;

— costs which should be borne by ratepayers and which should be borne by shareholders as they relate to bringing management skills up to an acceptable level;

11. Twice a year a report will be filed with the Commission by the firm under contract addressing areas needing improvement, recommendations to address these areas and evaluation of progress and performance during the previous 6 months, costs of which to be borne by shareholders;

12. Staff will use the above reports and any other relevant information to assess Integrated's performance annually for two years and report any concerns or recommendations to the Commission;

13. Integrated will file management contracts between the management company and individual utilities as they are signed;

14. Within 3 months, Integrated will develop a cost allocation system for each of the utilities and the management company; Staff to assist in discussing cost allocation methodology;

15. Metering at Indian Mound and the Carleton systems will be completed in accordance with this Order; and

16. By December 31, 1996, a master meter will be installed at Indian Mound.

Integrated must appreciate the importance of full compliance with these conditions. The Commission will issue a show cause order why one or more of the franchises should not be revoked should these terms not be met in a timely manner. If a problem arises creating difficulty in meeting a condition, Integrated should notify Staff immediately and should seek amendment of this Order demonstrating its efforts to comply and reasons why the terms cannot be met as ordered.

Both Indian Mound and the Carleton systems require metering. Staff testified that Integrated's proposal for completion of Indian Mound metering by 1998 was acceptable. Staff made no recommendation for completion of metering of the Carleton systems. We should note that Carleton was ordered to complete metering or propose an alternative deadline by January

16, 1996 in Order No. 21,872. To date we believe nothing has been done. We will order Integrated to file a plan for metering of the Carleton systems within 45 days of this Order, which shall include realistic time frames for completion of each of the systems.

We will grant the requests to allow Indian Mound and Carleton to cease operations as a public utility, pursuant to RSA 374:28.

We do not find the ambiguity in RSA 374:33 that Integrated argues is present. Should there be any lingering confusion on this issue, however, we will clarify our interpretation. We interpret RSA 374:33 to require Commission approval of all transfers of a certain size which affect any public utility, whether it be a water, gas, electric, telephone or steam utility. It is illogical, in our view, to read the citation to the Public Utility Holding Company Act as a qualifier of both "public utility" and "holding company."

Given that Integrated's erroneous interpretation of the statute was apparently made in good faith, i.e. in reliance upon advice of counsel, and given Integrated's efforts to file a petition once the issue was brought to light, we will not fine either party to the transfer.

In order that customers fully understand the terms of the approvals granted herein, we will require copies of this Order to be posted in a central location at each of the developments served, as well as being available at Integrated's office in Moultonboro. The more customers know and understand about these changes in provision of utility service, the better the chance to avoid misunderstanding.

Finally, as we noted at the start of the combined hearing on these dockets, the decisions in the two dockets are independent of one another. For rehearing and appeal purposes, therefore, an aggrieved party should indicate which docket it is addressing. If necessary, the Commission will issue separate orders addressing each of the petitions independently, after review of any rehearing request that may be filed.

Based upon the foregoing, it is hereby

ORDERED, that the Petition regarding Integrated operating a water utility serving the franchise territory previously served by Indian

Page 479

Mound is APPROVED; and it is

FURTHER ORDERED, that the Petition regarding Consolidated's purchase of the assets of Carleton is APPROVED; and it is

FURTHER ORDERED, that compliance tariffs be filed within 15 days of this order.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of June, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Carleton Water Co. Trust, DR 95-028, Order No. 21,872, 80 NH PUC 661, Oct. 18,

1995. [N.H.] Re Consolidated Water Co., Inc., DE 95-331, Order No. 21,971, 81 NH PUC 15, Jan. 9, 1996. [N.H.] Re Integrated Water Systems, Inc., DE 95-300, Order No. 21,972, 81 NH PUC 16, Jan. 9, 1996.

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NH.PUC*06/18/96*[89217]*81 NH PUC 480*Investigation into Extended Area Service

[Go to End of 89217]

81 NH PUC 480

Re Investigation into Extended Area Service

DRM 94-001
Order No. 22,204

New Hampshire Public Utilities Commission

June 18, 1996

ORDER denying rehearing of Order No. 22,107 (81 NH PUC 288, *supra*) in which the commission had terminated a proceeding examining possible revisions to the state's existing structure for extended area telephone services (EAS). Commission reiterates that recent state and federal legislation requiring the development of local exchange competition and further growth of interexchange competition appear to prohibit any further expansion of EAS, as such would have an adverse impact on both local and intraLATA toll markets.

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1. COMMISSIONS, § 46

[N.H.] Investigation and action — Commission authority to initiate investigations — Commission discretion as to termination of investigatory proceedings. p. 481.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Toll services — Effect of recent state and federal legislation — Further opening of toll markets — Opening of local exchange markets — Limited need for extended area service. p. 481.

3. SERVICE, § 445

[N.H.] Telephone — Exchange areas and boundaries — Extended area service (EAS) — Unlikelihood for expansion of EAS calling — Factors — Telecommunications Act of 1996 as requiring greater toll and local competition — Expansion of EAS as inhibiting such competition. p. 481.

4. RATES, § 573

[N.H.] Telephone rate design — Extended area service (EAS) — Unlikelihood for expansion of EAS structures — Factors — EAS as reducing toll market competition — Telecommunications Act of 1996 as requiring greater toll and local competition — Expansion of

EAS effectively proscribed by the Act. p. 481.

APPEARANCES: As previously noted.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On April 15, 1996, the New Hampshire Public Utilities Commission (Commission) issued Order No. 22,107 which closed its rulemaking and investigation into telephone

extended area service (EAS) territories. EAS is the area beyond a particular telephone exchange for which toll calls are treated as local calls without charge, as the cost has been built into one's basic monthly charge. Some EAS territories are large, others very small. There have been numerous customer complaints and petitions filed over the years regarding the limits or areas included in a particular exchange's EAS territory.

Order No. 22,107 followed extensive discovery by the Commission Staff (Staff) into current EAS territories. Twelve New Hampshire local exchange carriers cooperated in this effort.

In February 1996, the United States Congress passed the Telecommunications Act of 1996 (TAct) which mandates competition in local exchange services (with some exceptions not at issue here). In addition, the New Hampshire Legislature in July of 1995 enacted RSA 374:22-f and g, which required the Commission to adopt rules relative to competitive franchises for local exchange service in areas served by companies having more than 25,000 access lines. Given the sweeping federal mandate and authorization by the New Hampshire Legislature, the Commission determined that further analysis of EAS territories was not appropriate.

In an era of expanding telecommunications services and providers and changing regulatory scheme, the issue of EAS has become a critical one. Any expansion of the incumbent local exchange carrier's "free" calling areas could significantly impair the ability of competitors to effectively enter a fledgling market.

As stated in Order No. 22,107, we interpret the TAct

> "as effectively prohibiting us from imposing requirements that will negatively affect or otherwise manipulate competition unless the requirements act to safeguard the rights of consumers, ensure continued quality of service, protect public safety, or preserve and enhance universal service. Expanding EAS would necessarily inhibit competition in the short run, by reducing the toll market before local competition is viable. Therefore, the TAct appears to preclude regulatory expansion of EAS, whether by rulemaking or by consideration of individual petitions under the EAS Guidelines."

Granite State Telephone, Inc., an independent local exchange carrier located in Weare, New Hampshire, filed on May 15, 1996 a Motion for Rehearing of Order No. 22,107. GST asserted that the Commission's decision to close the investigation and take no more petitions for

expansion of EAS violates GST's due process rights and misinterprets the TAct. GST reads Section 253 of the TAct not to prohibit expansion of EAS, as local competition could provide choices in calling areas as competitors package local service. LECs, according to GST, should not be prohibited from developing new calling areas, for to do so would disadvantage them in competing against new providers.

Though Staff initially filed a response, it withdrew the response prior to the Commission's deliberations. No other party responded to Order No. 22,107.

II. COMMISSION ANALYSIS

[1] We find no basis to grant GST's Motion but will clarify a few key points that may not have been clear in our Order. At the outset it is important to note that this investigation and rulemaking docket was initiated by the Commission and was not the result of a petition for rulemaking pursuant to RSA 541-A:4 or request for investigation. The Commission has the authority to initiate investigations and close them when no longer appropriate. See RSA 365:5.

[2-4] As we discussed in detail in Order No. 22,107, state and federal enactments have significantly changed the landscape for telecommunications services, potential providers and appropriate regulatory involvement. We remain focused on our efforts to implement competitive approaches to telecommunications where possible and in the public interest, pursuant to these enactments. For example, we have commenced a docket on intraLATA presubscription and our draft rules on competition in

basic exchange service, mandated by RSA 374:22-f, are scheduled for public hearing July 9, 1996. As stated in Order No. 22,107, we do not believe it would be appropriate to further consider expansion of EAS territories in light of the changes in legislation.

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 an 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.

We did not intend by our Order to foreclose LECs from using calling areas as a means of competing for customers. In fact, we urged use of optional calling plans and other creative approaches to toll calling needs of customers in that Order and we continue to do so.

Finding no basis on which to rehear or reconsider this issue, we will deny GST's Motion.

Based upon the foregoing, it is hereby

ORDERED, that GST's Motion for Rehearing is DENIED; and it is

FURTHER ORDERED, that Order No. 22,107 is clarified as set forth above.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of June, 1996.

EDITOR'S APPENDIX

Citations in Text

[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*06/18/96*[89218]*81 NH PUC 482*QAI, Inc., dba Long Distance Billing

[Go to End of 89218]

81 NH PUC 482

Re QAI, Inc., dba Long Distance Billing

DE 95-284
Order No. 22,205

New Hampshire Public Utilities Commission

June 18, 1996

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

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1. CERTIFICATES, § 123

[N.H.] Telephone carrier — Intrastate intraLATA long-distance services — Interim authority — Assessment of competitive impacts — Exclusion of local exchange services. p. 482.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate intraLATA toll services — Interim authority — Assessment of competitive impacts — Exclusion of local exchange services. p. 482.

BY THE COMMISSION:

ORDER

[1, 2] On October 16, 1995, QAI, Inc. d/b/a Long Distance Billing (QAI), a Minnesota corporation, petitioned the New Hampshire Public Utilities Commission (Commission) for authority to do business as a telecommunications public utility in the State of New Hampshire (petition) pursuant to, *inter alia*, RSA 374:22 and RSA 374:26. QAI has demonstrated the

financial, managerial and technical ability to offer service as conditioned by this order. The Commission previously approved numerous, similar petitions filed during the Trial Period, pursuant to the Modified Stipulation Agreement (Stipulation) in Docket No. DE 90-002, approved by Order No. 20,916 (August 2, 1993). Our orders in those numerous dockets granted the petitioner(s) interim authority to offer intraLATA toll service, specifically excluding local exchange service, for the service territory of the entire State of New Hampshire, during the Trial Period, in order to allow the Commission to analyze competition during the two-year Trial Period.

Because the Trial Period identified by the Stipulation expired on September 30, 1995, we have explicitly clarified that the authority we had granted remains in effect until we specifically modify or revoke that authority, after analysis of the Trial Period. *See* Order No. 21,851 (October 3, 1995). Likewise, our grant of authority ordered herein remains in effect until we specifically modify or revoke that authority.

The public good is served by permitting such competition by telecommunications companies. The Commission permits competitive entry in order to foster competition in the New Hampshire intrastate toll market and to allow the Commission to analyze the effects of such competition.

The public should be provided an opportunity to respond in support of, or in opposition to this petition.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that QAI is granted interim authority to offer as a telecommunications public utility intraLATA toll service, specifically excluding local exchange service, for the service territory of the entire State of New Hampshire, subject to the following conditions:

1. The services shall be offered by approved tariffs.

2. The services shall be offered until the Commission orders otherwise.

3. QAI shall file tariffs for new services and changes in approved services (other than rate changes), with effective dates of no less than 30 days after the date the tariffs are filed with the Commission.

4. Within one business day of offering an approved service to the public at a rate different from its rates on file with the Commission, QAI shall notify the Commission of the change.

5. QAI is exempted from NH Admin. Rules, Puc 406.03 Accounting Records; Puc 407 Forms Required of All Telephone Utilities; and Puc 409 Uniform System of Accounts for Telecommunications Companies.

6. QAI shall maintain its book and records in accordance with Generally Accepted Accounting Principles.

7. QAI 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. QAI 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. QAI shall compensate the appropriate Local Exchange Company for all originating and terminating access used by QAI pursuant to NET Tariff N.H.P.U.C. 79, Switched Access Service Rate or its successors or its relevant equivalent contained in the tariffs of the Independent Local Exchange Companies.

10. New Service offerings filed for approval with the Commission shall be accompanied by tariff pages describing the service, rates and effective dates.

FURTHER ORDERED, that the authority granted herein remains in full force and effect until the Commission orders otherwise; and it is

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

FURTHER ORDERED, that QAI shall publish a copy of the Notice of Conditional Approval attached to this Order once in a statewide newspaper of general circulation. Said

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publication shall occur no later than June 25, 1996, and an affidavit proving publication shall be filed with the Commission on or before July 2, 1996; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, et seq. QAI 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 July 9, 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 July 16, 1996; and it is

FURTHER ORDERED, this Order *Nisi* shall be effective July 18, 1996, unless the Commission provides otherwise in a supplemental order issued prior to the effective date and it is

FURTHER ORDERED, that QAI shall file a compliance tariff with the Commission on or before July 18, 1996, in accordance with NH Admin. Rules, Puc 1601.01 (b).

By order of the Public Utilities Commission of New Hampshire this eighteenth day of June, 1996.

Notice of Conditional Approval of
QAI, INC. d/b/a LONG DISTANCE BILLING

Granting Interim Authority to Conduct Business as a Telecommunications Public Utility in

the State of New Hampshire

On October 16, 1995, QAI, Inc. d/b/a Long Distance Billing, a Minnesota corporation, filed with the New Hampshire Public Utilities Commission (Commission) a petition to do business as a telecommunications public utility in the State of New Hampshire, specifically to provide intrastate long distance telecommunications services.

In Order No. 22,205, issued in Docket No. DE 95-284, the Commission granted QAI conditional approval to operate as of July 18, 1996, subject to the right of the public and interested parties to comment on QAI 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 QAI's petition to do business in the State must be submitted in writing no later than July 9, 1996, and reply comments no later than July 16, 1996, to:

Dr. Sarah P. Voll
Executive Director and Secretary
Public Utilities Commission
8 Old Suncook Road
Concord, New Hampshire 03301-7319

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Generic Investigation into IntraLATA Toll Competition Access Rates, DE 90-002, Order No. 20,916, 78 NH PUC 365, Aug. 2, 1993. [N.H.] Re Long Distance North of New Hampshire, Inc., et al., DE 87-249, Order No. 21,851, 80 NH PUC 628, Oct. 3, 1995.

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NH.PUC*06/24/96*[89219]*81 NH PUC 484*Excel Telecommunications Inc.

[Go to End of 89219]

81 NH PUC 484

Re Excel Telecommunications Inc.

DS 96-181
Order No. 22,206

New Hampshire Public Utilities Commission

June 24, 1996

ORDER authorizing an interexchange telephone carrier to introduce an outbound flat-rate toll service for both residential and small business customers.

Page 484

1. RATES, § 582

[N.H.] Telephone rate design — Toll services — Tariff revisions — Introduction of outbound flat-rate toll service — For residential and small business customers — Separate peak and off-peak rates — Changes in other rate plans — Interexchange carrier. p. 485.

BY THE COMMISSION:

ORDER

[1] On May 28, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from Excel Telecommunications, Inc. (Excel) requesting authority to introduce Flat Rate Service and revise rates for effect June 28, 1996.

Flat Rate Service is an outbound toll service designed for residential and small business customers. Rates are $0.25 per minute during peak hours (7am to 7pm Monday through Friday) and $0.15 per minute off-peak.

Base rates for Excel Plus and ExcelPlus II are being increased to $0.4025 per minute during the day. Volume discounts up to 50 percent continue to apply depending on the terminating customer's carrier.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize Excel to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of Excel's tariff, PUC No. 2 are approved for effect as filed:

1st Revised Page 1
1st Revised Page 17
1st Revised Page 18
1st Revised Page 19
2nd Revised Page 20 in lieu of 1st

Revision Original Page 25;

FURTHER ORDERED, that Excel file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this twenty-fourth day of June, 1996.

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[Go to End of 89220]

81 NH PUC 485

Re Great Bay Power Corporation

DF 96-112
Order No. 22,207

New Hampshire Public Utilities Commission

June 24, 1996

ORDER authorizing an exempt wholesale generator (EWG) to engage in a corporate reorganization to make it a wholly owned subsidiary of a holding company. The changes will allow the new holding company to pursue various unregulated business endeavors which heretofore had been prohibited by virtue of the company's EWG status.

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1. CORPORATIONS, § 21

[N.H.] Reorganization — Formation of holding company — Purpose — Avenues for unregulated business ventures — Elimination of restrictive exempt wholesale generator status. p. 487.

2. ELECTRICITY, § 3

[N.H.] Generating plant — Exempt wholesale generator — Restrictions on business activities — Corporate reorganization and formation of holding company as a response. p. 487.

Page 485

BY THE COMMISSION:

ORDER

I. DESCRIPTION OF THE FILING

On April 12, 1996 Great Bay Power Corporation (Great Bay) filed with the New Hampshire Public Utilities Commission (the Commission) requesting authorization for Great Bay to carry out a corporate restructuring, which will result in Great Bay being a wholly-owned subsidiary of a holding company.

In support of its petition, Great Bay states as follows:

Great Bay (formerly EUA Power Corporation) is a New Hampshire corporation formed in 1985 and authorized by the Commission pursuant to RSAs 374:22 and 374:26 to engage in

business in New Hampshire as a public utility solely for the purpose of participating as a joint owner in the construction of the Seabrook Nuclear Power project (Seabrook) and upon completion of construction, for the purpose of selling its share of the output of Seabrook for resale. *Re: EUA Power Corporation*, 71 NH PUC 73 (1986). Great Bay's principal asset is an undivided 12.1324% interest in the Seabrook facility.

Great Bay is currently classified as an Exempt Wholesale Generator (EWG) under the Public Utility Holding Company Act of 1935. As an EWG, Great Bay is limited to the generation, purchase and sale of electricity in the wholesale electricity market and activities incidental thereto.

Great Bay proposes a corporate restructuring that will result in the formation of a holding company of which Great Bay will be a wholly-owned subsidiary that will retain its Seabrook interest. This corporate restructuring will enable the holding company to pursue activities which Great Bay as an EWG may not presently pursue.

Great Bay intends to effect this restructuring pursuant to an Agreement and Plan of Merger (Merger Agreement) by and among Great Bay, Great Bay Holdings Corp., (Holdings) and Transitory Subsidiary, Inc. (Merger Co.). To implement the Merger Agreement, Great Bay has created Holdings, a Delaware corporation, presently a subsidiary owned by Great Bay, and Merger Co., a New Hampshire corporation that is a wholly-owned subsidiary of Holdings. The Merger Agreement provides for Merger Co. to be merged with and into Great Bay, with Great Bay to be the surviving company. Shareholders of Great Bay will exchange their shares in Great Bay for shares in Holdings in the same amounts and proportions as each shareholder owns as of the record date for implementation of the Merger Agreement.

Because the Merger Agreement requires the issuance and registration of new shares, it not only requires the approval of Great Bay's shareholders, but Great Bay shareholders will be entitled to assert dissenters' rights pursuant to RSA 293-A:13.01-.31. Appraisal rights will entitle any Great Bay shareholder to receive the value of its shares paid in cash rather than the new shares of Holdings that constitute the merger consideration. The Merger Agreement provides that if shareholders of Great Bay who own more than 20,000 shares properly exercise dissenters' rights, the Merger Agreement will not be consummated. The Merger Agreement will be submitted to the shareholders of Great Bay for their approval at a special meeting of shareholders.

The restructuring effected pursuant to the Merger Agreement will not affect Great Bay's existing assets and liabilities, including the Seabrook asset, all of which will remain in Great Bay. Great Bay may, however, pay dividends to Holdings, its shareholder, in the future.

Great Bay also intends to execute a Management Services Agreement (Management Agreement) between Holdings and Great Bay that will provide for the payment of a monthly management services fee by Great Bay to Holdings. The management fee is intended to cover salaries and other expenses of Holdings. The Management Agreement will not result in increased administrative costs for Great Bay; rather, administrative costs will simply be shifted to Holdings with a corresponding reduction in such costs for Great Bay, the subsidiary. Great Bay will file a copy of the Management Agreement with the Commission in accordance with the requirements of RSA 366:3.

The proposed corporate restructuring will have no material effect on the ability of Great

Page 486

Bay to discharge its functions as a public utility.

There is no present plan for Holdings to engage in any particular line of business. However, Great Bay wishes to be structured in anticipation of deregulated environment for electrical utilities, so that its affiliates can promptly take advantage of opportunities which may arise. Business activities that Holdings contemplates might include:

a. providing unregulated services to the electrical utilities industry;

b. purchasing excess generation from other utilities and selling it to New Hampshire customers; and

c. pursuing other existing profitable ventures.

The proposed corporate restructuring is subject to the approval of the Commission pursuant to RSAs 366, 374:3, 375:30, and 374:33. Great Bay states that the restructuring will enhance the financial stability of the Great Bay organization and provide the flexibility to engage in a variety of unregulated business activities while isolating the Seabrook EWG asset in a wholly-owned subsidiary whose ability to perform its functions as a public utility will remain entirely unimpaired.

II. COMMISSION ANALYSIS

[1, 2] We have reviewed the petition and supporting documents and find that the corporate restructuring may promote the goals established in the Commission's Pilot Program on Retail Wheeling. This restructuring will allow Great Bay to provide electric service in the Pilot Program as well as in any restructuring effort that could occur in the future. The Securities and Exchange Commission has issued its approval of Great Bay's Form S-4 Registration Statement on June 10, 1996. Final approval of the shareholders is required prior to the corporate restructuring. Therefore, we will approve the proposed corporate restructuring conditionally subject to Great Bay receiving all necessary shareholder approvals under applicable corporate law. Great Bay will be required to file documentation regarding the results of the special meeting of the shareholders which is expected to be held on or before June 30, 1996. Upon consummation of the merger Great Bay will be required to submit a copy of the Management Services Agreement.

Based upon the foregoing, it is hereby

ORDERED, that Great Bay pursuant to RSA 374:3 may engage in the proposed corporate restructuring, subject to shareholder approval; and it is

FURTHER ORDERED, that Great Bay file a certified copy of the official vote of the shareholders; and it is

FURTHER ORDERED, that Great Bay will notify this Commission upon the consummation of the merger; and it is

FURTHER ORDERED, that a copy of the Management Agreement shall be filed within 30 days of the merger.

By order of the Public Utilities Commission of New Hampshire this twenty-fourth day of June, 1996.

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NH.PUC*06/28/96*[89221]*81 NH PUC 487*Implementation of the Telecommunications Act of 1996

[Go to End of 89221]

81 NH PUC 487

Re Implementation of the Telecommunications Act of 1996

DE 96-177
Order No. 22,208

New Hampshire Public Utilities Commission

June 28, 1996

ORDER extending the effective date of proposed timetables for the processing of requests for arbitration or for approval of settlements relative to transactions between incumbent local exchange telephone carriers and competing local exchange carriers.

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1. PROCEDURE, § 6

[N.H.] Enforcement proceedings — Telecommunications Act of 1996 — Arrangements between incumbent local exchange telephone carriers and competing local exchange carriers

Page 487

— Commission review or arbitration of — Timetable for processing — Extension of effective date for procedural schedule. p. 488.

BY THE COMMISSION:

ORDER

[1] On June 3, 1996, the Commission issued Order *Nisi* No. 22,177, regarding submission and review of agreements or petitions for arbitration under the Telecommunications Act of 1996. Comments were received on June 21, 1996; by the terms of the order, it will become effective June 28th unless the Commission provides otherwise in a supplemental order.

Because several of the issues raised by commenters require greater consideration than the Commission has been able to allocate to date, we will extend the effective date for two weeks.

Based upon the foregoing, it is hereby

ORDERED, that Order No. 22,177 shall be effective July 12, 1996 unless the Commission provides otherwise in a supplemental order issued on or before that date.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of June, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Implementation of Telecommunications Act of 1996, DE 96-177, Order No. 22,177, 81 NH PUC 431, June 3, 1996.

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NH.PUC*07/01/96*[89222]*81 NH PUC 488*IntraLATA Toll Competition Access Rates

[Go to End of 89222]

81 NH PUC 488

Re IntraLATA Toll Competition Access Rates

Respondent: New England Telephone and Telegraph Company

DE 90-002
Order No. 22,209

New Hampshire Public Utilities Commission

July 1, 1996

ORDER accepting as modified a local exchange telephone carrier's proposed reduction in switched access originating and terminating access charges, with intrastate access charges to mirror interstate access charges.

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1. RATES, § 588

[N.H.] Telephone rate design — Toll services — End-user originating and terminating charges — Switched access service — Reduction in intrastate charges — Mirroring of intrastate and interstate access charges — Local exchange carrier. p. 488.

BY THE COMMISSION:

ORDER

[1] On May 1, 1996, New England Telephone and Telegraph Company d/b/a NYNEX (NYNEX) filed to reduce its access rates in compliance with Order No. 20,864 (78 NH PUC

283) and the Modified Stipulation and Agreement dated July 29, 1993 for effect July 1, 1996.

The proposed intrastate switched access rate for originating and terminating access totals $0.07394 for both non-800 and 800 access. The comparable interstate access rate prior to July 1, 1996 is approximately $0.07420. However, the

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interstate access local transport rate element has been restructured making comparison between the interstate and intrastate tariffs difficult. Carriers with direct trunk transport pay a fixed monthly rate while carriers who use tandem routed transport pay usage and distance sensitive rates. Local transport in the intrastate tariff is a usage and distance sensitive rate.

To make the comparison, NYNEX calculated a per minute composite transport rate of $0.001941 based on revenue received from all carriers for transport (including fixed, usage and distance sensitive charges) and divided by the total minutes of use. Using the calculated composite transport rate and the other rate elements in the interstate tariff, NYNEX calculated the equivalent intrastate rate as $0.07394.

However, Order No. 20,864 requires that NYNEX file an intrastate access rate equal to the interstate rate in effect as of July 1, 1996. The rate filed with the Federal Communications Commission (FCC) on April 2, 1996 was rejected by the FCC; NYNEX revised its filing on June 27, 1996 in accordance with the FCC Order to incorporate a rate of $0.07201. We will therefore require NYNEX to revise its compliance tariff for intrastate access effective July 1, 1996 to reflect rates that are equivalent to the interstate access rates of $0.07201.

Based upon the foregoing, it is hereby

ORDERED, that NYNEX refile its compliance tariff for intrastate access effective July 1, 1996 setting intrastate access equivalent to $0.07201.

By order of the Public Utilities Commission of New Hampshire this first day of July, 1996.

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NH.PUC*07/01/96*[89223]*81 NH PUC 489*Retail Competition Pilot Program

[Go to End of 89223]

81 NH PUC 489

Re Retail Competition Pilot Program

Applicants: Concord Electric Company; Exeter and Hampton Electric Company

DR 95-250
Order No. 22,210

New Hampshire Public Utilities Commission

July 1, 1996

PETITION by the parent company of two electric utilities for approval of a further modified plan

for implementing a pilot program for competitive electric services; granted. The new plan makes minor changes to the one adopted in Order No. 22,119 (81 NH PUC 319, *supra*).

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1. RATES, § 321

[N.H.] Electric rate design — Unbundling of rates — Under pilot program for retail competition — Discount from bundled rates as a participation incentive credit (PIC) — Measures for funding PIC — Limits — No use of revenues from retail sales growth attributed to pilot program — Modification of original pilot plan. p. 490.

2. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric service — Pilot program for retail competition — Components — Rate discounts as participation incentive credit (PIC) — Measures for funding PIC — Limits — No use of revenues from retail sales growth attributed to pilot program — Modification of original pilot plan. p. 490.

BY THE COMMISSION:

ORDER

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On June 14, 1996 UNITIL Service Corporation filed with the New Hampshire Public Utilities Commission (Commission) on behalf of Concord Electric Company and Exeter & Hampton Electric Company (collectively, "UNITIL") relative to its participation in the Pilot Program. The filing memorializes a proposed stipulated resolution of the issues raised by UNITIL in response to Order No. 22,119 which conditionally approved a previously filed Joint Recommendation entered into by UNITIL and the Office of Consumer Advocate (OCA). The instant filing was also executed and endorsed by the OCA as well as the Commission Staff (Staff).

[1, 2] UNITIL proposes to implement the Pilot under the same terms of Order No. 22,119 with several modifications. The primary difference between the original UNITIL-OCA Recommendation and the instant proposal is that UNITIL would not be permitted to utilize any revenues associated with retail sales growth to fund the Participation Incentive Credit (PIC). It would be permitted to retain in the Mitigation Proceeds Credit (MPC) 61% of any savings resulting from re-negotiated power contracts up to the total amount of the PIC plus $100,000 during the term of the Pilot. The proposal also allows UNITIL to retain the net margins on new sales by UNITIL Power Corporation (UPC) to competitive suppliers in the Pilot to offset revenue losses due to the implementation of the Pilot up to a specified level.[1(56)] If approved by the Commission, UNITIL proposes to open its distribution system so that its Pilot customers can begin procuring power from competitive suppliers on July 1, 1996.

No objections were filed to the UNITIL-OCA-Staff proposal; however, Granite State Electric Company (GSEC) filed a letter "to address certain statements and representations contained in

the June 12th [UNITIL] document as well as in Unitil's earlier filings which suggest that Unitil's circumstances are somehow unique or exceptional relative to other utilities in the state ... ." *See*, June 21, 1996 letter from GSEC to Dr. Sarah P. Voll.

After reviewing the proposed settlement, and in light of the fact that other electric utilities in the state have already opened their systems for purposes of the Pilot, we believe that the proposal represents an acceptable means of allowing UNITIL's customers to participate in the Pilot. Under the terms of the UNITIL proposal, there is a more equitable balance between investor interests and those of non-participating customers with respect to the revenue impact of the Pilot. In approving the proposal, we take no position on the merits, or lack thereof, of UNITIL's assertions that it is "unique" entitling it to different treatment relative to stranded costs in the context of full industry restructuring. As with the other recommendations that we conditionally approved in this proceeding, our acceptance of the instant settlement should in no way be interpreted as having any precedent-setting effect relative to future treatment of stranded costs in the context of industry restructuring.

Based upon the foregoing, it is hereby

ORDERED, that the proposed recommendation of UNITIL, OCA and Staff as set forth in UNITIL's June 14, 1996 letter is APPROVED.

By order of the Public Utilities Commission of New Hampshire this first day of July, 1996.

FOOTNOTES

[1]That level shall not exceed the revenue losses resulting from power sales by UPC at prices less than the assumed retail market prices previously established by the Commission, less $100,000.

EDITOR'S APPENDIX

Citations in Text

[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*07/01/96*[89224]*81 NH PUC 491*Concord Electric Company

[Go to End of 89224]

81 NH PUC 491

Re Concord Electric Company

Additional applicant: Exeter and Hampton Electric Company

DR 96-034
Order No. 22,211

New Hampshire Public Utilities Commission

July 1, 1996

ORDER rejecting an electric utility group's 1996/1997 demand-side management (DSM) program budget as proposed and continuing in effect existing DSM charges. Commission notes that the new budget represents only about 60% of the group's last authorized budget yet projects administration and marketing costs that are almost 60% higher than those incorporated in the last budget, a result the commission deems to be noncost-effective. Accordingly, existing DSM programs are continued for the interim, pending revised filings by the utility group.

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1. ELECTRICITY, § 4

[N.H.] Operating practices — Demand-side management (DSM) programs — Annual filing — Interim continuation of existing DSM budget — Factors — Flawed avoided-cost assumptions — Noncost-effective proposals. p. 493.

2. CONSERVATION, § 1

[N.H.] Affiliated electric utilities — Demand-side management (DSM) programs — Annual filing — Interim continuation of existing DSM budget — Factors — Deficient avoided-cost estimates — Inappropriate cost/benefit ratios. p. 493.

3. CONSERVATION, § 1

[N.H.] Affiliated electric utilities — Demand-side management programs — Annual filing — Specific components — Reductions in rebates for low-income ratepayers — Experimental basis. p. 493.

APPEARANCES: LeBoeuf, Lamb, Greene and MacRae by Paul B. Dexter, Esq. on behalf of Concord Electric Company and Exeter and Hampton Electric Company; the Office of Consumer Advocate by Kenneth E. Traum on behalf of residential ratepayers; E. Barclay Jackson, Esq. on behalf of the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On February 1, 1996, Concord Electric Company and Exeter & Hampton Electric Company (the Companies) filed with the New Hampshire Public Utilities Commission (Commission) their Demand Side Management (DSM) Programs proposal for the program year July 1, 1996 through June 30, 1997.

By Order of Notice issued May 8, 1996, the Commission scheduled a prehearing conference for May 22, 1996, 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. The prehearing conference was subsequently

rescheduled to May 24, 1996 at the request of counsel for the Companies. No party filed for intervention. The Office of the Consumer Advocate (OCA) is a statutorily recognized intervenor and participated fully in the docket. The Commission heard evidence on June 20, 1996.

II. POSITIONS OF THE PARTIES AND STAFF

A. *The Companies*

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The Companies proposed a DSM program budget for 1996/97 of $848,626, which is approximately 60% of the Companies' approved budget for the program year 1995/96. This budget is to be allocated over three customer classes in the following manner: residential class, $270,242, regular general class, $389,563, and the large general class, $188,821. The recovery of the DSM expenses is collected through a Conservation Charge (CC). The current and proposed CC rates for the Companies are as follows:

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

Concord Electric Company

Customer Class	*Current Rate*	*Proposed Rate*
Residential	$0.00174	$0.00048
Regular General	$0.00263	$0.00176
Large General	($0.00003)	$0.00069

Exeter & Hampton Electric Company

Customer Class	*Current Rate*	*Proposed Rate*
Residential	$0.00161	$0.00079
Regular General	$0.00272	$0.00176
Large General	$0.00015	$0.00064

For both Companies, the large general service classes will see increases in their CC rates while the residential and regular general service classes will see decreases. The residential and regular general service class decreases are mainly due to reduced program costs.

The Companies stated that their proposed program changes are intended to reduce rates for both DSM program participants and non-participants. The DSM proposal describes significant changes to the residential program reflecting primarily a consolidation of individual programs from the prior period and an increased number of DSM measures available. The DSM proposal also describes the Companies' attempt to reduce administrative costs by requesting reduced reporting requirements.

The Companies also request to extend their Comprehensive Efficiency Alternative Financing Pilot Program which is due to expire on December 31, 1996. Under the proposal the program would be extended through June 30, 1997 to be consistent with the program year for all other programs under review.

B. *Staff*

Staff opposes the Companies' proposals as filed and raises a number of concerns regarding the filing. Staff believes the cost-effectiveness of the proposed programs, measured by the Total

Resource Cost (TRC) test ratio is unacceptably low. The TRC ratios for the residential, regular general, and large general service classes for the Unitil Companies are respectively, 1.01, 1.26, and 1.32. Staff points out that in DR 92-184, the Commission established threshold TRC values of 1.2 for residential programs and 1.5 for commercial and industrial programs. None of the proposed programs meet those Commission established thresholds.

The magnitude of design, administration and marketing costs in relation to the total program budget is unjustifiably high in Staff's opinion. In the current proposal, these expenditures are 45% of the entire proposed DSM budget, up from 28.5% for the previous program year. Staff questions the Companies' changing the methodology regarding the calculation of avoided costs from a 5 megawatt decrement methodology to a market-based approach. Staff also expressed the concern that because the Companies have aggregated the previous year's measures into one large program per customer class, Staff has been unable to determine whether any component meets the foregoing TRC test ratios. In addition, Staff disagreed with the Companies' proposal to change its annual DSM filing to a biennial filing at this time.

C. *OCA*

The OCA queried how DSM programs be looked at in light of HB 1392 (Chapter 29). Specifically, should cost-effectiveness be measured by the costs to society, to total bills of all ratepayers, or to total bills of non-participating ratepayers? The OCA questioned the significance of traditional benefit-cost ratios, which may not be consistent with what was

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established in HB 1392, namely, will the bills of non-participating ratepayers be cumulatively reduced as a result of these programs? Without a 100% rebate program, low-income ratepayers would have to pay without being direct beneficiaries of DSM measures.

III. COMMISSION ANALYSIS

[1-3] The Commission has reviewed the record in this proceeding and finds persuasive Staff's arguments against approval of the filing. We concur with Staff's concern about the proper avoided costs to be used, and therefore we will direct the Companies to recalculate the benefit-cost ratios using the avoided costs under the traditional methodology. Because a fully competitive electricity market does not yet exist, we believe that it is inappropriate at this time to use market determined prices to calculate avoided costs for DSM purposes.

We will also require the Companies to provide Staff with the necessary information requested regarding TRC test results on a program-by-program basis. After Staff has received and analyzed the new information regarding the disaggregated TRC benefit cost ratios calculated according to traditional methodology, Staff shall submit its recommendation to the Commission and Companies. We will then make a determination regarding the Companies' proposed programs for the 1996/97 DSM program year based on the record in this proceeding and Staff's recommendation.

Third, the Commission believes that the Companies should be allowed to proceed with a reduced rebate for low-income customers as an experiment. We expect the results of a reduced rebate program will yield valuable information on which to base future, more comprehensive

programs.

Fourth, the Commission approves the revised reporting requirements as agreed to by the Companies and Staff.

Based upon the foregoing, it is hereby

ORDERED, that the current DSM surcharge remain in effect, until ordered otherwise, pending further Commission analysis and reconciliation; and it is

FURTHER ORDERED, that the Companies provide the calculations as outlined above on or before July 8, 1996; and it is

FURTHER ORDERED, that the Companies submit revised reports as agreed to in this docket, effective with its reporting of July 1996 results.

By order of the Public Utilities Commission of New Hampshire this first day of July, 1996.

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NH.PUC*07/01/96*[89225]*81 NH PUC 493*Concord Electric Company

[Go to End of 89225]

81 NH PUC 493

Re Concord Electric Company

DR 96-178
Order No. 22,212

Re Exeter and Hampton Electric Company

DR 96-179
Order No. 22,212

New Hampshire Public Utilities Commission

July 1, 1996

ORDER approving new rates proposed by affiliated electric utilities for their respective fuel adjustment charges (FAC) and purchased power adjustment charges (PPAC). For Concord, an FAC *credit* of 0.629 cents per kilowatt-hour (kWh) and a PPAC *rate* of 0.676 cents per kWh are adopted. For Exeter and Hampton, an FAC *credit* of 0.643 cents per kWh and a PPAC *rate* of 0.778 cents per kWh are adopted.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 12

[N.H.] Direct energy costs — Fuel adjustment charge (FAC) — Purchased power adjustment charge (PPAC) — FAC credits — PPAC rates — Factors — Changes in parent company's wholesale rates — Affiliated electric utilities. p. 495.

2. COGENERATION, § 25

[N.H.] Rate design — Avoided-cost basis — Short-term capacity and energy rates — Peak/off-peak factors — As developed in fuel and purchased power adjustment charge proceeding — Affiliated electric utilities. p. 495.

APPEARANCES: Leboeuf, Lamb, Greene & MacRae by Scott J. Mueller, Esq. on behalf of Concord Electric Company and Exeter & Hampton Electric Company: Edwin P. LeBel and Patrick J. Moast for the Staff of the New Hampshire Public Utilities Commission

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On May 31, 1996 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, 1996.

On June 20, 1996, the Commission held a duly noticed consolidated hearing to review the Companies' FAC and PPAC rate filings.

II. POSITION OF THE COMPANIES

In direct testimony, UNITIL explained that the net effects from the proposed FAC and PPAC rate changes are an increase.

UNITIL presented calculations supporting CEC's request for a FAC credit of ($0.00629) per Kwh and a PPAC rate of $0.00676 per kWh. The combined effect of the two rates will increase a typical 500 kWh Concord residential customer's bill by $1.85 per month. UNITIL also presented calculations in support of E&H's request for a FAC credit of ($0.00643) per kWh and a PPAC rate of $0.00778 per kWh. The combined effect of the two rates will increase a typical 500 kWh E&H residential customer's bill by $2.35 per month.

UNITIL testified that no adjustment to the sales forecast had been made for the Pilot Program in Electric Competition (Pilot). Under questioning by Staff as to how the Pilot would be reported, UNITIL indicated that the final decision on monthly reporting of PPAC and FAC Pilot tests had not been made and indicated its willingness to work with Staff to meet Staff needs.

UNITIL presented the July 1996 through December 1996 UNITIL Power Corporation (UPC) production plan, associated costs, and estimated short term avoided cost rate in his direct testimony. The UPC production plan is the basis for UPC's fuel, purchased power, and transmission service costs, and are used in developing UPC's wholesale rates.

UPC's filed, wholesale billing rates for firm service from July through December 1996 are as follows:

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

6/1-12/31/96 Demand Charge $19.61 per kW/Month
Base Energy Charge         1.367 cents per kWh
Fuel Charge Rates          1.906 cents per kWh
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The rates represent an overall increase in wholesale rates compared to the last six month period due to increases in Demand and Base Energy Charges and a decrease in the Fuel Charge as presented in Attachments DKF-2 though DKF-14 to Exhibit 3.

The Companies' proposed Demand Charge increase is due to changing the Bangor Hydro Dispatchable System charges from Base Energy Charges to Demand Charges due to a renegotiation of the Bangor Hydro contract, and a scheduled increase in the entitlement from the NEPCO-Slice of System contract. The Companies' proposed Base Energy Charge increase is also due to under-collection in the prior period and the change in the Bangor Hydro Contract.

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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 3.08 cents per kWh
Off Peak             2.43 cents per kWh
All Hours            2.72 cents per kWh
Capacity Rate         $2.98 per kW-year
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III. COMMISSION ANALYSIS

Having reviewed all the testimony and exhibits in this case, the responses provided by the Companies, we accept the May 31, 1996 filings of the Companies.

We will direct the companies to work with Staff on how the Pilot will be reported in their monthly reconciliation filings and in future FAC and PPAC Filings.

[1] We find that the FAC for the July 1 through December 31, 1996, period will be a credit of ($0.00629) per kWh for CEC and a credit of ($0.00643) per kWh for E&H. For the same period, the PPAC for CEC will be $0.00676 per kWh and $.0.00778 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 $1.85 increase 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 $2.35 increase to the monthly bill.

[2] We find that the proposed short term avoided capacity and energy rates, calculated in accord with the methodology outlined in prior Commission orders, are just and reasonable.

Based on the foregoing, it is hereby

ORDERED, that CEC's FAC rate for the period July 1 through December 31, 1996, shall be

a credit of ($0.00629) per kWh while its PPAC rate shall be $ 0.00676 per kWh; and it is

FURTHER ORDERED that E&H's FAC rate for the period July through December, 1996, shall be a credit of ($0.00643) per kWh while its PPAC rate shall be $ 0.00778 per kWh; and it is

FURTHER ORDERED, that for the same period the short-term power purchase rates (avoided capacity and energy rates) for Qualifying Facilities for CEC and E&H shall be as follows:

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

Energy Rates

On Peak       3.08 cents per kWh
Off Peak      2.43 cents per kWh
All Hours     2.72 cents per kWh

Capacity Rate 2.98 dollars per Kw-year;
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and it is

FURTHER ORDERED, that CEC and E&H file revised tariff pages in compliance with this order on or before July 12, 1996.

By order of the Public Utilities Commission of New Hampshire this first day of July, 1996.

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NH.PUC*07/01/96*[89226]*81 NH PUC 495*Public Service Company of New Hampshire

[Go to End of 89226]

81 NH PUC 495

Re Public Service Company of New Hampshire

DR 96-148
Order No. 22,213

New Hampshire Public Utilities Commission

July 1, 1996

ORDER adopting procedural schedule as to a newly established investigatory proceeding for determining if an electric utility had used its "best efforts" to renegotiate certain power purchase agreements with wood-fired small power producers.

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1. COGENERATION, § 17

[N.H.] Contracts — Power purchase agreements — As between electric utility and wood-fired small power producers — Renegotiation process — Evaluation of utility's "best efforts" — Procedural schedule for such review. p. 496.

APPEARANCES: Gerald M. Eaton, Esq. on behalf of Public Service Company of New Hampshire; Brown, Olson & Wilson by Bryan K. Gould, Esq. on behalf of Bio-Energy Corporation, Bridgewater Power Company, L.P., Hemphill Power and Light Company, Pinetree Power, Inc., Pinetree Power-Tamworth, Inc. and Whitefield Power and Light Company; Orr & Reno by Howard M. Moffett on behalf of Briar Hydro Associates, Errol Hydroelectric Limited Partnership, Gregg Falls Hydroelectric Associates and Pembroke Hydro Associates; Michael W. Holmes, Esq. on behalf of the Office of Consumer Advocate; Eugene F. Sullivan III, Esq. on behalf of the Staff of the Public Utilities Commission.

BY THE COMMISSION:

ORDER

[1] On May 10, 1996 the New Hampshire Public Utilities Commission (Commission) opened the instant docket to investigate the issue of whether Public Service Company of New Hampshire (PSNH) had used its "best efforts" to negotiate sales agreements to replace the rate orders of eight wood-fired and five hydroelectric small power producers (SPPs) as required by Section 12 of the 1989 Rate Agreement.

At the duly noticed prehearing conference held on June 5, 1996, the Commission granted the Motion to Intervene of Bio-Energy Corporation, Bridgewater Power Company, L.P., Hemphill Power and Light Company, Pinetree Power, Inc., Pinetree Power-Tamworth, Inc. and Whitefield Power and Light Company (Wood-Fired SPPs), and the Petition for Limited Intervention by Briar Hydro Associates, Errol Hydroelectric Limited Partnership, Gregg Falls Hydroelectric Associates and Pembroke Hydro Associates (Hydro SPPs).

The Parties and the Staff of the Commission (Staff) agreed to the schedule in the Order of Notice for the remainder of this proceeding, which is as follows:

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

PSNH and SPP Testimony and
Document Room certified
as ready for investigation          June 17, 1996

Last of Rolling Data
Requests by Staff and
Intervenors                         July 15, 1996

Last of PSNH and SPP Data
Responses                           July 29, 1996

Testimony by Staff and
Intervenors                       August 19, 1996

Last of Rolling Data Requests
by PSNH and SPPs                  August 29, 1996

Last of Rolling Data
Responses by Staff
and Intervenors                September 12, 1996

Rebuttal Testimony
(All Parties)                  September 26, 1996
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First Settlement Conference	October 3, 1996
Second Settlement Conference	October 10, 1996
Hearings	October 15-18, 1996

The schedule will be automatically extended for late-filed data requests or responses or required follow-up for incomplete responses on a day for day basis or more if other procedural schedules are affected.

Based upon the foregoing, it is hereby

ORDERED, that the procedural schedule agreed to by the Parties and the Staff is hereby adopted.

By order of the Public Utilities Commission of New Hampshire this first day of July, 1996.

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NH.PUC*07/02/96*[89227]*81 NH PUC 497*MCI Telecommunications Corporation of New Hampshire

[Go to End of 89227]

81 NH PUC 497

Re MCI Telecommunications Corporation of New Hampshire

DS 96-182
Order No. 22,214

New Hampshire Public Utilities Commission

July 2, 1996

ORDER approving an interexchange telephone carrier's proposed tariff revisions which would reduce from 10% to 5% the discount applicable to "Friends and Family" Option A service and would introduce a "Preferred Maximizer" service discount option based on certain monthly usage volumes.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll services — Tariff revisions — Reduction in "Friends and Family" discount — Introduction of "Preferred Maximizer" service — Monthly usage as a factor — Interexchange carrier. p. 497.

BY THE COMMISSION:

ORDER

[1] On May 31, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from MCI Telecommunications Corporation of New Hampshire (MCI)

requesting authority to make various revisions to its tariff and introduce Preferred Maximizer for effect July 1, 1996.

The proposed revisions include: 1) a reduction of the percentage discount from 10 percent to 5 percent for Friends & Family Option A; and 2) correction of a typographical error in the Option D (MCI Flat Rate Plus) section.

Preferred Maximizer is a discount optional package for customers who subscribe to MCI Preferred Service. Discounts apply based on monthly usage and terms described in the interstate tariff.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize MCI to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of MCI's tariff, NHPUC No. 1 are approved for effect as filed:

51st Revised Page 1

28th Revised Page 2

29th Revised Page 3

35th Revised Page 3.1

7th Revised Page 25.2

2nd Revised Page 32

7th Revised Page 59;

and it is

FURTHER ORDERED, that MCI file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this second day of July, 1996.

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NH.PUC*07/02/96*[89228]*81 NH PUC 497*Granite State Electric Company

[Go to End of 89228]

81 NH PUC 497

Re Granite State Electric Company

DR 96-174, DR 96-175
Order No. 22,215

New Hampshire Public Utilities Commission

July 2, 1996

ORDER approving an electric utility's proposed changes in its fuel and purchased power

Page 497

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adjustment clause rates. Accordingly, the utility's fuel adjustment clause factor is increased from 0.826 cents per kilowatt-hour (kWh) to 0.994 cents per kWh. A purchased power adjustment clause credit of 0.096 cents per kWh likewise would apply. Short-term avoided-cost capacity and energy rates for qualifying facilities also are discussed.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 10

[N.H.] Direct energy costs — Fuel and purchased power adjustment clause rates — Fuel clause component — Increase in fuel clause factor — Causes — Forecasted increase in oil, gas, and coal prices — Prior-period underrecoveries — Nuclear plant outages — Electric utility. p. 500.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 13

[N.H.] Direct energy costs — Fuel and purchased power adjustment clause rates — Purchased power component — Institution of *credit* — Increase in credit — Factors — State franchise taxes — Electric utility. p. 500.

3. COGENERATION, § 25

[N.H.] Rates — Purchases of power from qualifying facilities — Associated purchased power adjustment clause rates — Purchasing utility's avoided costs as benchmark — Short-term capacity and energy charges — Type of distribution as a factor — Electric utility. p. 500.

APPEARANCES: Carlos A. Gavilondo, Esquire on behalf of Granite State Electric Company; Patrick J. Moast and James J. Cunnigham Jr. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On May 31, 1996 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 Fuel Adjustment Clause (FAC), power purchase rates for qualifying facilities (Qfs) and Purchased Power Cost Adjustment (PPCA). On June 19, 1996, the Company filed revised FAC schedules. 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, 1996 through December 31, 1996. The changes in GSEC's PPCA are effective for bills rendered for meters read for the

period July 1, 1996 through June 30, 1997.

On June 19, 1996, the Commission held a duly noticed public hearing to review the FAC, QF rates and PPCA filed by GSEC.

II. POSITIONS OF THE PARTIES AND STAFF

A. *GSEC*

At the hearing the Company proposed an FAC factor of $0.00994 per kwh, an increase of $0.00168 from the existing FAC factor of $0.00826 per kWh and, at the hearing, 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	$0.03085	$0.02315	$0.02672
Primary Distribution	$0.03313	$0.02429	$0.02838
Secondary Distribution	$0.03431	$0.02485	$0.02923

Capacity Rates Per kWh	*Capacity Payment*
Subtransmission	$1.88 per kW-month
Primary Distribution	$2.06 per kW-month
Secondary Distribution	$2.16 per kW-month

The value of capacity used to determine Granite State's QF capacity payments is $22 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.

In addition, GSEC proposes a PPCA Factor of credit ($0.00096) per kWh, an increase of $0.00167 per kwh, from the current PPCA factor of credit ($0.00263) per kWh, to be effective on July 1, 1996 to coincide with changes in the Company's fuel factor and rates paid to QFs.

At the June 19, 1996 hearing, GSEC presented witnesses in support of its proposed rates. Ms. Pamela A. Viapiano, Senior Rate Analyst, supported her testimony on the proposed FAC and purchased power rates for QF's. A panel of GSEC witnesses, Mr. Suresh S. Iyer, Ms. Mary O'Neil and Ms. Mary Lynch supported the testimony of Jeffrey W. VanSant, Vice President and Director for Fuel Supply for New England Power. Mr. Iyer addressed price projections for oil, Ms. O'Neil addressed price projections for coal and Ms. Lynch addressed price projections for gas. Company witness, Mr. Peter T. Zschokke, Manager of Retail Rates for New England Power Service Company provided explanatory statements on the proposed PPCA.

The proposed FAC factor is $0.00994 per kWh, an increase of $0.00168 per kWh from the current factor of $0.00826 per kWh. The increase is due to an estimated underrecovery from the first half of 1996 and an increase in fuel costs in the second half. GSEC's underrecovery is due to higher coal and gas prices, outage of Millstone III (a lower cost nuclear unit) and the provision for recovery of the 1% New Hampshire franchise taxes which the Commission made retroactively effective as of November 1, 1995. During the second half, the Company estimates that coal and gas prices will continue to be higher than the estimates used to determine the fuel

factor for the first half. In addition, the anticipated continued outage at Millstone III until October 1, 1996 and the continued collection of the 1% franchise tax also contributes to a higher fuel factor in the second half.

The panel supported projections that fuel costs are estimated to increase in the second half of 1996. Fuel oil prices for 2.2% sulfur residual fuel are projected to be in the range of $16.00 to $18.00 per barrel, trending toward the high end of this range as winter approaches. Coal costs are projected to average approximately $1.70 per MMBTU and spot gas prices will be in the $2.35 to $2.50 range through fall and then trend upward reaching $2.70 per MMBTU by December.

The Company explained that the PPCA credit is composed of PPCA W- 92(s)(R) and PPCA W-95(S) and produces the proposed PPCA factor called PPCA W-95(S)(R2). The proposed PPCA factor is a credit of ($0.00096) per kWh and includes the proposed PPCA W-95(S)(R2) factor credit of ($0.00106) per kWh and the prior period reconciling adjustment factor of $0.00010 per kWh. Thus, the proposed total PPCA credit factor that will be in place for the twelve month period ending June 30, 1997 is a credit of ($0.00096) per kwh. The Company noted that its PPCA revenues reflect the provision for recovery of the 1% New Hampshire franchise taxes which the Commission made retroactively effective as of November 1, 1995.

B. *Staff Investigation*

Staff reviewed the Company's proposed FAC, QF Rates and PPCA including the FAC revisions submitted on June 21, 1996 which incorporated actual results through May, 1996, an adjustment to correct the treatment of franchise taxes which was identified during the course of discovery and later data on the maintenance schedule for Vermont Yankee nuclear unit and revised oil price estimates. Staff concerns included the following issues: New Hampshire Franchise Taxes, Company projections on mitigation of costs for natural gas pipeline demand charges, the timing of Wyman Unit #4 refunds, and the impact of the Pilot program (Docket DR 95- 250), if any, on the Company's

Page 499

proposed factors.

At the hearing, Staff questioned the Company about its treatment of the New Hampshire Franchise Tax and found that the Company is including a provision for the 1% New Hampshire Franchise Tax which the Commission made retroactively effective as of November 1, 1995 in its order No. 22,141 dated May 13, 1996 approving permanent rates for GSEC. Accordingly, Granite State's reconciliation of actual revenues beginning in November 1995 has appropriately incorporated the 1% franchise tax.

At the hearing, Staff noted that the Company's forecast of natural gas pipeline demand charge mitigation credits is significantly below the actual amounts of mitigation credits experienced in the past six months. The forecast of mitigation credits is $286,000 per month during the July through December 1996 time period versus an actual average of roughly $1.5 million per month in the November 1995 through April 1996 time period. The Company stated that relatively high mitigation amounts were recorded in the past six- month period for two reasons. First, Manchester Street's capacity factors during that time period were relatively low due to unexpected outages, requirements of testing the oil firing capability of the units and variations in

the NEPOOL dispatch of the units. Secondly, market area prices and supply commodity costs were relatively high during the November 1995 through April 1996 time period which allowed GSEC to release pipeline capacity to third parties.

Staff questioned the Company's treatment of refunds associated with NEP's share of output from Wyman Unit #4. The Company advised that NEP made the refund to GSEC on January 9, 1995 in the amount of $34,710 but did not include the refund amount in the GSEC reconciliation until November 1995, ten months later. Staff believes that the Company should have included interest which amounts to roughly two thousand dollars for the ten-month period January 1995 through November 1995. Staff calculated the impact on the FAC for the additional interest and found that, due to the low amount, there was no change to the Company's proposed FAC factor.

At the hearing, Staff questioned the Company about the Pilot program impact on the FAC and the PPCA. The witness indicated that NEP's fuel adjustment clause will be adjusted directly to reflect the sales of electricity to Pilot participants located in GSEC's service territory. These adjustments, which are designed to maintain revenue neutrality for NEP's and GSEC's non-participating customers were detailed in the April 16, 1996 filing to FERC by GSEC and NEP to implement the Pilot program. The adjustments are not included in the forecast in this proposed FAC filing, but will be fully reflected in the reconciliation of historic expense included in GSEC's next fuel charge filing. In addition, the Company indicated that the PPCA is affected by the Pilot program because sales by NEP to GSEC that would have been made to Pilot participants would have been priced at the tail block in NEP's rate, but the revenues are based on the higher average costs of purchased power by GSEC. Appropriate adjustments to preserve revenue neutrality to non-participants will be included in GSEC's next PPCA reconciliation and in the Company's monthly variance reports. Also, GSEC indicated that NEP's base rates will not be affected by the Pilot program until NEP's next rate case. GSEC's charges to Pilot program participants will include rates approved by the Commission including appropriate stranded cost charges. These stranded cost charges will be adjusted for actual market prices at the conclusion of the Pilot program.

Based on the above and the record in this case, Staff is satisfied with the Company responses and supports the Company's filing for changes in its FAC, QF rates and PPCA. Staff recommends that the Commission approve the proposed FAC of $0.00994 per kwh, and the rates paid to QF's and the proposed PPCA credit of ($0.00096) per kWh.

III. COMMISSION ANALYSIS

[1-3] The Commission has reviewed Company responses to issues raised by Staff on New Hampshire Franchise Taxes, pipeline demand charge mitigation efforts, reconciliation of the

Page 500

Wyman #4 refunds and impact of the New Hampshire's Pilot program on the Company's filing and believes that the Company's filing adequately addresses Staff's concerns on each of these issues. The Commission notes that, for a typical residential monthly bill of 500 kWh, the change in the FAC factor results in an increase of $.84 per month and the change in the PPCA factor results in a further increase of $.84 per month. 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 the proposed rates.

Based upon the foregoing, it is hereby

ORDERED, that the Fuel Adjustment Clause factor for GSEC for bills rendered for meters read on or after July 1, 1996 through December 31, 1996 shall be $0.00994 per kWh; and it is

FURTHER ORDERED, that GSEC pay Qualifying Facilities for the period July 1, 1996 through December 31, 1996 the following rates:

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

Energy Rates Per kwh	*On Peak*	*Off-Peak*	*Average*
Subtransmission Distribution	$0.03085	$0.02315	$0.02672
Primary Distribution	$0.03313	$0.02429	$0.02838
Secondary Distribution	$0.03431	$0.02485	$0.02923

Capacity Rates Per kwh	*Capacity Payment*
Subtransmission	$1.88 per kw-month
Primary Distribution	$2.06 per kw-month
Secondary Distribution	$2.16 per kw-month;

and it is

FURTHER ORDERED, that the Purchase Power Cost Adjustment factor for GSEC for bills rendered for meters read on or after July 1, 1996 through June 30, 1997 shall be a credit of ($0.00096) per kWh; and it is

FURTHER ORDERED, that GSEC file tariff pages in compliance with this Order no later than 15 days from the issuance of this Order.

By order of the Public Utilities Commission of New Hampshire this second day of July, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Granite State Electric Co., DR 95-169, Order No. 22,141, 81 NH PUC 359, May 13, 1996.

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NH.PUC*07/02/96*[89229]*81 NH PUC 501*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 89229]

81 NH PUC 501

Re New England Telephone and Telegraph Company dba NYNEX

DR 96-187
Order No. 22,216

New Hampshire Public Utilities Commission

July 2, 1996

ORDER 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 service — Special rate contract — Amendment — As providing for arrangement similar to a sale and leaseback. p. 502.

2. SERVICE, § 449

[N.H.] Telephone — Special service — Fiber distributed data interface service — Provision of electronic equipment by customer — Maintenance by carrier — Arrangement akin to sale-and-leaseback transaction — Amendment of special service contract. p. 502.

Page 501

BY THE COMMISSION:

ORDER

[1, 2] On June 7, 1996, New England Telephone and Telegraph Company (NYNEX) filed with the New Hampshire Public Utilities Commission (Commission) a special contract (No. 96-7) amending an earlier special contract with Cabletron Systems, Inc. (Cabletron) 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.

The special contract filing was accompanied by a Motion for Proprietary Treatment to exempt the cost analysis and Customer Proprietary Network Information (CPNI) from public disclosure, which the Commission will address in a separate order.

The Commission earlier approved the original contract for this service with Cabletron in DR 95-039 through Order No. 21,816 (September 6, 1995). The Commission approved a contract amendment expanding the geographic scope of the original offering in DR 95-325 by Order No. 21,919 (November 22, 1995).

One purpose of our approval was to allow NYNEX to respond to competitive pressures, and to offer service special in nature. FDDI is a 100 Mbps service, typically utilized by the niche of 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.

Cabletron is a vendor of LAN electronics, among other things. As part of this agreement, Cabletron, as an equipment vendor, is selling state-of-the-art electronics to NYNEX. NYNEX has incorporated the purchase, installation and maintenance costs of the Cabletron electronics into the rate charged by NYNEX to Cabletron for the FDDI service. The two parties have formalized arrangements for network monitoring, where Cabletron will support the Cabletron electronics as a vendor, while NYNEX performs the actual maintenance. Although the structure of this arrangement somewhat resembles a sale-and-leaseback arrangement, and to some degree a single customer as large as Cabletron exerts leverage over even NYNEX, Staff believes that NYNEX's purchase of the electronics from Cabletron, which is then utilized by NYNEX to provide FDDI service to Cabletron, is reasonable.

NYNEX's cost analysis is incremental to their earlier docketed analyses, because this contract is an incremental expansion of the earlier offer. This cost analysis contains no opportunity cost analysis, because unlike the Centrex-verses-PBX analysis, NYNEX, prior to network unbundling, has no alternative or wholesale revenue stream if it does not provide this retail offering to this customer.

As in the earlier contracts, the changes maintain the two element price structure, including a commitment amount and a monthly service. Standard factors and schedules were employed.

NYNEX 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. These incremental costs are not necessarily equal to NYNEX's filed 1990 or 1993 Incremental Cost Study.

Staff recommends Commission approval of special contract No. 96-7. Staff makes this recommendation after evaluation of the assumptions on which the cost analysis is founded, many involving multi-year forecasts of technology deployment, and competitive alternatives.

This contact is submitted under the thirty-day review mandated by the recently amended 378:18-B (1996). The proposal as filed contains errors in the contract which could have justified rejection of the proposal outright. The foregoing notwithstanding, Staff notes the company's considerable efforts to bring the filing into

Page 502

compliance. In consideration of the level of cooperation evidenced, Staff recommends that NYNEX be allowed, in this instance, to file amendments to correct three administrative errors, and to clarify the Suitability section. We expect NYNEX to exert a higher level of effort to assure the accuracy and completeness which comports with a thirty-day review or risk rejection of similar, administratively deficient filings in the future.

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 *NISI*, that NYNEX's Special Contract No. 96-7 with Cabletron, as administratively corrected below, is approved; and it is

FURTHER ORDERED, that we clarify here that NYNEX shall, within 45 days, file with the Commission, administrative corrections to Contract No. 96-7 signed by both parties to the contract, to correct the typographical error on the last line of the first page of the contract (which incorrectly referenced Appendix C rather than Appendix D); and likewise file corrections to the two typographical errors on Appendix B page 1 of 4, clarifying the intended number of locations (which is confidential); and it is

FURTHER ORDERED, that we clarify here that NYNEX shall, within 45 days, file with the Commission, administrative corrections to Contract No. 96-7 signed by both parties to the contract to clarify that the Suitability section Appendix A page 2 of 2 has been satisfied by standard procedures, as agreed with Staff; and it is

FURTHER ORDERED, that during any rate case or rate redesign filed by NYNEX during the life of Special Contract No. 96-7, the Commission may consider whether any changes should be made to the revenue requirements or cost studies as a result of the rates afforded Cabletron in Special Contract No. 96-7; and it is

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

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 1601.05, the Petitioner shall cause an attested copy of this Order *Nisi* to be published once in a statewide newspaper of general circulation, such publication to be no later than July 9, 1996 and to be documented by affidavit filed with this office on or before July 16, 1996; and it is

FURTHER ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or file a written request for a hearing on this matter before the Commission no later than July 23, 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 July 30, 1996; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective August 1, 1996, 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 July, 1996.

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 95-325, Order No. 21,919, 80 NH PUC 759, Nov. 22, 1995.

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NH.PUC*07/02/96*[89230]*81 NH PUC 504*Granite State Electric Company

[Go to End of 89230]

81 NH PUC 504

Re Granite State Electric Company

DR 96-173
Order No. 22,217

New Hampshire Public Utilities Commission

July 2, 1996

PETITION by electric utility for authority to initiate a "performance interruptible credit" program, tied to interruptible service requirements used by the New England Power Pool; granted.

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1. RATES, § 339

[N.H.] Electric rate design — Interruptible service — "Performance interruptible credit" program — Customer load profiles as a factor — Correlation to interruptible service requirements of the New England Power Pool. p. 504.

2. SERVICE, § 324

[N.H.] Electric — Interruptible service — "Performance interruptible credit" program — As response to possible summer capacity shortages — Limits on customer eligibility — Correlation to interruptible service requirements of the New England Power Pool. p. 504.

BY THE COMMISSION:

ORDER

[1, 2] On May 31, 1996, Granite State Electric Company (GSEC) filed for approval effective July 1, 1996, its Performance Interruptible Credit Provision (PICP) along with a Service Agreement for customers who elect to participate in the program. The PICP is designed to match the terms and conditions of NEPOOL Type 5 Dispatchable Load. When called upon by NEPOOL during Operating Procedure No. 4 (OP4), Action 10, customers who qualify as interruptible load under NEPOOL Criteria, Rules and Standards No. 16 are entitled to be paid by NEPOOL $2.00 per average kilowatt interrupted per day. The customer is credited based on the difference between the expected load at the time of the interruption and the actual load during each interruption. The expected load level is determined by comparing the load profile of the customer on the previous similar business day and the customer's actual load at the time the interruption was called.

The credit each customer receives from GSEC for interrupting during OP4, Action 10, matches exactly what NEPOOL pays New England Power (NEP). NEP then credits GSEC the

same amount through its power bill pursuant to the settlement agreement in NEP's W-10 rate case. Accordingly, neither NEP nor GSEC is harmed financially by customers of GSEC participating in the program.

GSEC states in its cover letter that this program is important to customers who can participate. Those customers will directly benefit by interrupting load when called upon by NEPOOL. Customers of GSEC currently served under the Cooperative Interruptible Service (CIS) program are not eligible. The program is also important to GSEC and NEP as they plan to respond to potential capacity shortages in New England this summer.

Based on our review of the filing, the current capacity situation in New England and our understanding of NEPOOL Operating Procedure No. 4, we will approve the filing as being in the public interest and direct GSEC to file on an annual basis the number of customers participating in the Performance Interruptible Credit program and the number of times they were requested under OP4, Action 10, to interrupt load and the level of interruption achieved by the participants.

Based upon the foregoing, it is hereby

ORDERED, that GSEC's Performance Interruptible Credit program is APPROVED as filed effective July 1, 1996.

By order of the Public Utilities Commission of New Hampshire this second day of July, 1996.

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NH.PUC*07/02/96*[89231]*81 NH PUC 505*New Hampshire Electric Cooperative, Inc.

[Go to End of 89231]

81 NH PUC 505

Re New Hampshire Electric Cooperative, Inc.

DR 96-040
Order No. 22,218

New Hampshire Public Utilities Commission

July 2, 1996

ORDER authorizing an electric cooperative to implement a surcharge mechanism through which to recover costs associated with a change in accounting for post-retirement benefits other than pensions.

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1. EXPENSES, § 49

[N.H.] Employee pensions and welfare — Post-retirement benefits other than pensions — Change in accounting methods — Compliance with Statement of Financial Accounting Standards No. 106 — Associated transition costs — Recovery via surcharge — Electric cooperative — Settlement. p. 505.

APPEARANCES: Dean, Rice and Howard by Mark E. Howard, Esq., for the New Hampshire Electric Cooperative, Eugene F. Sullivan Jr., Finance Director for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On February 8, 1996, New Hampshire Electric Cooperative, Inc. (NHEC), filed with the New Hampshire Public Utilities Commission (Commission) a petition implementing a surcharge to retail electric rates to recover the costs associated with the Financial Accounting Standards Board Statement 106, Post-Retirement Benefits Other than Pensions (PBOP). This proceeding arose from the Commission's Report and Order No. 20,806 addressing FAS 106 in DA 92-199 which set forth accounting and ratemaking considerations. 78 NH PUC 211.

On May 17, 1996, a settlement conference was held and all issues of concern to Staff were addressed. On May 24, 1996, a Settlement Stipulation was filed with the Commission.

II. POSITIONS OF NHEC AND STAFF

A. *NHEC*

NHEC initially requested a FAS 106 surcharge rate of $0.00044/kWh to be included in its retail rates effective with all meters read on or after April 1, 1996. The proposed surcharge would have resulted in an increase in NHEC's average retail revenue per kWh of 0.3%.

B. *Staff*

At the prehearing conference, Staff set forth issues raised by NHEC's filing as follows: first, the appropriate recovery mechanism; second, review of the actuarial study used to estimate benefit costs and related amortization periods for the accumulated post-retirement benefit obligation (APBO) and the expected post-retirement benefit obligation (EPBO); third, evaluation of PBOP costs currently included in base rates; and, fourth, the proposed implementation date.

C. *Offer of Settlement*

The full terms of the Offer of Settlement consists of a six-page settlement agreement and eleven pages of attachments. Key terms are summarized below.

[1] Under the Settlement, NHEC and the Staff agreed that NHEC will increase base rates for the purposes of FAS 106 recovery in the amount of $201,608, or $0.00033 per kWh. NHEC and the Staff agreed that NHEC's base rates may be increased for the single purpose of FAS 106 recovery without the necessity of

Page 505

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filing a full base rate case. This treatment is consistent with past cases of New Hampshire utilities' implementation of FAS 106. NHEC and the Staff agreed that the FAS 106 increase of $201,608 is made up of the following amortization and expense amounts. The APBO, also called

the "transition liability as of January 1, 1995," amounting to $1,421,200 shall be treated as a regulatory asset and shall be amortized over a period of eighteen years and six months beginning on the date of implementation. The annual amortization amount is $76,822. The EPBO, the accrued expenses from January 1, 1995 to June 30, 1996 amounting to $285,150, shall be treated as a regulatory asset and shall be amortized over a period of five years beginning on the date of implementation. The annual amortization amount is $57,030. In addition, FAS 106 costs include ongoing PBOP amounting to $190,100. Finally, NHEC and the Staff agreed that FAS 106 costs shall be reduced by the following amounts: $9,348 (the expected return on plan assets); $70,251 (the portion that is capitalized as overhead to construction work-in progress and plant retirements); and $42,745 (pay-as-you-go post retirement expenses already included in base rates).

NHEC and the Staff agreed that the implementation date of the proposed increase in base rates is effective with all meters read on or after July 1, 1996.

Finally, NHEC and the Staff agreed that PBOP amounts will be deposited in an external irrevocable trust, and that deposits of the full FAS 106 expenses will be made on a quarterly basis. Disbursements from the trust will only be made for the benefit of employees and retirees in accordance with NHEC's post-retirement plans, for expenses related to trust administration, or for refunds to ratepayers. A report regarding the status of the plan, including steps taken to mitigate the costs of the plan, will be provided to the Commission on an annual basis consistent with Order No. 20,806. In addition, any updated actuarial study otherwise prepared for or by NHEC will be filed with the Commission. NHEC will seek Commission approval before making any major changes to its plan in accordance with Order No. 20,806.

III. COMMISSION ANALYSIS

Having reviewed the Settlement and supporting testimony presented at the June 17, 1996 hearing, we find the terms to be acceptable and in conformance with RSA 378:28 and our prior order. We appreciate the efforts of NHEC and Staff in working together to develop a comprehensive settlement in this case.

Based upon the foregoing, it is hereby

ORDERED, that NHEC is authorized to increase rates by $201,608 or $0.00033 per kWh to provide for the implementation of FAS 106 PBOP, as set forth by Order No. 20,806 in Docket No. DA 92-199; and it is

FURTHER ORDERED, that external funding of these costs shall be handled by an independent trustee and that deposits to such irrevocable trust funds shall be made on a quarterly basis; and it is

FURTHER ORDERED, that the irrevocable external trust fund shall be allowed to make payments from its assets for the following reasons:

A) Employee benefit payments

B) Expenses of the trust

C) Commission approved customer refund plan

By order of the Public Utilities Commission of New Hampshire this second day of July,

1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Report and Order Addressing FAS 106 Accounting for Post-Retirement Benefits Other than Pensions, DA 92-199, Order No. 20,806, 78 NH PUC 211, Apr. 5, 1993.

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NH.PUC*07/02/96*[89232]*81 NH PUC 507*New Hampshire Electric Cooperative, Inc.

[Go to End of 89232]

81 NH PUC 507

Re New Hampshire Electric Cooperative, Inc.

DR 96-160
Order No. 22,219

New Hampshire Public Utilities Commission

July 2, 1996

ORDER approving an electric cooperative's proposed change in its power cost adjustment clause factor, decreasing it from 0.875 cents per kilowatt-hour (kWh) to 0.834 cents per kWh.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 13

[N.H.] Direct energy costs — Power cost adjustment (PCA) clause factor — Reduction in PCA factor — Considerations — Rate stability — Accelerated recovery of replacement power costs associated with a nuclear plant outage — Electric cooperative. p. 508.

APPEARANCES: Dean, Rice and Howard, by Mark E. Howard, Esq. on behalf of New Hampshire Electric Cooperative, Inc., Patrick J. Moast and James J. Cunningham, Jr. on behalf of the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On May 17, 1996 New Hampshire Electric Cooperative, Inc. (NHEC) filed with the New Hampshire Public Utilities Commission (Commission) tariff changes to its Power Cost Adjustment (PCA) for effect July 1, 1996 through December 31, 1996. Supporting testimony and exhibits were included in NHEC's filing. On May 23, 1996, NHEC filed its Short Term Avoided Costs with the Commission under separate cover.

At a duly noticed hearing on June 13, 1996, NHEC Rate Analyst, Heather K. Lucas, testified in support of NHEC's proposed PCA factor.

II. POSITIONS OF NHEC AND STAFF

A. *NHEC*

NHEC proposes a PCA factor of $0.00834 per kWh effective for all meters read on and after July 1, 1996 through December 31, 1996. The proposed PCA factor represents a decrease of $0.00041 per kWh, or 0.3%, compared to the current PCA factor of $0.00875 per kWh. For a typical customer using 500 kWh per month under Residential Rate D, a typical customer's bill will decrease by $0.21 from $69.69 per month to $69.48.

The Company proposes two modifications for calculating its PCA factor in this proceeding. The purpose of the modifications are to promote rate stability for retail customers by offsetting an expected significant January 1, 1997 one cent per kWh increase in the PSNH base energy rate which is charged to NHEC in accordance with the Amended Partial Requirements Agreement (APRA).

The first modification proposes to accelerate recovery of $1,465,336 of previously incurred, but deferred Maine Yankee 1995 outage replacement costs. The second modification proposes to over collect $811,203 of PCA revenues during the upcoming PCA period.

NHEC also proposes for Commission approval short-term energy rates which NHEC pays to qualifying facilities for each of the four utilities from which NHEC purchases power.

B. *Staff*

Staff did not file testimony in the proceeding but conducted cross examination on a number of issues regarding NHEC's power costs and its proposed rate stability modifications for effect during the July 1, 1996 to December 31, 1996 and January 1, 1997 through June 30,

Page 507

1997 rate periods.

During cross examination, NHEC indicated that its proposals are designed to achieve a PCA rate of $0.00834 per kWh for meters read effective July 1, 1996 and $0.00835 per kWh for meters read effective January 1, 1997.

NHEC further testified that were the proposed modifications to be rejected by the Commission, NHEC's July 1, 1996 PCA rate would be a credit of $0.00017 per kWh for the six-month period ending December 31, 1996. This PCA rate would represent a decrease of 6.5 percent from current average rates. However, projecting to January 1, 1997, its average customer bills would likely increase by 8 percent effective January 1, 1997. NHEC confirmed that virtually the entire 8 Percent increase in January 1, 1997 would be due to NHEC's contractual obligation to PSNH under its APRA resale service agreement.

Upon the conclusion of cross examination, Staff recommended approval of NHEC's PCA rates as filed, based upon discovery and consideration of NHEC's upcoming one cent per kWh APRA increase.

III. COMMISSION ANALYSIS

[1] Based on the our review of the record, we find that NHEC's proposed PCA factor of $0.00834 per kWh is appropriate for the period July 1, 1996 through December 31, 1996, results in just and reasonable rates and is in the public interest.

We note that NHEC's concern for rate stability in its filing is consistent with its recommendations in past PCA proceedings. We will approve NHEC's proposed accelerated recovery of the Maine Yankee amortized replacement power costs. We will also approve NHEC's proposed rate stability over-recovery.

Based upon the foregoing, it is hereby

ORDERED, that the Power Cost Adjustment factor for NHEC for the period July 1, 1996 through December 31, 1996 shall be $0.00834 per kWh, effective on all meters read on and after July 1, 1996; and it is

FURTHER ORDERED, that the short-term avoided energy rates paid to qualifying facilities shall be as shown in NHEC 2nd Revised Page 43 for the period July 1, 1996 through December 31, 1996; and it is

FURTHER ORDERED, that NHEC shall file tariff pages in compliance with this order no later than 15 days from the issuance date of this order.

By order of the Public Utilities Commission of New Hampshire this second day of July, 1996.

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NH.PUC*07/02/96*[89233]*81 NH PUC 508*Lakes Region Water Company, Inc.

[Go to End of 89233]

81 NH PUC 508

Re Lakes Region Water Company, Inc.

DF 96-162
Order No. 22,220

New Hampshire Public Utilities Commission

July 2, 1996

ORDER authorizing a water utility to incur up to $85,000 in additional long-term debt, so as to finance computer and billing software upgrades, the purchase of an accumulator tank, and conversion of water meters to electronic meter reading.

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1. SECURITY ISSUES, § 58

[N.H.] Incurrence of additional long-term debt — Purposes — Additions and betterments —

Purchase of new accumulator tank — Upgrades to computer and billing software systems — Conversion to electronic meter reading — Water utility. p. 508.

BY THE COMMISSION:

ORDER

[1] On May 17, 1996 Lakes Region Water Company, Inc., (Lakes Region), a New Hampshire Corporation with its principal place

of business in Moultonboro, New Hampshire, filed with the New Hampshire Public Utilities Commission (Commission) a petition for approval of additional financing in the total amount of $85,000 of long term debt, issuable over three years in installments of $55,000 in 1996, $15,000 in 1997 and $15,000 in 1998. The note will be to the Farmington National Bank, with the term of 120 months, payable in monthly installments, at a rate of two (2%) percent above the current prime of 8.25% making the rate on this transaction 10.25%. Lakes region represents that the financing of $55,000 will be used to purchase the following items in 1996. The amount of $17,000 will be used for upgrading the computer hardware, utility billing software and a new general ledger and accounts payable system. The amount of $23,000 will be used to purchase a 20,000 gallon accumulator tank and $15,000 will be used for Phase One of the conversion of water meters to electronic meter readers. In 1997, $15,000 will be used for Phase Two of the conversion of water meters to electronic meter readers. In 1998, $15,000 will be used for Phase Three of the conversion of water meters to electronic meter readers.

The Commission, having reviewed the filing and the Staff recommendation, finds the financing of this debt is consistent with the public good.

Based upon the foregoing, it is hereby

ORDERED, that Lakes Region's petition for additional financing is approved, pursuant to RSA 369:1 for the purpose herein set forth.

By order of the Public Utilities Commission of New Hampshire this second day of July, 1996.

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NH.PUC*07/02/96*[89234]*81 NH PUC 509*New Hampshire Electric Cooperative, Inc.

[Go to End of 89234]

81 NH PUC 509

Re New Hampshire Electric Cooperative, Inc.

DR 96-107
Order No. 22,221

New Hampshire Public Utilities Commission

July 2, 1996

ORDER accepting settlement as to an electric cooperative's proposed 1996-97 demand-side management (DSM) plan, where the cooperative had a history of underspending its approved DSM budgets. The new DSM program provides six new offerings for residential customers and three for commercial/industrial customers, all aimed at energy-efficiency through such components as electric thermal storage heating, storage water heating, and timer-controlled appliances. Commission also approves the cooperative's proposed level of surcharges by which to fund the programs, which surcharges are lower than those applicable in the previous DSM budget year.

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1. CONSERVATION, § 1

[N.H.] Electric cooperative — Demand-side management plans — Annual filing — Budget in line with historical spending patterns — Targeting of residential more than commercial/industrial customers — Components — Electric thermal storage heating — Storage water heating — Timer-controlled appliances — Reductions in funding surcharges — Settlement. p. 511.

2. ELECTRICITY, § 4

[N.H.] Operating practices — Demand-side management planning — Development of realistic budget — Emphasis on alternative fuel and heating programs — Targeting of residential more than commercial/industrial customers

Page 509

— Cooperative. p. 511.

3. RATES, § 260

[N.H.] Surcharges — Separate charges for residential, general, and primary general customers — For funding demand-side management (DSM) programs — Reductions in surcharge levels — To reflect more realistic DSM budget — Electric cooperative. p. 511.

APPEARANCES: Mark W. Dean of the law firm of Dean, Rice & Howard for the New Hampshire Electric Cooperative; Kenneth Traum of the Office of the Consumer Advocate on behalf of New Hampshire residential ratepayers; and E. Barclay Jackson, Esq. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On April 8, 1996, the New Hampshire Electric Cooperative (NHEC or the Company) filed with the New Hampshire Public Utilities Commission (Commission) its Demand-Side Management (DSM) proposals for the program year July 1, 1996 through June 30, 1997. NHEC's filing included the prefiled joint testimony of NHEC's Robert Reals and William Bayard and the prefiled testimony of Teresa Muzzey.

By Order of Notice issued April 24, 1996, the Commission scheduled a prehearing conference and a first technical session for May 10, 1996, set deadlines for intervention requests and objections thereto, outlined a procedural schedule, and required the Parties and Commission Staff (Staff) to summarize their position with regard to the filing for the record. No party filed for intervention. The Office of Consumer Advocate (OCA) is a statutorily recognized intervenor.

The Company, Staff, and OCA entered into a Settlement Stipulation (Settlement) which resolved all of the issues in this proceeding. A duly noticed hearing on the Settlement was held on June 21, 1996.

II. POSITIONS OF THE PARTIES AND STAFF

A. *The Company*

The Company proposed a DSM program budget for 1996/97 of $2,377,869, which is 55% above the 1995/96 approved budget of $1,529,403. This budget is to be allocated over three customer classes in the following manner; residential class, $1,686,851, general class, $659,552, and primary general class, $31,466. The recovery of the DSM expenses is collected through a monthly DSM surcharge on a per kWh basis.

The current and proposed surcharge rates 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	$0.00233	$0.00215
General	$0.00129	$0.00285
Primary General	$0.00105	$0.00210

The residential class has a proposed reduction in the DSM surcharge, while the general and primary general rate classes will see increases.

The Company proposed ten programs in its 1996/97 DSM filing, seven for residential customers and three for the commercial and industrial sector. The Company believes the 1996/97 programs are cost-effective, comprehensive, and balanced.

B. *Staff*

Staff stated that NHEC's 1996/97 DSM filing as proposed was overly optimistic and raised the following concerns regarding the filing. NHEC's actual spending for the 1994/95

Page 510

program year was 40% below its approved budget and actual spending for the 1995/96 program was 57% below its approved budget. The proposed 1996/97 filing budget is 258% of

1995/96 actual DSM expenditures. Because some of the proposed programs are new and untested, Staff has concerns that the number of participants targeted may be unachievable. Staff raises the issue of the cost-effectiveness of some of the programs proposed. In particular, Staff opposed the inclusion of non-energy benefits in calculating the Total Resource Cost (TRC) benefit-cost ratio. Staff requested and the Company provided TRC ratios on a measure-by-measure basis, which Staff used in recommending cost-effective programs. Staff opposes the "Alternative Fuel Pilot Program" proposed by the Company on the basis that much further research would need to be done to assess the viability of such a program.

C. *OCA*

The Office of Consumer Advocate offered no testimony during the hearing but cross-examined NHEC's witnesses with regard to the filing and is a signatory to the Settlement.

D. *Offer of Settlement*

[1-3] The full terms of the Settlement were filed with the Commission on June 14, 1996. Key terms are summarized below.

Under the Settlement, the parties agree that NHEC shall reduce its proposed budget to $1,341,695, inclusive of $77,312 for lost revenue recovery. Of the seven residential programs proposed, the Company agrees that it will eliminate the proposed residential Alternative Fuel Pilot Program and implement the remaining six programs: Controlled Standard/Storage Water Heating Program with a budget of $167,982; Comfort Crafted Home Energy Improvement Program with a budget of $211,285; Electric Thermal Storage/Controlled Dual Fuel Program with a budget of $251,475; Low Income Program with a budget of $197,094; Better Bulb Program with a budget of $113,461; and Energy Crafted Home Program with a budget of $14,055.

The Settlement provides for three programs in the Small and Large Commercial/Industrial categories. The 1996/1997 budget includes one program for the Small Commercial/Industrial sector, an Energy Efficiency Program with a budget of $186,805. The 1996/1997 budget includes two programs for the Large Commercial/Industrial category: an Energy Efficiency Program for the General Class with a budget of $157,118 and an Energy Efficiency Program for the Primary General Class with a budget of $33,894. Finally, the 1996/1997 budget includes a Savings Through Energy Management (STEM) Program with a budget of $8,526.

The Parties and Staff agreed that during the 1996/1997 program year, NHEC may shift, without requiring additional Commission approval, up to 20 percent of the budget for any approved DSM program to one or more DSM program, provided the shift is within the same rate class.

The Parties and Staff agree that NHEC shall propose in its next permanent rate case that all DSM-related expenses, with the exception of payroll, depreciation and interest on DSM capital expenditures, be excluded from base rates through an adjustment to the test year, and that all expenses so removed from base rates shall be incorporated in DSM budget filings.

Based upon the adjustments to the proposed budget as noted above, the Parties and Staff agree on the following DSM surcharges, which will be in effect between July 1, 1996 and June 30, 1997: Residential Class DSM surcharge of $0.00019 per kWh; the General Class DSM

surcharge of $0.00108 per kWh and the Primary General Class DSM surcharge of $0.00225 per kWh.

III. COMMISSION ANALYSIS

Having reviewed the full record in this case along with the Settlement and supporting testimony presented at the June 21, 1996 hearing, the Commission finds the Settlement to be in the public interest. The Settlement contains cost-effective conservation programs that should provide benefits to both participants and

Page 511

non-participants.

In light of the historical spending record of the Company, the Commission finds that the reduced budget is more realistic and should provide the Company with achievable DSM program spending levels. This Settlement will allow the Company and the Commission to monitor and review the 1996/97 program spending levels and evaluate the appropriateness of the programs and budget level for future consideration. We appreciate the efforts of NHEC and Staff in working to develop a comprehensive Settlement in this case.

Based upon the foregoing, it is hereby

ORDERED, that the Settlement filed with the Commission on June 17, 1996 is approved; and it is

FURTHER ORDERED, that effective July 1, 1996, the Residential Class DSM surcharge shall be $0.00019 per kWh, the General Class DSM surcharge shall be $0.00108 per kWh and the Primary General Class DSM surcharge shall be $0.00225 per kWh; and it is

FURTHER ORDERED, that NHEC file compliance tariff pages no later than 15 days from the date of this order.

By order of the Public Utilities Commission of New Hampshire this second day of July, 1996.

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NH.PUC*07/02/96*[89235]*81 NH PUC 512*Concord Steam Corporation

[Go to End of 89235]

81 NH PUC 512

Re Concord Steam Corporation

DR 96-131
Order No. 22,222

New Hampshire Public Utilities Commission

July 2, 1996

ORDER suspending and announcing a procedural schedule for a steam heating company's

proposed two-year 6% 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 — Adoption of procedural schedule — Steam heating utility. p. 512.

2. RATES, § 392

[N.H.] Steam heating rate design — Proposed rate increase — Necessity of suspension — To allow for adequate investigatory period — Procedural schedule — Issues to be addressed — Maintenance and rate case expenses — Weatherization adjustment. p. 512.

APPEARANCES: Peter G. Bloomfield, President, and Orr & Reno by David W. Marshall, Esq., on behalf of Concord Steam Corporation; Stephen P. Frink and Douglas Brogan on behalf of the Staff of the Public Utilities Commission.

BY THE COMMISSION:

ORDER

[1, 2] On June 5, 1996, Concord Steam Corporation (Concord Steam) filed with the New Hampshire Public Utilities Commission (Commission) a Proposed New Rate Tariff and supporting testimony and exhibits.

The Commission scheduled a prehearing conference for June 28, 1996, set a deadline for intervention requests, proposed a procedural schedule and called for initial positions of the Parties and Commission Staff (Staff).

No party has sought intervention. The Office of Consumer Advocate (OCA) is a statutorily recognized intervenor.

At the prehearing conference Concord Steam and Staff agreed to the following procedural schedule:

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

Responses to Oral Data Requests	
Propounded at 1st Technical Session	07/03/96
Data Requests by Staff & Intervenors	07/10/96
Company Data Responses	07/17/96
Technical Session at 10 a.m.	07/19/96
Testimony by Staff Intervenors	08/01/96
Technical Session/Settlement Conference	08/12/96
Filing of Settlement Agreement, if any	08/20/96
Hearing on merits, 10 a.m.	08/27/96

Also at the prehearing conference, in accordance with the Order of Notice, Concord Steam

summarized that Concord Steam petitioned for this proposed rate increase of approximately 6% per year for two years, in the approximate amount of $324,000, due to an increase in the costs of doing business.

Staff stated that it particularly intended to review, in addition to the filing, issues relating to operation and maintenance, sales, weatherization adjustment and rate case expenses. Staff also indicated that it anticipated that its investigation related to this docket would take longer than 30 days from the filing date and requested that the proposed tariff be suspended.

We find the proposed procedural schedule to be reasonable and will approve it for the duration of the case. We will therefore also suspend the tariff pages.

Based upon the foregoing, it is hereby

ORDERED, that the proposed procedural schedule delineated above is approved; and it is

FURTHER ORDERED, that, pursuant to RSA 378:6,I(a), the following tariff pages of Concord Steam are hereby suspended:

NHPUC No. 2 Steam

11 Revised Page No. 11

12 Revised Page No. 11

By order of the Public Utilities Commission of New Hampshire this second day of July, 1996.

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NH.PUC*07/02/96*[89236]*81 NH PUC 513*Comdata Telecommunications Services, Inc.

[Go to End of 89236]

81 NH PUC 513

Re Comdata Telecommunications Services, Inc.

DE 96-020
Order No. 22,223

New Hampshire Public Utilities Commission

July 2, 1996

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

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1. CERTIFICATES, § 123

[N.H.] Telephone carrier — Intrastate intraLATA long-distance services — Interim authority — Assessment of competitive impacts — Exclusion of local exchange services. p. 513.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate intraLATA toll services — Interim authority — Assessment of competitive impacts — Exclusion of local exchange services. p. 513.

BY THE COMMISSION:

ORDER

[1, 2] On January 19, 1996, Comdata Telecommunications Services, Inc. (CTS), a Delaware corporation, petitioned the New Hampshire Public Utilities Commission (Commission) for authority to do business as a telecommunications public utility in the State of New Hampshire (petition) pursuant to, *inter alia*, RSA 374:22 and RSA 374:26. CTS has demonstrated the financial, managerial and technical ability to offer service as conditioned by this order. The Commission previously approved numerous, similar petitions filed

during the Trial Period, pursuant to the Modified Stipulation Agreement (Stipulation) in Docket No. DE 90-002, approved by Order No. 20,916 (August 2, 1993). Our orders in those numerous dockets granted the petitioner(s) interim authority to offer intraLATA toll service, specifically excluding local exchange service, for the service territory of the entire State of New Hampshire, during the Trial Period, in order to allow the Commission to analyze competition during the two-year Trial Period.

Because the Trial Period identified by the Stipulation expired on September 30, 1995, we have explicitly clarified that the authority we had granted remains in effect until we specifically modify or revoke that authority, after analysis of the Trial Period. *See* Order No. 21,851 (October 3, 1995). Likewise, our grant of authority ordered herein remains in effect until we specifically modify or revoke that authority.

The public good is served by permitting such competition by telecommunications companies. The Commission permits competitive entry in order to foster competition in the New Hampshire intrastate toll market and to allow the Commission to analyze the effects of such competition.

The public should be provided an opportunity to respond in support of, or in opposition to this petition.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that CTS is granted interim authority to offer as a telecommunications public utility intraLATA toll service, specifically excluding local exchange service, for the service territory of the entire State of New Hampshire, subject to the following conditions:

1. The services shall be offered by approved tariffs.

2. The services shall be offered until the Commission orders otherwise.

3. CTS shall file tariffs for new services and changes in approved services (other than rate changes), with effective dates of no less than 30 days after the date the tariffs are filed with the Commission.

4. Within one business day of offering an approved service to the public at a rate different from its rates on file with the Commission, CTS shall notify the Commission of the change.

5. CTS is exempted from NH Admin. Rules, Puc 406.03 Accounting Records; Puc 407 Forms Required of All Telephone Utilities; and Puc 409 Uniform System of Accounts for Telecommunications Companies.

6. CTS shall maintain its book and records in accordance with Generally Accepted Accounting Principles.

7. CTS 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. CTS 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. CTS shall compensate the appropriate Local Exchange Company for all originating and terminating access used by CTS pursuant to NET Tariff N.H.P.U.C. 79, Switched Access Service Rate or its successors or its relevant equivalent contained in the tariffs of the Independent Local Exchange Companies.

10. New Service offerings filed for approval with the Commission shall be accompanied by tariff pages describing the service, rates and effective dates.

FURTHER ORDERED, that the authority granted herein remains in full force and effect until the Commission orders otherwise; and it is

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

FURTHER ORDERED, that CTS 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 July 9, 1996, and an affidavit proving publication shall be filed with the Commission on or before July

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16, 1996; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, et seq. CTS 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 July 23, 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 July 30, 1996; and it is

FURTHER ORDERED, this Order *Nisi* shall be effective August 1, 1996, unless the Commission provides otherwise in a supplemental order issued prior to the effective date and it is

FURTHER ORDERED, that CTS shall file a compliance tariff with the Commission on or before August 1, 1996, in accordance with NH Admin. Rules, Puc 1601.01 (b).

By order of the Public Utilities Commission of New Hampshire this second day of July, 1996.

Notice of Conditional Approval of
COMDATA TELECOMMUNICATIONS
SERVICES, INC.

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

On January 19, 1996, Comdata Telecommunications Services, Inc. (CTS), a Delaware corporation, filed with the New Hampshire Public Utilities Commission (Commission) a petition to do business as a telecommunications public utility in the State of New Hampshire, specifically to provide intrastate long distance telecommunications services.

In Order No. 22,223, issued in Docket No. DE 96-020, the Commission granted CTS conditional approval to operate as of August 1, 1996, subject to the right of the public and interested parties to comment on CTS 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 CTS's petition to do business in the State must be submitted in writing no later than July 23, 1996, and reply comments no later than July 30, 1996, to:

Dr. Sarah P. Voll
Executive Director and Secretary
Public Utilities Commission
8 Old Suncook Road
Concord, New Hampshire 03301-7319

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Generic Investigation into IntraLATA Toll Competition Access Rates, DE 90-002, Order No. 20,916, 78 NH PUC 365, Aug. 2, 1993. [N.H.] Re Long Distance North of New Hampshire, Inc., et al., DE 87-249, Order No. 21,851, 80 NH PUC 628, Oct. 3, 1995.

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NH.PUC*07/03/96*[89237]*81 NH PUC 515*Business Options, Inc.

[Go to End of 89237]

81 NH PUC 515

Re Business Options, Inc.

DE 96-065
Order No. 22,224

New Hampshire Public Utilities Commission

July 3, 1996

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

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1. CERTIFICATES, § 123

[N.H.] Telephone carrier — Intrastate intraLATA long-distance services — Interim

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authority — Assessment of competitive impacts — Exclusion of local exchange services. p. 516.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate intraLATA toll services — Interim authority — Assessment of competitive impacts — Exclusion of local exchange services. p. 516.

BY THE COMMISSION:

ORDER

[1, 2] On March 12, 1996, Business Options, Inc., an Illinois corporation, petitioned the New Hampshire Public Utilities Commission (Commission) for authority to do business as a telecommunications public utility in the State of New Hampshire (petition) pursuant to, *inter alia*, RSA 374:22 and RSA 374:26. Business Options, Inc. has demonstrated the financial, managerial and technical ability to offer service as conditioned by this order. The Commission previously approved numerous, similar petitions filed during the Trial Period, pursuant to the Modified Stipulation Agreement (Stipulation) in Docket No. DE 90-002, approved by Order No. 20,916 (August 2, 1993). Our orders in those numerous dockets granted the petitioner(s) interim authority to offer intraLATA toll service, specifically excluding local exchange service, for the service territory of the entire State of New Hampshire, during the Trial Period, in order to allow the Commission to analyze competition during the two-year Trial Period.

Because the Trial Period identified by the Stipulation expired on September 30, 1995, we have explicitly clarified that the authority we had granted remains in effect until we specifically modify or revoke that authority, after analysis of the Trial Period. *See* Order No. 21,851

(October 3, 1995). Likewise, our grant of authority ordered herein remains in effect until we specifically modify or revoke that authority.

The public good is served by permitting such competition by telecommunications companies. The Commission permits competitive entry in order to foster competition in the New Hampshire intrastate toll market and to allow the Commission to analyze the effects of such competition.

The public should be provided an opportunity to respond in support of, or in opposition to, this petition.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that Business Options, Inc. is granted interim authority to offer as a telecommunications public utility intraLATA toll service, specifically excluding local exchange service, for the service territory of the entire State of New Hampshire, subject to the following conditions:

1. The services shall be offered by approved tariffs.

2. The services shall be offered until the Commission orders otherwise.

3. Business Options, Inc. shall file tariffs for new services and changes in approved services (other than rate changes), with effective dates of no less than 30 days after the date the tariffs are filed with the Commission.

4. Within one business day of offering an approved service to the public at a rate different from its rates on file with the Commission, Business Options, Inc. shall notify the Commission of the change.

5. Business Options, Inc. is exempted from NH Admin. Rules, Puc 406.01 Preservation of Records; Puc 406.03 Accounting Records; Puc 406.04 Short Term Debt; Puc 407 Forms Required of All Telephone Utilities; and Puc 409 Uniform System of Accounts for Telecommunications Companies.

6. Business Options, Inc. shall maintain its book and records in accordance with Generally Accepted Accounting Principles and shall make those books and records available within the State of New Hampshire whenever required by the Commission.

7. Business Options, Inc. shall file with the Commission each calendar year an Annual Report consisting of a Balance Sheet and Statement of Operations, and an Information Sheet

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containing the names, mailing addresses and titles of corporate officers, and the address to which the New Hampshire Utility Assessment should be mailed.

8. Business Options, Inc. 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. Business Options, Inc. shall compensate the appropriate Local Exchange Company for all originating and terminating access used by Business Options, Inc. pursuant to NET Tariff N.H.P.U.C. 79, Switched Access Service Rate or its successors or its relevant equivalent

contained in the tariffs of the Independent Local Exchange Companies.

10. New Service offerings filed for approval with the Commission shall be accompanied by tariff pages describing the service, rates and effective dates; and it is

FURTHER ORDERED, that the authority granted herein remains in full force and effect until the Commission orders otherwise; and it is

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

FURTHER ORDERED, that Business Options, Inc. 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 July 10, 1996, and an affidavit proving publication shall be filed with the Commission on or before July 17, 1996; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, et seq., Business Options, Inc. 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 July 24, 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 July 31, 1996; and it is

FURTHER ORDERED, this Order *Nisi* shall be effective August 2, 1996, unless the Commission provides otherwise in a supplemental order issued prior to the effective date; and it is

FURTHER ORDERED, that Business Options, Inc. shall file a compliance tariff with the Commission on or before August 2, 1996, in accordance with NH Admin. Rules, Puc 1601.01 (b).

By order of the Public Utilities Commission of New Hampshire this third day of July, 1996.

Notice of Conditional Approval of
Business Options, Inc.

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

On March 12, 1996, Business Options, Inc., an Illinois corporation, filed with the New Hampshire Public Utilities Commission (Commission) a petition to do business as a telecommunications public utility in the State of New Hampshire, specifically to provide intrastate long distance telecommunications services.

In Order No. 22,224, issued in Docket No. DE 96-065, the Commission granted Business Options, Inc. conditional approval to operate as of August 2, 1996, subject to the right of the public and interested parties to comment on Business Options, Inc. 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 Business Options, Inc.'s petition to do business in the State must be submitted in writing no later than July 24, 1996, and reply comments no later than July 31, 1996, to:

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Dr. Sarah P. Voll
Executive Director and Secretary
Public Utilities Commission
8 Old Suncook Road
Concord, New Hampshire 03301-7319

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Generic Investigation into IntraLATA Toll Competition Access Rates, DE 90-002, Order No. 20,916, 78 NH PUC 365, Aug. 2, 1993. [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*07/08/96*[89238]*81 NH PUC 518*Public Service Company of New Hampshire

[Go to End of 89238]

81 NH PUC 518

Re Public Service Company of New Hampshire

DR 95-114
Order No. 22,225

New Hampshire Public Utilities Commission

July 8, 1996

ORDER conditionally approving an electric utility's proposed special rate contract with an industrial mill customer, Crown Vantage, Inc. However, the utility is directed to modify those parts of the contract the commission finds to be anticompetitive, namely sole source supplier provisions, restrictions on third-party installations of generation, and 84-month contract terms. But the commission agrees that the special contract is needed to prevent the customer from relocating out-of-state.

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1. MONOPOLY AND COMPETITION, § 21

[N.H.] Restraint of trade and anticompetitive practices — Special contracts — Terms

encumbering customer's property — Anti-self-generation provisions — Length of contract as extending beyond initiation of retail electric generation — Required modification of proposed contract — Electric utility. p. 521.

2. MONOPOLY AND COMPETITION, § 21

[N.H.] Restraint of trade and anticompetitive practices — Special contracts — Terms encumbering customer's property or rights — Prohibitions on third-party power supplier bids — Determination of anticompetitive effects — Electric utility — Required modification of proposed contract. p. 521.

3. RATES, § 211

[N.H.] Special rate contracts — Anticogeneration or load retention agreements — Necessity of modification — To eliminate anticompetitive effects — Inconsistency of sole source supplier terms with retail electric competition program — Electric utility. p. 521.

4. MONOPOLY AND COMPETITION, § 21

[N.H.] Restraint of trade and anticompetitive practices — Special contracts — Effect of terms prohibiting competing third-party power supplier bids — Acquiescence by customer as a factor — Meeting of the minds — Electric service — Dissenting opinion. p. 522.

BY THE COMMISSION:

ORDER

I. DESCRIPTION OF THE FILING

The Petitioner, Public Service Company of New Hampshire (PSNH), filed on April 25, 1995, pursuant to RSA 378:18, a request for approval of a special contract, Special Contract No. NHPUC-112 (NHPUC-112), between PSNH and James River Paper Company, Inc., a Virginia based corporation with paper and related manufacturing facilities located in Berlin and Gorham, New Hampshire (James River-

Page 518

Berlin/Gorham). PSNH describes the intent of NHPUC-112 as an important component to James River-Berlin/Gorham's efforts to maintain its manufacturing operations at Berlin and Gorham, especially as James River expected to spin off the Communications Papers and specialty packaging papers segment of the company into a separate company, Crown Vantage, as NHPUC-112 was being filed.[1(57)] PSNH states that an additional longer term objective of NHPUC-112 to defer Crown Vantage's cogeneration option thereby maintaining PSNH sales. NHPUC-112, which contains ten-year rates and conditions and cannot be terminated by either party before eighty-four months from the Effective Date of the contract, supersedes NHPUC-71, the existing special contract between PSNH and James River-Berlin/Gorham and its successors and assigns. NHPUC-71 is a special contract for discounted electric rates that phase out over its five-year term. The discount will be completely phased-out at the end of 1996 and NHPUC-71 terminates on December 31, 1997. NHPUC-71 was approved by the Commission on July 14,

1992 in DR 91-125. *See* Order No. 20,540.

In the instant docket, PSNH's filing included, in both redacted and unredacted form, the special contract, testimony, a technical statement by PSNH and a technical statement from Crown Vantage supporting a discounted rate for Crown Vantage based on the financial problems facing the Berlin/Gorham facilities and the viable cogeneration alternative available to Crown Vantage. PSNH also requested protective treatment for certain information considered confidential in the filing. On May 15, 1995, the Commission granted PSNH's Motion for Confidentiality. *See* Order No. 21,653. On June 20, 1995, the Office of Consumer Advocate, citing the passage of Senate Bill 168, withdrew its May 9, 1995 Request for Hearing.

PSNH asserts in its filing that NHPUC-112 is designed primarily for business retention as Crown Vantage faces increased financial pressure due to the severe economic conditions in the pulp and paper industry during 1993 and 1994 and the spin-off of the Berlin/Gorham facilities from James River to newly formed Crown Vantage. The Berlin/Gorham facilities form the largest mill complex of Crown Vantage. PSNH believes NHPUC-112 will assist Crown Vantage in remaining a viable New Hampshire business.

NHPUC-112 is also designed to meet the long-term benefit to PSNH and its customers of deferring cogeneration and thereby retaining the load of Crown Vantage. In 1993, Crown Vantage installed a new chemical recovery boiler. PSNH asserts the new chemical recovery boiler has created a cost-effective opportunity for the installation of a 15 MW steam turbine generator. An independent cogeneration analysis was undertaken by an experienced cogeneration developer that supports the viability of cogeneration. Crown Vantage undertook its own cogeneration study which indicated cogeneration as a viable energy alternative. PSNH avers that its own analysis supports the technical and economical feasibility of cogeneration for Crown Vantage. PSNH has, therefore, priced NHPUC-112 to provide Crown Vantage with a discount sufficient to make cogeneration unattractive and to ensure that over the long term Crown Vantage remains a customer of PSNH.

PSNH attests that Crown Vantage's purchased electric costs from PSNH represent a significant portion of Crown Vantage's total operating costs. PSNH argues that retaining the load and the resulting contribution to fixed costs will, among other things, help to mitigate upward pressure on rates thereby protecting PSNH's customers from the effects of lost revenue and sales while maintaining PSNH's shareholder value.

An attached technical statement by Ronald A. Baillargeon, Manager of Engineering Group, Environmental Services, and Power Generation/Distribution Systems for Crown Vantage, supports NHPUC-112. Mr. Baillargeon states the mills at Berlin/Gorham are very old facilities which are costly to operate and maintain and are challenged to meet the efficiencies of the newer, more efficient mills.[2(58)] Mr. Baillargeon emphasizes that despite recent poor financial performance of the Berlin/Gorham facilities, the spin-off and recent operating improvements such as the new chemical recovery boiler and a number of conservation measures position Crown Vantage to

increase production and reduce energy costs. Purchased electric costs are a significant cost to

Crown Vantage according to Mr. Baillargeon. He believes the high purchased power costs from PSNH put Crown Vantage at a disadvantage to its competitors. Mr. Baillargeon states NHPUC-112 would improve Crown Vantage's viability and is similar in nature to other agreements it has received from other suppliers.

The pricing in NHPUC-112 consists of rates of electric service for each facility, Berlin and Gorham, that are lower than otherwise available under applicable tariff rates or the rates in effect currently under NHPUC-71. A Monthly Metering and Administrative Charge of $5,000 is billed each month for the term of NHPUC-112. All demand and energy taken by Crown Vantage during each 30-minute period up to 8,000 kW, the "Contract Demand" level, is considered Firm Service used to supplement Crown Vantage's own hydro and steam generation. The Monthly Distribution/Transmission Demand Charge ($/kW of Contract Demand) is $5.22 effective June 1, 1996 until June 1, 1999 and increases annually thereafter at approximately 4 - 4.5 percent. The Generation Capacity Charge ($/kVA of Billing Demand) remains constant from June 1, 1996 through May 31, 1999 at $1.73 per kVA. On June 1, 1996 it increases to $2.08 per kVA, a 20 percent change, and escalates thereafter by 20 percent annually for the remainder of the contract.

The energy charges for all energy used up to the level of the Contract Demand for the first 2,000,000 kWh shall be priced at the total of PSNH's Fuel and Purchased Power Adjustment Clause (FPPAC) Base Amount (BA), the FPPAC rate, the full level of Nuclear Decommissioning Charges (NDC) plus 1.75 cents per kWh. All amounts over 2,000,000 kWh are billed at FPPAC BA plus the FPPAC rate plus NDC plus 0.5 cents per kWh. All capacity and energy above the level of Contract Demand and not determined to be Replacement Power will be billed as Non-Firm Service and priced at 125 percent of PSNH's Incremental Cost unless the total cost of Non-Firm Service is determined to be greater than what the cost would have been under the energy rates of tariff Rate LG in which case the Rate LG tariff energy rates would apply.

Crown Vantage may sell its excess electric energy to PSNH at 80 percent of PSNH's decremental cost which will be determined in accordance with NEPEX Criteria, Rules and Standards Number 11.

As a condition of service under NHPUC-112, Crown Vantage and PSNH agree to a number of provisions. *Article 12 - Additional Generation* states Crown Vantage agrees to utilize PSNH as its sole supplier of electricity and will not displace PSNH electricity sales through purchases of power from third parties or by installing its own additional generation. Crown Vantage may make changes to its hydroelectric facilities as part of any hydroelectric relicensing proceedings before the Federal Energy Regulatory Commission. Crown Vantage also agrees not to install or allow a third party to install additional generation for sale or use by a third party.[3(59)]

Article 14 - Early Termination specifies that either party may terminate NHPUC-112 with six months written notice, but no sooner than eighty-four months from the Effective Date of the contract as defined in *Article 16 - Effective Date and Contract Term*. According to Article 16, except as provided in Article 14, NHPUC-112 continues in full force and effect for the ten year period from the Effective Date and remains in effect thereafter until either party provides the other with ninety days written notice.

II. COMMISSION ANALYSIS

The Commission has reviewed NHPUC-112, the supporting materials and the information on the land affected by NHPUC-112. We have conducted our review pursuant to the language of RSA 378:18, which gives the Commission the authority to approve special contracts when "special circumstances exist which render such departure from the general schedules just and consistent with the public interest ... ." In addition, we note that since NHPUC-112 was filed with the Commission, new legislation, SB 533, has been passed regarding special contracts and economic development and

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business and load retention tariffs. *See* Laws of 1996, Chapter 186 (effective June 3, 1996).

In the above-referenced statute, the Legislature clearly indicated its preference for tariffed retention rates over special contracts. *See* Laws of 1996, Chapter 186, section 1, subsection III. However, the Legislature has also recognized that "special contracts may be necessary in some circumstances." *Id.* Under RSA 378:18-a, II, effective June 3, 1996, load retention contracts are available to customers only if the utility represents that the load would have otherwise left the utility, the contracts are approved pursuant to RSA 378:18 and the Commission determines that no tariffed rate is sufficient to retain the load.

Arguably the provisions of RSA 378:18-a, II are inapplicable to special contracts executed prior to June 3, 1996. However, inasmuch as the legislative directives contained therein are tantamount to criteria for determining whether the contract is "just and consistent with the public interest" under RSA 378:18, we will not ignore them. Instead, we will direct PSNH to indicate whether any of its tariffed rates, including the business retention rates filed on June 26, 1996, is sufficient to retain this load.

Assuming that PSNH is successful in demonstrating the insufficiency of its tariffed rates, our analysis does not end there. In determining whether the contract is just and consistent with the public interest, we are mindful of newly-enacted legislation regarding electric industry restructuring which requires that we "aggressively pursue restructuring and increased customer choice in order to provide electric service at lower and more competitive rates." Laws of 1996, Chapter 129, section 1, subsection III. We also note that the Legislature has directed the Commission to seek to implement "full customer choice among electricity suppliers in the most expeditious manner possible." RSA 374-F:3, XV.

[1-3] Contractual provisions that limit the development of generation and prevent customer choice for periods beyond the time when retail competition is likely to be implemented are inconsistent with the provisions of RSA 374-F and therefore are neither just nor in the public interest. Thus, the contractual provision preventing third party generation, *Article 12 - Additional Generation*, which we have found objectionable in prior orders, is anti-competitive in that it prevents Crown Vantage from allowing any third party from installing additional generation for sale or use by the third party. This is particularly true in this situation given the nature of the land and its current and prior usage. We will therefore, as a condition of our approval, require that the sentence that prohibits Crown Vantage from installing or allowing a third party to install additional generation be removed.

Based upon our review of this filing, we find that Special Contract No. NHPUC-112, because

of its combination of generating facilities, viable cogeneration option, high purchased power electric costs and the level of those costs as a portion of its total variable costs, contains special circumstances that qualify it for departure from standard tariff rates pursuant to RSA 378:18. We are convinced that NHPUC-112 would provide benefits to Crown Vantage and PSNH and its other customers absent the anti- competitive provisions contained in NHPUC-112, i.e. Article 12 and the term language contained in *Article 14 - Early Termination.* As we make the transition to retail competition we cannot afford to allow incumbent monopoly providers of electricity to enter into contractual arrangements that could undermine both the advent and level of competition in the state. We acknowledge that the exact nature of the changes that will occur in this industry are still unknown. The direction toward increased competition, however, is clear. As proposed, NHPUC-112 would remove from the future market one of the largest customers, as well as one of the largest electricity generators, in the state. In isolation, the effects of one special contract may not be deleterious to the forthcoming evolution of the industry. However, NHPUC-112 cannot be viewed as an isolated special contract. The contractual terms contained in pending special contracts and tariffs for economic development and business retention tariffs all contain sole supplier language that retains the customer beyond the implementation date for retail competition the Legislature has set out in HB 1392. Therefore, we will approve

NHPUC-112 conditioned on PSNH demonstrating that no tariff is sufficient to retain this load, and further conditioned upon PSNH and Crown Vantage amending NHPUC-112 to delete the second sentence of Article 12 and modify the minimum term language contained in *Article 14 - Early Termination* to state that the contract may be terminated upon either eighty-four months from the Effective Date or upon the date that retail competition is approved by this Commission, whichever event occurs first.

Our conditional approval of NHPUC-112 should greatly help Crown Vantage remain a viable New Hampshire business while ensuring that special contracts are not used to impede or circumvent future competition.

Based upon the foregoing, it is hereby

ORDERED *Nisi*, that Special Contract No. NHPUC-112 between PSNH and Crown Vantage, Inc. is APPROVED, subject to the condition that PSNH demonstrates by July 22, 1996 that no tariffed rate is sufficient as discussed herein and files NHPUC- 112 in accordance with the changes to *Article 12 - Additional Generation* and *Article 14 - Early Termination* indicated herein and makes no other changes; 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, 1996 and to be documented by affidavit filed with this office on or before August 5, 1996; and it is

FURTHER ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or file a written request for a hearing on this matter before the Commission no later than July 29, 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 August 5, 1996; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective August 12, 1996, 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, 1996.

Concurring Opinion of
Commissioner Bruce B. Ellsworth

[4] I was, and am, prepared to approve NHPUC-112 as filed on April 25, 1995.

My colleagues and I agree on the need to move forward quickly and aggressively into the exploration of a competitive environment. We agree that customers should be given a choice in the terms and conditions under which they obtain electric utility service.

However, we do not agree on whether or not constraints should be allowed to be placed on contracts during this period of transition, or on the amount of regulatory control which should be imposed during this period.

So long as the contract purchaser is satisfied with the provisions of the contract, and so long as the contract does not impose any financial, operational or safety burdens on other customers, then I am prepared to support a contract between the parties. I will not substitute my judgment for the judgment of either of two willing parties in determining whether or not a contract is in their best interests.

I would not deny the parties the opportunity to agree to the provisions of *Article 14 - Early Termination* which commits Crown Vantage to an 84 month contract term. I would not be critical, as is the majority, of the provisions of *Article 12 - Additional Generation* by which Crown Vantage agrees not to allow any third party from installing additional generation for sale or use by a third party.

I find it understandable and proper that PSNH take reasonable steps to minimize the amount of stranded investment that may result as a consequence of competition by attempting to include provisions in their contracts which commit their customers for extended periods of time. While each of those provisions will be subject to a test of fairness and necessity, I would be at least as critical of their failure to attempt to mitigate stranded costs as I would be of their attempts to retain their customers.

Accordingly, I was prepared to sign an

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approving order for the contract as it was submitted. However, I will join in signing it if it is modified as the majority requested. I also join them in all other aspects of the order.

Bruce B. Ellsworth
Commissioner

July 8, 1996

FOOTNOTES

[1]In August 1995, the Berlin/Gorham facilities became part of the new spin-off company, Crown Vantage, Inc. James River Corp. had sold its Groveton facilities to Wausau Paper Mills Company of Wausau, Wisconsin in 1993. Crown Vantage will be used in place of James River-Berlin/Gorham for the remainder of this order.

[2]Pursuant to a telephone conversation with Staff, Mr. Baillargeon agrees to have certain portions of his technical statement and PSNH's technical statement be amended to include information that can not be considered confidential. This order includes descriptions that reflect those changes.

[3]By letter of the Executive Director of the Commission, dated November 9, 1995, PSNH was directed to file supplemental information on the James River (Crown Vantage) special contract. Specifically, the Commission requested information on the land affected by NHPUC-112, including whether the land affected had generation potential. On November 27, 1995, PSNH filed a two-page summary of the information requested. PSNH also included with the summary a map showing the generating facilities of Crown Vantage. PSNH stated that NHPUC-112 is partly a direct result of the substantial generating potential of Crown Vantage.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 92-125, Order No. 20,540, 77 NH PUC 346, July 14, 1992.

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NH.PUC*07/08/96*[89239]*81 NH PUC 523*Public Service Company of New Hampshire

[Go to End of 89239]

81 NH PUC 523

Re Public Service Company of New Hampshire

DR 96-077
Order No. 22,226

New Hampshire Public Utilities Commission

July 8, 1996

ORDER rejecting a proposal that a $36.5 million refund of overcollected fuel and purchased power adjustment clause (FPPAC) rates be made by an electric utility on a customer-specific basis. Commission affirms that the refunds should be provided in an across-the-board manner through reductions in future FPPAC periods.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 57

[N.H.] Billings and collections — Refunds of overrecoveries — Fuel and purchased power adjustment clause (FPPAC) — Effectuation of refunds via across-the-board reductions in future FPPAC periods — Electric utility. p. 524.

2. REPARATION, § 43.1

[N.H.] Method and award — Persons to benefit — Refunds of overrecovered fuel and purchased power adjustment clause (FPPAC) rates — Rejection of customer-specific refunds — Effectuation of refunds via across-the-board reductions in future FPPAC periods — Electric utility. p. 524.

3. REPARATION, § 42

[N.H.] Method and award — Provision for interest — Refunds of overrecovered fuel and purchased power adjustment clause rates — Electric utility. p. 524.

Page 523

BY THE COMMISSION:

ORDER

On June 3, 1996 the New Hampshire Public Utilities Commission (Commission) issued Order No. 22,181 regarding the Fuel and Purchased Power Adjustment Clause (FPPAC) proceeding for Public Service Company of New Hampshire (PSNH) for the period June 1, 1996 through November 31, 1996. Order No. 22,181 required, among other things, refund of $36.5 million to PSNH customers for small power producer amortizations that should not have been collected from ratepayers over the past four years pursuant to Paragraph B. (K), plus interest.[1(60)]

[1-3] The Campaign for Ratepayers Rights (CRR) filed, on June 13, 1996, a Petition for Customer-Specific Reparation, to which PSNH objected on June 21, 1996. CRR, which was not an intervenor in this case, asked that the $36.5 million refund be made on a customer-specific basis, rather than through a reduction in the next two FPPAC periods. CRR asserted that an across the board reduction to FPPAC would not fairly reflect the disparities in usage for seasonal customers. Further, PSNH should be able to effectuate a customer-specific refund in that it makes stockholder payments on an individual basis and in 1987 was ordered to refund monies on a customer-specific basis. CRR also asked that interest be applied to each customer's individual refund.

PSNH objected, stating that CRR's request is unduly burdensome and fails to adhere to the requirements of FPPAC as defined in the Rate Agreement. PSNH states that it maintains customer records extending only 15 months (with earlier records archived) and that the 1987 case involved a refund for the most recent 12 months only, which could more readily be accessed. Further, because the refund extends over two FPPACs, covering 12 months, seasonal disparities will not be an issue.

We are not persuaded that CRR's Petition is in the public interest and, therefore, will deny

the request. For PSNH to carry out the refund on a customer-specific basis, going back four years, would require inordinate time and expense. PSNH would have to locate past customers, some of whom would no longer be at the prior address or even in the state, pro-rate the refund to those who were customers for only a portion of the four year period in question, and mail individual checks to each.

FPPAC, as well as the semi-annual purchased power adjustments and fuel adjustments used by other electric utilities and cost of gas adjustments used by gas utilities, is designed to allow for changes in customers' bills to address over-recovery and under-recovery for prior periods without need for a full rate case. In cases of over- recovery, we routinely order a reduction in the next occurring adjustment charge to bring the utility back in line with actual costs incurred. In the case of under-recovery we order an increase in the next adjustment charge. We have never ordered refunds (for over-recovery) or additional charges (for under-recovery) on a customer-specific basis and do not believe it would be manageable or fair to do so in this case.

Because we do not consider customer-specific refunds to be appropriate in a case such as this, we will not evaluate whether the Rate Agreement would require amendment in order to make a customer-specific refund.

CRR also asks that refunds be made with interest. While we will not order customer-specific refunds, we have already stated that the refund is to be with interest. The full order on this FPPAC proceeding addresses the refund and interest in detail. CRR's second request, therefore, is moot.

Based upon the foregoing, it is hereby

ORDERED, that CRR's Petition for Customer-Specific Reparation is DENIED.

By order of the Public Utilities Commission of New Hampshire this eighth day of July, 1996.

FOOTNOTES

[1]The Commission is finalizing a detailed order fully addressing the issues and Commission holdings for this FPPAC period.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 96-077, Order No. 22,181, 81 NH PUC 438, June 3, 1996.

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NH.PUC*07/08/96*[89240]*81 NH PUC 525*MCI Telecommunications Corporation of New Hampshire

[Go to End of 89240]

81 NH PUC 525

Re MCI Telecommunications Corporation of New Hampshire

DS 96-191
Order No. 22,227

New Hampshire Public Utilities Commission

July 8, 1996

ORDER approving an interexchange telephone carrier's proposed introduction of a new flat-rate toll product, "Sure Save Sense Calling."

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1. RATES, § 582

[N.H.] Telephone rate design — Toll services — Tariff revisions — Introduction of "Sure Save Sense Calling" — Flat-rate toll product — Grandfathering of existing flat-rate customers — Interexchange carrier. p. 525.

BY THE COMMISSION:

ORDER

[1] On June 12, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from MCI Telecommunications Corporation of New Hampshire (MCI) requesting authority to introduce Sure Save Sense Calling Option and grandfather existing MCI Flat Rate customers for effect July 11, 1996.

The Sure Save Sense Calling Option is a toll product offering a flat rate of $0.31 per minute Monday through Friday between 7 a.m. and 7 p.m., and $0.26 per minute during other times.

The filing also proposes to grandfather MCI Flat Rate service to existing customers. Effective July 11, 1996, MCI Flat Rate will no longer be available to new customers.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize MCI to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of MCI's tariff, NHPUC No. 1 are approved for effect as filed:

52nd Revised Page 1

29th Revised Page 2

30th Revised Page 3

2nd Revised Page 25.5

3rd Revised Page 33;

and it is

FURTHER ORDERED, that MCI file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this eighth day of July, 1996.

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NH.PUC*07/09/96*[89241]*81 NH PUC 525*Union Telephone Company

[Go to End of 89241]

81 NH PUC 525

Re Union Telephone Company

DR 95-311
Order No. 22,228

New Hampshire Public Utilities Commission

July 9, 1996

ORDER granting in part and denying in part motions for confidentiality as to certain data

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requested pursuant to an investigatory proceeding relating to alleged excess earnings by a local exchange telephone carrier.

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1. PROCEDURE, § 16

[N.H.] Discovery and inspection — Confidentiality — As to data requests in earnings investigation — Granted as to third-party billing service revenues — Denied as to executive salary levels — Local exchange telephone carrier. p. 526.

2. EXPENSES, § 96

[N.H.] Payroll — Executive compensation plans — Necessity of disclosure — In course of earnings investigation — Local exchange telephone carrier. p. 526.

BY THE COMMISSION:

ORDER

On June 3, 1996, Union Telephone Company (Union), pursuant to Puc 203.04, filed with the

New Hampshire Public Utilities Commission (Commission) a motion for confidential treatment for certain responses to Staff's discovery requests (Motion). The responses contain interexchange carrier (IXC) service usage data and employee compensation information.

Union argues that the IXC data should be afforded protective treatment because 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, Union states that it provided the documents required in Puc 204.08(b)(1) and cited the statutory support required by Puc 204.08(b)(2). Union states that the IXC data consists of billing and collection revenues by IXC which is financial and commercial information which may be protected pursuant to the standards established in Puc 204.08(b)(4). Union further provides facts describing the benefits of non-disclosure, thus meeting the requirements of Puc 204.08(b)(3). More specifically, Union alleges that disclosure of the IXC data would result in competitive harm to the IXCs.

Union seeks confidentiality for the compensation information arguing that it too may be protected under RSA 91-A:5,IV. Union states that the compensation information is not generally available to the public, that Union has consistently maintained the confidentiality of individual compensation information and that disclosure of the compensation information would result in harm to its efforts in maintaining a cost effective, productive work force.

The detailed information regarding revenues and compensation contained in the responses is critical to the Commission's investigation in this docket.

[1, 2] 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 to Union and the IXCs appear to outweigh the benefits of disclosure of the IXC data to the public. The IXC data should be exempt from public disclosure pursuant to RSA 91-A:5,IV and N.H. Admin. Rules, Puc 204.08.

Under the same balancing test, however, the benefits of non- disclosure of all compensation data do not appear to outweigh the benefits of disclosure of the compensation data. Contrary to Union's assertion that this information is not publicly available, some of the employee salary information sought to be protected is already available to the public. Utilities must file with the Commission annual reports pursuant to RSA 374:13. These reports, which are publicly available, require disclosure of compensation for the utility's officers, in this case the President, Vice President, Treasurer and Chief Executive Officer. As to these officers, we will deny Union's Motion. For all other employees for whom protection is requested, we find the information to be exempt from public disclosure under RSA 91-A:5,IV in that it is financial and personnel information which Union has traditionally kept confidential.

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Based upon the foregoing, it is hereby

ORDERED, that Union's Motion is GRANTED IN PART to the extent it relates to IXC service usage data and compensation for employees, excluding officers; and it is

FURTHER ORDERED, that Union's Motion is DENIED IN PART to the extent it relates to compensation for officers identified in the Commission's annual report; and it is

FURTHER ORDERED, that this order is subject to reconsideration in the event that the Commission Staff or any party raises concerns and it is subject to the on-going right of the Commission to reconsider this order in light of RSA 91-A, should circumstances so warrant.

By order of the Public Utilities Commission of New Hampshire this ninth day of July, 1996.

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NH.PUC*07/09/96*[89242]*81 NH PUC 527*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 89242]

81 NH PUC 527

Re New England Telephone and Telegraph Company dba NYNEX

DR 96-187
Order No. 22,229

New Hampshire Public Utilities Commission

July 9, 1996

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 Cabletron Systems, Inc., for fiber distributed data interface service.

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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 therein — Benefits of nondisclosure as outweighing those of disclosure. p. 528.

BY THE COMMISSION:

ORDER

On June 7, 1996, New England Telephone and Telegraph Company (NYNEX) filed with the New Hampshire Public Utilities Commission (Commission) Special Contract (No. 96-7) amending an earlier special contract with Cabletron Systems, Inc. (Cabletron) 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.

The special contract filing was accompanied by a Motion for Proprietary Treatment of the cost analysis and Customer Proprietary Network Information (CPNI) in the contract and its supporting material (hereinafter the Information). Neither the Commission Staff nor the Office of Consumer Advocate has taken a position regarding the motion.

On July 2, 1996 by Order *Nisi* No. 22,216 the Commission approved the contract, required NYNEX to file within 45 days administrative corrections to the contract signed by both parties, and stated that it would address the Motion for a Proprietary Treatment in a separate order.

In its motion NYNEX argues that the Information should be afforded protective treatment because, using our analysis in *Re NET*, Order No. 21,731, 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, NYNEX states that it provided the documents required in Puc 204.08(b)(1) and cited the statutory support required by Puc 204.08(b)(2). NYNEX states that the Information consists of customer specific, competitively sensitive data relating to the cost data underlying the special contract, network size, routing and configuration data, information regarding specific service features, price and incremental

costs, contract terms such as special rates and billing details, and Cabletron's use of the telephone network, Thus, it meets the requirements of Puc 204.08(b)(4). NYNEX further provides facts describing the benefits of non-disclosure, thus meeting the requirements of Puc 204.08(b)(3).

[1] NYNEX has alleged that disclosure of the Information would result in harm because release of the Information regarding network facilities and systems features would comprise Cabletron's business plan and provide its competitors with valuable technical and operational information that it has devoted time and resources to develop. NYNEX also seeks to protect the customer specific features, services and pricing information based on its general policy of protecting customer information, consistent with policies protecting CPNI adopted by the Commission and the Federal Communications Commission.

In addition, the costing data for customer-specific components and equipment would likely be part of network designs developed by NYNEX in response to future requests for service. Release of the Information, it is alleged, would place NYNEX at a competitive disadvantage when proposing similar network solutions to other customers that they could use as a bargaining lever. Release of the Information would also jeopardize NYNEX's ongoing commercial relationship with its suppliers and affect the contract price for necessary equipment.

The detailed customer specific information regarding customer usage, costs and pricing contained in the Information is critical to review of the special contract by the Commission and Commission Staff, as required by RSA 378:18.

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) and *NET*, Order No. 21,731, dated July 10, 1995, the benefits of non-disclosure to Cabletron, NYNEX and the general body of ratepayers in this case appear to outweigh the benefits of disclosure to the public.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that NYNEX's Motion for Proprietary Treatment of the cost analysis and CPNI in the contract with Cabletron and its supporting material is granted; and it is

FURTHER ORDERED, that this order is subject to reconsideration in the event that the Commission Staff or any party raises concerns and it is subject to the on-going right of the Commission to reconsider this order in light of RSA 91-A, should circumstances so warrant.

By order of the Public Utilities Commission of New Hampshire this ninth day of July, 1996.

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. [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*07/09/96*[89243]*81 NH PUC 528*AT&T Communications of New Hampshire, Inc.

[Go to End of 89243]

81 NH PUC 528

Re AT&T Communications of New Hampshire, Inc.

DS 96-189
Order No. 22,230

New Hampshire Public Utilities Commission

July 9, 1996

ORDER authorizing an interexchange telephone carrier to offer its "MultiQuest" and "MultiQuest 900 Express" services to both state and local governmental agencies, at a rate slightly reduced from the standard one.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — "MultiQuest" services — Availability to state and local governmental agencies — Slight price reductions — Interexchange telephone carrier. p. 529.

Page 528

BY THE COMMISSION:

ORDER

[1] On June 11, 1996, the New Hampshire Public Utilities Commission (Commission) received a request from AT&T Communications of New Hampshire, Inc., (AT&T) to revise its MultiQuest and MultiQuest Express 900 services for effect July 10, 1996.

The revisions make MultiQuest and MultiQuest 900 Express available to state and local governments. State and local government rates for these services are slightly reduced from the standard rate.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize AT&T to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of AT&T's tariff, NHPUC No. 1 are approved for effect as filed:

Section 6

Table of Contents Original Page 8

1st Revised Page 2

1st Revised Page 3

1st Revised Page 4

3rd Revised Page 5

Original Page 6

Section 15

Table of Contents Original Page 17

1st Revised Page 2

1st Revised Page 3

1st Revised Page 4

2nd Revised Page 5

Original Page 6;

and it is

FURTHER ORDERED, that AT&T file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this ninth day of July, 1996.

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NH.PUC*07/09/96*[89244]*81 NH PUC 529*North American InTeleCom, Inc.

[Go to End of 89244]

81 NH PUC 529

Re North American InTeleCom, Inc.

DS 96-190
Order No. 22,231

New Hampshire Public Utilities Commission

July 9, 1996

ORDER authorizing a telecommunications carrier to provide operator services to guests in hotels and motels.

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1. RATES, § 585

[N.H.] Telephone rate design — Toll services — Operator services provided to hotel/motel guests — Interexchange carrier. p. 529.

2. SERVICE, § 468

[N.H.] Telephone — Toll services — Operator services provided to hotel/motel guests — Availability of credit card billings — Interexchange carrier. p. 529.

BY THE COMMISSION:

ORDER

[1, 2] On June 11, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from North American InTeleCom Inc., (NAI) requesting authority to include provision of operator services for hotel/motel guest telephones and credit card billing in its tariff, for effect July 11, 1996.

We find the proposed changes to be in the public good. The Commission permits

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flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize NAI to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of NAI's tariff, NHPUC No. 1 are approved for effect as filed:

1st Revised Page 1

1st Revised Page 2

1st Revised Page 6

1st Revised Page 7

1st Revised Page 8

1st Revised Page 14

1st Revised Page 19;

and it is

FURTHER ORDERED, that NAI file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this ninth day of July, 1996.

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NH.PUC*07/09/96*[89245]*81 NH PUC 530*Western Union Communications, Inc.

[Go to End of 89245]

81 NH PUC 530

Re Western Union Communications, Inc.

DS 96-195
Order No. 22,232

New Hampshire Public Utilities Commission

July 9, 1996

ORDER authorizing an interexchange telephone carrier to make various tariff revisions, so as to note a change in address and to reduce rates for certain debit calling cards.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Tariff revisions — Reduction in rates for certain debit calling cards — Notation of change in address — Interexchange telephone carrier. p. 530.

BY THE COMMISSION:

ORDER

[1] On June 13, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from Western Union Communications, Inc. (WUC) requesting authority to

make administrative changes to its tariff, for effect July 13, 1996.

WUC's address has been changed on each page of the tariff. In addition, language has been added to clarify that certain calls may not be made using WUC's debit card. Lower rates are also being introduced for debit cards purchased after June 1, 1996.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize WUC to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that WUC's tariff, NHPUC No. 3, Original pages, is approved for effect as filed; and it is

FURTHER ORDERED, that WUC file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this ninth day of July, 1996.

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NH.PUC*07/09/96*[89246]*81 NH PUC 531*Allnet Communications Services, Inc., dba Frontier Communications

[Go to End of 89246]

81 NH PUC 531

Re Allnet Communications Services, Inc., dba Frontier Communications

DS 96-196
Order No. 22,233

New Hampshire Public Utilities Commission

July 9, 1996

ORDER authorizing an interexchange telephone carrier to initiate "Baseline 800" service, a toll-free switched access inbound 800 service.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Introduction of "Baseline 800" service — Special rates for toll-free, switched access inbound 800 service — Interexchange telephone carrier. p. 531.

BY THE COMMISSION:

ORDER

[1] On June 13, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from Allnet Communication Services, Inc., d/b/a Frontier Communications (Frontier) requesting authority to introduce Baseline 800 service, for effect July 15, 1996.

Baseline 800 service is a toll-free switched access inbound service. The service is an add-on to Frontier's interstate offering.

We find the proposed changes to be in the public good. New services expand the choice of telephone services and foster competition in the New Hampshire intrastate toll market which allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize the introduction of Baseline 800.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of Frontier's tariff, NHPUC No. 2 are approved for effect as filed:

Original Page 61.1

1st Revised Page 66

Original Page 84.1;

and it is

FURTHER ORDERED, that Frontier file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this ninth day of July, 1996.

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NH.PUC*07/10/96*[89247]*81 NH PUC 531*Public Service Company of New Hampshire

[Go to End of 89247]

81 NH PUC 531

Re Public Service Company of New Hampshire

DR 96-077
Order No. 22,234

New Hampshire Public Utilities Commission

July 10, 1996

ORDER addressing overcollections, cost deferrals, and the effect of three nuclear plant outages within the context of an electric utility's fuel and purchased power adjustment clause (FPPAC) proceeding. Although the commission agrees to continue the existing FPPAC rate of zero, it determines that certain past FPPAC recoveries have been improperly deferred, such that ratepayers are entitled to a refund of FPPAC overcollections of $36.5 million over the next two

years.

Moreover, the commission finds that unplanned, prolonged outages at the Millstone 3, Seabrook, and Vermont Yankee nuclear power plants were the result of management imprudence, such that associated replacement power costs are disallowed. The commission

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comments that even though the utility was neither in control of nor operating the plants, its ownership interest in each plant rendered it proportionally liable for plant costs. All owners were found to have had sufficient warning about possible mussel fouling at the Millstone plant as well as a malfunctioning reactor trip at the Seabrook station, such that prudent measures could have been taken in time to prevent the outages caused by those conditions.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 10

[N.H.] Direct energy costs — Fuel and purchased power adjustment clause — Purpose — To help even out projected rate path — Formula approach to limit annual rate increases to no more than 5.5% — Electric utility. p. 539.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 57

[N.H.] Billing adjustments — For over- or undercollections — Deferrals to assure compliance with 5.5% annual rate increase limit — Effect of improper deferrals — Overcollections to be refunded to ratepayers. p. 539.

3. AUTOMATIC ADJUSTMENT CLAUSES, § 53

[N.H.] Billing adjustments — For over- or undercollections — Effective fuel and purchased power adjustment clause (FPPAC) rate as a factor — FPPAC rate of zero versus positive FPPAC rate — Overcollections as an offset to certain cost deferrals versus refunds to customers, respectively — Electric utility. p. 539.

4. REPARATION, § 15

[N.H.] Grounds for allowing — Overcollections of fuel and purchased power adjustment clause (FPPAC) rate — Improper deferrals of certain associated costs — When positive FPPAC rate in effect — Preservation of rate parity under FPPAC formula — Two-year refund period — Electric utility. p. 539.

5. AUTOMATIC ADJUSTMENT CLAUSES, § 10

[N.H.] Direct energy costs — Fuel and purchased power adjustment clause (FPPAC) — Retention of an FPPAC rate of zero — Customer refunds of certain improperly deferred costs — Use of certain FPPAC overcollections as offsets to other deferral accounts — Electric utility. p. 540.

6. AUTOMATIC ADJUSTMENT CLAUSES, § 58

[N.H.] Billing adjustments — Retroactive application — As not violating prohibition on retroactive rate making — Factors — Fuel and purchased power adjustment clause (FPPAC)

rates as not being permanent rates — Statutory authority for continuing commission jurisdiction over FPPAC rates. p. 540.

7. EXPENSES, § 17

[N.H.] Factors affecting recovery — Reasonableness and due diligence in operations — Mismanagement or imprudence as reducing or negating recovery — Nonrecovery of replacement power costs — When ineffective management causes plant outages. p. 541.

8. AUTOMATIC ADJUSTMENT CLAUSES, § 12

[N.H.] Direct energy costs — Fuel and purchased power adjustment clause — Nuclear generating costs as a component — Impact of extended, unplanned outages — Limits on recovery of associated replacement power costs — Factors — Defective design and operation — Liability of each proportionate owner regardless of degree of operational control — Electric utility. p. 543.

9. EXPENSES, § 122

[N.H.] Electric utility — Fuel and

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purchased power costs — Replacement power costs — Incurred due to extended, unplanned outages at nuclear plants — Limits on recovery — Factors — Defective design and operation — Liability of each proportionate owner regardless of degree of operational control. p. 543.

10. ELECTRICITY, § 4

[N.H.] Generating plant — Operating practices — Nuclear plant outages — Millstone 3, Seabrook, and Vermont Yankee units — Imprudent design and operation — Liability for — Merely as result of partial ownership interest — Lack of operational control notwithstanding. p. 543.

APPEARANCES: Cynthia A. Broadhead, Esq. of Northeast Utilities Service Company and 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.; Michael W. Holmes, Esq. of the Office of Consumer Advocate on behalf of residential ratepayers; 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 15, 1996, Public Service Company of New Hampshire (PSNH) filed with the New Hampshire Public Utilities Commission (Commission) a petition for adjustment of rates pursuant to the Fuel and Purchased Power Adjustment Clause (FPPAC) for the period June 1, 1996 through November 30, 1996, along with supporting testimony and exhibits. The Petition

requested a continuation of the current zero FPPAC rate even though PSNH had over-collected approximately $8.5 million in the proceeding six month FPPAC period and conservatively estimated it would over-collect another $10 million by the end of the forthcoming FPPAC period.[1(61)]

The Office of Consumer Advocate (OCA), a statutorily authorized intervenor, fully participated in the proceeding. The New Hampshire Electric Cooperative, Inc. (NHEC) sought late intervention, without opposition, which the Commission granted on April 18, 1996, though NHEC did not further participate in the docket. There were no other requests for intervention.

Prior to making its FPPAC filing, PSNH on February 21, 1996 filed a Motion to Amend Scope (Motion to Amend). In the Motion to Amend, PSNH argued that five issues should be deferred until a later proceeding. Those issues included: two unplanned outages in 1991 at the Millstone Point Unit 3 nuclear generating station, in which PSNH owns a 4.5% share, one caused by mussel fouling of the service water system and the other caused by galvanic corrosion to the service water system; a 1995-1996 refueling outage extension at the Maine Yankee nuclear generating station, in which PSNH owns a 2.85% share; issues involving the Sharing Agreement between PSNH and Northeast Utilities Service Company (NU); and a reactor trip at the Seabrook nuclear generating station in January, 1996.

OCA and Commission Staff (Staff) objected in part, arguing that the two Millstone outages, which had previously been deferred, should be considered in this docket.

The Commission, by Order No. 22,045 (March 11, 1996), granted PSNH's request to defer the Maine Yankee extension, the Sharing Agreement issues and the Seabrook Station reactor trip and denied PSNH's request to defer the two Millstone 3 outages.

On March 15, 1996, PSNH filed a Motion to Reconsider Order No. 22,045 (Motion to Reconsider) solely as it related to the service water system galvanic corrosion outage, which the Commission denied at its March 25, 1996 public meeting and by Order No. 22,143 (May 13, 1996). PSNH subsequently submitted the direct supplemental testimony of Thomas J. Dente regarding the service water system galvanic corrosion outage at Millstone 3.

On April 10, 1996 PSNH filed a Motion

for Protective Order regarding a confidential agreement reached between NU, North Atlantic Energy Service Corporation, and Westinghouse Electric Corporation (Westinghouse), which the Commission granted in Order No. 22,143. The agreement related to Westinghouse's liability for the failure of the Turning Vane Cap Screws (TVCS) to the reactor coolant pumps at both Seabrook and Millstone 3.

On May 8, 1996 Staff submitted the prefiled direct testimony of Arthur C. Johnson, James R. Thyng, Chester A. Kokoszka and Thomas C. Frantz as well as the Staff's consultant Samuel H. Hobbs of GDS Associates. On the same date, OCA submitted the prefiled direct testimony of Kenneth E. Traum.

Also on that date, Staff filed a Motion to Strike Testimony of John W. Noyes and Robert A. Baumann regarding the interpretation of Paragraph B. (K) of Exhibit C to the Rate Agreement

(Paragraph B. (K)).[2(62)] On May 13, 1996 the OCA filed a response in opposition to Staff's Motion. At the start of the hearing on May 14, 1996, PSNH stated it did not oppose the Motion to Strike provided testimony on similar issues by Mr. Traum were similarly stricken. The Commission denied the Motion to Strike.

On May 10, 1996 PSNH filed the rebuttal testimony of Robert A. Baumann, Thomas J. Dente and Anthony M. Callendrello as well as its proposed list of issues to be contested in the hearings. On May 13, 1996, Staff proposed a schedule of witnesses for the hearings, and Staff and OCA submitted modifications to PSNH's statement of issues.

In accordance with the procedural schedule, the Commission heard evidence on May 14, 15 and 16, 1996. PSNH, OCA and Staff filed briefs on May 28, 1996.

On June 13, 1996, the Campaign for Ratepayers Rights (CRR) filed a Petition for Customer Specific Reparation, to which PSNH filed a Response and Objection on June 21, 1996. Order No. 22,226 denied CRR's Petition.

II. POSITIONS OF THE PARTIES AND STAFF

The testimony and briefs raised the following contested issues: (1) whether the FPPAC rate can be negative in this FPPAC period, and the legal ramifications of the positions set forth on this issue by the OCA and Staff; (2) whether PSNH assumed the risk of sales lower than projected at the time the Rate Agreement was approved; (3) whether the 1991 unplannned outage at Millstone 3 caused by mussel fouling of the service water system was the result of imprudence; (4) whether the extension of the 1994 refueling outage at Seabrook Station to repair the TVCS to the reactor coolant pumps was the result of imprudence; (5) whether imprudence was the cause of the unplanned outage at the Vermont Yankee nuclear generating station; (6) whether the economic penalties incurred as a result of imprudence at generating units in the NU "initial system" in which PSNH owns a share or entitlement must be offset by the economic gain resulting from the sale of power under the Sharing Agreement; and (7) whether disallowances for costs incurred in a previous FPPAC period but deferred for review in the current FPPAC period should be refunded under the circumstances of the current FPPAC period or the circumstances as they existed in the FPPAC period in which the costs were incurred.

A. *PSNH*

(1) *Negative FPPAC Rate.*

PSNH argued that although it had admittedly over-collected its FPPAC costs in the previous FPPAC period and projected that it would again over-collect FPPAC costs in the upcoming FPPAC period, the Commission should nonetheless set the FPPAC rate at $0.00 and allow PSNH to use the over-collections to offset certain deferral accounts. PSNH argued that pursuant to Paragraph B. (K) it was allowed to use over-collections in a period of negative FPPAC costs to reduce two deferral accounts. The first deferral account consists of costs incurred in buying back the NHEC's share of Seabrook Station deferred pursuant to Paragraph B. (K). The second deferral account consists of certain costs incurred to purchase power from certain specified small power producers (SPP) deferred pursuant to Paragraph B. (D).

To the extent the OCA or Staff asserted Paragraph B. (K), or an agreement in DR 92-250 among PSNH, the OCA and Staff relative to Paragraph B. (K), required PSNH to further defer, and therefore refund, approximately $36.5 million it had collected from ratepayers since 1992 in contradiction to Paragraph B. (K), PSNH contends that an order to that effect by the Commission would be illegal and unconstitutional.

Initially, PSNH argued that such an order would violate the statute of limitations of two years for reparations set forth in RSA 365:29. PSNH further argued in a footnote, however, that RSA 365:29 was "preempted" by RSA 363-C:3 which provided for the approval of the Rate Agreement "notwithstanding any other provision of law." Thus, PSNH asserted that the Commission could not order reparations because there was no provision in the Rate Agreement for such reparations.

PSNH also argued that because the rate schedules or tariffs setting forth FPPAC rates for the past four years were not only contractual in nature, but had the force and effect of law, any change in those rates would constitute retroactive rate making in violation of the federal and State constitutions.

(2) *Risk of Sales Projections for the Purposes of FPPAC.*

PSNH asserted that it did not accept the risk of sales lower than projected as part of the calculation of FPPAC. That is, PSNH does not believe that the FPPAC rate should be reduced to reflect the fact that sales projections made at the time the Rate Agreement was presented to the Commission under RSA 362-C:3 have not been realized.

PSNH based its position on the fact that FPPAC is reconciled for "actual sales" in the previous six months, not forecasted sales. In a footnote, PSNH further asserts that any risk associated with forecasted sales accepted by PSNH related to base rates because of the rate of return ceiling and floor placed on earnings.

(3) *Millstone 3 Mussel Fouling Outage.*

PSNH asserted the Millstone 3 mussel fouling outage was not the result of "management" imprudence. It supported this position with the assertion that Mr. Hobbs had proffered no testimony supporting a position that the outage was the result of unreasonable actions on the part of management.

PSNH asserted that Mr. Hobbs concluded that the outage was solely the result of unreasonable or imprudent actions on the part of Stone and Webster Engineering Company (Stone and Webster), the architect that designed Millstone 3 and the service water systems. PSNH asserted that this conclusion "had not been proven" by Staff or the OCA.

PSNH further contends that, even assuming for the sake of argument that Stone and Webster was negligent in designing the system, "such negligence cannot be imputed to PSNH unless there is also evidence that PSNH failed to exercise reasonable managerial oversight ... ." Post Hearing Memorandum at 10.

PSNH further asserted that if the emergent work that occurred two days into the mussel fouling outage and lasted beyond the conclusion of the mussel fouling outage was found to be

prudent, the most the Commission could disallow is two days of replacement power costs.

(4) *Seabrook Reactor Coolant Pump Repair Outage.*

PSNH contended that the seven day extension of Seabrook's third refueling outage to repair the TVCS locking cups was not the result of imprudence. PSNH criticized Staff's reliance on the experience of Millstone 3, a sister station of the same design as Seabrook and operated by an NU subsidiary. PSNH argues that Millstone's experience with failing TVCS locking cups on its reactor coolant pumps is not relevant because the locking cups and TVCS at Millstone were of a different design from those at Seabrook.

PSNH also objected to Staff's assertion that TVCS locking cup failures may have been associated with installation errors because there was no evidence that installation of the TVCS and the locking cups required any special skill.

PSNH also asserted that Mr. Hobbs'

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conclusion that Seabrook management failed to fully comprehend and act upon an independent consultant's conclusions relative to noise and vibration detected in the reactor vessel by the loose parts monitoring system was meritless.

(5) *Vermont Yankee Outage.*

PSNH did not put forth a position in testimony or in its post hearing memorandum concerning Staff's conclusion that the automatic shutdown of Vermont Yankee due to the failure of a feedwater regulator valve was the result of imprudence. Given that PSNH continues to seek recovery of the replacement power costs incurred during this outage, however, we conclude that PSNH does not believe the outage was the result of imprudence.

(6) *Effect of the Sharing Agreement on Imprudence Disallowances.*

In the event we conclude the 1991 Millstone 3 outage was imprudent, PSNH asserted that any disallowances must be offset by revenues received by PSNH ratepayers under the Sharing Agreement. PSNH asserted that this has been its practice over the history of FPPAC and the Sharing Agreement even when it has been to the detriment of shareholders and that equity required the continuation of the practice. PSNH further contended that this was the appropriate manner to compute such disallowances as it reflected the actual "economic harm" to ratepayers.

(7) *Proper Treatment of Disallowances.*

PSNH took the position that disallowances should be reflected in the FPPAC period in which the Commission determines the costs were not reasonably incurred.

B. *OCA*

(1) *Negative FPPAC Rate.*

In testimony and its post hearing memorandum, the OCA maintained that Paragraph B. (K) required the deferral of all SPP amortizations made pursuant to Paragraph B. (D) if inclusion of the amortizations in FPPAC would result in more than a 5.5% increase in rates in any year of the fixed rate period.

OCA further argued that Paragraph B. (K) had not been applied in this manner thereby resulting in PSNH collecting $36.5 million it should not have from ratepayers. Thus, OCA concluded the Commission should require PSNH to refund this over-collection plus interest.

(2) *Risk of Sales Projections for the Purposes of FPPAC.*

The OCA argued that shareholders had "unconditionally" accepted the risk that sales projections made at the time of the Rate Agreement would be achieved from the perspective of both base rates and FPPAC. Thus, OCA concluded that the fixed cost components of FPPAC, as compared to the variable cost components such as fuel, should be spread over the projected growth in kWh sales thereby resulting in a lower FPPAC rate.

The OCA based this conclusion on certain references relative to the assumption of risk in Report and Order No. 19,889 approving the Rate Agreement and witnesses' statements in that same proceeding. *Re Northeast Utilities/Public Service Company of New Hampshire,* 114 PUR4th 385, 75 NH PUC 396 (1990).

(3) *Millstone 3 Mussel Fouling Outage.*

The OCA supported the conclusion of Mr. Hobbs and Staff that the 1991 mussel fouling at Millstone 3 was the result of imprudence. The OCA also criticized PSNH's reliance on a decision issued by the Connecticut Department of Public Utility Control (DPUC) finding no imprudence for this outage when in fact an appellate court had remanded the case to the DPUC for further evidentiary proceedings after finding that the Connecticut Office of Consumer Counsel (OCC) had been deprived access to internal plant documents which the DPUC had considered. The OCA also noted that one of PSNH's sister utilities, Connecticut Light and

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Power, had entered into a settlement with the OCC relative to this outage and other issues.

(4) *Seabrook Reactor Coolant Pump Repair Outage.*

Again, the OCA supported the position of Mr. Hobbs and Staff that the seven day extension to Seabrook's third refueling outage to replace the TVCS in the reactor coolant pumps was caused by imprudence.

(5) *Vermont Yankee Outage.*

The OCA put forth no position on this issue.

(6) *Effect of the Sharing Agreement on Imprudence Disallowances.*

The OCA put forth no position on this issue.

(7) *Proper Treatment of Disallowances.*

The OCA took the position that disallowances should be reflected under the relevant circumstances in the FPPAC period in which costs were incurred.

C. *Staff*

(1) *Negative FPPAC Rate.*

In its post hearing memorandum Staff adopted the position of the OCA relative to the interpretation of Paragraph B. (K). Staff also concluded that PSNH had over-collected $36.5 million from ratepayers which should be returned to ratepayers during the fixed rate period with interest.

(2) *Risk of Sales Projections for the purposes of FPPAC.*

Staff took no position on this issue.

(3) *Millstone 3 Mussel Fouling Outage.*

Staff expert, Mr. Hobbs, concluded that the 1991 mussel fouling outage at Millstone 3 was the result of imprudence. Mr. Hobbs based his conclusion on what was or should have been known by the owners and their agent, Stone and Webster, relative to the mussel fouling potential of MONEL piping at the time of the plant's design and construction. In light of this fact, and the knowledge of the potential for mussel fouling in even more toxic piping, Mr. Hobbs concluded that the owners recognized the need for draining with physical examination of this piping when not in use because of the lack of chlorination but failed to provide positive confirmation of system draining which could have been accomplished at a relatively low cost. These methods of positive confirmation could have included a check valve on the system drain to ensure that the system had actually drained or the installation of a viewing port for visual confirmation.

Given these findings Mr. Hobbs concluded the mussel fouling outage was the result of imprudence.

Staff did not recommend the disallowance of the entire cost of replacement power incurred during mussel fouling. Instead, Staff recommended that some percentage of these costs be mitigated in recognition that necessary and prudent repairs were made during the imprudent outage.

(4) *Seabrook Reactor Coolant Pump Repair Outage.*

Staff asserted the extension of Seabrook's third refueling outage caused by loose TVCS and TVCS locking cups in the reactor coolant pumps was the result of imprudence. Staff reached this conclusion based on Millstone 3's experience with problems with its TVCS and TVCS locking cups.

Staff asserted that Millstone 3, a sister reactor to the Seabrook reactor operated by another subsidiary of NU, had an affirmative obligation to share its knowledge relative to these problems with Seabrook management, and that the failure to affirmatively express concerns with the Seabrook style TVCS and TVCS locking cups led to a seven day extension to the third refueling outage. Staff based its assertion

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that NU had an affirmative obligation to alert Seabrook to problems with the TVCS and TVCS locking cups on the $188 million in Seabrook synergies granted to NU as part of the Rate Agreement in reliance on NU's representations that its superior nuclear performance and its operation of Millstone 3, the same type of nuclear station as Seabrook, would result in savings to ratepayers through reduced costs in operating Seabrook.

Mr. Hobbs also found this outage extension imprudent based on his analysis of an independent contractor's conclusions relative to noise and vibration detected in the bottom of the reactor vessel by the loose parts monitoring system prior to this refueling outage. Mr. Hobbs concluded that management was imprudent because it failed to determine the "probable" cause of the noise and vibrations. The combination of the noise and vibration in the reactor vessel and Millstone 3's experience with TVCS and locking cups coming free from the reactor coolant pumps into the reactor vessel led to his conclusion of imprudence.

(5) *Vermont Yankee Outage.*

Staff asserted that this outage occurred because of the poor instructions to technicians contained in the maintenance overhaul procedures manual. Thus, Staff concluded the outage was the result of imprudence.

(6) *Effect of the Sharing Agreement on Imprudence Disallowances.*

Staff argued that imprudence disallowances should not be offset by the revenues acquired by PSNH under the Sharing Agreement because of imprudence. Staff asserted it would be a perverse result to use the Sharing Agreement to allow NU to recover some of, all of, or more than the disallowance made as a result of NU imprudence.

(7) *Proper Treatment of Disallowances.*

Staff took the position disallowances should be reflected under the relevant circumstances in the FPPAC period in which costs were incurred.

III. COMMISSION ANALYSIS

We will address the contested issues in the order set forth in the positions of the parties.

(1) *Paragraph B. (K).*

An interpretation of Paragraph B. (K) has never been directly addressed by the Commission since its approval of the Rate Agreement. Although Paragraph B. (K) is mentioned in a settlement agreement in an FPPAC proceeding in 1992, the settlement agreement only addresses the methodology to be used in computing the reductions that should be applied to Paragraph B. (K) deferrals and does not address what costs should be deferred pursuant to Paragraph B. (K). The settlement agreement specifically limited its application to that proceeding and the circumstances in place at that time.[3(63)] As such, we do not find it relevant to the question posed in this docket.

Thus, the interpretation and application of Paragraph B. (K) of FPPAC is an issue of first impression for the Commission.

FPPAC is computed pursuant to the following formula in the Rate Agreement:

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

$$FPPAC = \{[\frac{(ENf + PCf + EA)}{(kWh\ Req\ X\ DE)} - BA]\ X\ SFT\} + PA$$

Rate Agreement at D-91.

Paragraph B. (K) is an element of the first item in the numerator of this formula, ENf, the forecasted energy expense. Paragraphs B. (A) through B. (K) in the Rate Agreement specify what costs may be included in the forecasted energy expense. Rate Agreement, D-93 - D-103.

As the parties and Staff have pointed out, Paragraph B. (K) consists of two sentences, the first of which, though somewhat convoluted, is the key to its interpretation and application. The relevant language in this sentence reads as follows:

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> K) Notwithstanding paragraphs D [allowance for SPP costs, deferrals and amortizations], F and J (with E), in the event increases in customer charges would be required ... because amounts previously deferred under paragraphs D or J are to be recovered with or without a return, then in such case recovery of the additional expense pursuant to said paragraphs and, to the extent necessary, recovery of the amounts previously deferred pursuant to paragraphs D or J will be limited \&... and deferred for future recovery through FPPAC \&... to the extent that such deferral is required to limit the additional increase in customer charges each year by reason of paragraphs D, F and J (with E) and this paragraph and the return thereon to 0% of the amount which would have been collected from customers if all of the reference assumptions were achieved.

Rate Agreement D-102

[1] This language reveals that Paragraph B. (K) was designed as a mechanism to help achieve the projected rate path of the Rate Agreement: seven 5.5% annual rate increases. To effectuate this goal, Paragraph B. (K) excludes certain costs under certain circumstances from ENf that would otherwise be included in ENf through the operation of Paragraphs B. (D), (E), (F) or (J), but for the fact that the recovery of these costs would move the proposed rate path above projections in any year of the Fixed Rate Period.

The costs Paragraph B. (K) excludes from recovery are, in relevant part, the amortization costs of all SPP deferrals made pursuant to Paragraph B. (D) and payment to the NHEC for the purchase of its entitlement to Seabrook under Paragraph B. (F) when the recovery of the amortizations or the Seabrook payments would result in a rate increase greater than 5.5% in any year. PSNH is allowed to recover these further deferrals in a future FPPAC proceeding where the recovery of these deferrals will not result in an annual increase above 5.5%, that is, where recovery of these deferrals will not result in a positive FPPAC rate. Thus, where the FPPAC rate in any annual period during the Fixed Rate Period would be less than $0.00, and Paragraph B. (K) deferrals have been made, PSNH is allowed to recover these further deferrals. Therefore, there can be no negative FPPAC rate in any year where there are B. (K) deferrals. At the end of the Fixed Rate Period, May 31, 1997, any unamortized balance of such deferred amounts are to be placed into rate base and recovered over a period from one to ten years through base rates.[4(64)]

[2-4] To date, PSNH has deferred the recovery of approximately $29 million of Paragraph B. (F) costs pursuant to Paragraph B. (K). PSNH has not, however, deferred any of the amortizations of SPP deferrals pursuant to Paragraph B. (K) notwithstanding the fact that

FPPAC has caused the projected rate path to rise above the 5.5% level since 1992. The result of this failure to properly defer these amortizations has been the over-collection of $36.5 million from ratepayers.

Paragraph B. (K) and its application became an issue in this proceeding because PSNH proposed a $0.00 FPPAC rate even though at the time of filing it projected it would over-collect $8.5 million in the December 1, 1995 - May 31, 1996 FPPAC period and projected it would over-collect another $10 million in the following six months. PSNH proposed to apply the estimated $18.5 million over-collection to the $29 million NHEC deferrals made pursuant to Paragraph B. (K). As was noted above, FPPAC has been either positive or zero since 1992, and thus the operation of Paragraph B. (K) had never been called into question.

Had PSNH made all of the appropriate Paragraph B. (K) deferrals, our analysis would be concluded and we would adopt PSNH's position relative to the application of over-collections to Paragraph B. (K) deferrals in a period of $0.00 FPPAC costs. Given that PSNH has made the required deferrals of NHEC costs pursuant to Paragraph B. (K) but has failed to make the required SPP amortization deferrals pursuant to Paragraph B. (K) over the past four years, however, we must now address how to rectify this error and provide for the appropriate application of Paragraph B. (K). We agree with Staff and the OCA that we should require PSNH to refund to ratepayers the deferrals that

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should have been made over the past four years with interest in order to return parity to the Rate Agreement.

This is not to say, however, that all amounts paid to reduce deferrals must now be refunded. As Mr. Frantz testified, one must evaluate the FPPAC rate for the period in question. If FPPAC were zero, any amount overcollected should be used to offset deferrals rather than refunded to customers. If it were positive, the amount overcollected should be refunded to customers.

For example, the disallowance for mussel fouling would have been imposed in 1992, in DR 92-050, had the issue not been deferred. The FPPAC rate for that period was zero. Therefore, the amount disallowed by this order should be used to offset deferrals, rather than refunded to customers.

By contrast, to the extent that CAA costs have been overcollected during a period in which there is a positive FPPAC rate, as is the case in DR 95-058, the amount overcollected should be refunded to customers and not used to offset deferrals. Because the Commission issued its order regarding CAA costs on June 17, 1996, however, and there has been no opportunity to put on the record evidence of any amounts overcollected, we will address actual CAA costs in the December 1, 1996 through May 31, 1997 FPPAC.

[5] Therefore, PSNH shall refund the $36.5 million in SPP amortization deferrals with interest during the next two FPPAC periods, the remainder of the Fixed Rate Period, but will be allowed to otherwise hold FPPAC at a $0.00 rate and use any over- collections to reduce the NHEC and SPP Paragraph B. (K) deferrals. At the conclusion of the Fixed Rate Period any remaining balance to these deferral accounts shall be capitalized and placed in rate base for amortization over one to ten years. PSNH shall inform the Commission in writing at the

conclusion of the Fixed Rate Period the period of time over which it proposes to amortize this account so that we may accurately assess its earnings.

PSNH has argued that an order requiring such a refund would violate the statutory standards set forth in RSA 365:29, or in the alternative, RSA 362-C:3. It further contends that such an order would violate the prohibibition on retrospective laws contained in U. S. Const., Art I, §10 and N. H. Const., Art I, §23.

In the circumstances of this case, we conclude that limiting reparations to a period of two years would not allow for the proper implementation of the Rate Agreement. Thus, in order to effectuate the terms of the Rate Agreement, we will require PSNH to refund any previous FPPAC rates that did not appropriately implement the provisions of Paragraph B. (K) set forth above. We take this action pursuant to the provisions of RSA 362-C:3 that require the Commission to "take such ... actions as may be necessary to implement the provisions of the [rate] agreement," and the continuing jurisdiction over rates granted to the Commission in RSA 365:28 which allows the Commission to alter, amend or otherwise modify any previous order after hearing.

[6] With regard to PSNH's contention that such a modification of previous FPPAC rates would result in retrospective ratemaking, the New Hampshire Supreme Court held in *Appeal of Granite State Electric*, 120 N.H. 536 (1980) that "absent statutory authority, final rates cannot be retroactively adjusted." 120 N.H. at 538. Assuming for the sake of argument that the FPPAC rate is a "permanent rate," subject to semi-annual retroactive adjustments, RSA 362-C:3 and 365:28 provide the Commission with the statutory authority to retain continuing jurisdiction over the rates to be charged under the Rate Agreement. Because by statute the FPPAC rate could be modified to ensure the implementation of the Rate Agreement, any such modification would not violate the federal or State constitutions.

(2) *Risk of Sales Projections for the Purposes of Computing FPPAC.*

We do not believe PSNH accepted the risk of overly optimistic sales projections made at the hearings held pursuant to RSA 362-C:3 to determine whether the Rate Agreement was in the public interest for the purposes of FPPAC. In support of its position that PSNH accepted this risk, the OCA cites the following language contained in the Commission's Report and

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Order finding the Rate Agreement in the public interest:

> 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.

Re Northeast Utilities/Public Service Company of New Hampshire, 77 NH PUC 396, 434 (1990).

The language of this statement itself reveals that the Commission was not referring to FPPAC. The statement was made in the context of base rates: hence, its reference to the floor of the ROE Collar which is only applicable to base rates, and the reference to the Fixed Rate Period which ends May 31, 1997 while FPPAC continues until 2001. Furthermore, the quotation is

found in Section B. of the Order which is entitled *BASE RATES* as compared to Section C. which is entitled *FUEL AND PURCHASED POWER ADJUSTMENT CLAUSE. Re Northeast Utilities/Public Service Company of New Hampshire*, 77 NH PUC 396, 425, 435 (1990).

Moreover, as is set forth above, the FPPAC rate is the result of a calculation made pursuant to a formula contained in the Rate Agreement. Although "kWh" in the denominator refers to "forecasted kWh requirement to serve [PSNH'S] *forecasted sales*" (emphasis added), "PA" of the formula reconciles forecasted sales to actual sales at the conclusion of each FPPAC period through "SAa." Rate Agreement, at D-92; D-104

(3) *Millstone 3 Mussel Fouling Outage.*

[7] The New Hampshire Supreme Court has held that when a utility has exhibited inefficiency, improvidence, economic waste, abuse of discretion, or action inimical to the public interest, costs incurred may not be passed on to ratepayers. *Appeal of Seacoast Anti-Pollution League*, 125 N.H. 708 (1985). The prudence standard is one of the specific standards that has been developed by the Court to govern the inclusion or exclusion of such costs for ratemaking purposes. *Appeal of Conservation Law Foundation*, 127 N.H. 606, 637 (1986). Prudence is "essentially ... an analogue of the common law negligence standard" requiring a utility to exercise due care in its activities. *Id.* The test of due care asks what a reasonable person would do under the circumstances existing at the time of a decision. *Fitzpatrick v. Public Service Co. of N.H.*, 101 N.H. 35 (1957).

One of the factors relevant to a determination of reasonable care under the circumstances is special skill or knowledge because

> [o]ne who engages in a business, occupation, or profession must exercise the requisite degree of learning, skill, and ability of that calling with reasonable and ordinary care; furthermore, the specialist within a profession may be held to a standard of care greater than that required of the general practitioner.

57A Am. Jur. 2d, Negligence § 190.

Consequently, it is the Commission's responsibility and obligation under the law to determine whether PSNH, or its agents, conducted themselves with the level of care expected of highly trained and compensated specialists with regard to the Millstone 3, Seabrook and Vermont Yankee unplanned outages.

Applying this standard to the evidence presented in this proceeding we conclude the 1991 Millstone 3 mussel fouling outage was the result of imprudence.

Millstone 3 is operated by a subsidiary of NU, Northeast Nuclear Energy Company (NNECO); PSNH owns a 4.5% interest in the facility. The station was constructed and designed by Stone and Webster for NNECO.

On July 25, 1991 the station was shut down because of mussel fouling of the heat exchanges served by the B Train of the Service Water System. The testimony revealed that mussel fouling was a major concern of NNECO and Stone and Webster during the design and construction of the Service Water Systems at Millstone 3 because mussels are a very hardy biofouling organism in the area in which Millstone 3 is located.

The service water system at Millstone 3 consists of two redundant piping systems referred to as "Trains A and B" used to cool certain components within the nuclear station with seawater brought in from Niantic Bay. The two Trains are not identical in construction. Due to the exposure of the exterior of certain portions of Train B to seawater and for seismic protection, 13 vertical feet and 96 horizontal feet of Train B were constructed of a product known as "MONEL," an alloy comprised of 67% nickel, 30% copper and 1.6% iron. Train A, and those portions of Train B not comprised of MONEL, are comprised of cast iron with the interior coated with 90% copper and 10% nickel (90/10 copper-nickel), 90/10 copper-nickel piping cast in concrete and solid 90/10 copper-nickel piping.

Train B which contained the 109 feet of MONEL piping, was the train that experienced the mussel fouling, and the mussel fouling occurred in that part of Train B consisting of MONEL causing the plant to shut down. As is set forth above, Train A contained no MONEL and did not experience mussel fouling.

As Mr. Dente testified, the service water systems at Millstone 3 were designed with "defense in depth" to prevent mussel fouling, or as Mr. Hobbs described the design, the service water system was designed with "multifaceted defenses" to prevent mussel fouling. Mr. Dente identified "targeted chlorination," "the use of fouling resistant materials for all wetted areas of system piping," "hydraulic control," and "service water system drain and flush" as the defense in depth or multifaceted defenses in use to prevent mussel fouling at Millstone 3. However, as Mr. Hobbs testified, and Mr. Dente concurred, all four of these design defenses were either non-existent or weakened in that part of Train B that experienced the mussel fouling, the MONEL.

The initial line of defense, water chemistry, or chlorination, was not present at all while Train B was in operation and in limited quantity, quality and duration when the system was down and thought to be drained because the system utilized targeted chlorine injection, immediately after the section of MONEL piping. The next line of defense, use of copper, a material which is toxic to mussels, was limited to 30% in the MONEL piping as compared to 90% in the rest of Train B and all of Train A.

Mr. Hobbs testified that the 1952 reference "Marine Fouling and Prevention" prepared for the United States Navy by the Woods Hole Oceanographic Institute and published by the United States Naval Institute, a reference which was considered an industry handbook and remained in print until sometime in the 1980s, categorized copper nickel cladding consisting of at least 70% copper as "least susceptible to [mussel] fouling" and categorized MONEL as one of many alloys "most susceptible to [mussel] fouling." Tr. Day II at 80. Mr. Dente referred to the conclusions reached by the Connecticut DPUC consultant BCS, who concluded that it was not unreasonable for the Company and Stone and Webster to disregard this reference. Ex. 21 at 5-7. BCS states in its report, "That MONEL is more susceptible to biofouling than cupronickel was not realized by Stone and Webster," and further, "This report related to materials for ship hulls, and was not used as a basic reference for piping design in the 1970's." Ex. 21, Att. TJD-3 at 32-33.

Mr. Hobbs disagreed, pointing out that Stone and Webster's own treatise on mussel fouling

prepared for the Electric Power Research Institute (EPRI) in 1984 makes specific reference to the work "Methods for Controlling Marine Fouling in Intake Systems" published in 1973 which, in turn, states that the Woods Hole reference is the "*vade vecum* [handbook] for those working on marine fouling problems." Tr. Day II at 81-82. Thus, Stone and Webster, the architects and construction engineers of Millstone 3, were, or should have been, aware of the potential mussel fouling problems of MONEL as their own study prepared for EPRI cites to works calling the Woods Hole Study the handbook for those working on marine fouling problems. Stone and Webster as an organization was fully aware of the mussel fouling problems with MONEL.

Thus, the only real defenses against mussel fouling in the MONEL piping were the last two: hydraulic control, or fluid velocity, and the ability to drain and inspect this piping when Train B is not in use. During periods when the

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Train is not in use, however, the only remaining defense against fouling in the MONEL piping was the ability to drain and inspect the piping. As both Mr. Hobbs and Mr. Dente testified, complete drainage is essential during the period of time when the Train is not in use because any remaining water in the system without fluid velocity allows mussels to come to rest and implant on the sides of the piping, thereby fouling the pipe.

[8-10] We find that it was the failure of NNECO and Stone and Webster to design the system in a manner that allowed for positive confirmation that the system was drained, and NNECO's failure to take advantage of those inspection opportunities available to it under the circumstances to positively confirm the system had drained, that led to this outage. Thus, we conclude NNECO and Stone and Webster did not exercise the requisite standard of care commensurate with the skills and abilities expected in the construction of a service water system given what was known or should have been known at the time of the design and construction of Train B relative to biofouling.

As Mr. Hobbs testified, once management made the decision to rely on velocity and drainage in lieu of chlorination in the portion of the Train consisting of MONEL piping they had a duty to "provide positive confirmation of system drainage." Mr. Hobbs further testified that the only means management had available to it to ensure system drainage was to listen to the drain pipe: if water was heard flowing, management assumed that the system was draining. It had no way of visually confirming the system had drained.

Mr. Hobbs further testified that two relatively inexpensive measures could have been taken to confirm system drainage: the installation of a viewing port for visual verification of drainage, and the installation of a check valve on the drainage pipe to ensure the drain was operating properly.

With regard to the appropriate disallowance of replacement power costs, this outage is complicated by the fact that while mussel fouling triggered the outage, two days after the outage occurred NNECO worked in parallel for the rest of the mussel fouling outage on galvanic corrosion of the service water system, the cause of which was determined to be prudent. The galvanic corrosion would have required the plant to shut down before the next scheduled shut down. Nevertheless, given that the outage was initially caused by mussel fouling, which could

have been prevented by prudent actions on the part of NNECO and Stone and Webster, we believe that a disallowance of more than two days of replacement power costs is appropriate.

In setting the appropriate amount to disallow for this outage, we must craft a methodology that is specific to the unusual circumstances of this case, recognizing that prudent work on corrective repairs that would have ultimately caused an unplanned outage was undertaken once the mussel-fouling problem became apparent. We also recognize, however, that there will always be emergent and planned work conducted during an unplanned outage, and we do not want to create an incentive on the part of utilities to "discover" such work to offset imprudence.

We will disallow all replacement power costs incurred during the first two days of the outage that dealt primarily with the mussel fouling problem. We will then take the period of the outage during which work was performed to correct both the mussel fouling and galvanic corrosion problems, and divide that in half. The Commission will consider half of that period of time to have been caused by mussel fouling and half by galvanic corrosion. This results in a disallowance of replacement power costs for 46 days of the 90-day mussel fouling outage, or approximately $611,000 in 1991 dollars. While this is not a perfect solution, the Commission believes that it is the best available to apply under the circumstances of this case.

With regard to PSNH's assertion that it cannot be held liable for the imprudence or negligence of NNECO or Stone and Webster, we disagree. PSNH is a joint owner of Millstone 3, and the joint owners retained the services of NNECO to operate the nuclear station. It is a fundamental rule of the law of agency that a principal is liable for the acts of its agent when the agent is acting within the scope of its authority. *Cutter v. Town of Farmington*, 126

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N.H. 836, 840-841 (1985). Furthermore, the New Hampshire Supreme Court has held that where a duty sought to be enforced is one imposed by law pursuant to the rights and obligations granted under a franchise the duty is non-delegable and the principal remains liable. *Rolfe v. Boston & Maine Railroad*, 69 N.H. 476 (1898). Thus, PSNH is liable for the imprudence of NNECO and Stone and Webster and may not collect its share of the replacement power costs for this outage from ratepayers.

(4) *Seabrook Reactor Coolant Pump Repair Outage.*

While all of the fuel was removed from the reactor vessel in the course of Seabrook Station's 1994 third refueling outage, an inspection was conducted of the core plate to ensure that no foreign debris would interfere with the replacement of the fuel into the reactor vessel. During this inspection two Reactor Coolant Pump TVCS locking cups were found on the core plate. Because of the discovery of the locking cups, Seabrook conducted further inspections of the reactor vessel leading to the discovery of one of the TVCS.

The TVCS are large bolt-like screws approximately nine inches in length weighing between five and ten pounds each. The TVCS locking cups are light metal split rings placed into the recess where the head of the bolts will sit. They are designed to ensure that the bolts do not loosen from the vibrations and the load of the Reactor Coolant Pumps. Neither Staff nor Mr. Hobbs concluded Seabrook was imprudent because the TVCS bolts and locking cups failed to perform as intended by the manufacturer.

Both Staff and Mr. Hobbs noted that Seabrook's sister plant, Millstone 3, operated by NNECO, another NU subsidiary, had experienced problems with the TVCS locking cups in 1987. In 1987, seven of the TVCS locking cups were found in Millstone 3's reactor vessel requiring removal of the pumps and the installation of new TVCS locking cups. Upon removal, two other locking cups were determined to be loose. Again, in 1993 Millstone 3 found three locking cups in its reactor vessel. Examination of the TVCS bolts at Millstone 3 when the pumps were pulled in 1993 revealed a further problem with cracking of the bolts. Both sets of locking cups at Millstone 3 were of a different design than Seabrook.

In 1993, Millstone 3 installed new TVCS bolts and locking cups of a design similar to those used at Seabrook. Westinghouse, however, made an improvement to the locking cups by strengthening the locking cup bosses. The bosses are employed to keep the locking cups from coming loose.

Staff concluded that this outage extension could have been reduced by seven days if Millstone 3 had conveyed its experience with these locking cups to personnel at Seabrook and Seabrook had anticipated replacing the TVCS and locking cups as part of the third refueling outage. Millstone 3 had broad experience with this locking cup problem, and when they were confronted with the Seabrook style locking cups to which Westinghouse had made improvements to the locking cup bosses to ensure they would not come loose, Millstone 3 had an affirmative duty to pass this information on to Seabrook personnel. Staff based this conclusion on the provisions of the Rate Agreement and the Report and Order accepting the Rate Agreement.

Pursuant to the Rate Agreement NU was entitled to an additional $300 million in compensation from New Hampshire ratepayers if it could establish that it would bring certain "synergies" to the operation of PSNH.[5(65)] NU defined these synergies as "the capitalized synergies, efficiencies or other cost savings or benefits brought by NU to the acquisition of PSNH." *Re Northeast Utilities/Public Service Company of New Hampshire*, 75 NH PUC 396, 408 (1990). One of these projected benefits was a reduction in the costs of operating Seabrook of $188 million. The Commission accepted NU's assertion and adopted the $188 million Seabrook synergy.

In accepting this synergy the Commission noted that achievement of the projected savings "depends primarily on NU aggressively pursuing its represented course of action to reduce Seabrook expenses ... ." *Re Northeast Utilities/Public Service Company of New Hampshire*, 75 NH PUC 396, 444 (1990). The

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Commission further based its acceptance of the Seabrook synergies on NU's "record of excellence in the area of nuclear operations ..." and "the NU experience with Millstone 3, a comparable plant to Seabrook ... ." *Re Northeast Utilities/Public Service Company of New Hampshire*, 75 NH PUC 396, 444 (1990).

The Commission did not limit its approval of the Seabrook synergy to computation of the Investment Adder, or the Return on Equity cap, however. The Commission noted that

"[a]ttainment of the savings levels attributed to the synergies by NU is essential to the maintenance of the 5.5% per year rate projections and reasonable levels of rates thereafter" and that the risk of not achieving the Seabrook synergies "falls on ratepayers." *Re Northeast Utilities/Public Service Company of New Hampshire*, 75 NH PUC 396, 447 (1990).

Because the risk of NU failing to achieve the projected synergies would fall on ratepayers the Commission held that it would "hold PSNH strictly accountable in subsequent rate proceedings to demonstrate that they have exercised their best efforts to achieve the projected level of savings ...." *Re Northeast Utilities/Public Service Company of New Hampshire*, 75 NH PUC 396, 447 (1990).

Based on this language, Staff concluded that NU had not used its best efforts to alert Seabrook to the problems with the TVCS and TVCS locking cups at Millstone 3 which it was obliged to do and that, therefore, the outage was imprudent.

Mr. Hobbs reached the same conclusion as did Staff, but he also emphasized that Seabrook had had an indication of loose parts in the reactor vessel which reached an "alarm level sometime in March" of 1993. He testified that Seabrook had retained the services of a consultant to analyze the sounds being detected. The consultant concluded that the "probable" source of the noise was in the reactor vessel below the core plate; it was "improbable" that the noise originated outside the reactor vessel; a "potential" cause of the noise was a rattling sound around the in-core instrumentation lines. Mr. Hobbs analyzed the consultant's use of the words "probable," "improbable" and "potential" very carefully as they have different meanings and raise different concerns especially in the context of a nuclear reactor. Mr. Hobbs testified that determining a "potential" cause for the noise was insufficient and that Seabrook should have continued to analyze the problem until it determined the "probable" source of the noise. Mr. Hobbs concluded that based on the information from Millstone 3 that was or should have been available to Seabrook, the TVCS and TVCS locking cups should have been the primary suspect for the cause of these noises. If NAEC had reached such a conclusion or had such a suspicion, Seabrook could have reduced this outage by seven days by preparing to inspect the reactor coolant pumps as part of the third refueling outage.

Based on the testimony of Staff and Mr. Hobbs we find that the seven day extension of the 1994 third refueling outage was the result of a failure of communication between NNECO and Seabrook, combined with the failure of Seabrook to determine a probable source for the noise in the reactor vessel. Thus we conclude that NU, as the parent of these two subsidiaries, did not exercise the requisite standard of care commensurate with the skills and abilities expected and promised for the operation of Seabrook and this failure led to the seven day extension of this outage. We will, therefore, disallow $1.042 million in replacement power costs, plus interest from the time PSNH placed these costs on its books.

(5) *Vermont Yankee Outage.*

On December 8, 1995, the failure of a feedwater regulating valve led to a low level of water in the reactor vessel and caused an automatic shutdown of the Vermont Yankee plant. It was determined that a shaft in the regulating valve failed because the upper and middle portions of the three piece valve had come unthreaded. It was further determined that the upper and middle portions of the valve's shaft came unthreaded because a technician, in disassembling the shaft

during a previous outage, had grasped its upper portion to apply the force necessary to unthread the lower portion from the middle portion of the shaft. This released the tension or torque on the threading

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between the upper and middle portions of the shaft leading to its failure.

Staff reviewed the operating procedure instructing the technician on how to perform this task and found that it was inadequate. The operating procedure contained no information on where to grasp the three section shaft, and the potential problems that would occur if improperly grasped, or on how to apply reverse torque to avoid the unthreading which occurred. Thus, Staff concluded that the outage was the result of imprudence.

We are persuaded by Staff's testimony that Vermont Yankee did not exercise the requisite standard of care commensurate with the skills and abilities expected in the operation of a nuclear generating station in its failure to adequately set forth the operating procedures to be followed by technicians when working on the feedwater valves. We will, therefore, disallow the $17,000 in replacement power costs PSNH ratepayers incurred as a result of the outage.

(6) *Effect of Joint Dispatch Savings on Imprudence Disallowances.*

As noted above, we disallowed $611,000 (in 1991 dollars) in replacement power costs incurred by PSNH ratepayers as a result of the mussel fouling outage at Millstone 3 in 1991. PSNH asserted that any such disallowance must be offset against the revenues PSNH received from Joint Dispatch Savings as a result of the unplanned outage caused by NU imprudence.

The mussel fouling outage commenced on July 25, 1991 and ended on October 23, 1991. Thus, replacement power purchased because of this outage was purchased pursuant to Section 4 of the Rate Agreement during the so-called "Interim Period" before the Sharing Agreement took effect. The Interim Period was that period commencing with PSNH's emergence from bankruptcy and ending with its merger with NU, June 5, 1992.

Section 4 of the Rate Agreement provides, in relevant part that:

> In the Interim Period, NU will use its best efforts to achieve as much of the expected energy savings occurring after the Acquisition Effective Date as possible *through energy exchange contracts between Stand-Alone PSNH and NU system companies*. (emphasis added)

Rate Agreement at D-10.

Thus, PSNH's argument, to the extent it has any merit, is irrelevant to the replacement power costs incurred herein because at the end of the 1991 Millstone outage, PSNH was a stand-alone company entering into contracts for the sale of power. Therefore, there were no Joint Dispatch Savings with which to offset imprudence disallowances.

Nonetheless, we are not persuaded by PSNH's argument that Joint Dispatch Savings should offset any disallowance for management imprudence. There is nothing in the record to suggest that Joint Dispatch Savings were ever intended to offset imprudence. To do so would render meaningless the impact of disallowing replacement power costs incurred from many imprudent

outages. With a combined system as is the case with NU, an outage at one NU plant is likely to result in greater generation and dispatch at a sister plant, which could generate Joint Dispatch Savings. Costs of imprudence should not be offset by savings that accrue as a result of that imprudence. Outages and Joint Dispatch Savings will continue to be evaluated as distinct issues.

(7) *Proper Period Treatment of Disallowances.*

We agree with Staff and the OCA that issues deferred from previous FPPAC periods ultimately resulting in cost disallowances should be refunded to customers under the same circumstances in the period in which the costs were incurred.

Based upon the foregoing, it is hereby

ORDERED, that, pursuant to Paragraph B. (K) of Exhibit C to the Rate Agreement, PSNH must also defer the recovery of any SPP amortizations made pursuant to Paragraph B. (D) that will result in a positive FPPAC rate in any year during the Fixed Rate Period; and it is

FURTHER ORDERED, that PSNH must refund $36.5 million in SPP amortizations it

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should not have collected from ratepayers over the past four years pursuant to Paragraph B. (K) plus interest computed at the prime rate amounting to $42,404,482 in this and the next FPPAC period; and it is

FURTHER ORDERED, that the FPPAC rate for the period commencing June 1, 1996 through November 30, 1996 is $0.00 and PSNH shall apply any overcollections, currently estimated at $18.5 million, to its Paragraph B. (K) deferrals; and it is

FURTHER ORDERED, that the 1991 mussel fouling outage at the Millstone 3 nuclear generating station was the result of imprudence and $611,000 in replacement power costs are disallowed, plus interest computed at the prime rate amounting to $778,599; and it is

FURTHER ORDERED, that seven days of replacement power costs incurred during the repair of the reactor coolant pumps at the Seabrook nuclear generating station in 1994 are disallowed, resulting in a total disallowance, including interest at prime rate, of $1,182,543; and it is

FURTHER ORDERED, that $17,000 in replacement power costs incurred as a result of imprudence at the Vermont Yankee nuclear generating station are disallowed; and it is

FURTHER ORDERED, that whether disallowances shall be refunded to customers or applied to deferrals will be based on calculations that assume the disallowance had been made in the FPPAC period in which the costs were incurred; and it is

FURTHER ORDERED, that the short term avoided cost rates are approved as filed by PSNH on April 29, 1996 in PSNH Exhibit 14 - Revised.

By order of the Public Utilities Commission of New Hampshire this tenth day of July, 1996.

FOOTNOTES

[1]Also scheduled to go into effect on June 1, 1996 is the last of the seven annual 5.5% increases to base rates authorized in the Rate Agreement between PSNH's parent company Northeast Utilities Service Company and the State of New Hampshire.

[2]The Rate Agreement is the agreement defined in RSA 362-C:2, I and the amended plan of reorganization described in RSA 362- C:2,IV.

[3]The settlement agreement specifically states that "[t]he issues resolved in this settlement may not be used as an admission by any party as to the merits of the resolved issues or as precedent in a future proceeding."

[4]Rate Agreement, D-103. Thus, in order to recover these deferrals after the Fixed Rate Period PSNH must prosecute a full rate proceeding demonstrating earnings below a reasonable level.

[5]The $300 million is used to calculate the ceiling of the Return on Equity collar during the Fixed Rate Period. It does not apply to the collar floor. Thus, NU is allowed to lower its overall Return on Equity by adding $300 million to rate base in the analysis of its level of earnings.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 96-077, Order No. 22,045, 81 NH PUC 174, Mar. 11, 1996. [N.H.] Re Public Service Co. of New Hampshire, DR 96-077, Order No. 22,143, 81 NH PUC 367, May 13, 1996. [N.H.] Re Public Service Co. of New Hampshire, DR 96-077, Order No. 22,226, 81 NH PUC 523, July 8, 1996.

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NH.PUC*07/11/96*[89248]*81 NH PUC 547*Public Service Company of New Hampshire

[Go to End of 89248]

81 NH PUC 547

Re Public Service Company of New Hampshire

DR 96-216
Order No. 22,235

New Hampshire Public Utilities Commission

July 11, 1996

ORDER suspending and scheduling hearings on new economic development and business retention rates proposed by an electric utility.

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1. RATES, § 166

[N.H.] Factors affecting reasonableness — Solicitation of business — Economic development and business retention rates — Tariffed discounts — Suspension of proposed rates — Issues as to eligibility and minimum term requirements — Electric utility. p. 548.

2. RATES, § 248

[N.H.] Schedules and procedure — Suspension — As to proposed economic development and business retention rates — To allow for adequate investigatory period — Electric utility. p. 548.

BY THE COMMISSION:

ORDER

[1, 2] Public Service Company of New Hampshire (PSNH), filed with the New Hampshire Public Utilities Commission (Commission) on June 26, 1996, a petition for approval of Business Retention Service Rate BR and Economic Development Energy Service Rate ED, revised to comply with the recently enacted statute NH RSA 378:11-a and Commission Order No. 22,027 issued on February 23, 1996 in Docket DR 95-180.

The filing raises, *inter alia*, issues related to the minimum term provision, the adequacy of the discount to obviate the need for special contracts, and the consistency of the proposed BR rate, which limits eligibility to businesses contemplating leaving the state, with NH RSA 378:11-a as amended, which authorizes discounted load retention rates for businesses contemplating leaving the electric system whether or not they remain in the state.

Based on the foregoing, it is hereby

ORDERED, that a Hearing on the Merits be held before the New Hampshire Public Utilities Commission located at 8 Old Suncook Road, Concord, New Hampshire on August 6, 1996, at 10:00 a.m.; 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 15, 1996, in a statewide newspaper of general circulation publication to be documented by affidavit filed with the Commission on or before August 6, 1996; and it is

FURTHER ORDERED, that PSNH serve a summary of its proposed rates and a copy of this Order of Notice in accordance with N.H. Admin.Rules Puc 1601.05(j) by first class U.S. Mail postmarked no later than July 15, 1996, on all customers with special contracts pending before the Commission and all customers with which it is actively negotiating special contracts for economic development, business retention and load retention; 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 July 29, 1996, 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 July 31, 1996; and it is

FURTHER ORDERED, that the Commission will take administrative notice of the record in Docket No. DR 95-180; and it is

FURTHER ORDERED, that the following tariff pages of NHPUC No. 37 - Electricity, Public Service Company of New Hampshire be suspended:

Original Pages 75a, 75b and 75c

1st Revised Page 73

1st Revised Page 74

1st Revised Page 75

1st Revised Page 76

1st Revised Page 77

1st Revised Page 78

1st Revised Page 79

1st Revised Page 80

Page 548

1st Revised Page 81

1st Revised Page 82

1st Revised Page 83

By order of the Public Utilities Commission of New Hampshire this eleventh day July, 1996.

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.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 95-180, Order No. 22,027, 81 NH PUC 109, 170 PUR4th 538, Feb. 23, 1996.

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NH.PUC*07/12/96*[89249]*81 NH PUC 549*Implementation of the Telecommunications Act of 1996

[Go to End of 89249]

81 NH PUC 549

Re Implementation of the Telecommunications Act of 1996

DE 96-177
Order No. 22,236

New Hampshire Public Utilities Commission

July 12, 1996

ORDER clarifying and further refining timetables and procedures proposed in an earlier order for the processing of requests for arbitration or for approval of settlements relative to transactions between incumbent local exchange telephone carriers and competing local exchange carriers.

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1. PROCEDURE, § 6

[N.H.] Enforcement proceedings — Telecommunications Act of 1996 — Commission review of requests for arbitration thereunder — Commission review of proposed settlements thereunder — Arrangements between incumbent local exchange telephone carriers and competing local exchange carriers — Procedures and schedules for processing — Refinement and clarification. p. 551.

2. MONOPOLY AND COMPETITION, § 83

[N.H.] Telephone services — Local exchange competition — Pursuant to the Telecommunications Act of 1996 — Arrangements between incumbent local exchange telephone carriers and competing local exchange carriers — Commission review of requests for arbitration under the Act — Commission review of proposed settlements under the Act — Timetables for processing — Refinement and clarification. p. 551.

3. PROCEDURE, § 26

[N.H.] Conduct of hearings — Effect of legislatively mandated time constraints — Reliance only on oral argument — Elimination of testimony and cross-examination — As to arbitration and settlement proceedings arising under the Telecommunications Act of 1996. p. 553.

BY THE COMMISSION:

ORDER

I. Introduction

Order No. 22,177 (the Order) established a proposed generic schedule and procedural guidelines by which the Commission plans to consider petitions for arbitration submitted pursuant to the Telecommunications Act of 1996 (the Act). The procedural guidelines cover

treatment of resolved and unresolved issues at the

Page 549

time of the request for arbitration, types of supporting documentation required, possible steps to streamline the process due to time constraints imposed by the Act, and standards for review. The Order also required incumbent local exchange carriers (ILECs) to file certain information within 10 days of the effective date of the Order. The Order was issued *nisi* for effect on June 21, 1996.

By Joint Motion filed on June 21, 1996, New England Telephone and Telegraph Company, Granite State Telephone, Inc., Merrimack County Telephone Company, Contoocook Valley Telephone Company, Inc., Wilton Telephone Company, Inc., Hollis Telephone Company, Inc., Dunbarton Telephone Company, Northland Telephone Company of Maine, Inc., Bretton Woods Telephone Company, Inc., Dixville Telephone Company, Inc., and Union Telephone Company (the Movants), requested the New Hampshire Public Utilities Commission (the Commission) to clarify or, in the alternative, to suspend the Order. In their motion, the Movants seek clarification of the Commission's decision regarding (1) the timing of final action on a petition for arbitration, (2) the nature of arbitration sessions and due process considerations which attach to them, (3) the Commission's treatment of issues voluntarily resolved at the time arbitration commences, (4) the effect of RSA 363:17 on the Commission's authority to assign a hearings examiner, (5) motions for rehearing, and (6) the Commission's requirement that ILECs file all extended area service (EAS) agreements within 10 days of the effective date of the Order.

The Commission also received comments on the Order *nisi* from AT&T Communications of New Hampshire, Inc. and from the Office of the Consumer Advocate (OCA). AT&T's comments recommended that the Commission incorporate additional, specific discovery requirements during the arbitration process. Among other requirements, AT&T recommended that ILECs file cost studies used to support costing and pricing assertions, and that specific times for data requests and responses, depositions, and briefs be built into the generic procedural schedule.

The OCA's comments raised a number of substantive issues regarding sections of the Act which, while important to the implementation of the Act, are the subject of future dockets, on-going FCC rulemakings, and the actual arbitration proceedings. The OCA raises two procedural issues. The first is a request to clarify its status as a statutory party, pursuant to RSA 363:28, both to arbitration and to the Commission's review of arbitrated and negotiated agreements. The second is a request that the Commission reverse its position that the Act preempts RSA 541:3.

By Order No. 22,208, the Commission extended the *nisi* period to July 12, 1996.

In order to provide a single document by which all parties may understand our arbitration procedures, this order supersedes Order No. 22,177.

II. Commission Role

Pursuant to the Act, with regard to agreements between ILECs and competing local exchange carriers (CLECs) for interconnection, services, or network elements, the Commission is responsible for mediating agreement negotiations if requested to mediate, for arbitrating those

agreements if petitioned to arbitrate, and for reviewing and issuing a final order on the agreements. The Act specifies the time periods within which mediation, arbitration, and final review must be completed.

Pursuant to the Act, any party participating in negotiation may ask the Commission to mediate any differences arising in the course of negotiation. Because the Act specifies that negotiation may occur during the first 135-160 days of the entire process, we interpret this section of the Act (section 252(a)(2)) to mean that mediation must be completed within 160 days from the date on which an ILEC receives a bona fide request for interconnection, services or network elements. In the event of a request for mediation, we plan to respond as quickly as possible and to assign a mediator.

At section 252(b)(4)(C), the Act specifies that arbitration must be completed within 9 months from the date on which an ILEC receives a bona fide request for interconnection, services or network elements. Section 252(e)(4)

requires the Commission to complete its review and issue an order accepting or rejecting the agreement 30 days thereafter.

The Act leaves to the states authority to establish arbitration and review processes within the strict timeframes outlined above. In the following sections we describe the processes we intend to use in fulfilling our responsibilities. Unless preempted by federal law, we shall recognize and apply, where appropriate, all state statutes, including RSA 363:17 and RSA 363:28.

We intend to hire such consultants as required to fulfill our obligations under the Act. The costs of any such consultants will be assessed pursuant to RSA 365:37,II, or in such manner as allowed by law.

We reserve the right, in order to meet the deadlines in the Act, to consolidate proceedings, change the schedule, limit intervention, and take any other steps that are necessary to insure that the deadlines of the Act are met. We will not relinquish our authority, nor fail to meet our obligation, to act as the final arbiter of these agreements.

In the event that the ILEC files a generally available interconnection tariff, as permitted by section 252(f) of the Act, the Commission must either complete its review of that tariff within 60 days or let the tariff take effect while the Commission continues its review, unless the ILEC agrees to an extension. Our review shall be conducted in accordance with section 252(f)(2). At the time we receive such a tariff, we shall establish an expedited schedule for review in order to meet the deadline imposed by the Act.

III. Arbitration

A. Schedule

[1, 2] The following schedule, which may be adjusted for weekends and holidays, shall apply to any petition for arbitration submitted pursuant to section 252(b)(1) of the Act.

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

Commission Day #	*Day #s of entire process*	*Activity Required*
Day 1	(135-160)	Submit petition for arbitration along with supporting documentation, including ILEC cost study if ILEC is petitioner
Day 15	(150-175)	Hold technical session/prehearing conference; motions for intervention due
Day 25	(160-185)	Response to petition due, including ILEC cost study if ILEC is respondent
Day 30	(165-190)	Arbitration session begins
Day 90	(220-250)	Submit arbitrated agreement and arbitrator's report to Commission, along with elements of agreement reached through negotiation
Day 95-97	(225-255)	Commission hearing on arbitrated agreement
Day 120	(250-275)	Final order regarding arbitrated agreement

For the purposes of the schedule listed above the days in parentheses are the total days from the date a CLEC requests negotiations with the ILEC as provided for in the Act. The days listed at the beginning of each line are the days from the date a petition for arbitration is submitted to the Commission.

Page 551

B. Arbitration Process

After a petition is filed, the Commission shall issue an order of notice and cause the notice to be published as soon as possible, to insure that adequate notice of the proceeding is provided to the public. The Commission shall bill the cost of publication to the petitioner(s).

At the time a party petitions for arbitration the petition shall be accompanied by all supporting documentation, including prefiled testimony and any data to support the petition, a list of unresolved issues, the position of each of the parties with respect to those issues, and a list of any other issues discussed and resolved by the parties. In addition, an ILEC shall submit a cost study at the time of petition or response, as appropriate. The petitioner shall provide a copy of the petition and supporting documentation to the other parties, not later than the same day on which the petition is submitted to the Commission. The respondent shall provide a copy of the petition and supporting documentation to the other parties, not later than the same day on which the petition is submitted to the Commission.

The arbitrator, whether a hired consultant or not, shall conduct the arbitration process according to the following guidelines. After reviewing the petition and responses, and consulting with the parties either together or separately, the arbitrator may commence a formal process of arbitration if unable to resolve differences though any informal means the arbitrator chooses. The formal process shall include witnesses' testimony and cross-examination, recorded by court reporter to create a record for review. The arbitrator may schedule time for the exchange of data requests and data responses during the prehearing conference on Day 15 of the process.

C. Substance and Standards

The substance of the issues arbitrated will be defined by the parties to the prior negotiations. Section 252(b)(1) of the Act limits our arbitration to "open issues" submitted by the petitioner. We interpret "open issues" to mean those issues the parties consider unresolved. Section 252(b)(2)(A) places a duty on the petitioner to submit documentation regarding "unresolved issues," the position of each party with respect to the unresolved issues, and issues "discussed and resolved." We interpret this section to mean that the arbitrator's active role of assisting the achievement of voluntary agreements and imposing terms and conditions to forge an involuntary arbitrated agreement applies only to the open issues. The arbitrator, nonetheless, will and must have full knowledge of the content of the proposed interconnection, service or network elements agreement.

In resolving open issues by arbitration, the arbitrator shall insure that the resolution of all issues meets the requirements of section 251 of the Act, including the regulations issued by the FCC. Pursuant to the Act, the arbitrator shall establish any rates for interconnection, services, or network elements according to subsection 252(d) of the Act and shall provide a schedule for implementation of the terms and conditions of the agreement.

The arbitrator shall submit a report to the Commission on Day 90. The arbitrator's report will contain, at a minimum, a recommended arbitrated agreement resolving the open issues and a summary of the arbitrator's reasons for so resolving the issues.

IV. Negotiation

The following schedule, which may be adjusted for weekends and holidays, shall apply to any negotiated agreement submitted for approval by the Commission:

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

Day 1      T{
Submit agreement and supporting documentation with the
Commission
T}
Day 20     T{
Hold technical session/prehearing conference, motions to
intervene due
T}
Day 20-40  T{
Rolling data requests and responses exchanged
T}
Day 45     T{
Testimony filed by any party opposing the agreement
T}


Days 50-52 T{
Commission hearing on negotiated agreement
T}
Day 80     T{
Final order regarding negotiated agreement
T}
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After a negotiated agreement is filed, the Commission shall issue an order of notice and cause the notice to be published as soon as possible, to insure that adequate notice of the proceeding is provided to the public. The Commission shall bill the cost of publication to the negotiating parties equally.

V. Other Filings Required

Within 10 days of the effective date of this order, every ILEC shall file with the Commission a list of the companies that have requested interconnection, services or network elements, thus triggering the provisions of the Act, and the date on which the request was made. On an ongoing basis, ILECs shall, within 10 days of any additional request for interconnection, services or network elements, notify the Commission of any such request which occurs after the effective date of this order.

Within 10 days of the effective date of this order, every ILEC shall file with the Commission any pre-existing or interim agreements of a similar nature, including but not limited to extended area service (EAS) agreements. While EAS agreements are not, in our opinion, subject to section 252 review under the Act, the agreements will be useful in analyzing the arbitrated and negotiated agreements submitted to us for approval. Our use of EAS agreements will not create any entitlement to or justification for the same rates, terms, and conditions contained in these agreements.

Section 252(b)(4)(B) authorizes us to obtain such information as may be necessary to reach a decision on unresolved issues. In addition, RSA 365:5 and 6 and our rule Puc 202.12 give the Commission authority to obtain this information. Our investigative authority is sufficiently broad to permit action that coincides and is consistent with the Act.

VI. Commission Hearings on Negotiated and Arbitrated Agreements

[3] Because of the time constraints imposed by the Act, it may be necessary to limit the number of hearing days on any arbitrated agreement or negotiated agreement. Therefore, the hearing before the Commission will be in the nature of an oral argument; it will not be a hearing at which there will be testimony and cross-examination. As is our usual practice, we will decide at the time of the hearing whether post-hearing briefs are appropriate.

All provisions of the agreements, whether achieved through arbitration or negotiation, will be submitted to the Commission for its review. Though we recognize and will apply the different standards of review for provisions of negotiated versus arbitrated agreements pursuant to sections 252(e)(2)(A) and (B) of the Act, we will not place them on different time tracks; all issues associated with any one interconnection, service, or network elements agreement shall be handled in one proceeding. Therefore, negotiated provisions of an agreement which goes to arbitration will follow the schedule for arbitrated agreements. Only those agreements which are totally negotiated and for which no provision is arbitrated, will follow the schedule for negotiated agreements.

Section 252(e)(4) of the Act states that no state court shall have jurisdiction to review the Commission's action in approving or rejecting an agreement under this section. We noted in Order No. 22,177 that this section preempts RSA 541:3 and that we will therefore not entertain motions for rehearing. Section 252(e)(4) provides no time for a rehearing of the Commission action by the Commission, only a time within which the Commission must approve or reject an agreement. Section 252(e)(6) provides only for appeal to Federal district court to determine whether the agreement meets the requirements of sections 251 and 252. It follows that this section preempts RSA 541:3. However, to the extent that time allows, a party who wishes to draw the Commission's attention to a perceived administrative error or mistake of fact may move for reconsideration before appealing to federal court. The interests of administrative

efficiency would be served by such an action.

Based upon the foregoing, it is hereby

ORDERED, that the foregoing requirements and schedules are imposed on any party seeking mediation, arbitration, or approval of agreements pursuant to the Act; and it is

FURTHER ORDERED, that the ILECs shall file within 10 days of the effective date of this order a list of the requests for agreements which it has received and the dates on which they were received; and it is

FURTHER ORDERED, that the ILECs shall file within 10 days of the effective date of this order any pre-existing or interim agreements of a similar nature, including EAS agreements.

By order of the Public Utilities Commission of New Hampshire this twelfth day of July, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Implementation of Telecommunications Act of 1996, DE 96-177, Order No. 22,177, 81 NH PUC 431, June 3, 1996. [N.H.] Re Implementation of Telecommunications Act of 1996, DE 96-177, Order No. 22,208, 81 NH PUC 487, June 28, 1996.

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NH.PUC*07/15/96*[89250]*81 NH PUC 554*Kearsarge Telephone Company

[Go to End of 89250]

81 NH PUC 554

Re Kearsarge Telephone Company

DR 96-054
Order No. 22,237

New Hampshire Public Utilities Commission

July 15, 1996

ORDER authorizing a local exchange telephone carrier to begin providing integrated services digital network services.

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1. SERVICE, § 449

[N.H.] Telephone — Special service — Integrated services digital network (ISDN) offerings — Impact of ISDN system changes on customer equipment — Necessity of annual report —

Local exchange carrier. p. 554.

2. RATES, § 553

[N.H.] Telephone rate design — New integrated services digital network (ISDN) offerings — Basic ISDN subscription rates — Additional usage charges — Local exchange telephone carrier. p. 554.

BY THE COMMISSION:

ORDER

On February 20, 1996, Kearsarge Telephone Company (Kearsarge) filed tariff pages proposing to introduce Integrated Services Digital Network (ISDN) Services for effect March 22, 1996. In support of its filing, Kearsarge filed forecasts of revenues and expenses associated with the proposed features.

On March 18, 1996, the Commission issued Order No. 22,057 suspending the filing to allow Staff to review the filing. Kearsarge has provided Staff with additional information, addressing its concerns. On June 18, 1996, the Commission issued Order No. 22,199 further suspending the filing to allow Staff to complete its review of the filing and Kearsarge to modify language in the proposed tariff pages. On July 12, 1996 Kearsarge submitted revised tariff pages reflecting those modifications.

[1, 2] The modified tariff pages clarify the terms of the usage charges to be applied to the local calling area calls in excess of a threshold 1,800 local calling area calls originating minutes per "B" Channel and the language regarding the technology available in Kearsarge territory. They also specify that, while Kearsarge is not responsible if changes in its ISDN network render customer's equipment obsolete or

otherwise adversely affected, Kearsarge will notify customers of changes to its ISDN network in certain circumstances.

Staff has recommended approval of the proposed tariff pages as modified. It has also recommended that, given the new nature of the service, and in particular the usage charges, Kearsarge should submit an annual report after one year's experience with these ISDN services, detailing the actual subscription rates, usage rates, costs and revenues and a comparison of actual experience with the forecasts presented in this filing.

The Commission finds that the proposed tariff, as modified, is in the public good. We will order that Kearsarge file an annual report within one year and three months of the effective date of these tariff pages, detailing the actual subscription rates, usage rates, costs and revenues and a comparison of actual experience with the forecasts presented in this filing.

Based upon the foregoing, it is hereby

ORDERED, that the following tariff pages of Kearsarge Telephone Company are approved for effect with the date of this order:

NHPUC No. 7
Section 2
First Revised Sheet 7 Issued In Lieu of

Original Sheet 7 First Revised Sheet 8 Issued In Lieu of

Original Sheet 8

Original Sheet 9 First Revised Sheet 10 Issued In Lieu of

Original Sheet 10

Original Sheet 11

Original Sheet 12 First Revised Sheet 13 Issued In Lieu of

Original Sheet 13 First Revised Sheet 14 Issued In Lieu of

Original Sheet 14 First Revised Sheet 15 Issued In Lieu of

Original Sheet 15

and it is

FURTHER ORDERED, that Kearsarge shall file a report on or before October 15, 1997, detailing the actual subscription rates, usage rates, costs and revenues and a comparison of actual experience with the forecasts presented in this filing; and it is

FURTHER ORDERED, that Kearsarge file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05(k).

By order of the Public Utilities Commission of New Hampshire this fifteenth day of July, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Kearsarge Telephone Co., DR 96-054, Order No. 22,057, 81 NH PUC 194, Mar. 18, 1996. [N.H.] Re Kearsarge Telephone Co., DR 96-054, Order No. 22,199, 81 NH PUC 471, June 18, 1996.

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NH.PUC*07/15/96*[89251]*81 NH PUC 555*Kearsarge Telephone Company

[Go to End of 89251]

81 NH PUC 555

Re Kearsarge Telephone Company

DR 96-080
Order No. 22,238

New Hampshire Public Utilities Commission

July 15, 1996

ORDER further suspending a local exchange telephone carrier's proposed introduction of enhanced custom calling services.

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1. RATES, § 553

[N.H.] Telephone rate design — Enhanced custom calling services — Suspension — Extension of suspension period — To allow for adequate investigatory period — Local exchange carrier. p. 556.

Page 555

2. RATES, § 248

[N.H.] Schedules and procedure — Suspension — Of proposed service offering — Extension of suspension period — To allow for adequate investigatory period — Enhanced custom calling services — Local exchange carrier. p. 556.

BY THE COMMISSION:

ORDER

[1, 2] On March 20, 1996, Kearsarge Telephone Company (Kearsarge) filed tariff pages proposing to offer Enhanced Custom Calling Services for effect April 22, 1996. In support of its filing, Kearsarge filed forecasts of revenues and expenses associated with the proposed features. On April 19, 1996, the Commission issued Order No. 22,106, suspending the proposed tariff pages to allow Staff time to review the filing and supporting materials. On May 6, 1996, Mr. Dave Colter, a Kearsarge customer filed a letter, urging the Commission to expedite its decision in this docket.

Staff requires additional time to investigate the filing and material filed in support of the proposed tariff and, therefore, has requested that the proposed tariff pages be suspended.

We have reviewed Staff's request and will further suspend the proposed filing to allow a thorough review of the tariff filing and the accompanying supporting materials. Mr. Colter's concern is acknowledged and shared by this Commission; however, the public interest is best served by a thorough investigation of Kearsarge's filing. We will direct Staff to complete its review within thirty days.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of Kearsarge are suspended:

NHPUC No. 7

Section 3 -

Second Revised Sheet 2

Original Sheet 2.1

First Revised Sheet 3

First Revised Sheet 3.1

Third Revised Sheet 4

First Revised Sheet 5

By order of the Public Utilities Commission of New Hampshire this fifteenth day of July, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Kearsarge Telephone Co., DR 96-080, Order No. 22,106, 81 NH PUC 288, Apr. 19, 1996.

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NH.PUC*07/16/96*[89252]*81 NH PUC 556*Merrimack County Telephone Company

[Go to End of 89252]

81 NH PUC 556

Re Merrimack County Telephone Company

DR 96-081
Order No. 22,239

New Hampshire Public Utilities Commission

July 16, 1996

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

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1. SERVICE, § 433

[N.H.] Telephone — Proposal for advanced digital services and basic rate interface integrated services digital network (ISDN) service — Suspension — 30-day continuation of suspension period — To allow for adequate investigatory period — Local exchange carrier. p. 557.

2. RATES, § 248

[N.H.] Schedules and procedure — Suspension — Of proposed service offerings — 30-day

continuation of suspension period — To

Page 556

allow for adequate investigatory period — As to advanced digital services and basic rate interface integrated services digital network (ISDN) service — Local exchange telephone carrier. p. 557.

BY THE COMMISSION:

ORDER

[1, 2] On March 21, 1996, Merrimack County Telephone (Merrimack) filed tariff pages proposing to introduce Advanced Digital Services, Basic Rate Interface ISDN for effect April 22, 1996. In support of its filing, the Company filed incremental cost study support materials associated with the proposed features. On April 19, 1996 the Commission issued Order No. 22, 109, suspending the tariff pages to allow Staff time to review the filing and materials. Merrimack has provided the additional information requested by Staff.

Staff requires time to investigate the filing and material filed in support of the proposed tariff, including the additional information, and, therefore, has requested that the proposed tariff pages be further suspended to permit completion of its review.

We have reviewed Staff's request and will suspend the proposed filing to allow a thorough review of the tariff filing, and the supporting materials. However, while the public interest is best served by a thorough investigation of Merrimack's filing, the timely introduction of cost justified services is equally important. We will therefore direct Staff to complete its investigation within 30 days.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of Merrimack are suspended:

NHPUC No. 7
Part III - General, Section 1,

Original Pages 1 through 7

By order of the Public Utilities Commission of New Hampshire this sixteenth day of July, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Merrimack County Teleph. Co., DR 96-081, Order No. 22,109, 81 NH PUC 299, Apr. 19, 1996.

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[Go to End of 89253]

81 NH PUC 557

Re Dunbarton Telephone Company

DR 96-084
Order No. 22,240

New Hampshire Public Utilities Commission

July 16, 1996

ORDER further suspending a local exchange telephone carrier's proposed introduction of new direct inward dialing, digital, and switched services.

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1. RATES, § 553

[N.H.] Telephone rate design — New service offerings — Direct inward dialing, digital, and switched services — Suspension — Extension of suspension period — To allow for adequate investigatory time — Local exchange carrier. p. 558.

2. RATES, § 248

[N.H.] Schedules and procedure — Suspension — As to new telephone offering — Extension of suspension period — To allow for adequate investigatory time — Direct inward dialing, digital, and switched services — Local exchange carrier. p. 558.

Page 557

BY THE COMMISSION:

ORDER

[1, 2] On March 25, 1996 Dunbarton Telephone Company (Dunbarton) filed tariff pages proposing to introduce Direct Inward Dialing (DID) Service, DSI 1.544 Megabits per second (Mbps) Digital Service and Switched 56 Kilobit per second (Kbps) Service for effect April 22, 1996. In support of its filing, the Company stated it was mirroring NYNEX rates for the proposed services in order to incur minimal costs. In addition, on April 19, 1996, the Company resubmitted tariff pages P.U.C. - N.H. No. 5, Section 3 Sheet Q-1 Original and Section 3, Sheet Q-3 Original, correcting cross-references which were inadvertently omitted from the initial filing.

On April 19, 1996 the Commission issued Order No. 22,108, suspending the proposed tariff pages. Subsequently, on April 25, 1996, the Commission revised Order No. 22,108 to correct the inadvertent omission of references, as described in the Executive Director's April 26, 1996 letter

to the Parties.

Staff requires additional time to investigate the filing and consider the use of NYNEX rates for these services and, therefore, has requested that the proposed tariff pages be further suspended.

We have reviewed Staff's request and will further suspend the proposed filing to allow a thorough review of the tariff filing and the accompanying supporting materials. However, while the public interest is best served by a thorough investigation of Dunbarton's filing, the timely introduction of cost justified services is equally important. We will direct Staff to complete its review of this filing within thirty days.

Based upon the foregoing, it is hereby

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

NHPUC No. 5

Section 3 - Sheets O-1, O-2, P-1, P-2, P-3, P-4, P-5, P-6, P-7, P-8, P-9, P-10, Q-1, Q-2, Q-3, Q-4, Q-5, and Q-6.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of July, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Dunbarton Teleph. Co., DR 96-084, Order No. 22,108, 81 NH PUC 298, Apr. 19, 1996.

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NH.PUC*07/16/96*[89254]*81 NH PUC 558*Merrimack County Telephone Company

[Go to End of 89254]

81 NH PUC 558

Re Merrimack County Telephone Company

DS 96-197
Order No. 22,241

New Hampshire Public Utilities Commission

July 16, 1996

ORDER suspending a local exchange telephone carrier's proposed introduction of enhanced business services, a form of Centrex service.

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1. SERVICE, § 463

[N.H.] Telephone — Proposal for Centrex-like "enhanced business services" — Suspension — To allow for adequate investigatory period — Local exchange carrier. p. 559.

2. RATES, § 248

[N.H.] Schedules and procedure — Suspension — Of proposed service offering — To allow for adequate investigatory period — As to Centrex-like "enhanced business services" — Local exchange telephone carrier. p. 559.

BY THE COMMISSION:

Page 558

ORDER

[1, 2] On June 14, 1996, Merrimack County Telephone Company (Merrimack) filed proposed tariff pages to introduce Enhanced Business Services (EBS) for effect July 15, 1996. Merrimack has stated that EBS is also referred to as Centrex service. In support of its filing, Merrimack filed incremental cost study support materials and market research data.

Staff requires time to investigate the filing and material filed in support of the proposed tariff and therefore requested that the proposed tariff pages be suspended.

We have reviewed Staff's request and will suspend the proposed filing to allow a thorough review of the tariff filing and the accompanying supporting materials.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of Merrimack County Telephone Company are suspended:

NHPUC No. 7

Part III - General, Section 2,

Original Pages 1 through 26

By order of the Public Utilities Commission of New Hampshire this sixteenth day of July, 1996.

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NH.PUC*07/16/96*[89255]*81 NH PUC 559*LCI International Telecom Corporation

[Go to End of 89255]

81 NH PUC 559

Re LCI International Telecom Corporation

DS 96-198
Order No. 22,242

New Hampshire Public Utilities Commission

July 16, 1996

ORDER authorizing an interexchange telephone carrier to revise various of its calling plans, to reduce billing increments for some services and to introduce two new "World Talk" plans, one designed for housing entities wanting to offer toll service to residents and one providing switched access calling card service.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Tariff revisions — Billing increment reductions for some calling plans — Interexchange telephone carrier. p. 559.

2. SERVICE, § 468

[N.H.] Telephone — Toll service — Introduction of "World Talk" service plans — Components — Toll package for housing entities to offer residents — Switched access calling card service — Interexchange telephone carrier. p. 559.

BY THE COMMISSION:

ORDER

[1, 2] On June 17, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from LCI International Telecom Corp. (LCI) requesting authority to make various revisions to its tariff and introduce World Talk Dedicated Service and World Talk 800 Service.

The proposed revisions include textual changes and billing increment reductions for Campus Talk Dedicated Service, Campus Talk 800, Military Talk, and Earthtalk. Corrections are made to the volume discounts for Integrity service as well as the discount tables for Integrity Option A and HSDS-DS-3 IOC. Option C is being introduced for Integrity. Minimum usage commitment language is being added to the Rules and Regulations section.

LCI is also adding two new promotional offerings. World Talk Dedicated Service is designed for all types of housing entities that want to provide a long distance service to residents. World Talk 800 is a calling card service which provides long distance service using switched access.

Page 559

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize LCI to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of LCI's tariff, NHPUC No. 3 are effective as filed:

6th Revised Page 1
4th Revised Page 2
4th Revised Page 3
5th Revised Page 3.1
Section 2
1st Revised Page 9
2nd Revised Page 10
1st Revised Page 10.1
Original Page 10.2
1st Revised Page 23
1st Revised Page 24
1st Revised Page 26
Original Page 29
Original Page 30
Section 3
1st Revised Page 41
Section 4
1st Revised Page 12
Original Page 12.1
2nd Revised Page 13
1st Revised Page 13.1
Original Page 13.2
1st Revised Page 14
1st Revised Page 15
2nd Revised Page 16
1st Revised Page 16.1
Original Page 16.2
2nd Revised Page 22
2nd Revised Page 24
1st Revised Page 25
1st Revised Page 26

Original Page 31

Original Page 32;

and it is

FURTHER ORDERED, that LCI file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this sixteenth day of July, 1996.

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NH.PUC*07/22/96*[89256]*81 NH PUC 560*John P. Chandler v. Newfound Economic Development Corporation

[Go to End of 89256]

81 NH PUC 560

John P. Chandler
v.
Newfound Economic Development Corporation

DE 96-186
Order No. 22,243

New Hampshire Public Utilities Commission

July 22, 1996

ORDER dismissing complaint as to the administration of a mediation fund which had been established to aid certain wood-fired biomass independent power producers should they be unable to find other markets for their output and have to cease operations upon termination and buyouts of previously approved power purchase contracts they had executed with an electric utility, Public Service Company of New Hampshire.

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1. COGENERATION, § 17

[N.H.] Contracts — Long-term agreements — Modification and renegotiation — Buyout of long-term rate orders — Mediation fund as component of buyout — Wood-fired biomass independent power producers — Ongoing commission oversight. p. 562.

2. COGENERATION, § 17

[N.H.] Contracts — Long-term agreements

Page 560

— Modification and renegotiation — Buyout of long-term rate orders — Terms and

conditions — Establishment of mediation fund — For employee retraining or lost market opportunities — Administration of fund — Disbursement of loans and grants — Reasonableness — Wood-fired biomass independent power producers. p. 562.

APPEARANCES: McGrath Law Firm by Peter G. McGrath, Esq. on behalf of the Newfound Economic Development Corporation; the Office of the Consumer Advocate by Michael W. Holmes, Esq. on behalf of Representative John P. Chandler and 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 September 23, 1994 the Commission issued Order No. 21,368 approving an agreement between Bristol Energy Corporation (BEC), a wood-fired independent power producer located in Alexandria, and Public Service Company of New Hampshire (PSNH) that provided for the cancellation of BEC's rate order under which PSNH was required to purchase the electric output of the plant. *Re Public Service Company of New Hampshire*, 79 NH PUC 531 (1994). The agreement also provided for the establishment of a fund by PSNH in the amount of $1.2 million to mitigate the economic impact of closing the plant on the employees of the plant and those industries, such as wood-chip producers, that had developed to serve the plant (Mitigation Fund or Fund). Pursuant to the Agreement, the Fund was to be administered by the Newfound Economic Development Corporation (NEDC).

On May 16, 1996 the Commission received a letter of complaint from Representative John P. Chandler, a resident of Hill, who represents the Towns of Hill, Andover, Danbury, Salisbury and Wilmot in the General Court. The complaint stated that NEDC had granted Ingram-Howell of Alexandria, LLC (Ingram-Howell) a $200,000 loan from the Fund to develop a biomass-to-ethanol plant. The complaint raised concerns regarding a confidentiality agreement entered into between NEDC and Ingram-Howell, and whether the proposed project was in accordance with the mission statement governing the use of the Fund.

On May 31, 1996 NEDC responded to Representative Chandler's complaint as requested by the Commission.

On June 10, 1996 we issued an Order of Notice scheduling a hearing for July 10, 1996 to determine whether NEDC's actions in granting the loan were in compliance with Order No. 21,368. *Re Public Service Company of New Hampshire*, 79 NH PUC 531 (1994).

On July 1, 1996 NEDC filed a motion to dismiss the complaint or in the alternative to schedule a prehearing conference. On July 10, 1996 the Office of the Consumer Advocate filed an objection to NEDC's motion on behalf of Representative Chandler and all residential ratepayers.

At the duly noticed July 10, 1996 hearing the Commission denied NEDC's motion for a prehearing conference, took the motion to dismiss under advisement and took evidence on the

merits of the complaint.

II. POSITIONS OF THE PARTIES AND STAFF

A. *Representative John P. Chandler and the Office of the Consumer Advocate*

As is set forth above, Representative Chandler initially questioned NEDC's refusal to make public the information upon which it relied in awarding a $200,000 loan to Ingram-Howell on the grounds that NEDC had entered into a confidentiality agreement with Ingram-Howell. He also raised whether the Ingram- Howell's proposed project would in fact involve the use of low grade wood-chips.

Page 561

In addition at the hearing, Representative Chandler and the OCA questioned whether the process that resulted in Ingram-Howell's selection for a loan was "fair and evenhanded" as required by Order No. 21,368. Representative Chandler and the OCA raised the fact that a Request for Proposals (RFP) that resulted in the grant of a loan to Ingram-Howell had been developed after certain officers of NEDC had reviewed Ingram-Howell's proposed project, and that certain participants in the selection process had not reviewed Ingram-Howell's actual proposal but had rather relied on an executive summary of the project. Representative Chandler also expressed concern that the confidentiality agreement impaired the evaluation process because the evaluators were prohibited from discussing Ingram-Howell's proposal with third parties.

B. *Newfound Economic Development Corporation*

In its motion to dismiss, NEDC maintained that the Commission lacked jurisdiction to hear Representative Chandler's complaint because NEDC was not a public utility as defined by RSA 362:2. NEDC further contended that NEDC's administration of the Mitigation Fund did not provide sufficient grounds to establish Commission jurisdiction because the New Hampshire Supreme Court had held that Commission jurisdiction could not be viewed so broadly as to establish jurisdiction over all individuals or entities somehow associated with utility activities.

With regard to the confidentiality agreement, NEDC argued that it was bound by the agreement that was necessary to protect the trade secrets and pending patents upon which Ingram-Howell's process relied. NEDC further argued that Ingram-Howell's confidentiality requirement was warranted due to the existence of a potential competitor in the ethanol production field in New Hampshire.

On the merits, NEDC maintained that the RFP process had not been tainted by the fact that four officers of NEDC had reviewed the proposed project before the RFP had been issued because the RFP was subject to the scrutiny of individuals and entities advising NEDC that had never seen the Ingram-Howell project. NEDC further contended that the actual selection process was not tainted because of the numerous distinct bodies that reviewed each of the candidates for loans or grants.

C. *Staff*

Staff took the position that the Commission had the authority to determine whether the Fund had been administered in a fair and equitable manner.

III. COMMISSION ANALYSIS

[1, 2] In its order approving the agreement creating the Mitigation Fund and providing for its administration by NEDC the Commission stated that it would "not interject [itself] into the decision-making process of the Fund Administrator, [nor would it] act as an `appeal tribunal' regarding disbursements ... ." *Re Public Service Company of New Hampshire*, 79 NH PUC 531, 539 (1994). Notwithstanding the Commission's unwillingness to interject itself into the decision-making processes of the Fund Administrator, it also recognized that the Mitigation Fund was "ultimately ratepayer monies" and therefore determined that it "will not completely remove [itself] from the Funds' oversight." *Id.*

In order to protect ratepayer interests without becoming intimately involved in the decision-making processes of the Fund Administrator, the Commission stated that it would require the Fund Administrator to be "fair, evenhanded and responsible in [its] allocations," and that all potential recipients of Fund proceeds be given a "fair opportunity to obtain mitigation assistance." *Id.*

Because the Commission specifically retained continuing jurisdiction over the fairness of the distribution process as a condition for the use of ratepayer monies to create the Fund, we will deny NEDC's motion to dismiss. Thus, we will consider Representative Chandler's and the OCA's complaints to the extent they allege improprieties in the distribution process.

Page 562

The first allegation of impropriety is that the development of the RFP was tainted because four officers of NEDC had reviewed Ingram-Howell's proprietary trade secrets and project plans during the same time period that NEDC employees, its advisory committees and Board of Directors were developing the RFP. Based on the testimony, we cannot find that availability of this information resulted in an unfair selection process. Although there may have been an appearance of impropriety, we cannot conclude that there was any impropriety in fact.

Although the four officers of NEDC sit on the sixteen member Board of Directors, which ultimately authorized the issuance of the RFP, there is no evidence that the RFP was somehow skewed to favor Ingram-Howell's proposal. Change Parker, Executive Director of NEDC, testified that the RFP was developed by NEDC employees, but that the development of the RFP was an iterative process wherein drafts of the RFP were sent to advisory committees and NEDC's Board of Directors for review, comments and proposed changes. Mr. Parker testified that the RFP was modified after each draft was returned to NEDC with comments and proposed changes.

Furthermore, there was no evidence or allegation based on an examination of the actual RFP that revealed an innate advantage for Ingram-Howell within the four corners of the document. Thus, we cannot conclude that the four officers who sat on the Board of Directors somehow corrupted the process to ensure Ingram-Howell's success.

Representative Chandler and the OCA also questioned this prior relationship between NEDC officers and employees and the representatives of Ingram-Howell. Again, based on the testimony

we cannot conclude that Ingram-Howell was awarded a loan because its prior relationship with or familiarity to NEDC employees resulted in an unfair selection process.

Mr. Parker testified that there were six applicants for loans and grants under the RFP, one of which was Ingram-Howell; and that although Ingram-Howell was awarded a loan, two other applicants have been awarded grants. He further testified that the selection process was based on the review of three independent committees and a recommendation from NEDC officers, and that the final selection by the sixteen member Board of Directors was based on all of the three reviews and the officers' recommendations.

The first review was conducted by three professionals from the forest industry. Each of these professionals independently reviewed the six proposals without input from one another and listed the positive and negative aspects of each project. The second review was conducted by NEDC's forest industry committee. The committee independently reviewed the six proposals and ranked and weighted each proposal. The third review was conducted by the NEDC Mitigation Fund advisory board which consists of timbering professionals, the Chief Executive Officer of BEC, the Director of the Society for the Protection of New Hampshire's Forests and a representative of PSNH. At the request of a number of these individuals, executive summaries of the proposals were reviewed and a recommendation was made to NEDC as to which proposals should be awarded funds and what the amount of those awards should be.

Based on these independent reviews NEDC officers made recommendations to the Board of Directors. The Board of Directors analyzed each of these reviews and chose the proposals that would receive funds and the amount and form of the award. We find the process to have been thorough and professional and cannot conclude the process was tainted by the confidentiality agreement or by any other factor.

Representative Chandler and the OCA also questioned whether the Ingram-Howell proposal would actually result in the use of the type of low grade wood-chips that were formerly used to fire the BEC plant when it was in production, or whether it would in fact rely on higher grade chips from debarked logs. This is the type of analysis that the commission specifically indicated it would not undertake when it approved the agreement creating the Fund. We will not substitute our judgment for the judgment of the Fund administrators; we will not here second-guess the administrator's decisions on fund recipients.

With regard to the failure of NEDC to release information relative to the trade secrets and pending patents held by Ingram- Howell as they relate to its proposed project in Alexandria, while we question the application of RSA chapter 91-A to NEDC, this issue is a matter for the Superior Court, not this Commission, to resolve. RSA 91-A:7. In addition, we wish to note that at the hearing NEDC represented that Ingram-Howell is willing to speak with Representative Chandler and would entertain written request for information on a case-by-case basis. Exhibit 5.

Representative Chandler also noted that there was a great deal of public concern in Alexandria and the surrounding communities relative to the use of municipal solid waste in the ethanol production process proposed by Ingram-Howell from the perspective of both traffic flows and environmental concerns. Again, these are not issues within our jurisdiction. Any

concerns relative to traffic, the environment or municipal solid waste should be brought to the appropriate municipal bodies or State agencies for their review.

Based upon the foregoing, it is hereby

ORDERED, that NEDC's motion to dismiss is denied; and it is

FURTHER ORDERED, that the process employed by the NEDC in awarding a $200,000 loan to Ingram-Howell was in compliance with Order No. 21,368.

By order of the Public Utilities Commission of New Hampshire this twenty-second day of July, 1996.

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NH.PUC*07/22/96*[89257]*81 NH PUC 564*Statewide Electric Utility Restructuring Plan

[Go to End of 89257]

81 NH PUC 564

Re Statewide Electric Utility Restructuring Plan

DR 96-150
Order No. 22,244

New Hampshire Public Utilities Commission

July 22, 1996

ORDER addressing preliminary procedural matters in a proceeding addressing the possible restructuring of the state's electric utility industry. Commission declines to designate the proceeding as either purely adjudicative or a rulemaking, finding that procedural aspects of both types of proceeding will have to be employed. Commission also resolves certain intervention, service of process, and evidentiary issues.

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1. PARTIES, § 16

[N.H.] Respondents — Necessary parties — All jurisdictional electric utilities — As to proceeding addressing restructuring of electric utility industry. p. 566.

2. PROCEDURE, § 2

[N.H.] Commission authority to determine procedural direction — Adjudicative versus rulemaking proceedings — Issues of fact versus policy as a factor — Blending of procedures as appropriate. p. 567.

3. PROCEDURE, § 2

[N.H.] Commission decision governing procedural direction — In proceeding addressing restructuring of electric utility industry — Adherence to rulemaking procedures in most aspects — But actual promulgation of rules not necessary — Use of adjudicative procedures for stranded

cost charge issue — Necessity of public hearings. p. 567.

4. COMMISSIONS, § 48

[N.H.] Action and investigation — Through officers or agents — Special designation of staff — As advocates or decisional employees — Type of proceeding as a factor. p. 569.

5. PROCEDURE, § 23

[N.H.] Notice — Sufficiency of and parties notified — Service of notice and papers — By facsimile rather than by mail or in person — No waivers of service as to any party —

Page 564

Proceeding addressing restructuring of electric utility industry. p. 570.

6. PROCEDURE, § 28

[N.H.] Conduct of hearings — Evidentiary matters — Proposal to eliminate "friendly" cross-examination — Rejection — But parties encouraged to consolidate their testimony and evidentiary presentations — Proceeding addressing restructuring of electric utility industry. p. 570.

APPEARANCES: Dom S. D'Ambruoso, Esq., of Ransmeier & Spellman for Connecticut Valley Electric Company, Inc.; Robert A. Bersak, Esq. Robert P. Knickerbocker, Jr. Esq. of Day, Berry and Howard for Public Service Company of New Hampshire; Scott J. Mueller, Esq., of LeBoeuf, Lamb, Greene & MacRae for Concord Electric Co., Exeter & Hampton Electric Company and Unitil Power Corp. Inc.; Carlos A. Gavilondo, Esq., for Granite State Electric Co.; Mark W. Dean, Esq., of Dean, Rice and Howard for New Hampshire Electric Cooperative, Inc.; Steven V. Camerino, Esq., of McLane, Graf, Raulerson & Middleton for EnergyNorth Natural Gas, Inc.; Robert A. Olson, Esq., and Paul A. Savage, Esq., of Brown, Olson & Wilson for Green Mountain Energy Partners, Bio-Energy Corporation, Inc., Bridgewater Power Corporation, Inc., Hemphill Power & Light Company, Inc. Whitefield Power and Light Company, Inc., Pinetree Power, Inc., and Pinetree Power - Tamworth, Inc.; Mitchell A. Berkowitz for the City of Berlin; George E. Sansoucy for Coos County; Peter H. Grills, Esq., for the City of Manchester; Jeanne M. Sole, Esq., for the Conservation Law Foundation; Robert D. Shapiro, Esq., for Competitive Power Coalition of New England; Christopher O'Brien for Wheeled Electric Power Corp., Inc.; Harold T. Judd, Esq., for Federated Department Stores; Henry Vielleux for Business and Industry Association of New Hampshire; Ted Diers for Merrimack River Watershed Council; Peter Dill, Esq., for Granite State Energy; John J. Ratigan, Esq., of Donahue, McCaffrey, Tucker & Ciandella for New Hampshire Municipal Association; Robert A. Backus, Esq., of Backus, Meyer, Solomon and Rood and Joshua L. Gordon, Esq., for Campaign for Ratepayers Rights; D. Dickinson Henry for The Solutions Collaborative; Howard M. Moffett Esq., of Orr and Reno for Granite State Hydropower Association; Daniel W. Allegretti, Esq., for Retail Merchants Association of New Hampshire; James T. Rodier, Esq., for Freedom Energy Company; James Monahan for Cabletron Systems; James Bianco, Esq, for Enron Capital & Trade Resources; Deborah M. Barradale, Esq., for EnerDev, the City of Claremont, and Granite State Taxpayers,

Inc.; Jacqueline Lake Killgore, Esq., for Public Utility Policy Institute; Alan Linder, Esq., for Save Our Homes Organization; Tammar Van Ryn for Society for the Protection of New Hampshire Forests; Michael W. Holmes, Esq., of the Office of Consumer Advocate for residential ratepayers; and Robert J. Frank, Esq., for Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. INTRODUCTION AND PROCEDURAL HISTORY

On May 30, 1996, the New Hampshire Public Utilities Commission (Commission) opened this docket in response to the recent enactment of state legislation that requires the Commission to initiate a generic proceeding and develop a statewide electric utility restructuring plan no later than February 28, 1997. *See*, Chapter 129 (HB 1392) codified as RSA 374-F. The Commission's Order of Notice scheduled a prehearing conference for June 25, 1996 and invited comments on preliminary procedural issues relative to the implementation of RSA 374-F. The Order of Notice also directed interested parties to submit requests for intervention pursuant to RSA 541-A:32 and N.H. Admin. Rules, Puc 203.02.

On June 21, 1996, Public Service

Company of New Hampshire (PSNH) filed a Motion for an Adjudicative Proceeding, for Designation of Staff, and for Other Relief (Motion). A number of parties submitted objections and responses to PSNH's Motion. On July 10, 1996, the Public Utilities Policy Institute (PUPI) filed a Motion to Schedule Evidentiary Hearing. This order addresses intervention requests, PSNH's Motion and responses, PUPI's Motion, and several other procedural issues raised by various parties at or subsequent to the prehearing conference.

II. POSITIONS OF THE PARTIES

A. *Intervention Requests*

[1] All of the state's jurisdictional electric utilities are mandatory parties to this proceeding. The Commission received over 50 requests for full or limited intervention, which are identified in Appendix 1 to this order. No party objected to any request for intervention.

B. *Form of Proceeding*

PSNH asserted that the entire restructuring docket would involve its rights and privileges and therefore should be adjudicatory. Some of the other jurisdictional electric utilities, including Granite State Electric Company (GSEC) and Connecticut Valley Electric Company (CVEC), asserted that the interim stranded cost charge would necessitate adjudicative procedures, but did not argue that the entire proceeding should be made adjudicative at this time.

A number of parties objected to the assertions of PSNH regarding the need for adjudicative proceedings on all matters, including Green Mountain Energy Partners, Enron, EnerDev, Inc., Cabletron, City of Claremont, Granite State Taxpayers Association, Retail Merchants Association of New Hampshire, New Hampshire Municipal Association, Save Our Homes

Organization, Conservation Law Foundation, Appalachian Mountain Club and Society for Protection of New Hampshire Forests. They argued PSNH was not entitled as a matter of law to an adjudicative proceeding on all matters and that the RSA 374-F does not require such an approach.

PUPI moved for an evidentiary hearing on the issue of interim stranded costs, and whether setting such a charge was mandated by RSA 374-F or merely permissive. PUPI argued that the legislature mandated that the Commission set an interim stranded cost.

C. *Motion to Designate Staff*

PSNH moved to designate the Commission Staff (Staff) as either advisory decisional employees or Staff advocates, recounting the statutory standards of RSA 363:30 which authorize such designation.

There were no responses in support of the separation request, though some parties, including CVEC and GSEC, did not object or took no position. Nearly all other commenters objected to the request, arguing that PSNH had made no showing regarding the need for separation at this time.

D. *Issues Regarding Documents*

PSNH asked the Commission to authorize facsimile service among the parties for the duration of this docket, to waive N.H. Admin. Rules, Puc 203.04(b) requiring concurrence in motions, due to the large number of intervenors in the docket and to strictly enforce Puc 203.04(c) granting parties and Staff 10 days in which to respond to motions and not act on motions before the 10 day period had run.

Those who responded to these issues were supportive, arguing it would reduce the burden of participating in so large a case.

E. *Issues Regarding Parties*

PSNH asked the Commission to bar friendly cross examination of witnesses in order to expedite the hearings. No party supported this request and many opposed it.

A number of parties, including Cabletron, SOHO, Enron, Conservation Law Foundation, Granite State Taxpayers and the New Hampshire Municipal Association, responded to our request for comments on consolidation of parties, arguing primarily that while many

Page 566

entities may share some common concerns, they should not be prohibited from acting on their own if their interests diverged on particular points. CVEC argued that mandatory consolidation was appropriate and suggested a number of categories into which parties would fall.

F. *Issues Regarding Restructuring Plan*

PUPI asked that we resolve certain threshold legal issues at the start of the docket, before addressing other aspects of the restructuring plan. GSEC argued that while these issues were critical, to address them in the abstract before the restructuring plan was developed would not be

fruitful.

Concord Electric Company and Exeter and Hampton Electric Company (collectively the Unitil Companies) asked for an opportunity to provide comments on the Plan itself, before the initial draft is issued, arguing that the parties had considerable expertise that would be of benefit to the Commission.

III. COMMISSION ANALYSIS

A. *Intervention Requests*

We grant all intervention requests as set forth in Appendix 1. In so doing, however, we note that several parties who have sought and received full intervention status arguably may not have standing to intervene under RSA 541-A:32 and N.H. Admin. Rules, Puc 203.02. We grant these requests because we wish to encourage public participation in this generic proceeding. Nonetheless, all parties should be aware that we intend to exercise our authority to limit or condition the participation of any such parties if circumstances so warrant.

B. *Form of Proceeding*

[2, 3] PSNH's Motion summarily states that "it is entitled to an adjudicatory proceeding for the entirety of this docket" because the setting of an interim stranded cost charge and "each and every other issue in this docket necessary for the restructuring of the electric utility industry will have a material impact on the legal rights, duties or privileges of PSNH."

In response to the Motion, a number of parties contend that the Legislature intended the Commission to use non-adjudicative processes in this proceeding.[1(66)] Other parties support PSNH's request for adjudicative procedures, particularly in setting the interim stranded cost charges for each utility.[2(67)]

"It has become black letter law that the choice to proceed by rulemaking or adjudication lies within the sound discretion of the agency." C. Koch, *Administrative Law and Practice*, § 2.14 (1985) (1996 Supplement). Under the New Hampshire Administrative Procedure Act (APA), an "adjudicative proceeding" is defined as one in which "the rights, duties, or privileges of a party are required by law to be determined after notice and an opportunity for hearing." RSA 541-A:1, I, IV. The term "adjudicative proceeding" refers to a set of procedures that must be followed in contested cases which are designed to protect the procedural due process rights of affected parties. *See* RSA 541-A:31-36.

The fundamental difference between adjudication and rulemaking has to do with the nature of an agency's decision-making functions. Adjudication generally involves a determination of individual rights or duties and is often conducted through an adversarial "trial-type" process. Rulemaking, on the other hand, involves a finding of general applicability which is prospective in nature and which is determined as a result of comments to a document initiated either by the agency or a petitioner. Although the line is sometimes not clear, adjudicative procedures are typically required to resolve factual issues while rulemaking procedures are appropriate for establishing policies or standards of general applicability. Adjudicative procedures are generally not utilized in rulemakings or other "non-adjudicative" proceedings that are more legislative in character, but that is due to the nature of the issues under consideration, rather than any rigid limitations on decisionmaking procedures. Professor Davis explains the problem this way:

In an adjudication, the only issue may be one

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> of law, so that use of trial procedure would be a misfit. In rulemaking, the main issue may be one of specific fact, and may call for presentation of evidence, subject to cross-examination. Letting the choice of procedure depend on the characterization of a whole proceeding as "judicial," "legislative," "adjudication" or "rulemaking" involves crude thinking that fails to begin to reach the true reasons that should control the selection of the appropriate procedure.

Davis, K., *Administrative Law Treatise*, § 10.5 (1979).

While not expressly stated in the New Hampshire APA, it is clear that not all administrative agency proceedings must be rigidly and categorically classified as either rulemaking or adjudication for the duration of the proceeding.[3(68)] It is possible that a particular proceeding may require the application of both rulemaking and adjudicative procedures based upon the particular issues which must be addressed by an agency in carrying out its responsibilities. In fact, we believe the Legislature explicitly recognized this when it enacted RSA 374-F:4, XI, applicable to this proceeding, and stated, "any administrative or adjudicative proceeding or public hearing relating to this chapter shall be subject to the provisions of RSA 541-A." The reference to different types of proceedings and the broad reference to RSA 541-A, which includes both rulemaking and adjudicative procedures, in our view indicates the Legislature's desire to allow essentially a hybrid proceeding incorporating elements of both types of proceedings.

PSNH's Motion and the comments of several parties reveal a degree of confusion over these fundamental principles of administrative law. It appears that some parties presume that our characterization of this proceeding (as either adjudication or rulemaking) will rigidly dictate the decision-making procedures which will be made available to decide all issues, whether they involve issues of fact, law or policy. Those who advocate that the Commission "solve" these procedural questions by simply characterizing the proceeding as either rulemaking or adjudication offer a facile solution to what are sometimes difficult questions of procedure. Moreover, the mere classification of an administrative proceeding as either adjudicative or rulemaking does not determine the nature of the activity nor does it ensure that affected parties will be afforded their procedural due rights. It is the "character of the action, rather than its label, which must be used to determine whether it is `adjudicative' or `legislative'." C. Koch, *Administrative Law and Practice*, § 2.3 (1985) (1996 Supplement).

In this proceeding RSA 374-F:4, II requires that we "undertake a generic proceeding to develop a statewide industry restructuring plan ... and ... after public hearings ... issue a final order no later than February 28, 1996." This phase of the proceeding is clearly legislative in nature; the development of a restructuring plan is akin to rulemaking in that the plan is a "statement of general applicability" to "implement, interpret or make specific a statute enforced or administered by such agency." RSA 541-A:1, IV.[4(69)] We are also required to establish an "interim stranded cost recovery charge" for each jurisdictional electric utility. *See* RSA 374-F:4, II and VI. This requires an adjudicative proceeding because in setting interim stranded cost

charges specifically tailored for each utility, we are determining the "legal rights, duties or privileges" of those parties. Thus, this phase will be conducted pursuant to RSA 541-A:31 *et seq.*

The source of PSNH's position appears to be a mistaken belief that it will be afforded procedural due process protection only if we expressly designated this proceeding as "entirely adjudicatory." This position appears to derive from a misunderstanding about the relationship between this agency's obligations under the APA and the procedural due process rights to which parties are entitled under the federal and state constitutions. Simply designating this proceeding as an adjudication under the APA does not guarantee PSNH procedural due process. Likewise, by declining to designate the entire proceeding "adjudication" under the APA, we have not denied PSNH any such rights. Our decision simply reflects the nature of this undertaking, which as explained above, is both legislative and adjudicative.

PSNH also relies on an overly broad interpretation of RSA 541-A:1, IV which defines a contested case. According to the New Hampshire Supreme Court:

> Not all agency actions that affect legal rights, duties or privileges are contested cases. Legislative-style rulemaking decisions, while affecting legal rights, duties or privileges, are not required by law to be determined by adjudication.

Appeal of Toczko, 136 N.H. 480, 485 (1992). This decision also supports the proposition that the Court will not strictly construe the APA in a way which unduly limits the discretion of an agency to select procedures that will effectuate its purposes.

Based upon the foregoing, we deny PSNH's blanket request to declare the entire proceeding adjudicative, which would then require us to resolve "each and every issue" in this proceeding according to the procedures set forth in RSA 541-A:32-36. Nonetheless, we have concluded that such adjudicative procedures should be used in order to set interim stranded cost charges. We do not foreclose the possibility of making adjudicative procedures available to address other issues, but will require PSNH and other parties to specify those aspects of RSA 374-F for which they seek such procedures.

The only remaining issue is whether we must conduct the non-adjudicative aspects of this proceeding through formal rulemaking process set forth in RSA 541-A:3.[5(70)] After carefully reviewing RSA 374-F, we have concluded that, by instructing us to undertake a "generic proceeding," the Legislature did not intend to direct or require us to establish the statewide restructuring plan through formal rulemaking. RSA 374-F:4, II directs us to conduct "public hearings" and to issue a "final order" no later than February 28, 1997. The term "public hearing" appears in the rulemaking section of RSA 541-A. *See* RSA 541-A:11. Thus, the use of that term in RSA 374-F indicates a Legislative intent that we conduct the type of hearing associated with rulemaking. However, this is not to say that we are compelled to promulgate rules for electric industry restructuring. We believe that if the Legislature intended us to be bound by the strict rulemaking procedures of RSA 541-A:3, it would have so specified as it has done in numerous other instances. The key words "shall adopt rules pursuant to RSA 541-A," which the Legislature often uses, are not present here. The reference to "public hearings ... subject to the provisions of RSA 541-A" in RSA 374-F, XI manifests, in our view, a Legislative direction that we conduct a

portion of our proceedings in essentially the same manner as rulemaking hearings, without the need to formally adopt a rule.

Because we intend to set an interim stranded cost charge prior to February 1997, PUPI's request that we conduct an evidentiary hearing as to whether the Commission is mandated to do so is an unnecessary step.

C. *Motion to Designate Staff*

[4] PSNH's Motion requests that the Commission designate its Staff as staff advocates or decisional employees, pursuant to RSA 363:30 and N.H. Admin. Rules, Puc 203.15. PSNH does not provide support for its request; rather it recites the words in RSA 363:32 and offers no explanation why the statute applies to the circumstances of this case.

Pursuant to RSA 363:30-36, the Commission is required designate Staff members as either decisional employees or staff advocates only when it conducts an adjudicative proceeding. As we explained above, this proceeding is more legislative in nature, although adjudicative procedures will be used for certain issues. We have the express statutory authority to segment this proceeding into adjudicative and non-adjudicative phases for purposes of separating Staff members. *See*, RSA 363:33.

When we undertake any such adjudication during this proceeding, we will consider requests to designate staff which may be filed regarding the issue or issues being adjudicated. While it would be premature to rule on any request at this time, we hereby notify the parties that we are inclined to grant such a request regarding the interim stranded cost charge. PSNH's blanket request for designation on all

Page 569

issues, and in all portions of this proceeding, is denied.

D. *Issues Regarding Documents*

[5] PSNH asked the Commission to authorize service by facsimile among the parties rather than require mail or personal service. We believe that this is a reasonable proposal and hereby direct all parties who have been granted full intervention status to submit a letter to the Commission's Executive Director no later than August 1, 1996 with a facsimile number for service purposes. Any party who is unable to receive service by facsimile should so indicate. We will issue a revised service list with facsimile numbers shortly.

We will not accept the request of Conservation Law Foundation to waive service to certain parties. Though it is a cumbersome process to serve this many parties, we do not believe it would be fair or workable to make distinctions among full intervenors.

PSNH also proposes that the Commission waive N.H. Admin. Rules, Puc 203.04(b) which requires parties to seek the concurrence of other parties relative to any motion that is filed. According to PSNH, there are a multiplicity of parties which have "substantially adverse interests" from one another. We agree and grant PSNH's request to waive the requirements of Rule 203.04(b) in this docket unless and until we order otherwise.

PSNH requests that the Commission enforce the requirements of N.H. Admin. Rules, Puc

203.04(c) which provides that objections to motions must be filed within 10 days of the date that the motion is filed. We decline to relinquish our express authority under N.H. Admin. Rules, Puc 201.05 which permits us to waive the provision of any of our rules except where precluded by statute and we therefore deny the request. We intend, however, to enforce the ten day deadline on objections except in cases in which we find good cause to shorten or extend the objection period.

The Unitil Companies and PSNH encourage the Commission to develop an electronic bulletin board for orders, motions and other documents in this case. We understand the usefulness of the suggestion, but do note that to be comprehensive, all parties must file their pleadings electronically as well as in hard copy. We are exploring the idea and will notify the parties if we are able to set up such a bulletin board.

E. *Issues Regarding Parties*

[6] PSNH asks that the Commission prohibit "friendly cross" during hearings in this proceeding. We do not believe that it is appropriate to deny parties the opportunity to conduct cross-examination during the adjudicative portions of this proceeding. Parties should understand, however, that we will limit cross-examination that is redundant or unproductive.

Regarding consolidation, we appreciate the efforts of some parties to consolidate their filings when appropriate. For example, Granite State Taxpayers Association, City of Claremont, EnerDev, Inc., and Retail Merchants Association filed a joint objection to PSNH's Motion, as did Conservation Law Foundation, Audubon Society of New Hampshire, Appalachian Mountain Club, Society for Protection of New Hampshire Forests, and Merrimack River Watershed Council.

Many parties have expressed concern that mandated consolidation of parties could compromise their unique interests. We continue to believe that parties should join with others who share the same interests and views on various issues. We will not mandate any form of consolidation at this time, but reserve the right to address this issue again, prior to or during any hearings in this matter. We expect parties to explore ways to combine efforts for purposes of presenting testimony and cross-examining witnesses.[6(71)] We will note that an agreement to consolidate some aspects of presentation and cross-examination will not preclude parties from offering separate presentations on particular issues should their interests diverge.

F. *Issues Regarding Restructuring Plan*

Several parties have suggested that the Commission should afford an opportunity to submit comments and/or testimony before the

Page 570

Commission issues its preliminary draft plan. We do not believe that such an approach is helpful or consistent with our Legislative mandate. RSA 374-F requires the Commission to develop a statewide restructuring plan. We recognize that any comments or testimony we solicit will reflect the disparity of interest involved in this proceeding. We intend to carefully and seriously evaluate the views and suggestions of all interested parties during this proceeding. Nevertheless, we have decided to maintain our current procedural schedule and issue a

preliminary draft of our restructuring plan on August 8, 1996.

We also do not intend to resolve threshold legal issues prior to the development of the plan. We agree with GSEC's concern that analysis of these issues in the abstract is not a useful endeavor, given the extremely tight time frame in which we must work.

Finally, we are inclined to accept CVEC's suggestion that after issuance of the preliminary plan we conduct another prehearing conference at which time we will address whether there are additional issues beyond the interim stranded cost charge that should be adjudicated. At that time we will also address other administrative matters necessary to help the parties prepare for hearings on the restructuring plan.

Based upon the foregoing, it is hereby

ORDERED, that PSNH's Motion for an Adjudicative Proceeding, for Designation of Staff, and for Other Relief is GRANTED IN PART and DENIED IN PART, as set forth above; and it is

FURTHER ORDERED, that PUPI's Motion for an Evidentiary Hearing is declared MOOT.

By order of the Public Utilities Commission of New Hampshire this twenty second day of July, 1996.

APPENDIX 1

Parties Granted Full Intervention:

American Association of Retired Persons

Air Resource Division, New Hampshire Department of Environmental Services

Appalachian Mountain Club

Audubon Society of New Hampshire

Business and Industry Association

Cabletron Systems, Inc.

Campaign for Ratepayers Rights

City of Berlin

City of Claremont

City of Manchester

Community Action Programs

Competitive Power Coalition of New England, Inc.

Conservation Law Foundation

Coos County Commissioners

EnerDev, Inc.

EnergyNorth Natural Gas, Inc.

Enron Capital & Trade Resources

Federated Department Stores
Freedom Energy Company
Granite State Energy, Inc.
Granite State Hydropower Association
Granite State Taxpayers, Inc.
Green Mountain Energy Partners
KCS Power Marketing, Inc.
Massachusetts Energy Efficiency Council, Inc.
Merrimack River Watershed Council
NH Citizen Action

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NH Municipal Association
Penti J. Aalto
Public Utility Policy Institute
Retail Merchants Association of New Hampshire
Save Our Homes Organization
Senator C. Jeanne Shaheen
Senator Frederick King
Senator James Rubens
The Solutions Collaborative
Society for the Protection of New Hampshire Forests
Tri-Chamber Governmental Affairs Council
Wheeled Electric Power Company
Wood-Fired SPPs
Parties Granted Limited Intervention:
Control Molding Inc.
Easter Seals
Great Bay Power Corporation
Greater Concord Chamber of Commerce
Greater Dover Chamber of Commerce
Greater Manchester Chamber of Commerce
Greater Keene Chamber of Commerce

Greater Nashua Chamber of Commerce

Greater Portsmouth Chamber of Commerce

Greater Rochester Chamber of Commerce

Greater Somersworth Chamber of Commerce

Home Builders Association of NH

Manchester Manufacturing Management Center

Moore Center

NH Grocers Association

NH Lodging & Restaurant Association

NH Rural Development Council

NH Small Business Development Center

FOOTNOTES

[1]See e.g., the joint objection to PSNH's Motion filed by Retail Merchants Association of New Hampshire, Granite State Taxpayers Association, Enerdev, Inc., and the City of Claremont.

[2]We note that most of the affected jurisdictional utilities allege that adjudicative processes must be used to establish the interim stranded cost charge contemplated by RSA 374-F:4(II). For instance, Granite State Electric Company points out that the setting of interim stranded cost charges requires the Commission to examine the "unique circumstances of each utility."

[3]The statute upon which PSNH relies to designate staff as advocates or decisional employees supports this conclusion. RSA 363:33 contemplates that proceedings may be "phased" into adjudicative and non-adjudicative parts.

[4]Under the APA, if agency action meets the definition of rulemaking, it must follow certain procedures. Thus, consistent with the above analysis, even if we characterize this docket as adjudicatory, a reviewing court is not bound by that characterization.

[5]Specifically, those aspects of this proceeding which require us to "implement, interpret or make specific" RSA 374-F. See, RSA 541-A:1, XV.

[6]This obviously does not apply to the electric utilities which will be required to submit compliance filings in future proceedings.

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NH.PUC*07/22/96*[89258]*81 NH PUC 573*Union Telephone Company

[Go to End of 89258]

DS 96-207
Order No. 22,245

New Hampshire Public Utilities Commission

July 22, 1996

ORDER suspending a local exchange telephone carrier's proposed introduction of "Switch DataPath" service.

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1. SERVICE, § 433

[N.H.] Telephone — Proposal for "Switch DataPath" service — Suspension — To allow for adequate investigatory period — Local exchange carrier. p. 573.

2. RATES, § 248

[N.H.] Schedules and procedure — Suspension — Of proposed service offering — To allow for adequate investigatory period — As to "Switch DataPath" service — Local exchange telephone carrier. p. 573.

BY THE COMMISSION:

ORDER

[1, 2] On June 24, 1996, Union Telephone Company (Union) filed a petition to introduce Switch DataPath Service, for effect July 22, 1996. The filing did not contain any cost support material.

On July 12, 1996, after a request from Staff, Union provided cost support materials.

Staff requires time to investigate the filing, including the recently received cost support material, and, therefore, has requested that the proposed tariff pages be suspended.

We have reviewed Staff's request and will suspend the proposed filing to allow a thorough review of the filing and the supporting materials. We will note that N.H. Admin. Rule Puc 1601.05(a) requires that changes to tariffs can take effect only after 30 days notice to the Commission. "Tariffs" are defined in the rules as the entire schedule, not the rates, terms and conditions of a specific service, so that the rule applies to new offerings as well as changes to existing services. Since the Commission received the filing on June 24, 1996, the earliest proposed effective date of the tariff is July 24, 1996, not July 22nd.

Based upon the foregoing, it is hereby

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

NHPUC No. 7 - Telephone

Index Page 9 Seventh Revision Canceling Sixth Tariff Check Sheet Page 3 Part III - General, Section 21, Page 22
Original Part III - General, Section 21, Page 23

Original.

By order of the Public Utilities Commission of New Hampshire this twenty-second day of July, 1996.

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NH.PUC*07/23/96*[89259]*81 NH PUC 573*AT&T Communications of New Hampshire, Inc.

[Go to End of 89259]

81 NH PUC 573

Re AT&T Communications of New Hampshire, Inc.

DS 96-203
Order No. 22,246

New Hampshire Public Utilities Commission

July 23, 1996

ORDER authorizing an interexchange telephone carrier to revise its tariffs pertinent to software defined data network service.

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1. RATES, § 592

[N.H.] Telephone rate design — Toll

Page 573

service — Tariff revisions — As to software defined data network service — Use of digital switched access as a factor — Interexchange telephone carrier. p. 574.

BY THE COMMISSION:

ORDER

[1] On June 21, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from AT&T Communications of New Hampshire, Inc., (AT&T) requesting authority to make various revisions to its Software Defined Data Network Service (SDDN) for effect July 21, 1996.

The revisions include various rate changes, the deletion of obsolete promotional language and the addition of two new schedules: H1 and H2. Schedule H1 applies to calls which originate from on-network locations using digital special access and terminate at locations using digital switched access or digital special access.

Schedule H2 applies to SDDN calls which originate from on-network locations using digital

switched access and terminate at locations using digital switched access.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize AT&T to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of AT&T's tariff, NHPUC No. 1 are approved for effect as filed:

Table of Contents

7th Revised Page 5

Section 2

2nd Revised Page 8

1st Revised Page 10

1st Revised Page 10.1

1st Revised Page 10.2

1st Revised Page 10.3

1st Revised Page 10.4

4th Revised Page 11

1st Revised Page 12

Original Page 13

Original Page 14

Original Page 15;

and it is

FURTHER ORDERED, that AT&T file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this twenty-third day of July, 1996.

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NH.PUC*07/23/96*[89260]*81 NH PUC 574*AT&T Communications of New Hampshire, Inc.

[Go to End of 89260]

81 NH PUC 574

Re AT&T Communications of New Hampshire, Inc.

DS 96-204
Order No. 22,247

New Hampshire Public Utilities Commission

July 23, 1996

ORDER authorizing an interexchange telephone carrier to introduce various transmission speeds for its digital switched access services.

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1. RATES, § 592

[N.H.] Telephone rate design — Toll service — Tariff revisions — Digital switched access services — Introduction of various transmission speeds — Interexchange telephone carrier. p. 575.

Page 574

BY THE COMMISSION:

ORDER

[1] On June 21, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from AT&T Communications of New Hampshire, Inc., (AT&T) requesting authority to introduce various transmission speeds for its Switched Digital Service for effect July 21, 1996.

The filing introduces Switched Digital Service at 384 kilobits per second and at 1.536 kilobits per second. The service is an add-on to AT&T's interstate offering.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize AT&T to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of AT&T's tariff, are approved for effect as filed:

NHPUC No. 1

Master Table of Contents

3rd Revised Page 1.1

Section 27

Original Page 29 Table of Contents

Original Page 1

Original Page 2

Original Page 3

Original Page 4

Original Page 5

Original Page 6

Original Page 7

NHPUC No. 2

2nd Revised Title Page

and it is

FURTHER ORDERED, that AT&T file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this twenty-third day of July, 1996.

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NH.PUC*07/23/96*[89261]*81 NH PUC 575*Target Telecom Inc.

[Go to End of 89261]

81 NH PUC 575

Re Target Telecom Inc.

DS 96-206
Order No. 22,248

New Hampshire Public Utilities Commission

July 23, 1996

ORDER authorizing an interexchange telephone carrier to make various tariff revisions, primarily to recognize new services now being provided by certain underlying carriers.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Tariff revisions — To incorporate new service offerings of underlying carriers — Interexchange telephone carrier. p. 575.

BY THE COMMISSION:

ORDER

[1] On June 25, 1996, the New Hampshire Public Utilities Commission (Commission)

received a petition from Target Telecom Inc., (TTI) requesting authority to make numerous revisions to its tariff and therefore, replace it with the introduction of TTI's tariff NHPUC No. 2 for effect July 21, 1996.

Revisions to the original tariff are primarily the addition of services provided by specified underlying carriers. In addition, references to the New Hampshire Admin. Rules

Page 575

have been changed to accommodate changes resulting from recently adopted Puc 1200.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize TTI to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that TTI's tariff, NHPUC No. 2 is approved for effect as filed with Original pages.

FURTHER ORDERED, that TTI file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this twenty-third day of July, 1996.

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NH.PUC*07/23/96*[89262]*81 NH PUC 576*Voyager Networks, Inc.

[Go to End of 89262]

81 NH PUC 576

Re Voyager Networks, Inc.

DE 96-050
Order No. 22,249

New Hampshire Public Utilities Commission

July 23, 1996

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

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1. CERTIFICATES, § 123

[N.H.] Telephone carrier — Intrastate intraLATA long-distance services — Interim authority

— Assessment of competitive impacts — Exclusion of local exchange services. p. 576.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate intraLATA toll services — Interim authority — Assessment of competitive impacts — Exclusion of local exchange services. p. 576.

BY THE COMMISSION:

ORDER

[1, 2] On February 16, 1996, Voyager Networks, Inc., a Delaware corporation, petitioned the New Hampshire Public Utilities Commission (Commission) for authority to do business as a telecommunications public utility in the State of New Hampshire (petition) pursuant to, *inter alia*, RSA 374:22 and RSA 374:26. Voyager Networks, Inc. has demonstrated the financial, managerial and technical ability to offer service as conditioned by this order. The Commission previously approved numerous, similar petitions filed during the Trial Period, pursuant to the Modified Stipulation Agreement (Stipulation) in Docket No. DE 90-002, approved by Order No. 20,916 (August 2, 1993). Our orders in those numerous dockets granted the petitioner(s) interim authority to offer intraLATA toll service, specifically excluding local exchange service, for the service territory of the entire State of New Hampshire, during the Trial Period, in order to allow the Commission to analyze competition during the two-year Trial Period.

Because the Trial Period identified by the Stipulation expired on September 30, 1995, we have explicitly clarified that the authority we had granted remains in effect until we specifically modify or revoke that authority, after analysis of the Trial Period. *See* Order No. 21,851 (October 3, 1995). Likewise, our grant of authority ordered herein remains in effect until we specifically modify or revoke that authority.

The public good is served by permitting such competition by telecommunications companies. The Commission permits competitive entry in order to foster competition in the New Hampshire intrastate toll market and to allow

the Commission to analyze the effects of such competition.

The public should be provided an opportunity to respond in support of, or in opposition to this petition.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that Voyager Networks, Inc. is granted interim authority to offer as a telecommunications public utility intraLATA toll service, specifically excluding local exchange service, for the service territory of the entire State of New Hampshire, subject to the following conditions:

1. The services shall be offered by approved tariffs.

2. The services shall be offered until the Commission orders otherwise.

3. Voyager Networks, Inc. shall file tariffs for new services and changes in approved services (other than rate changes), with effective dates of no less than 30 days after the date the tariffs are filed with the Commission.

4. Within one business day of offering an approved service to the public at a rate different from its rates on file with the Commission, Voyager Networks, Inc. shall notify the Commission of the change.

5. Voyager Networks, Inc. is exempted from NH Admin. Rules, Puc 406.01 Preservation of Records; Puc 406.03 Accounting Records; Puc 406.04 Short Term Debt; Puc 407 Forms Required of All Telephone Utilities; and Puc 409 Uniform System of Accounts for Telecommunications Companies.

6. Voyager Networks, Inc. shall maintain its book and records in accordance with Generally Accepted Accounting Principles and shall make those books and records available within the State of New Hampshire whenever required by the Commission.

7. Voyager Networks, Inc. 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. Voyager Networks, Inc. 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. Voyager Networks, Inc. shall compensate the appropriate Local Exchange Company for all originating and terminating access used by Voyager Networks, Inc. pursuant to NET Tariff N.H.P.U.C. 79, Switched Access Service Rate or its successors or its relevant equivalent contained in the tariffs of the Independent Local Exchange Companies.

10. New Service offerings filed for approval with the Commission shall be accompanied by tariff pages describing the service, rates and effective dates; and it is

FURTHER ORDERED, that the authority granted herein remains in full force and effect until the Commission orders otherwise; and it is

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

FURTHER ORDERED, that Voyager Networks, Inc. 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 July 30, 1996, and an affidavit proving publication shall be filed with the Commission on or before August 6, 1996; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, et seq., Voyager Networks, Inc. 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 August 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 August 20, 1996; and it is

FURTHER ORDERED, this Order *Nisi* shall be effective August 22, 1996, unless the Commission provides otherwise in a

Page 577

supplemental order issued prior to the effective date and it is

FURTHER ORDERED, that Voyager Networks, Inc. shall file a compliance tariff with the Commission on or before August 22, 1996, in accordance with NH Admin. Rules, Puc 1601.01 (b).

By order of the Public Utilities Commission of New Hampshire this twenty-third day of July, 1996.

Notice of Conditional Approval of
Voyager Networks, Inc.

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

On February 16, 1996, Voyager Networks, Inc., a Delaware corporation,, filed with the New Hampshire Public Utilities Commission (Commission) a petition to do business as a telecommunications public utility in the State of New Hampshire, specifically to provide intrastate long distance telecommunications services.

In Order No. 22,249, issued in Docket No. DE 96-050, the Commission granted Voyager Networks, Inc. conditional approval to operate as of August 22, 1996, subject to the right of the public and interested parties to comment on Voyager Networks, Inc. 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 Voyager Networks, Inc.'s petition to do business in the State must be submitted in writing no later than August 13, 1996, and reply comments no later than August 20, 1996, to:

Dr. Sarah P. Voll
Executive Director and Secretary
Public Utilities Commission
8 Old Suncook Road
Concord, New Hampshire 03301-7319

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Generic Investigation into IntraLATA Toll Competition Access Rates, DE 90-002, Order No. 20,916, 78 NH PUC 365, Aug. 2, 1993. [N.H.] Re Long Distance North of New

Hampshire, Inc., et al., DE 87-249, Order No. 21,851, 80 NH PUC 628, Oct. 3, 1995.
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NH.PUC*07/23/96*[89263]*81 NH PUC 578*Consumers New Hampshire Water Company, Inc.

[Go to End of 89263]

81 NH PUC 578

Re Consumers New Hampshire Water Company, Inc.

DR 95-124
Order No. 22,250

New Hampshire Public Utilities Commission

July 23, 1996

ORDER authorizing a water utility to recover $286,500 in rate case expenses, via a surcharge included in the fixed customer charge, to be amortized over a 12-month period.

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1. EXPENSES, § 89

[N.H.] Rate case expense — Allowance limited to costs actually incurred — Exclusion of unrelated bill insert expenses — Exclusion of unrelated legal fees — Recovery via surcharge added to fixed customer charge — One-year amortization period — Water utility. p. 579.

BY THE COMMISSION:

ORDER

Consumers New Hampshire Water Company, Inc. (Consumers), upon receiving authorization for a rate increase from the New Hampshire Public Utilities Commission (Commission) in its Order No. 22,169, issued May

28, 1996, filed for approval for recovery of rate case expenses in the total amount of $301,746. In a letter to the Commission dated June 6, 1996, Consumers indicated that it discussed rate case expense recovery with its Customer Advisory Council, which was created as directed by the Commission. The Council made a suggestion for rate case expense recovery, as follows:

> At the next billing following the effective date of the new water rates, refund via a one time credit the over collection of revenues between the rates put into effect on January 20, 1996 and the final rates based on the stipulation with interest on the over collection at the prime interest rate. Set the water rates so the rate case expense recovery is built in the

new fixed charges of the rates and recoverable over the next twelve months. Once the rate case expenses are recovered, adjust the water rates downward. This will result in ending the recovery of the rate case expenses, so that over recovery does not occur.

[1] On June 26, 1996 the Commission received a memorandum from Mark A. Naylor, Assistant Finance Director, containing the Staff's recommendation for the amount of rate case expense that Consumers should be authorized to recover. The Staff recommendation provides for a recovery of $286,500. The Staff recommended a reduction of $11,239 in expenses for customer communications, including costs for bill stuffers not fully related to the rate case, for legal expense of $1,907 for matters unrelated to the rate case, and for estimated costs of $2,100 out of a total of $4,100. Additionally, while taking no position as to the method of recovery of the rate case expenses as recommended by the Advisory Council, Staff did recommend that the recovery be made over 18 months, rather than 12.

We have reviewed the Staff's recommendation, and have considered the input of the Advisory Council. We believe that the approach advocated by the Council is fair, and we will approve the inclusion of the rate case expense surcharge in the fixed customer charge, for a period of 12 months. We will approve the total dollar amount of $286,500 as recommended by Staff.

Based upon the foregoing, it is hereby

ORDERED, that Consumers New Hampshire Water Company, Inc. is hereby authorized to recover $286,500 in rate case expenses over a 12 month period, through the inclusion of a surcharge in the fixed customer charge, as outlined herein; and it is

FURTHER ORDERED, that Consumers file, within 10 days of this order, tariff pages designed to implement the revised customer charges.

By order of the Public Utilities Commission of New Hampshire this twenty-third day of July, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Consumers New Hampshire Water Co., Inc., DR 95-124, Order No. 22,169, 81 NH PUC 410, May 28, 1996.

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NH.PUC*07/29/96*[89264]*81 NH PUC 579*Public Service Company of New Hampshire

[Go to End of 89264]

81 NH PUC 579

Re Public Service Company of New Hampshire

DR 96-148
Order No. 22,251

New Hampshire Public Utilities Commission

July 29, 1996

ORDER admonishing an electric utility for failing to follow an earlier directive requiring production of *all* company documents pertinent to an investigation into whether the utility had used its "best efforts" to renegotiate certain power purchase agreements with wood-fired small power producers.

Page 579

1. PROCEDURE, § 17

[N.H.] Discovery and inspection — Commission authority to compel production — Directive to produce *all* company documents — Relative to electric utility's "best efforts" to renegotiate certain power purchase agreements — Deferral of ancillary confidentiality issues — Associated suspension of previously set procedural schedule. p. 581.

APPEARANCES: Gerald M. Eaton, Esq. for Public Service Company of New Hampshire; Brown, Wilson and Olson by Bryan K. Gould, Esq. for Bio-Energy Corporation, Bridgewater Power Company, L.P., Hemphill Power & Light Company; Pinetree Power, Inc., Pinetree Power-Tamworth, Inc. and Whitefield Power & Light Company; 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 AND
POSITIONS OF PARTIES AND STAFF

The New Hampshire Public Utilities Commission (Commission) initiated docket DR 96-148 to explore whether Public Service Company of New Hampshire (PSNH) had used its "best efforts" as required by Section 12 of the Rate Agreement between the State of New Hampshire and Northeast Utilities/PSNH in its negotiations with certain small power producers (SPPs). The issue had previously been part of the docket regarding settlements reached with a number of wood-burning small power producers, but was moved to a separate docket. *See*, Order No. 22,052 (March 12, 1996) and Order No. 22,152 (May 17, 1996). By Order No. 22,213 (July 1, 1996) the Commission granted requests for full and limited intervention and set a procedural schedule.

Order No. 22,152 set forth requirements for production of documents regarding PSNH's negotiations, as well as a procedural schedule. Among the requirements was that PSNH make available in a documents room all materials regarding its efforts in negotiations with the SPPs.

II. POSITIONS OF THE PARTIES AND STAFF

A. *Staff*

Commission Staff (Staff) on June 28, 1996 filed a Motion to Compel Document Sweep to Provide Access to Identified Documents, Certification of Document Room and to Amend Procedural Schedule (Motion), in which the OCA concurred. The Motion argues that PSNH should conduct a complete document sweep of all of Northeast Utilities' subsidiaries and to provide a sworn statement that it has conducted such a sweep and that all relevant documents have been made available. The Motion also asserts that documents should not be withheld from Staff or the OCA as privileged, though it conceded that the wood-fired SPP intervenors, with whom PSNH may end up in litigation, may not be entitled to see all such documents. Staff also asserts that PSNH bears the burden of proof in establishing it used its best efforts in negotiations.

Staff's Motion was triggered in part by PSNH's letter to Staff dated June 17, 1996 which in Staff's view indicated that less than a full search of files had been undertaken. The letter also states that a number of documents had been withheld due to various claims of privilege.

B. *PSNH*

PSNH's June 17, 1996 letter identifies seven employees (John W. Noyes, William T. Frain, Jr., Richard A. Soderman, James R. Shuckerow, Thomas G. Getz,[1(72)] Shelton B. Wicker, Jr., and James C. Ward) whose files are available for review. Files of Robert Bersak and Gerald M. Eaton were in the process of being

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reviewed to determine if there were additional "non-confidential or non-privileged materials" that were not already part of the files made available. In addition, PSNH "excluded documents which were privileged, documents seeking or containing legal advice, documents prepared in anticipation of litigation, and attorney work product."

PSNH objects to the Motion on July 8, 1996, arguing that the files produced already contained over 800 documents and "a wealth of information" and that further search of files would produce documents that "will likely be duplicative of the documents already provided." PSNH notes that although it had produced and indexed files quickly, the Staff and OCA had as yet failed to review them. The files of Mr. Bersak and Mr. Eaton are now complete and available. It asserts that to conduct a full sweep of documents or certify that no other employees have relevant information is unnecessary and would seriously delay the proceeding.

PSNH offers to work with Staff and the OCA on resolving the matter informally, before taking it to the Commission. If that should fail, PSNH argues that it should have an opportunity to address the issue.

PSNH also states that it does not concur in Staff's assertion that PSNH bears the burden of proof on this issue and asks that the Commission determine burden of proof only after "research and an opportunity to argue in legal memoranda."

C. *OCA et al.*

None of the other parties responded to the Motion.

III. COMMISSION ANALYSIS

[1] Having reviewed Staff's Motion and PSNH's objection, we share Staff's concern that PSNH's June 17, 1996 letter and July 8, 1996 response leave a number of questions unanswered. PSNH identifies those employees whom it deems to have "truly material" information. Without knowing the extent and content of the information PSNH believes is relevant but not "truly material," we are not reassured by the letter that all relevant documents have been made available. Further, PSNH's argument that it is unreasonable and unnecessary to inquire of more than the nine identified employees as to their files is not a satisfactory response to our order requiring disclosure of relevant documents. PSNH must take steps to assure the Commission that it has sought to identify all relevant documents regarding its efforts in SPP negotiations. In an era of computerized communication, it would appear to us that an electronic mail message sent to all employees requesting identification of relevant documents would be one way of accomplishing this goal.

While such an effort may be time consuming, we expect no less of PSNH than we would of any party faced with discovery requests that are necessary to the investigation or development of the record. We will not modify our standard procedures in this case.

PSNH also asserts a number of privileges which it believes would prohibit disclosure of the materials. We will not rule on these issues as yet, as we hope progress can be made to reduce the number of documents over which PSNH intends to seek protection or claim privilege.

If after consultation there are documents or portions of documents which PSNH believes should be subject to confidentiality, it should file a request for confidential treatment in accordance with our rules, N.H. Admin. Rules, Puc 208 no later than August 6, 1996. We will grant confidential treatment to those documents or portions of documents which fall within the exceptions to disclosure under the Right to Know Law, RSA 91-A.

For those documents or portions of documents for which it believes it has any other claim of privilege, PSNH should assert the privilege in writing, also no later than August 6, 1996. We will at that time review any assertion of privilege and, if appropriate, order production of the documents for *in camera* review.

We encourage Staff and the OCA to commence review of the documents already made available while PSNH works to respond to this Order. Upon production of further assurances and documents as required by this Order, Staff and the OCA should work with PSNH to resolve any differences it can.

We will grant PSNH's request that the burden of proof issue be resolved after legal memoranda, which will likely be part of final briefs in this docket. At the outset, however, we think it fair to put all parties and Staff on notice that our initial impression is to agree with Staff on this issue.

Because the production of documents is taking longer than originally intended, we will temporarily suspend the procedural schedule for resolution of these issues. Our general approach to discovery is to give the parties and Staff broad leeway to conduct discovery without our involvement or directive. If issues regarding documents are not resolved by August 6, however,

we will deviate from that general approach and impose further orders to move the docket forward.

Based upon the foregoing, it is hereby

ORDERED, that PSNH assure the Commission it has identified all relevant documents to this issue; and it is

FURTHER ORDERED, that for any document or portion of a document over which PSNH requests confidential treatment or a finding of privilege, PSNH shall identify the document or portion thereof and file an appropriate written request with the Commission no later than August 6, 1996; and it is

FURTHER ORDERED, that the procedural schedule in this docket is temporarily suspended.

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of July, 1996.

FOOTNOTES

[1]Mr. Getz is now employed by the Commission as a Utility Analyst. He is not participating in this docket and has stated he will not divulge to the Commission any information on SPP negotiations which he obtained while at PSNH.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire,
DR 94-300, Order No. 22,052, 81 NH PUC 185, Mar. 12, 1996. [N.H.] Re Public Service Co. of New Hampshire,
DR 94-300, Order No. 22,152, 81 NH PUC 382, May 17, 1996. [N.H.] Re Public Service Co. of New Hampshire,
DR 96-148, Order No. 22,213, 81 NH PUC 495, July 1, 1996.

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NH.PUC*07/29/96*[89265]*81 NH PUC 582*Portland Pipeline Corporation

[Go to End of 89265]

81 NH PUC 582

Re Portland Pipeline Corporation

DE 96-169
Order No. 22,252

New Hampshire Public Utilities Commission

July 29, 1996

ORDER granting yet another extension of a natural gas pipeline lease executed between Portland Pipeline Corporation and Granite State Gas Transmission, Inc. The lease as originally approved set a termination date of March 31, 1999, which Portland could change to an earlier date, something it elected to do, as of March 31, 1996. A previously approved lease extension allowed the pipeline to extend that early termination date to March 31, 1997, while the instant extension provides an early termination date of April 30, 1998, instead.

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1. GAS, § 10

[N.H.] Leases — Of natural gas pipeline facilities — Long- term lease agreement — Early termination provisions — Further extension of already exercised early termination option. p. 583.

2. LEASES, § 1

[N.H.] Contract terms — Long-term lease agreement — Early termination provisions — Further extension of already exercised early

Page 582

termination option — Lease of natural gas pipeline facilities. p. 583.

BY THE COMMISSION:

ORDER

[1, 2] The Petitioner, Portland Pipeline Corporation (Portland), on May 24, 1996, filed a petition with the New Hampshire Public Utilities Commission (Commission) related to amending the lease agreement of its 18-inch pipeline to Granite State Gas Transmission, Inc. (Granite State). In the petition, Portland requested that the Commission either (1) rule that the Commission has no jurisdiction over the Lease and the amendments thereto because of preemption by Federal law, or (2) approve the Second Amendment and authorize Portland to execute it and to enter into agreements provided for by it, subject to approval of the Second Amendment by FERC.

Because we do not believe that we are pre-empted by federal law, we will address the merits of the petition.

Under the Lease Agreement, dated November 23, 1987, Portland is leasing its 18-inch pipeline to Granite State Gas Transmission, Inc. (Granite State). The Lease was authorized by the Federal Energy Regulatory Commission (FERC) and by Order No. 18,773 (72 NH PUC 326, 1987) of the Commission dated July 20, 1987.

The Lease was to terminate on March 31, 1999, unless it was terminated sooner pursuant to another lease provision. Under this second lease provision Portland was granted the option to terminate the Lease on March 31, 1996, 1997 or 1998 by giving timely prior written notice to Granite State. In October 1993 Portland exercised its option and gave notice of termination of

the Lease to take effect as of March 31, 1996. On January 13, 1994 Portland and Granite State executed an agreement, for consideration, to amend the Lease to extend the March 31, 1996 termination date by one year to March 31, 1997. Portland solicited and gained approval to amend the lease from the FERC, *Granite State Gas Transmission, Inc.*, 69 FERC ¶ 61,186 (1994), and from the Commission, Order No. 21,442 (79 NH PUC 654 1994).

We find that the extension of the Lease by one year is in the public interest. Northern Utilities Inc, (Northern) a New Hampshire natural gas utility serving customers in southwestern New Hampshire is dependent upon the volumes transported under the lease agreement. By extending the Lease, we ensure that New Hampshire customers will continue to be served with a reliable supply of Canadian natural gas while Northern considers its options for future gas supply.

Based upon the foregoing, it is hereby

ORDERED, that Portland Pipeline Corporation is granted authorization to extend the Lease Agreement by one year, from March 31, 1997 to April 30, 1998.

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of July, 1996.

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NH.PUC*07/29/96*[89266]*81 NH PUC 583*Pennsylvania Alternative Communications, Inc.

[Go to End of 89266]

81 NH PUC 583

Re Pennsylvania Alternative Communications, Inc.

Additional applicant: LCI International Telecom Corporation

DE 96-158
Order No. 22,253

New Hampshire Public Utilities Commission

July 29, 1996

ORDER authorizing the transfer of certain customer accounts and other business assets from Pennsylvania Alternative Communications, Inc., to LCI International Telecom Corporation.

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1. CONSOLIDATION, MERGER, AND SALE, § 23

Page 583

[N.H.] Transfer of assets and customers — Factors affecting approval — Corporate and economic efficiencies — Compliance with standard of no net harm — Telecommunications carriers. p. 584.

BY THE COMMISSION:

ORDER

On May 16, 1996, the New Hampshire Public Utilities Commission (Commission) received the joint petition (Petition) of LCI International Telecom Corp. (LCI Telecom) and Pennsylvania Alternative Communications, Inc. (PACE), requesting to transfer selected assets from PACE to LCI Telecom.

The Commission, by Order No. 20,601 (September 11, 1992), granted PACE, a Pennsylvania corporation, authority to operate in the State of New Hampshire. PACE wishes to retain its authority and tariffs and intends to continue to provide services in New Hampshire.

LCI Telecom, a Delaware corporation, was granted authority to operate in the State of New Hampshire by Order No. 21,463 (December 14, 1994). LCI Telecom is a wholly-owned subsidiary of LCI International Management Services, Inc. (LCIM). LCIM, in turn, is a wholly-owned subsidiary of LCI International, Inc. (LCII), the ultimate corporate parent of LCI family of companies.

[1] PACE seeks to sell to LCI Telecom the following assets: (a) substantially all of PACE's retail long distance telecommunications services customer accounts, including, but not limited to all customer lists, records, billing information, subscription agreements, contracts, arrangements and other understandings between PACE and its retail customers; (b) all of PACE's rights with respect to its sales agents and sales agencies and all records, payment and other information related thereto; (c) all dialer equipment and other assets necessary to provide service to PACE's dialer customers; and (d) the non-exclusive right to use the trademark "PACE Long Distance Service" and all other names used by PACE until June 30, 1997.

LCI Telecom represents that the transfer of assets will be essentially transparent to the customers, as it proposes to maintain existing tariffed rates and services currently on file with the Commission by PACE. LCI Telecom will amend its tariff with the Commission to incorporate the services, rates, terms and conditions currently offered by PACE. LCI Telecom anticipates achieving economic and marketing efficiencies from the transfer.

We find that the transfer of certain assets from PACE to LCI Telecom will result in no net harm. The transfer of assets may in fact produce net benefits to PACE's affected customers. We will, therefore, approve the Petition.

Based upon the foregoing, it is hereby

ORDERED, that the Petition for approval for the sale of certain PACE assets, as described in the Petition, is granted; and it is

FURTHER ORDERED, that PACE shall notify affected customers of the transaction in the next billing cycle; and it is

FURTHER ORDERED, that PACE shall continue to operate under its current tariff, until ordered otherwise.

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of July, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re LCI International of New Hampshire, Inc., DE 94-290, Order No. 21,463, 79 NH PUC 687, Dec. 14, 1994. [N.H.] Re PAC of New Hampshire, Inc., DE 92-122, Order No. 20,601, 77 NH PUC 532, Sept. 11, 1992.

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NH.PUC*07/29/96*[89267]*81 NH PUC 585*Home Owners Long Distance, Inc.

[Go to End of 89267]

81 NH PUC 585

Re Home Owners Long Distance, Inc.

Additional applicant: Avery Communications, Inc.

DE 96-192
Order No. 22,254

New Hampshire Public Utilities Commission

July 29, 1996

ORDER approving a transfer of control of Home Owners Long Distance, Inc., to Avery Communications, 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. 585.

BY THE COMMISSION:

ORDER

[1] The Petitioners, Home Owners Long Distance, Inc. (HOLD) and Avery Communications, Inc. (ACI) (Petitioners), jointly filed with the New Hampshire Public Utilities Commission (Commission), on June 13, 1996, a petition (Petition) to transfer the ownership and control of HOLD to ACI.

The transfer of control is part of a larger transaction wherein Avery Acquisition Sub, Inc., a

wholly-owned special purpose subsidiary of ACI, will merge with HOLD. The result is that HOLD will become a wholly-owned subsidiary of ACI.

HOLD is a privately held Texas corporation. HOLD was granted authority to conduct business as a telecommunications public utility in the State of New Hampshire on October 18, 1994, in Docket No. DE 94-177, through Order No. 21,393.

ACI, a publicly traded Delaware corporation, is a regional telecommunications company that provides, through its subsidiaries, domestic resold, interstate and intrastate long distance services, international (Mexican) communications, and telecommunications and equipment installation.

The Petitioners seek Commission approval to transfer control of HOLD to ACI. HOLD and ACI have entered into a merger agreement whereby ACI intends to acquire HOLD. In exchange for cash and common stock in ACI, HOLD will merge with Avery Acquisition Sub, Inc. HOLD will be the surviving entity and will be a wholly-owned subsidiary of ACI. The Petitioners request approval of the petition before August 1, 1996.

The transfer will be undertaken in a seamless fashion that will not affect the provision of intrastate telecommunications services and will not have an adverse effect on the operations and services provided in New Hampshire. Customers will continue to be able to purchase the same services from HOLD under the same rates, terms and conditions as currently available. HOLD will continue to offer service pursuant to its existing tariff. HOLD will continue to be managed by existing personnel and will also utilize the management and operational staffs of its parent company, ACI.

HOLD evidenced its technical, managerial, and financial competence in the record of DE 94-177. The Petitioners represent that the transfer of control will have no appreciable effect on customers.

We find that the transfer of control of HOLD to ACI will result in no net harm. The transfer of control may in fact produce net benefits to HOLD's customers and ratepayers. We will, therefore, approve the Petition.

Based upon the foregoing, it is hereby

ORDERED, that the Petition for approval to transfer control of HOLD to ACI is GRANTED; and it is

FURTHER ORDERED, that the Petitioners shall notify HOLD's customers of the

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transaction in the billing cycle following the transfer; and it is

FURTHER ORDERED, that HOLD shall continue to operate under its current tariff, until ordered otherwise.

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of July, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Home Owners Long Distance, Inc., DE 94-177, Order No. 21,393, 79 NH PUC 575, Oct. 18, 1994.

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NH.PUC*07/30/96*[89268]*81 NH PUC 586*Network Long Distance, Inc.

[Go to End of 89268]

81 NH PUC 586

Re Network Long Distance, Inc.

Additional applicant: Universal Network Services of New Hampshire, Inc.

DE 96-172
Order No. 22,255

New Hampshire Public Utilities Commission

July 30, 1996

ORDER authorizing the transfer of certain customer accounts and other business assets from Universal Network Services of New Hampshire, Inc., to Network Long Distance, Inc.

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1. CONSOLIDATION, MERGER, AND SALE, § 23

[N.H.] Transfer of assets and customers — Factors affecting approval — Corporate and economic efficiencies — Compliance with standard of no net harm — Telecommunications carriers. p. 586.

BY THE COMMISSION:

ORDER

On May 30, 1996, the New Hampshire Public Utilities Commission (Commission) received the joint petition (Petition) of Network Long Distance, Inc. (Network) and Universal Network Services of New Hampshire, Inc. (UNS), requesting to transfer selected assets from UNS to Network.

The Commission, by Order No. 21,425 (November 9, 1994), granted UNS, a Nevada corporation, authority to operate in the State of New Hampshire. UNS wishes to retain its authority and tariffs and intends to continue to provide services in New Hampshire.

Network, a Delaware corporation, was granted authority to operate in the State of New Hampshire by Order No. 21,345 (September 7, 1994).

[1] UNS seeks to sell to Network the following assets: (a) all of UNS's Qualified Customer Accounts, including, but not limited to customer lists, mailing lists, books, records, files, data, letters of agency and similar items related to the Qualified Customer Accounts; (b) all accounts receivable associated with and derived from the Qualified Customer Accounts and other mutually agreed to accounts receivable; (c) all of UNS's rights under any agreements, application forms, term contracts, letters of agency and all other contractual instruments related to the Qualified Customer Accounts, including, but not limited to UNS's right to assert claims and take other rightful action with respect to breaches, defaults and other violations of such Customer Contracts; (d) all customer and other deposits held or made by UNS related to the Qualified Customer Accounts; and (e) all T-1's and other equipment, excluding dialers, necessary to provide service to UNS customers relative to the Qualified Customer Accounts.

Following the consummation of the transaction, all of the present UNS customer accounts will be transferred to Network and those customers will be serviced pursuant to Network's tariff rates and products as filed with the Commission. To the extent that any present UNS rate products are not included in Network's tariffs, Network will amend its tariffs

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accordingly. Network will notify all customers in advance regarding any change in rates due to the alignment of two or more different rate products into a single rate product for common services.

Network represents that the transfer of assets will not in any way impair the quality of service currently rendered to UNS and Network customers. Network asserts that as a result of the proposed transfer of assets, Network will possess a larger customer account base and thus will be a stronger carrier to provide quality service to all customers presently serviced by both Network and UNS.

We find that the transfer of certain assets from UNS to Network will result in no net harm. The transfer of assets may in fact produce net benefits to UNS's affected customers. We will therefore, approve the Petition.

Based upon the foregoing, it is hereby

ORDERED, that the Petition for approval for the sale of certain UNS assets, as described in the Petition, is granted; and it is

FURTHER ORDERED, that prior to consummation of the transaction, Network shall file amendments to its tariff to include UNS's products not previously included in Network's tariff, so that the former-UNS customers will continue to receive services pursuant to a Commission approved tariff; and it is

FURTHER ORDERED, that UNS shall notify affected customers of the transaction in the billing cycle following consummation of the transaction; and it is

FURTHER ORDERED, that UNS shall continue to operate under its current tariff, until ordered otherwise.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of July,

1996.

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 Universal Network Services of New Hampshire, Inc., DE 94-129, Order No. 21,425, 79 NH PUC 634, Nov. 9, 1994.

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NH.PUC*07/30/96*[89269]*81 NH PUC 587*USTel, Inc., dba US Telephone

[Go to End of 89269]

81 NH PUC 587

Re USTel, Inc., dba US Telephone

DE 95-328
Order No. 22,256

New Hampshire Public Utilities Commission

July 30, 1996

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

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1. CERTIFICATES, § 123

[N.H.] Telephone carrier — Intrastate intraLATA long-distance services — Interim authority — Assessment of competitive impacts — Exclusion of local exchange services. p. 587.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate intraLATA toll services — Interim authority — Assessment of competitive impacts — Exclusion of local exchange services. p. 587.

BY THE COMMISSION:

ORDER

[1, 2] On November 20, 1995, USTel, Inc. (UST) d/b/a US Telephone, a Minnesota corporation, petitioned the New Hampshire Public Utilities Commission (Commission) for authority to do business as a telecommunications public utility in the State of New Hampshire (petition) pursuant to, *inter alia*, RSA 374:22 and RSA 374:26. UST has demonstrated the financial, managerial and technical ability to offer

service as conditioned by this order. The Commission previously approved numerous, similar petitions filed during the Trial Period, pursuant to the Modified Stipulation Agreement (Stipulation) in Docket No. DE 90-002, approved by Order No. 20,916 (August 2, 1993). Our orders in those numerous dockets granted the petitioner(s) interim authority to offer intraLATA toll service, specifically excluding local exchange service, for the service territory of the entire State of New Hampshire, during the Trial Period, in order to allow the Commission to analyze competition during the two-year Trial Period.

Because the Trial Period identified by the Stipulation expired on September 30, 1995, we have explicitly clarified that the authority we had granted remains in effect until we specifically modify or revoke that authority, after analysis of the Trial Period. *See* Order No. 21,851 (October 3, 1995). Likewise, our grant of authority ordered herein remains in effect until we specifically modify or revoke that authority.

The public good is served by permitting such competition by telecommunications companies. The Commission permits competitive entry in order to foster competition in the New Hampshire intrastate toll market and to allow the Commission to analyze the effects of such competition.

The public should be provided an opportunity to respond in support of, or in opposition to this petition.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that UST is granted interim authority to offer as a telecommunications public utility intraLATA toll service, specifically excluding local exchange service, for the service territory of the entire State of New Hampshire, subject to the following conditions:

1. The services shall be offered by approved tariffs.

2. The services shall be offered until the Commission orders otherwise.

3. UST shall file tariffs for new services and changes in approved services (other than rate changes), with effective dates of no less than 30 days after the date the tariffs are filed with the Commission.

4. Within one business day of offering an approved service to the public at a rate different from its rates on file with the Commission, UST shall notify the Commission of the change.

5. UST is exempted from NH Admin. Rules, Puc 406.03 Accounting Records; Puc 407 Forms Required of All Telephone Utilities; and Puc 409 Uniform System of Accounts for Telecommunications Companies.

6. UST shall maintain its book and records in accordance with Generally Accepted Accounting Principles.

7. UST 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. UST 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. UST shall compensate the appropriate Local Exchange Company for all originating and terminating access used by UST pursuant to NET Tariff N.H.P.U.C. 79, Switched Access Service Rate or its successors or its relevant equivalent contained in the tariffs of the Independent Local Exchange Companies.

10. New Service offerings filed for approval with the Commission shall be accompanied by tariff pages describing the service, rates and effective dates.

FURTHER ORDERED, that the authority granted herein remains in full force and effect until the Commission orders otherwise; and it is

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

FURTHER ORDERED, that UST 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 August 6,

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1996, and an affidavit proving publication shall be filed with the Commission on or before August 13, 1996; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, et seq. UST 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 August 20, 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 August 27, 1996; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective August 29, 1996, unless the Commission provides otherwise in a supplemental order issued prior to the effective date; and it is

FURTHER ORDERED, that UST shall file a compliance tariff with the Commission on or before August 29, 1996, in accordance with NH Admin. Rules, Puc 1601.01 (b).

By order of the Public Utilities Commission of New Hampshire this thirtieth day of July, 1996.

Notice of Conditional Approval of
USTEL, INC. d/b/a US TELEPHONE

Granting Interim Authority to Conduct Business as a Telecommunications Public Utility in

the State of New Hampshire

On November 20, 1995, USTel, Inc. (UST) d/b/a US Telephone, a Minnesota corporation, filed with the New Hampshire Public Utilities Commission (Commission) a petition to do business as a telecommunications public utility in the State of New Hampshire, specifically to provide intrastate long distance telecommunications services.

In Order No. 22,256, issued in Docket No. DE 95-328, the Commission granted UST conditional approval to operate as of August 29, 1996, subject to the right of the public and interested parties to comment on UST 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 UST's petition to do business in the State must be submitted in writing no later than August 20, 1996, and reply comments no later than August 27, 1996, to:

Dr. Sarah P. Voll
Executive Director and Secretary
Public Utilities Commission
8 Old Suncook Road
Concord, New Hampshire 03301-7319

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Generic Investigation into IntraLATA Toll Competition Access Rates, DE 90-002, Order No. 20,916, 78 NH PUC 365, Aug. 2, 1993. [N.H.] Re Long Distance North of New Hampshire, Inc., et al., DE 87-249, Order No. 21,851, 80 NH PUC 628, Oct. 3, 1995.

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NH.PUC*08/02/96*[89270]*81 NH PUC 589*Public Service Company of New Hampshire

[Go to End of 89270]

81 NH PUC 589

Re Public Service Company of New Hampshire

DR 95-114
Order No. 22,257

New Hampshire Public Utilities Commission

August 2, 1996

ORDER agreeing to hold public hearings on the conditions placed on an electric utility to win approval of a proposed special rate contract with an industrial mill customer, Crown Vantage, Inc. The commission observes that numerous parties have submitted comments both in favor of and opposed to the conditions, which

pertained to requiring the utility to modify the contract to eliminate certain terms the commission found to be anticompetitive, namely sole source supplier provisions and the duration of the contract. For the decision imposing the conditions, see Order No. 22,225 (81 NH PUC 518, *supra*).

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1. MONOPOLY AND COMPETITION, § 21

[N.H.] Restraint of trade and anticompetitive practices — Special contracts — Terms encumbering customer's property — Sole-source supplier and extended duration terms — Modification of contract as condition of approval — Public hearings on such conditions — Electric utility. p. 590.

2. RATES, § 649

[N.H.] Procedure — Public hearing — As to proposed special rate contract — As to conditions for approval — Alleged anticompetitive effects as a factor — Electric utility. p. 590.

BY THE COMMISSION:

ORDER

On April 25, 1995 Public Service Company of New Hampshire (PSNH) filed a request for approval of a special contract between itself and James River Paper Company, Inc. (James River), Special Contract No. NHPUC-112 (NHPUC-112), pursuant to RSA 378:18. The special contract concerned James River's Berlin and Gorham paper production facilities which have subsequently been restructured into a new corporation, Crown Vantage, Inc. (Crown Vantage).

On July 8, 1996 the Commission issued Order No. 22,225 conditionally approving the contract *nisi*. Initially, the Commission questioned the necessity of a special contract given the Legislature's stated preference for schedules of general application for load retention, business retention and economic development. Laws of 1996, Chapter 186. In addition, the Commission requested in accordance with RSA 378:18-a, II, that PSNH demonstrate why Rate BR, or other tariffed rates, including proposed rates LR and ED, would not be sufficient to retain Crown Vantage's load.

Following this request, the Commission addressed the merits of the proposed special contract under the public interest standard contained in RSA 378:18. Applying this standard, the Commission found that two provisions of the special contract had been fashioned by PSNH to inhibit the emergence of a competitive electric industry as envisioned by the New Hampshire Legislature with its passage of Laws of 1996, Chapter 129, to be codified at RSA Chapter 374-F. The specific provisions found to be anti-competitive were a provision that required Crown Vantage to purchase all of its electric requirements from PSNH for a period of at least seven years and a provision that precluded the siting of competitive generation at these two facilities

during the term of the contract. Thus, the Commission concluded that the special contract, as written, was not in the public interest. The Commission, therefore, conditioned its approval on the removal of the prohibition on the siting of generation facilities at the two sites and reforming the contract to allow Crown Vantage to terminate the contract after either seven years or upon the date that retail competition is approved by the Commission.

[1, 2] Since the issuance of Order No. 22,225 the Commission has received numerous comments from businesses and trade organizations throughout the State objecting to the conditions placed upon the approval of the contract. We also received requests for a hearing and motions to intervene from a number of these businesses. On July 29, 1996 PSNH filed a motion for a hearing pursuant to the provisions of Order No. 22,225. On that same date Freedom Energy, LLC, a competitive provider of electric service in the ongoing electric pilot program, filed comments in support of the Commission's decision.

Given the level of interest raised by Order

Page 590

No. 22,225 we will grant PSNH's motion for a public hearing to provide PSNH, all of the other commentators, and any other interested persons including competitive providers of electric service in the ongoing electric pilot program an opportunity to be heard with regard to any concerns with the conditions placed on special contract NHPUC-112.

Based upon the foregoing, it is hereby

ORDERED, that a hearing be held on August 16, 1996 at 10:00 a.m. to provide an opportunity for the public to be heard regarding Commission Order No. 22,225; and it is

FURTHER ORDERED, that PSNH serve a copy of this order in accordance with N.H. Admin. Rules, Puc 1601.05(j) by first class U.S. Mail postmarked no later than August 7, 1996, on all customers with special contracts pending before the Commission and all customers with which it is actively negotiating special contracts for economic development business retention and load retention.

By order of the Public Utilities Commission of New Hampshire this second day of August, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 95-114, Order No. 22,225, 81 NH PUC 518, July 8, 1996.

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NH.PUC*08/05/96*[89271]*81 NH PUC 591*Retail Competition Pilot Program

[Go to End of 89271]

81 NH PUC 591

Re Retail Competition Pilot Program

Petitioner: Public Service Company of New Hampshire

DR 95-250
Order No. 22,258

New Hampshire Public Utilities Commission

August 5, 1996

ORDER providing clarification of a code of conduct adopted in Order No. 22,176 (81 NH PUC 428, *supra*) relative to the marketing activities of utilities and other power suppliers participating in a pilot program for competitive electric services.

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1. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric service — Pilot program for retail competition — Means of competing — Marketing activities — Policing of such activities — Uniform code of conduct — Clarification — Treatment by utility of affiliates and nonaffiliates in like manner — Applicability of code only to pilot program — Different code to be adopted upon full industry restructuring. p. 591.

2. SERVICE, § 161

[N.H.] Rules and regulations — Code of conduct — Applicability to pilot program for retail electric competition — Clarification of certain code terms — Nondiscriminatory provision of ancillary billing and meter reading services — Granting of no preferences to affiliates over nonaffiliates — Code of conduct in effect only as to pilot program — New code to be adopted upon full industry restructuring. p. 591.

BY THE COMMISSION:

ORDER

[1, 2] On June 26, 1996, Public Service Company of New Hampshire (PSNH) filed a Request for Clarification of Order No. 22,176. That order established Uniform Standards of Conduct (Standards) for all jurisdictional electric utilities participating in the Pilot. According to PSNH, certain aspects of the Standards remain unclear and require clarification.

First, PSNH contends that standard 2.0 is

Page 591

"incomplete." As currently written, Standard 2.0 states as follows:

> 2.0 A New Hampshire electric utility shall supply services and apply tariffs to non-affiliates in the same manner and shall uniformly enforce its tariff provisions.

PSNH states that it "assumes" that this standard is intended to mean that "such services shall be supplied and tariffs applied to affiliates and non-affiliates in the same manner." PSNH is correct and we grant the clarification accordingly. Standard 2.0 shall now read as follows:

> 2.0 A New Hampshire electric utility shall supply services, apply tariffs and enforce tariffs to non-affiliates in the same manner as it supplies such services, applies such tariffs and enforces such tariffs to its affiliates.

Next, PSNH requests clarification as to the term "services" as it is used in Standard 2.0. PSNH states that it assumes that this Standard applies only to customer related services which are uniquely available to the utility distribution company, such as billing, meter reading and telephone services. PSNH is correct and we grant the requested modification. We do not believe that it is necessary to modify the words of Standard 2.0 to effectuate this clarification because it is self-evident.

The next requested modification involves the wording of Standard 4.0, which requires utilities to "simultaneously make available to the market and all competitive suppliers any and all information it provides to affiliate competitive suppliers." According to PSNH, the term "any and all information" is overly broad. Again, PSNH states its assumption that the Standard is intended to apply only to "customer or market information that is related to the Pilot and which is obtained by the utility due to its status as the monopoly distribution company." PSNH is correct and we grant its requested clarification of Standard 4.0. Again, we believe that the clarification is self-evident, and there is no need to modify the words of the Standard.

Finally, PSNH seeks clarification that all of the Standards apply only to the Pilot and are therefore non-precedential. We grant this clarification. All of the Standards of Conduct shall apply only to the Pilot and related transactions. The standards of conduct which this Commission will establish during or after full industry restructuring could be either less or more restrictive than those which we have adopted for the Pilot.

Based upon the foregoing, it is hereby

ORDERED, that PSNH's Request for Clarification of Order No. 22,176 is GRANTED as set for herein.

By order of the Public Utilities Commission of New Hampshire this fifth day of August, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Retail Competition Pilot Program, DR 95-250, Order No. 22,176, 81 NH PUC 428, June 3, 1996.

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NH.PUC*08/05/96*[89272]*81 NH PUC 592*Sprint

[Go to End of 89272]

81 NH PUC 592

Re Sprint

DE 96-224
Order No. 22,259

New Hampshire Public Utilities Commission

August 5, 1996

ORDER authorizing an interexchange telephone carrier to reconfigure its outreach program relative to operating the state's telecommunications relay service for the deaf and hearing- and speech-impaired. The changes reduce the amount of time the outreach manager devotes to the program, thereby providing a commensurate cut in overall program outreach costs as well.

Page 592

1. SERVICE, § 467.1

[N.H.] Telephone — Telecommunications relay service (TRS) for the deaf — Outreach efforts — Reduction in program manager time — Replacement with roving "ambassador" — Purchase of new TRS equipment — "Real-time" relay features. p. 593.

BY THE COMMISSION:

ORDER

On July 31, 1996, Sprint filed a petition with the New Hampshire Public Utilities Commission (Commission) requesting authority to modify the full-time outreach program associated with the New Hampshire Telecommunications Relay Service (TRS) and offering to make available enhanced services to TRS.

In Re: *Dual Party Relay Service - Telecommunications Relay Service (TRS)* 76 NH PUC 593 (1991) the Commission ordered Sprint to develop a full-time outreach program for New Hampshire and hire a full-time employee to educate New Hampshire citizens about New Hampshire TRS. The required full-time outreach program began in 1992 and appears to have been successful based on the steady increase in call volume through New Hampshire TRS as well as New Hampshire's high percentage of calls originated by hearing people.

In its petition, Sprint is proposing to reduce the amount of time the outreach manager devotes to New Hampshire's outreach program by 25 percent. Commensurate with this reduction, Sprint proposes to reduce the cost of the outreach program by 25 percent. In addition, Sprint is proposing to introduce an Ambassador program whereby Sprint will train individuals to give presentations about New Hampshire TRS to any group requesting such a presentation. Ambassadors will be paid for giving presentations with no cost passed through to New Hampshire.

Sprint's proposal also included an option for New Hampshire to purchase new TRS features for the cost of one year's reduction in outreach expenses (a one time cost of $25,000). Sprint asserts that with the addition of these features, New Hampshire TRS would have available every TRS feature Sprint offers nationwide. In addition, each of the features would provide greater access to telecommunications for New Hampshire TRS users and will reduce agent work time and thus the minutes billed to New Hampshire for call set-up and wrap-up.

The proposed new features, called Real-Time Relay Features, include a customer data base, 900 service and single line answering machine message retrieval service. The customer data base feature includes a customized list of information about each New Hampshire TRS customer if the customer chooses to supply it. Using the customer data base, customers have several options including last number redial, call block, caller ID, frequently called numbers, customer preferences such as preferred agent gender or greeting preferences, emergency numbers, carrier of choice branding for intra and interLATA call completion, outdial information, outdial restriction and auto-forward.

[1] In Re: *Dual Party Relay Service - Telecommunications Relay Service (TRS)* 76 NH PUC 593 (1991) the Commission established an Advisory Board for New Hampshire TRS to insure its ongoing improvement and success. The Commission received a letter from the Chairman of the Advisory Board stating that Sprint has explained its proposal to the Advisory Board and the Board unanimously voted to support the proposal including the purchase of Real-Time Relay Features.

The Commission has also received a letter from the Chairperson of the Relay New Hampshire Consumer Council supporting the proposal including the addition of the Real-Time Relay Features.

We find Sprint's proposal to be in the public good. It appears that although the outreach manager will no longer be full time, the outreach program will remain virtually full time with the addition of the Ambassador program, at a 25 percent annual reduction in cost.

We also find the addition of Real-Time

Page 593

Relay Features to be in the public good. As a result of the strong recommendation from our Advisory Board and the endorsement of the Relay New Hampshire Consumer Council as well as the potential reduction in agent work time, we will authorize Sprint to reconfigure the outreach program and implement the new features.

Based upon the foregoing, it is hereby

ORDERED, that the full-time outreach manager be allowed to reduce the amount of time devoted to the outreach program in New Hampshire by 25 percent commensurate with an annual $25,000 reduction in account management costs; and it is

FURTHER ORDERED, that Sprint implement Real-Time Relay Features for a non-recurring fee of $25,000.

By order of the Public Utilities Commission of New Hampshire this fifth day of August,

1996.

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NH.PUC*08/05/96*[89273]*81 NH PUC 594*Global Telemedia International, Inc.

[Go to End of 89273]

81 NH PUC 594

Re Global Telemedia International, Inc.

DE 95-330
Order No. 22,260

New Hampshire Public Utilities Commission

August 5, 1996

ORDER denying an interexchange telephone carrier authority to offer intrastate long-distance services, due to lack of proof as to its corporate registration as well as its financial competence.

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1. CERTIFICATES, § 76

[N.H.] Denial of — Factors — Failure to show financial competence — Failure to show proper corporate registration — Interexchange telephone carrier. p. 594.

BY THE COMMISSION:

ORDER

On November 27, 1995, Global Telemedia International, Inc. (GTMI), a Florida corporation, petitioned the New Hampshire Public Utilities Commission (Commission) for authority to do business as a telecommunications utility in the State of New Hampshire (petition) pursuant to, *inter alia*, RSA 374:22 and RSA 374:26.

GTMI's former subsidiary, Global Telemedia, Inc., was denied its petition for authority in docket DE-95-132, Order No. 21,755 (July 18, 1995). Staff issued written requests to GTMI on February 23, 1996 concerning its petition in the instant docket. On June 11, Staff wrote to the petitioner warning the applicant that it had not responded to Staff's request, and that Staff would proceed by June 14, 1996, to prepare its recommendation to the Commission in the absence of the applicant's response.

[1] Although GTMI's June 14, 1996 response was voluminous, it was not entirely responsive. More substantively, the filing and response do not establish the petitioner's financial competence. In particular, GTMI did not supply a requested three-year forecast charting its course to financial viability. At this juncture, it seems unproductive for the applicant to re-apply prior to their receipt of their audited 1996 annual report.

GTMI's petition filed in November of 1995 did not include evidence from the New Hampshire Secretary of State establishing proper foreign or domestic registration, pursuant to RSA 374:25. GTMI's June 14, 1996 response includes only an application with the Secretary of State, filed in February, 1996.

It is Staff's recommendation that GTMI does not evidence the necessary financial qualifications.

We have reviewed the record, and absent satisfaction of the statutory requirements of RSA 374:25 we cannot approve the instant petition, regardless of the merits. We concur that GTMI has not met its burden; it has not reasonably shown, *inter alia*, that it possesses financial competence. We agree with the

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recommendation of our Staff that the public good would not be served by approving the petition before us.

Based on the foregoing; it is hereby

ORDERED, that GTMI is denied authority to conduct business as telecommunications public utility in the State of New Hampshire, without prejudice.

By order of the Public Utilities Commission of New Hampshire this fifth day of August, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Global Telemedia, Inc., aka Global Wats One, Inc., DE 95-132, Order No. 21,755, 80 NH PUC 476, July 18, 1995.

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NH.PUC*08/05/96*[89274]*81 NH PUC 595*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 89274]

81 NH PUC 595

Re New England Telephone and Telegraph Company dba NYNEX

DR 96-234
Order No. 22,261

New Hampshire Public Utilities Commission

August 5, 1996

ORDER rejecting a proposed special rate contract as between a local exchange telephone carrier and Sprint Communications for the provision of Centrex service. Commission finds the filing to

contain so many administrative defects as to call into question its accuracy, completeness, and overall reasonableness.

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1. RATES, § 566

[N.H.] Telephone rate design — Centrex service — Proposed special rate contract — Factors affecting rejection — Extent of administrative deficiencies — Local exchange carrier. p. 597.

2. RATES, § 213

[N.H.] Special service contracts — Rejection by commission — Factors — Extent of administrative errors in filing — Local exchange carrier — Centrex services. p. 597.

BY THE COMMISSION:

ORDER

On January 15, 1996, New England Telephone and Telegraph Company (NYNEX) filed with the New Hampshire Public Utilities Commission (Commission) a special contract (No. 96-1) with Sprint Communications Company, L.P. (Sprint) for Centrex services, docketed as DR 96-017. NYNEX concurrently filed a Motion for Confidentiality, which was granted in Order 21,990 (January 22, 1996). On July 17, 1996, NYNEX withdrew its filing in DR 96-017, prior to further Commission action.

Simultaneously, on July 17, 1996, NYNEX refiled special contract No. 96-1 and within the same petition NYNEX filed an Amendment (No. 96-8) to the earlier special contract. As referenced in the petitioner's cover letter, NYNEX is seeking approval, in this docket, of both the original contract and the amendment to the contract.

In support of its petition, NYNEX filed a brief contract overview and a cost analysis associated with the proposed contract. This special contract filing was accompanied by a Motion for Confidentiality to exempt the cost analysis and various data in the contract from public disclosure.

This special contract and its amendment are filed pursuant to provisions of the recently enacted special contract statute. *See* RSA 378:18-b (1996). Thereunder, *inter alia*, the Commission has 30 days to determine whether the prices of the services are above the incremental costs of the services. Obviously, the individual services offered, their respective incremental costs, and their respective prices need to be clearly evidenced as the basis of a

reasoned determination. Given the expeditious statutory timelines involved in these dockets, the Commission clearly communicated to NYNEX its expectation that NYNEX's filings must be complete and accurate when filed.

In NYNEX's special contract filing in DR 96-187, which was recently approved under RSA 378:18-b, Staff worked closely with NYNEX to identify and correct the shortcomings in the

filing. However, the Commission explicitly put NYNEX on notice that: "We expect NYNEX to exert a higher level of effort to assure the accuracy and completeness which comports with a thirty-day review or risk rejection of similar, administratively deficient filings in the future." Order No. 22,216 at 3.

In the instant filing, NYNEX failed to follow the Commission's directive. Staff has conducted lengthy discussions and expeditious oral discovery with NYNEX regarding the special contracts and the cost support package. Staff identified a total of twelve (12) specific issues which require clarification, correction and/or support, either with the original special contract No. 96-1, the Amendment, No. 96-8, or the cost support package. Each issue is discussed below.

Number (1), Attachment B, Line 1 (Hardware Investment); *Number (2)*, Attachment B, Line 8 (Software Cost - Expense); and *Number (3)*, Attachment E, Line 1 (C.O. Installed Investment): all three attachments to the cost support package are completely unsupported. There is no citation as to their source(s). or indication as to what they include. There is a lack of even the most cursory description to indicate that the price is above the relevant cost. These three elements are critical inputs, essentially the drivers of the cost model, used to establish the price floor, under RSA 378:18-b.

Number (4): Attachment C to the cost support package is incomprehensible; although the interim confidential treatment the Commission extended to the filing precludes disclosure of the numbers within this attachment, the numbers are inconsistent with the outside-plant-cost investment, capital cost, and maintenance cost that are typically seen with the intensive use of outside-plant facility by Centrex service. Similar to No. 1 - No. 3, the entire Attachment contains no credible support, no citation, and no description.

Number (5): Staff asked NYNEX to clarify the intent and operation of paragraph No. 3 of the Amendment to Centrex Service Agreement, and in particular its logical interaction and consistency under 378:18-b. (The Amendment was negotiated and signed before, and filed after, the effective date of RSA 378:18-b.

Number (6), regarding Appendix A, Page 1 of 2, Amended: Staff asked NYNEX to clarify the reference to "additional [capacity beyond the confidential quantity agreed to in the contract], where there are insufficient existing facilities, then rates and charges will be developed on an Individual Case Basis." There is no evidence that such a pricing arrangement satisfies the requirements of the pricing floors in RSA 378:18-b.

Number (7), regarding Appendix A, Page 2 of 2, Amended: Staff noted to NYNEX an errant amendment concerning the particular central office, listed first under the heading of Initial System. Typographical errors are inconsistent with an expeditious review.

Number (8), regarding Appendix B, Page 3 of 5, Amended: Staff noted the reference to "the rates and charges for Centrex service at the new location will reflect the costs and features associated with the new location." Staff asked NYNEX whether this section operated similarly to the "Individual Case Basis" discussed in item (6) above, which could potentially violate the pricing standards of 378:18-b. NYNEX was unable to supply a timely response.

Number (9), regarding section 2.2 of the original contract: it was unclear to Staff, and NYNEX was unable to clarify upon inquiry, the interaction of section 2 (including 2.1 and 2.2)

of the original contract with paragraph No. 3 of the Amendment, cited in our item Number (5) above.

Pursuant to section 2.2 "Service shall not be provided hereunder, and the rates set forth herein shall not be effective, until PUC approval of this Agreement [No. 96-1, signed November 22, 1995] has been obtained." We understand that the services described are not available under NYNEX's tariff No. 75 (as amended from time to time). Therefore service was apparently not provided, under either the

Page 596

unapproved contract or the tariff, from at least November 22, 1995 to June 14, 1996, when the Amendment was filed. The Amendment is silent regarding the timing of the initiation of service, but does refer to retroactive application of a discounted rate from the time of PUC approval back to June 14, 1996. It is unclear why the contract Amendment refers to the price of services provided between June 14, 1996 and the date of PUC approval unless services were/are being provided. NYNEX must clarify whether or not off-tariff services were provided prior to approval (or effective date of the contract under 378:18-b).

Number (10), regarding section 9.3 of the contract: the Commission reserves its right to require prior approval of the assignment of NYNEX's rights and obligations under the contract, including to any corporate affiliate. For example, we would not allow NYNEX to assign the contract to an unregulated corporate affiliate without our prior approval.

Number (11), regarding section 9.4 of the contract: the Agreement [No. 96-1] may only be amended by a written agreement duly signed by authorized persons on behalf of the parties. Amendments to special contracts, for example changes in prices, require prior submission to the Commission for our review.

Number (12): The contract states "This Agreement [No. 96-1] may not be made public or disclosed to any third party without the prior written consent of both parties." Public availability from or disclosure by the Commission of both contracts and the support package is governed by N.H. Admin. Rule Puc 204.08 and the Commission's order in response to NYNEX's Motion for Protective Order.

As in earlier contracts, the charges maintain the two- element price structure, including a commitment amount and a monthly service. Standard factors and schedules were employed. NYNEX provided cost study details that, subject to a number of location-specific, engineering and business assumptions, attempt to demonstrate that the proposed rates for the services exceed the case-specific incremental costs. These incremental costs are not necessarily equal to NYNEX's filed 1990 or 1993 Incremental Cost Study.

[1, 2] Staff has recommended that the Commission reject NYNEX's special contract No. 96-1 and the amendment — special contract No. 96-8 — with Sprint Communications Co, L.P., without prejudice, pursuant to, *inter alia*, RSA 378:18. Staff made this recommendation based on an analysis of the filing, lengthy and numerous discussions with NYNEX, diligent efforts to work with NYNEX to cure the deficiencies cited, and in light of the specific direction to NYNEX issued in Commission Order No. 22,216 at 3.

We have reviewed the petition and accept Staff's recommendation. We reject without prejudice the special contract No. 96-1 and No. 96-8 filed by NYNEX, and find denial of the special contract to be in the public interest, pursuant to RSA 378:18 (1996).

The special contract proposal as filed contains errors, discussed above, which justify rejection of the proposal outright. The foregoing notwithstanding, we direct Staff to work closely with NYNEX as the company cures the cited defects, as well as any others discovered or created, should NYNEX elect to re-file the special contract in the future. We look forward to being able to expeditiously review a correct and complete special contract filing, if NYNEX re-files. We advise NYNEX to coordinate any necessary amendment(s) to the contract itself with the customer prior to submitting the contract for our review.

We will return all copies of the special contract and supporting information, thus rendering moot the Motion for Confidentiality.

Based upon the foregoing, it is hereby

ORDERED, that NYNEX's Special Contract No. 96-1 and the Amendment, Special Contract No. 96-8, with Sprint are rejected as filed, and approval is denied without prejudice.

By order of the Public Utilities Commission of New Hampshire this fifth day of August, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New England Teleph. & Teleg. Co., DR

Page 597

96-017, Order No. 21,990, 81 NH PUC 53, Jan. 22, 1996. [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*08/05/96*[89275]*81 NH PUC 598*MCI Telecommunications Corporation of New Hampshire

[Go to End of 89275]

81 NH PUC 598

Re MCI Telecommunications Corporation of New Hampshire

DS 96-222
Order No. 22,262

New Hampshire Public Utilities Commission

August 5, 1996

ORDER approving an interexchange telephone carrier's proposed implementation of a surcharge on operator-assisted calls billed to third-parties.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll services — Operator-assisted calls — Surcharge for such calls billed to a third party — Interexchange carrier. p. 598.

2. RATES, § 260

[N.H.] Surcharges — Interexchange telephone carrier — For operator-assisted toll calls — Billings to a third party — Interexchange carrier. p. 598.

BY THE COMMISSION:

ORDER

[1, 2] On July 10, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from MCI Telecommunications Corporation of New Hampshire (MCI) requesting authority to revise certain sections of its tariff for effect August 9, 1996.

The proposed revisions add a surcharge for third party billed operator assistance calls and clarifying language to the credit card section that specifies when the surcharge applies.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize MCI to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of MCI's tariff, NHPUC No. 1 are approved for effect as filed:

53rd Revised Page 1

30th Revised Page 2

3rd Revised Page 26.2

5th Revised Page 27

6th Revised Page 28;

and it is

FURTHER ORDERED, that MCI file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this fifth day of August, 1996.

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[Go to End of 89276]

81 NH PUC 598

Re Cable and Wireless, Inc.

DS 96-217
Order No. 22,263

New Hampshire Public Utilities Commission

August 5, 1996

ORDER approving an interexchange telephone carrier's proposed tariff revisions, which, among other things, introduce new employee

Page 598

discounts, provide for a billing increment of one minute for prepaid calling cards, and offer special rates to "EXCEL 800" customers having dedicated access.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll services — Tariff revisions — New employee discounts — New prepaid calling card billing increments — New service for certain subscribers with dedicated access — Interexchange carrier. p. 599.

BY THE COMMISSION:

ORDER

[1] On June 28, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from Cable & Wireless, Inc. (CWI) requesting authority to make various revisions to its tariff for effect July 28, 1996.

The proposed revisions include the introduction of a special rate for EXCEL 800 customers with dedicated access, and new employee discounts. Billing increments for prepaid calling cards have been changed to one minute, and several rates are being increased.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize CWI to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of CWI's tariff, NHPUC No. 3 are approved for effect as filed:

1st Revised Page 1

1st Revised Page 2

1st Revised Page 20

Original Page 20.1

1st Revised Page 24

1st Revised Page 25

1st Revised Page 26

1st Revised Page 27

1st Revised Page 28

1st Revised Page 29

1st Revised Page 30

1st Revised Page 32

1st Revised Page 35

1st Revised Page 38

1st Revised Page 39

1st Revised Page 40

1st Revised Page 42;

and it is

FURTHER ORDERED, that CWI file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this fifth day of August, 1996.

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NH.PUC*08/06/96*[89277]*81 NH PUC 599*WorldCom Network Service, Inc., dba WilTel Network Services

[Go to End of 89277]

81 NH PUC 599

Re WorldCom Network Service, Inc., dba WilTel Network Services

DS 96-209
Order No. 22,264

New Hampshire Public Utilities Commission

August 6, 1996

ORDER approving an interexchange telephone carrier's proposal for implementing a "casual calling" option under which nonsubscribers can access the carrier's toll network.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Tariff revisions — Introduction of "casual calling" option — No presubscription

Page 599

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necessary — "10XXX" access dialing — Interexchange carrier. p. 600.

BY THE COMMISSION:

ORDER

[1] On June 26, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from WorldCom Network Service, Inc., d/b/a WilTel Network Services (Wiltel) requesting authority to introduce Casual Calling for effect July 26, 1996.

Casual Calling is a toll option for customers without an established Wiltel account. Customers access the service by dialing 10555 or another Company accepted access number. Calls are billed in one minute increments and include a $0.35 per call surcharge.

We find the proposed changes to be in the public good. New services expand the choice of telephone services and foster competition in the New Hampshire intrastate toll market which allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize the introduction of Casual Calling.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of Wiltel's tariff, NHPUC No. 1 are approved for effect as filed:

2nd Revised Page 1

Original Page 86.1;

and it is

FURTHER ORDERED, that Wiltel file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this sixth day of August, 1996.

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[Go to End of 89278]

81 NH PUC 600

Re Integrated Water Systems, Inc.

Additional applicants: Indian Mound Water Corporation; Consolidated Water Company, Inc.; Carleton Water Company Trust

DR 95-300, DR 95-331
Order No. 22,265

New Hampshire Public Utilities Commission

August 6, 1996

ORDER modifying Order No. 22,203 (81 NH PUC 475, *supra*) as to the posting requirements contained therein by which all affected customers were to be notified of the acquisition of Indian Mound Water Corporation by Integrated Water Systems, Inc., and of Carleton Water Company Trust by Consolidated Water Company, Inc., which itself is an affiliate of Integrated Water Systems. Customers now may be informed via a letter distributed as a bill insert.

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1. CONSOLIDATION, MERGER, AND SALE, § 63

[N.H.] Procedure — Notice — Of merger and acquisition transactions — Between water utilities — Notification of customers via letter included as bill insert — Availability of full commission order at branch office — Elimination of posting requirement in central location in developments being served. p. 601.

BY THE COMMISSION:

ORDER

On June 18, 1996 by Order No. 22,203 (the Order) the New Hampshire Public Utilities Commission (Commission) conditionally

approved the petitions that transferred Indian Mound and Carleton Water Companies to Integrated Water Systems, Inc. and Consolidated Water Company (together Integrated). In order that customers fully understand the terms of the approvals being granted, the Commission required Integrated to post the order in a central location at each of the developments served by Integrated and to make a copy of the order available at Integrated's office in Moultonboro.

On July 17, 1996, Integrated filed a Motion for Reconsideration and Modification of

Commission Order No. 22,203, arguing that the requirement to post the order was impractical and potentially confusing to the customers. Integrated represented that there are no such central posting locations at the developments subject to the Order, and that the alternative of mailing the Order to each customer was both expensive and would erode customer confidence in Integrated's ability to provide safe and reliable service.

As an alternative, Integrated proposed that it notify customers of the change in ownership by means of a letter to be enclosed in the next regular billing. The letter would note the change in ownership, refer to the Order and proceedings, state that rates would remain unchanged, and provide information on Integrated's address, telephone number, principals and employees, corporate structure, and procedures for emergency service.

[1] We have reviewed Integrated's Motion and the Staff recommendation. Staff concurs that it is impractical to require the Order to be centrally posted in each development. We will relieve Integrated of the requirement to post the Order but will require that a copy of the Order be made available in the Moultonboro office upon request of a customer. We will also direct the Company to work with Staff to develop a letter of notification to customers, including the elements proposed by Integrated. The letter should also state the availability of the entire Order in Moultonboro and solicit suggestions from customers for improvements in service quality.

Based upon the foregoing, it is hereby

ORDERED, that the Company is released from the requirement of posting Order No. 22,203; and it is

FURTHER ORDERED, that the Company notify customers of the change in ownership by means of a letter as described above, the contents and wording of which shall be approved by Staff, to be enclosed in the next regular billing to customers.

By order of the Public Utilities Commission of New Hampshire this sixth day of August, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Integrated Water Systems, Inc., DR 95-300, Order No. 22,203, 81 NH PUC 475, June 18, 1996.

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NH.PUC*08/06/96*[89279]*81 NH PUC 601*MFS Intelenet of New Hampshire, Inc.

[Go to End of 89279]

81 NH PUC 601

Re MFS Intelenet of New Hampshire, Inc.

DS 96-218
Order No. 22,266

New Hampshire Public Utilities Commission

August 6, 1996

ORDER authorizing an interexchange telephone carrier to make various tariff revisions as to company rules on payment arrangements, interruptions in service, and limits on customer liability for unauthorized use of the network.

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1. SERVICE, § 162

[N.H.] Company rules and regulations — Interexchange telephone carrier — Tariff revisions — As to payment arrangements — As to interruptions of service — As to extent of liability for unauthorized use of network. p. 602.

Page 601

BY THE COMMISSION:

ORDER

[1] On July 1, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from MFS Intelenet of New Hampshire, Inc., (MFS) requesting authority to make various revisions to its tariff for effect July 31, 1996.

MFS is proposing revisions to regulations governing the undertaking of the company, payment arrangements, allowances for interruption in service, cancellation of service/termination liability, and customer liability for unauthorized use of the network. In addition, several new definitions have been added and minor corrections have been made.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize MFS to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of MFS' tariff, NHPUC No. 1 are approved for effect as filed:

10th Revised Page 1

1st Revised Page 5

1st Revised Page 6

Original Page 6.1

1st Revised Page 8

2nd Revised Page 9

2nd Revised Page 10
1st Revised Page 10.1
1st Revised Page 10.2
Original Page 10.3
Original Page 10.4
Original Page 17.2
1st Revised Page 17.3 in lieu of Original
Original Page 17.4
Original Page 17.5
3rd Revised Page 18
1st Revised Page 18.1
3rd Revised Page 19
1st Revised Page 19.1
1st Revised Page 19.2
1st Revised Page 19.3
1st Revised Page 19.4
Original Page 19.4.1
1st Revised Page 19.6
1st Revised Page 19.7
Original Page 19.8
Original Page 19.9
Original Page 19.10
2nd Revised Page 21;

and it is

FURTHER ORDERED, that MFS file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this sixth day of August, 1996.

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NH.PUC*08/06/96*[89280]*81 NH PUC 602*OneStar Direct Access, Inc., dba OneStar Long Distance, Inc.

[Go to End of 89280]

81 NH PUC 602

Re OneStar Direct Access, Inc., dba OneStar Long Distance, Inc.

DS 96-219
Order No. 22,267

New Hampshire Public Utilities Commission

August 6, 1996

ORDER authorizing an interexchange telephone carrier to introduce new employee advantage and conference calling service features and to modify its tariffed rules as to billings, payments, and deposits.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Introduction of employee advantage and conference calling service features —

Page 602

Interexchange telephone carrier. p. 603.

2. SERVICE, § 162

[N.H.] Company rules and regulations — Interexchange telephone carrier — Toll service — Modification of service rules — As to billings, payments, and deposit requirements. p. 603.

BY THE COMMISSION:

ORDER

[1, 2] On July 1, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from OneStar Direct Access Inc., d/b/a OneStar Long Distance, Inc. (OneStar) requesting authority to introduce its tariff, NHPUC No. 4.

Revisions to OneStar's tariff No. 3 include the introduction of Employee Advantage and Conference Calling. Two sections entitled Rate Programs were merged. Content changes were made to Association Programs and the Payment, Billing and Deposits section and "subscriber" is defined.

At the request of the Staff of the Commission, OneStar made some additional revisions to bring certain language into compliance with the Commission's NH Admin. Rules, Puc 1200. Since more than 50 percent of the pages were affected by the proposed revisions OneStar filed an Original tariff No. 4 pursuant to NH Admin. Rules, Puc 1601.05(b) (2)

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition.

Therefore, the Commission will authorize OneStar to introduce its tariff NHPUC No. 4.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of OneStar's tariff, NHPUC No. 4 are approved for effect as of the date of this order:

Original Pages 1-18

1st Revised Page 19 in lieu of Original

Original Pages 20-29

1st Revised Page 30 in lieu of Original

Original Pages 31-33

1st Revised Page 34 in lieu of Original

Original Pages 35-47;

and it is

FURTHER ORDERED, that OneStar file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this sixth day of August, 1996.

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NH.PUC*08/06/96*[89281]*81 NH PUC 603*Conetco Corporation dba Communications Network Corporation

[Go to End of 89281]

81 NH PUC 603

Re Conetco Corporation dba Communications Network Corporation

DE 96-023
Order No. 22,268

New Hampshire Public Utilities Commission

August 6, 1996

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

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1. CERTIFICATES, § 123

[N.H.] Telephone carrier — Intrastate intraLATA long-distance services — Interim authority — Assessment of competitive impacts — Exclusion of local exchange services. p. 604.

2. MONOPOLY AND COMPETITION, § 94

authority — Assessment of competitive impacts — Exclusion of local exchange services. p. 604.

BY THE COMMISSION:

ORDER

[1, 2] On January 19, 1996, Conetco Corporation d/b/a Communications Network Corp. (CNC) petitioned the New Hampshire Public Utilities Commission (Commission) for authority to do business as a telecommunications public utility in the State of New Hampshire (petition) pursuant to, *inter alia*, RSA 374:22 and RSA 374:26. CNC has demonstrated the financial, managerial and technical ability to offer service as conditioned by this order. The Commission previously approved numerous, similar petitions filed during the Trial Period, pursuant to the Modified Stipulation Agreement (Stipulation) in Docket No. DE 90-002, approved by Order No. 20,916 (August 2, 1993). Our orders in those numerous dockets granted the petitioner(s) interim authority to offer intraLATA toll service, specifically excluding local exchange service, for the service territory of the entire State of New Hampshire, during the Trial Period, in order to allow the Commission to analyze competition during the two-year Trial Period.

Because the Trial Period identified by the Stipulation expired on September 30, 1995, we have explicitly clarified that the authority we had granted remains in effect until we specifically modify or revoke that authority, after analysis of the Trial Period. *See* Order No. 21,851 (October 3, 1995). Likewise, our grant of authority ordered herein remains in effect until we specifically modify or revoke that authority.

The public good is served by permitting such competition by telecommunications companies. The Commission permits competitive entry in order to foster competition in the New Hampshire intrastate toll market and to allow
the Commission to analyze the effects of such competition.

The public should be provided an opportunity to respond in support of, or in opposition to this petition.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that CNC is granted interim authority to offer as a telecommunications public utility intraLATA toll service, specifically excluding local exchange service, for the service territory of the entire State of New Hampshire, subject to the following conditions:

1. The services shall be offered by approved tariffs.

2. The services shall be offered until the Commission orders otherwise.

3. CNC shall file tariffs for new services and changes in approved services (other than rate changes), with effective dates of no less than 30 days after the date the tariffs are filed with the

Commission.

4. Within one business day of offering an approved service to the public at a rate different from its rates on file with the Commission, CNC shall notify the Commission of the change.

5. CNC is exempted from NH Admin. Rules, Puc 406.03 Accounting Records; Puc 407 Forms Required of All Telephone Utilities; and Puc 409 Uniform System of Accounts for Telecommunications Companies.

6. CNC shall maintain its book and records in accordance with Generally Accepted Accounting Principles.

7. CNC 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. CNC 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. CNC shall compensate the appropriate Local Exchange Company for all originating

Page 604

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and terminating access used by CNC pursuant to NET Tariff N.H.P.U.C. 79, Switched Access Service Rate or its successors or its relevant equivalent contained in the tariffs of the Independent Local Exchange Companies.

10. New Service offerings filed for approval with the Commission shall be accompanied by tariff pages describing the service, rates and effective dates.

FURTHER ORDERED, that the authority granted herein remains in full force and effect until the Commission orders otherwise; and it is

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

FURTHER ORDERED, that CNC 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 August 13, 1996, and an affidavit proving publication shall be filed with the Commission on or before August 20, 1996; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, et seq. CNC 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 August 27, 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 September 3, 1996; and it is

FURTHER ORDERED, this Order *Nisi* shall be effective September 5, 1996, unless the Commission provides otherwise in a supplemental order issued prior to the effective date and it is

FURTHER ORDERED, that CNC shall file a compliance tariff with the Commission on or before September 5, 1996, in accordance with NH Admin. Rules, Puc 1601.01 (b).

By order of the Public Utilities Commission of New Hampshire this sixth day of August, 1996.

Notice of Conditional Approval of
CONETCO CORPORATION

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

On January 19, 1996, Conetco Corporation (CNC), a New York corporation, filed with the New Hampshire Public Utilities Commission (Commission) a petition to do business as a telecommunications public utility in the State of New Hampshire, specifically to provide intrastate long distance telecommunications services.

In Order No. 22,268, issued in Docket No. DE 96-023, the Commission granted CNC conditional approval to operate as of September 5, 1996, subject to the right of the public and interested parties to comment on CNC 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 CNC's petition to do business in the State must be submitted in writing no later than August 27, 1996, and reply comments no later than September 3, 1996, to:

Dr. Sarah P. Voll
Executive Director and Secretary
Public Utilities Commission
8 Old Suncook Road
Concord, New Hampshire 03301-7319

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Generic Investigation into IntraLATA Toll Competition Access Rates, DE 90-002, Order No. 20,916, 78 NH PUC 365, Aug. 2, 1993. [N.H.] Re Long Distance North of New Hampshire,

Inc., et al., DE 87-249, Order No. 21,851, 80 NH PUC 628, Oct. 3, 1995.

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[Go to End of 89282]

81 NH PUC 606

Re Overlook Communications International Corporation

DE 96-009
Order No. 22,269

New Hampshire Public Utilities Commission

August 6, 1996

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

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1. CERTIFICATES, § 123

[N.H.] Telephone carrier — Intrastate intraLATA long-distance services — Interim authority — Assessment of competitive impacts — Exclusion of local exchange services. p. 606.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate intraLATA toll services — Interim authority — Assessment of competitive impacts — Exclusion of local exchange services. p. 606.

BY THE COMMISSION:

ORDER

[1, 2] On January 11, 1996, Overlook Communications International, Corp. (OCIC), a North Carolina corporation, petitioned the New Hampshire Public Utilities Commission (Commission) for authority to do business as a telecommunications public utility in the State of New Hampshire (petition) pursuant to, *inter alia*, RSA 374:22 and RSA 374:26. OCIC has demonstrated the financial, managerial and technical ability to offer service as conditioned by this order. The Commission previously approved numerous, similar petitions filed during the Trial Period, pursuant to the Modified Stipulation Agreement (Stipulation) in Docket No. DE 90-002, approved by Order No. 20,916 (August 2, 1993). Our orders in those numerous dockets granted the petitioner(s) interim authority to offer intraLATA toll service, specifically excluding local exchange service, for the service territory of the entire State of New Hampshire, during the Trial Period, in order to allow the Commission to analyze competition during the two-year Trial Period.

Because the Trial Period identified by the Stipulation expired on September 30, 1995, we have explicitly clarified that the authority we had granted remains in effect until we specifically modify or revoke that authority, after analysis of the Trial Period. *See* Order No. 21,851 (October 3, 1995). Likewise, our grant of authority ordered herein remains in effect until we

specifically modify or revoke that authority.

The public good is served by permitting such competition by telecommunications companies. The Commission permits competitive entry in order to foster competition in the New Hampshire intrastate toll market and to allow the Commission to analyze the effects of such competition.

The public should be provided an opportunity to respond in support of, or in opposition to this petition.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that OCIC is granted interim authority to offer as a telecommunications public utility intraLATA toll service, specifically excluding local exchange service, for the service territory of the entire State of New Hampshire, subject to the following conditions:

1. The services shall be offered by approved tariffs.

2. The services shall be offered until the Commission orders otherwise.

3. OCIC shall file tariffs for new services and changes in approved services (other than rate changes), with effective dates of no less

Page 606

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, OCIC shall notify the Commission of the change.

5. OCIC is exempted from NH Admin. Rules, Puc 406.03 Accounting Records; Puc 407 Forms Required of All Telephone Utilities; and Puc 409 Uniform System of Accounts for Telecommunications Companies.

6. OCIC shall maintain its book and records in accordance with Generally Accepted Accounting Principles.

7. OCIC 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. OCIC 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. OCIC shall compensate the appropriate Local Exchange Company for all originating and terminating access used by OCIC pursuant to NET Tariff N.H.P.U.C. 79, Switched Access Service Rate or its successors or its relevant equivalent contained in the tariffs of the Independent Local Exchange Companies.

10. New Service offerings filed for approval with the Commission shall be accompanied by tariff pages describing the service, rates and effective dates.

FURTHER ORDERED, that the authority granted herein remains in full force and effect

until the Commission orders otherwise; and it is

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

FURTHER ORDERED, that OCIC 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 August 13, 1996, and an affidavit proving publication shall be filed with the Commission on or before August 20, 1996; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, et seq. OCIC 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 August 27, 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 September 3, 1996; and it is

FURTHER ORDERED, this Order *Nisi* shall be effective September 5, 1996, unless the Commission provides otherwise in a supplemental order issued prior to the effective date and it is

FURTHER ORDERED, that OCIC shall file a compliance tariff with the Commission on or before September 5, 1996, in accordance with NH Admin. Rules, Puc 1601.01 (b).

By order of the Public Utilities Commission of New Hampshire this sixth day of August, 1996.

Notice of Conditional Approval of
OVERLOOK COMMUNICATIONS
INTERNATIONAL CORP.

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

On January 11, 1996, Overlook Communications International, Corp. (OCIC), a North Carolina corporation, filed with the New Hampshire Public Utilities Commission (Commission) a petition to do business as a telecommunications public utility in the State of New Hampshire, specifically to provide intrastate long distance telecommunications services.

Page 607

In Order No. 22,269, issued in Docket No. DE 96-009, the Commission granted OCIC conditional approval to operate as of September 5, 1996, subject to the right of the public and interested parties to comment on OCIC 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 OCIC's petition to do business in the State must be submitted in writing no later than August 27, 1996, and reply comments no later than September 3, 1996, to:

Dr. Sarah P. Voll
Executive Director and Secretary
Public Utilities Commission
8 Old Suncook Road
Concord, New Hampshire 03301-7319

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Generic Investigation into IntraLATA Toll Competition Access Rates, DE 90-002, Order No. 20,916, 78 NH PUC 365, Aug. 2, 1993. [N.H.] Re Long Distance North of New Hampshire, Inc., et al., DE 87-249, Order No. 21,851, 80 NH PUC 628, Oct. 3, 1995.

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NH.PUC*08/06/96*[89283]*81 NH PUC 608*Primus Telecommunications, Inc.

[Go to End of 89283]

81 NH PUC 608

Re Primus Telecommunications, Inc.

DE 95-333
Order No. 22,270

New Hampshire Public Utilities Commission

August 6, 1996

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

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1. CERTIFICATES, § 123

[N.H.] Telephone carrier — Intrastate intraLATA long-distance services — Interim authority — Assessment of competitive impacts — Exclusion of local exchange services. p. 608.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate intraLATA toll services — Interim authority — Assessment of competitive impacts — Exclusion of local exchange services. p. 608.

BY THE COMMISSION:

ORDER

[1, 2] On November 29, 1995, Primus Telecommunications, Inc. (PTI), a Delaware corporation, petitioned the New Hampshire Public Utilities Commission (Commission) for authority to do business as a telecommunications public utility in the State of New Hampshire (petition) pursuant to, *inter alia*, RSA 374:22 and RSA 374:26. PTI has demonstrated the financial, managerial and technical ability to offer service as conditioned by this order. The Commission previously approved numerous, similar petitions filed during the Trial Period, pursuant to the Modified Stipulation Agreement (Stipulation) in Docket No. DE 90- 002, approved by Order No. 20,916 (August 2, 1993). Our orders in those numerous dockets granted the petitioner(s) interim authority to offer intraLATA toll service, specifically excluding local exchange service, for the service territory of the entire State of New Hampshire, during the Trial Period, in order to allow the Commission to analyze competition during the two-year Trial Period.

Because the Trial Period identified by the Stipulation expired on September 30, 1995, we have explicitly clarified that the authority we had granted remains in effect until we specifically modify or revoke that authority, after analysis of the Trial Period. *See* Order No.

21,851 (October 3, 1995). Likewise, our grant of authority ordered herein remains in effect until we specifically modify or revoke that authority.

The public good is served by permitting such competition by telecommunications companies. The Commission permits competitive entry in order to foster competition in the New Hampshire intrastate toll market and to allow the Commission to analyze the effects of such competition.

The public should be provided an opportunity to respond in support of, or in opposition to this petition.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that PTI is granted interim authority to offer as a telecommunications public utility intraLATA toll service, specifically excluding local exchange service, for the service territory of the entire State of New Hampshire, subject to the following conditions:

1. The services shall be offered by approved tariffs.

2. The services shall be offered until the Commission orders otherwise.

3. PTI shall file tariffs for new services and changes in approved services (other than rate changes), with effective dates of no less than 30 days after the date the tariffs are filed with the Commission.

4. Within one business day of offering an approved service to the public at a rate different from its rates on file with the Commission, PTI shall notify the Commission of the change.

5. PTI is exempted from NH Admin. Rules, Puc 406.03 Accounting Records; Puc 407 Forms Required of All Telephone Utilities; and Puc 409 Uniform System of Accounts for

Telecommunications Companies.

6. PTI shall maintain its book and records in accordance with Generally Accepted Accounting Principles.

7. PTI 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. PTI 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. PTI shall compensate the appropriate Local Exchange Company for all originating and terminating access used by PTI pursuant to NET Tariff N.H.P.U.C. 79, Switched Access Service Rate or its successors or its relevant equivalent contained in the tariffs of the Independent Local Exchange Companies.

10. New Service offerings filed for approval with the Commission shall be accompanied by tariff pages describing the service, rates and effective dates.

FURTHER ORDERED, that the authority granted herein remains in full force and effect until the Commission orders otherwise; and it is

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

FURTHER ORDERED, that PTI 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 August 13, 1996, and an affidavit proving publication shall be filed with the Commission on or before August 20, 1996; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, et seq. PTI 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 August 27, 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 September 3, 1996; and it is

FURTHER ORDERED, this Order *Nisi*

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shall be effective September 5, 1996, unless the Commission provides otherwise in a supplemental order issued prior to the effective date and it is

FURTHER ORDERED, that PTI shall file a compliance tariff with the Commission on or

before September 5, 1996, in accordance with NH Admin. Rules, Puc 1601.01 (b).

By order of the Public Utilities Commission of New Hampshire this sixth day of August, 1996.

Notice of Conditional Approval of
PRIMUS TELECOMMUNICATIONS, INC.

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

On November 29, 1995, Primus Telecommunications, Inc. (PTI), a Delaware corporation, filed with the New Hampshire Public Utilities Commission (Commission) a petition to do business as a telecommunications public utility in the State of New Hampshire, specifically to provide intrastate long distance telecommunications services.

In Order No. 22,270, issued in Docket No. DE 95-333, the Commission granted PTI conditional approval to operate as of September 5, 1996, subject to the right of the public and interested parties to comment on PTI 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 PTI's petition to do business in the State must be submitted in writing no later than August 27, 1996, and reply comments no later than September 3, 1996, to:

Dr. Sarah P. Voll
Executive Director and Secretary
Public Utilities Commission
8 Old Suncook Road
Concord, New Hampshire 03301-7319

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Generic Investigation into IntraLATA Toll Competition Access Rates, DE 90-002, Order No. 20,916, 78 NH PUC 365, Aug. 2, 1993. [N.H.] Re Long Distance North of New Hampshire, Inc., et al., DE 87-249, Order No. 21,851, 80 NH PUC 628, Oct. 3, 1995.

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NH.PUC*08/12/96*[89284]*81 NH PUC 610*Retail Competition Pilot Program

[Go to End of 89284]

81 NH PUC 610

Re Retail Competition Pilot Program

Petitioner: New Hampshire Electric Cooperative, Inc.

DR 95-250
Order No. 22,271

New Hampshire Public Utilities Commission

August 12, 1996

ORDER denying a petition for rehearing of Order No. 22,184 (81 NH PUC 441, *supra*) in which the commission had declined to take any action against Public Service Company of New Hampshire for its alleged blocking of transmission service to a cooperative's customers under a pilot program for competitive electric services. Commission reiterates that the dispute is part of a long-running debate on wholesale contract rates between the two parties, which dispute is now pending before the Federal Energy Regulatory Commission, in whose proceedings the state commission will not interfere.

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1. SERVICE, § 320

[N.H.] Electric — Pilot program for retail competition — Eligibility of customers of cooperative — Dispute as to transmission service blockade on cooperative's customers — Resolution before the Federal Energy Regulatory

Page 610

Commission — No present intervention by state commission. p. 611.

2. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric service — Pilot program for retail competition — Inclusion of customers of cooperative — Dispute as to transmission service blockade on cooperative's customers — Resolution before the Federal Energy Regulatory Commission — Deferral of state commission jurisdiction. p. 611.

BY THE COMMISSION:

ORDER

This order addresses a motion for rehearing filed with the New Hampshire Public Utilities Commission (Commission) by the New Hampshire Electric Cooperative (NHEC) relative to Commission Order No. 22,184 (June 10, 1996). In that order we denied, without prejudice, NHEC's request to "compel" Public Service Company of New Hampshire (PSNH) to comply with Order No. 22,081.

NHEC contends that PSNH has failed to comply with the Commission's conditional approval of the PSNH-Staff Joint Recommendation because it has refused to offer transmission service to NHEC's Pilot customers "on the same rates, terms and conditions which apply to other non-PSNH Pilot participants." *See*, Order No. 22,081 at 17. According to NHEC, the transmission tariffs that PSNH has filed at the Federal Energy Regulatory Commission (FERC) will, "if implemented," allow PSNH and its affiliate to collect per-kilowatt-hour revenue which is 1500% higher than that which is collected from other Pilot customers. Presumably, the additional charge above the transmission rate represents the amount that PSNH claims it is due

under its wholesale contract with NHEC. NHEC does not state how PSNH would actually collect this additional revenue under FERC-filed tariffs.

[1, 2] In Order No. 22,184, we noted that PSNH had filed a complaint with the FERC relative to its dispute with NHEC over the parties' wholesale contract. On July 8, 1996, PSNH informed the Commission that it would be making retail transmission service available to Pilot customers pursuant to the open access *pro forma* tariffs that it had filed at the FERC on July 9, 1996. It is our understanding that NHEC's Pilot customers currently have the opportunity to obtain transmission service under those *pro forma* tariffs which apply to other non-PSNH Pilot customers. The issue currently before the FERC is whether under the Amended Partial Requirements Agreement (APRA), NHEC is obligated to pay PSNH all revenues which it would have otherwise collected from NHEC in the absence of the Pilot. In our view, this is a matter that is properly before the FERC for the limited purpose of implementing the Pilot and we will await its decision. We reserve the right to revisit this issue as appropriate within our jurisdiction, after the FERC rules on PSNH's filing.

Because NHEC has presented no evidence to warrant taking action on this issue prior to the FERC ruling, we will deny NHEC's Motion for Rehearing.

Based upon the foregoing, it is hereby

ORDERED, that NHEC's Motion for Rehearing is DENIED.

By order of the Public Utilities Commission of New Hampshire this twelfth day of August, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Retail Competition Pilot Program, DR 95-250, Order No. 22,081, 81 NH PUC 237, Mar. 29, 1996. [N.H.] Re Retail Competition Pilot Program, DR 95-250, Order No. 22,184, 81 NH PUC 441, June 10, 1996.

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NH.PUC*08/12/96*[89285]*81 NH PUC 612*Retail Competition Pilot Program

[Go to End of 89285]

81 NH PUC 612

Re Retail Competition Pilot Program

Petitioner: Retail Merchants Association on behalf of May Department Stores
Respondent: Public Service Company of New Hampshire

DR 95-250
Order No. 22,272

New Hampshire Public Utilities Commission

August 12, 1996

ORDER finding that the relocation of an existing electric customer (a department store) within the serving electric utility's service area, even though accompanied by an increase in load, would not make the customer eligible to participate in the utility's pilot program for competitive electric services, since there would be no metering of the additional load separate and distinct from its existing load.

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1. RATES, § 166

[N.H.] Factors affecting reasonableness — Solicitation of business — New commercial or industrial load — Eligibility to participate in pilot program for retail electric competition — Definitions of new load — Relocation of customer as a factor — From out-of-state versus within same service territory — Eligibility of expanded existing load — Conditioned on separate metering of additional load. p. 612.

2. RATES, § 322

[N.H.] Electric rate design — Load factors — Pilot program for retail competition — Participation eligibility — Large commercial or industrial load — New load relocating from out-of-state — Expansion of existing load *if* such additional load served through separate meter. p. 612.

BY THE COMMISSION:

ORDER

On June 14, 1996, the Retail Merchants Association (RMA) filed with the New Hampshire Public Utilities Commission (Commission) a Motion for Declaratory Relief on behalf of its member, May Department Stores Co., requesting the Commission to find that a new Filene's department store located in the Mall of New Hampshire is eligible to participate in the Pilot Program as a "new load" customer. According to RMA, the store will be located on a new site, will be served through a new meter, and will require more than two and a half times more electricity than the existing facility. The existing store occupies approximately 60,000 square feet and the new store will occupy approximately 160,000 square feet. Therefore, RMA contends that the new store location qualifies as "new load" as set forth in Order No. 22,118.

On June 20, 1996, PSNH responded to RMA's motion and urged the Commission to deny the requested ruling. In support of its opposition, PSNH states that RMA is seeking to include as a Pilot participant the entire load of an existing customer who was not selected in the Pilot but who subsequently moved to a new location within the same service territory. While PSNH concedes that the new store's load will be higher than the load at its present location, it argues that the additional load is not "associated with the extension or expansion of an existing facility" as described in Order 22,118.

In addition, PSNH notes that it is possible for the vacated store to be occupied by a new

customer who moves from another state or who meets the "new load" criteria. Thus, if RMA prevails in its request, the end result could be that PSNH's Pilot load increases by the sum of the load at the new location and the new load at the existing location.

[1, 2] As noted by RMA in its motion and by PSNH in its response, the issue of "new load" has been addressed in two orders: first in the Final Guidelines, where the Commission declined to allow customers who simply moved to a new location within the same service

Page 612

territory to qualify for the Pilot, and second in Order No. 22,118, where the Commission defined new load as including an extension or expansion of an existing facility provided that it is served through a separate meter. RMA's motion, however, presents a situation that involves both re-location within a service territory and load growth.

We find that the additional load such as that associated with the May's new store would qualify for Pilot participation if sufficient evidence were presented that (a) the load for which Pilot eligibility is sought does not constitute "load-shifting," and (b) such "new" load will be served through a separate meter. We find, however, that RMA has failed to meet its burden of proof relative to these two factors. It is unclear to us how RMA can meet its burden of distinguishing which portion of the new facility's load is load which was "shifted" from its old facility and which portion of the load is "new" and separately metered. Without deciding the issue now, we would consider allowing the incremental increase in load to qualify as new load for participation in the Pilot if it is separately metered and if the existing load (which continues to be served by PSNH) can be estimated with a reasonable degree of accuracy. Because we have determined that RMA has failed to make a sufficient showing on these issues, we will deny its motion without prejudice.

Based upon the foregoing, it is hereby

ORDERED, that RMA's Motion for Declaratory Ruling is DENIED WITHOUT PREJUDICE.

By order of the Public Utilities Commission of New Hampshire this twelfth day of August, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Retail Competition Pilot Program, DR 95-250, Order No. 22,118, 81 NH PUC 310, Apr. 24, 1996.

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NH.PUC*08/12/96*[89286]*81 NH PUC 613*Retail Competition Pilot Program

[Go to End of 89286]

Re Retail Competition Pilot Program

Petitioner: Public Service Company of New Hampshire

DR 95-250
Order No. 22,273

New Hampshire Public Utilities Commission

August 12, 1996

ORDER denying a petition for reconsideration of Order No. 22,166 (81 NH PUC 404, *supra*) in which the commission had found that the nonheating loads of space-heating electric customers should be eligible for a pilot program for competitive electric services.

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1. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric service — Pilot program for retail competition — Customer eligibility — Residential space-heating customers — Nonheating portion of load — Inclusion in pilot program — Affirmation. p. 613.

BY THE COMMISSION:

ORDER

[1] This order addresses a motion for reconsideration filed with the New Hampshire Public Utilities Commission (Commission) by Public Service Company of New Hampshire (PSNH) relative to the portion of Commission Order No. 22,166 (May 28, 1996) concerning the eligibility of the "HeatSmart" Rate LCS customers to participate in the Pilot. In that order, we determined that customers who receive space heating service under this rate schedule should be permitted to have their non-heating loads supplied by competitive suppliers in the

Pilot.

According to PSNH, the Commission decided this issue without prior notice to the parties and without an opportunity for the parties to respond and provide relevant evidence to the Commission. PSNH alleges that the Commission already resolved this issue in earlier orders in this docket. We disagree. In Order No. 22,166, we found that nothing in the Rate LCS tariff precludes PSNH's customers from purchasing power from competitive suppliers in order to meet their non-space heating load. PSNH has presented no new evidence to support reconsideration of Order No. 22,166. Based upon the foregoing, it is hereby

ORDERED, that PSNH's Motion for Reconsideration is DENIED.

By order of the Public Utilities Commission of New Hampshire this twelfth day of August, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Retail Competition Pilot Program, DR 95-250, Order No. 22,166, 81 NH PUC 404, May 28, 1996.

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NH.PUC*08/12/96*[89287]*81 NH PUC 614*Connecticut Valley Electric Company, Inc.

[Go to End of 89287]

81 NH PUC 614

Re Connecticut Valley Electric Company, Inc.

DR 96-170
Order No. 22,274

New Hampshire Public Utilities Commission

August 12, 1996

ORDER suspending and proffering a procedural schedule for an electric utility's proposed $1.59 million (8.8%) 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 — Recommendation of procedural schedule — Electric utility. p. 614.

BY THE COMMISSION:

ORDER

On July 23, 1996, Connecticut Valley Electric Company (CVEC or Company) filed with the New Hampshire Public Utilities Commission (Commission) a petition for approval of rate schedules reflecting a permanent base rate increase of approximately $1,591,616 or 8.8%. CVEC also requested a temporary rate increase of $923,778 or 5.4% on bills rendered on or after August 23, 1996 and until permanent rates are approved and in effect.

CVEC represents that it has not filed a base rate case since 1983, and the increase is necessary to provide sufficient revenue to recover its operating costs and earn a reasonable return on equity. The proposed rate base includes the upgrade of the Lafayette Street substation and several distribution line voltage conversions. CVEC does not propose any rate re-design, change in the power cost levels reflected in base rates or change to conservation and load

management costs and charges.

[1] Based upon the foregoing, it is hereby

ORDERED, that there be held before the New Hampshire Public Utilities Commission located at 8 Old Suncook Road, Concord, New Hampshire on September 20, 1996 at 10:00, a Prehearing Conference, pursuant to N.H. Admin. Rules Puc 203.05, at which each party will provide a preliminary summary of its position with regard to the Petition, followed by a Hearing on Temporary Rates pursuant to RSA 378:27; and it is

FURTHER ORDERED, that, immediately following the Hearing on Temporary Rates, CVEC, the Staff of the Commission and the Intervenors hold a First Technical Session to review the Petition and allow CVEC to provide

Page 614

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any updates or amendments to its filing; and it is

FURTHER ORDERED, that the parties discuss the following proposed schedule prior to the prehearing conference:

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

Responses to Oral Data       September 26, 1996
Requests Propounded at the
1st Technical Session

Data Requests by Staff and      October 7, 1996
Intervenors

Company Data Responses         October 17, 1996

Technical Session              October 23, 1996

Testimony by Staff and        November 14, 1996
Intervenors

Data Requests by the Company  November 25, 1996

Data Responses by Staff and    December 5, 1996
Intervenors

Settlement Conference         December 12, 1996

Filing of Settlement          December 31, 1996
Agreement if any

Hearing                      January 7-8, 1997;
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Unless otherwise ordered following the prehearing conference, the above schedule 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 an attested copy of this Order of Notice no later than August 19, 1996, 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 September 20, 1996; and it is

FURTHER ORDERED, that CVEC further notify all persons desiring to be heard at this hearing by publishing an approximately two inch by three inch advertisement no later than September 11, 1996, in a newspaper of general circulation in that portion of the state in which operations are conducted, including the percentage increase requested, the date of the Prehearing Conference and a Company telephone number to call for further information, the format to be developed in collaboration with the Commission Staff; and it is

FURTHER ORDERED, that CVEC serve a summary of its proposed rate change in accordance with N.H. Admin.Rules Puc 1601.05(j), on current and known prospective customers in the earliest 30 day billing cycle following the availability of printed statements for inclusion with bills; 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 and the Office of the Consumer Advocate on or before September 17, 1996, 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 September 19, 1996; and it is

FURTHER ORDERED, that the following tariff pages of Electric Service Tariff NHPUC No. 5 - Electricity are hereby suspended:

10th Revised Page 24 Superseding 9th Revised Page 24

9th Revised Page 26 Superseding 8 Revised Page 26

9th Revised Page 27 Superseding 8th Revised Page 27

10th Revised Page 29 Superseding 9th Revised Page 29

9th Revised Page 30 Superseding 8th Revised Page 30

8th Revised Page 32 Superseding 7th Revised Page 32

10th Revised Page 33 Superseding 9th Revised Page 33

10th Revised Page 34 Superseding 9th Revised Page 34

8th Revised Page 36 Superseding 7th

Page 615

Revised Page 36

7th Revised Page 37 Superseding 6th Revised Page 37

8th Revised Page 38 Superseding 7th Revised Page 38

7th Revised Page 39 Superseding 6th Revised Page 39

10th Revised Page 40 Superseding 9th Revised Page 40

10th Revised Page 41 Superseding 9th Revised Page 41

10th Revised Page 43 Superseding 9th Revised Page 43

10th Revised Page 44 Superseding 9th Revised Page 44

7th Revised Page 46 Superseding 6th Revised Page 46

7th Revised Page 48 Superseding 6th Revised Page 48

2nd Revised Page 53 Superseding 1st Revised Page 53

2nd Revised Page 54 Superseding 1st Revised Page 54

2nd Revised Page 55 Superseding 1st Revised Page 55

1st Revised Page 56 Superseding Original Page 56

1st Revised Page 57 Superseding Original Page 57

1st Revised Page 58 Superseding Original Page 58

1st Revised Page 59 Superseding Original Page 59

1st Revised Page 60 Superseding Original Page 60

1st Revised Page 61 Superseding Original Page 61

1st Revised Page 62 Superseding Original Page 62

1st Revised Page 63 Superseding Original Page 63

1st Revised Page 64 Superseding Original Page 64

1st Revised Page 65 Superseding Original Page 65

1st Revised Page 66 Superseding Original Page 66

By order of the Public Utilities Commission of New Hampshire this twelfth day of August, 1996.

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*08/13/96*[89288]*81 NH PUC 616*LDDS Communications, Inc.

[Go to End of 89288]

81 NH PUC 616

Re LDDS Communications, Inc.

DS 96-226
Order No. 22,275

New Hampshire Public Utilities Commission

August 13, 1996

ORDER approving an interexchange telephone carrier's plan to offer "WorldMark" service, which combines toll, toll-free, and calling card features into one service package. A separate new calling card service is authorized as well.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Calling card services — Introduction of new card products — Inclusion in new "WorldMark" service package — Interexchange carrier. p. 616.

BY THE COMMISSION:

ORDER

[1] On July 11, 1996, the New Hampshire Public Utilities Commission received a petition from LDDS Communications, Inc., (LDDS) requesting authority to introduce WorldMark, add a new calling card service and relocate the

Page 616

Prepaid Card section, for effect August 12, 1996.

WorldMark is a combined toll, toll-free, and calling card product which includes performance guarantees for installation, restoration and service satisfaction. The service offers rates for switched and dedicated access and discounts depending on length of term commitment.

The proposed revisions also include the addition of direct dial rate and operator assisted rate schedules with the introduction of LDDS WorldCom Calling Card service.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize LDDS to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of LDDS' tariff, NHPUC No. 2 are approved for effect as filed:

8th Revised Page 1

7th Revised Page 1.1

2nd Revised Page 1.2

3rd Revised Page 4

1st Revised Page 4.1

1st Revised Page 54
2nd Revised Page 55
Original Page 55.1
1st Revised Page 75
Original Page 75.1
Original Page 75.2
Original Page 75.3
Original Page 75.4
Original Page 75.5
Original Page 75.6
Original Page 75.7
Original Page 75.8
Original Page 75.9
Original Page 75.10
1st Revised Page 84
Original Page 84.1
Original Page 84.2
2nd Revised Page 105.3
2nd Revised Page 105.4
2nd Revised Page 105.5
2nd Revised Page 105.6
2nd Revised Page 105.8
Original Page 114
Original Page 115
Original Page 116;

and it is

FURTHER ORDERED, that LDDS file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this thirteenth day of August, 1996.

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NH.PUC*08/13/96*[89289]*81 NH PUC 617*AT&T Communications of New Hampshire, Inc.

[Go to End of 89289]

81 NH PUC 617

Re AT&T Communications of New Hampshire, Inc.

DS 96-228
Order No. 22,276

New Hampshire Public Utilities Commission

August 13, 1996

ORDER authorizing an interexchange telephone carrier to assess special charges on those operator-assisted calling card calls that are billed to a calling card issued by a local exchange carrier. The carrier also may increase service charges applicable to calls charged to commercial credit cards.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Special charges — For operator-assisted calling card calls — Calls billed to local carrier-issued calling card — Calls billed to commercial credit cards — Interexchange telephone carrier. p. 618.

BY THE COMMISSION:

ORDER

[1] On July 12, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from AT&T Communications of New Hampshire, Inc., (AT&T) requesting authority to introduce rates for operator dialed calling card calls billed to a local exchange company calling card and to increase service charges for calls charged to commercial credit cards for effect August 12, 1996.

The proposed rates for operator dialed calling card calls billed to a LEC calling card are the same per minute as customer dialed calling card calls billed to an AT&T calling card.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize AT&T to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, the following pages of AT&T's tariff, NHPUC No. 1 are approved for effect as filed:

Section 17

2nd Revised Page 8

2nd Revised Page 9;

and it is

FURTHER ORDERED, that the following pages of AT&T's tariff, NHPUC No. 4 are approved for effect as filed:

Section 2

7th Revised Page 16

6th Revised Page 17;

and it is

FURTHER ORDERED, that AT&T file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this thirteenth day of August, 1996.

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NH.PUC*08/13/96*[89290]*81 NH PUC 618*Atlas Communications, Ltd., dba ACS Communications

[Go to End of 89290]

81 NH PUC 618

Re Atlas Communications, Ltd., dba ACS Communications

DE 96-066
Order No. 22,277

New Hampshire Public Utilities Commission

August 13, 1996

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

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1. CERTIFICATES, § 123

[N.H.] Telephone carrier — Intrastate intraLATA long-distance services — Interim authority — Assessment of competitive impacts — Exclusion of local exchange services. p. 618.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate intraLATA toll services — Interim authority — Assessment of competitive impacts — Exclusion of local exchange services. p. 618.

BY THE COMMISSION:

ORDER

[1, 2] On March 12, 1996, Atlas Communications, Ltd. d/b/a ACS Communications, petitioned the New Hampshire Public Utilities Commission (Commission) for authority to do business as a telecommunications public utility in the State of New Hampshire pursuant to, *inter alia*, RSA 374:22 and RSA 374:26. Atlas

Communications, Ltd. d/b/a ACS Communications has demonstrated the financial, managerial and technical ability to offer service as conditioned by this order. The Commission previously approved numerous, similar petitions filed during the Trial Period, pursuant to the Modified Stipulation Agreement (Stipulation) in Docket No. DE 90-002, approved by Order No. 20,916 (August 2, 1993). Our orders in those numerous dockets granted the petitioner(s) interim authority to offer intraLATA toll service, specifically excluding local exchange service, for the service territory of the entire State of New Hampshire, during the Trial Period, in order to allow the Commission to analyze competition during the two-year Trial Period.

Because the Trial Period identified by the Stipulation expired on September 30, 1995, we have explicitly clarified that the authority we had granted remains in effect until we specifically modify or revoke that authority, after analysis of the Trial Period. *See* Order No. 21,851 (October 3, 1995). Likewise, our grant of authority ordered herein remains in effect until we specifically modify or revoke that authority.

The public good is served by permitting such competition by telecommunications companies. The Commission permits competitive entry in order to foster competition in the New Hampshire intrastate toll market and to allow the Commission to analyze the effects of such competition.

The public should be provided an opportunity to respond in support of, or in opposition to this petition.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that Atlas Communications, Ltd. d/b/a ACS Communications is granted interim authority to offer as a telecommunications public utility intraLATA toll service, specifically excluding local exchange service, for the service territory of the entire State of New Hampshire, subject to the following conditions:

1. The services shall be offered by approved tariffs.

2. The services shall be offered until the Commission orders otherwise.

3. Atlas Communications, Ltd. d/b/a ACS Communications shall file tariffs for new services and changes in approved services (other than rate changes), with effective dates of no less than 30 days after the date the tariffs are filed with the Commission.

4. Within one business day of offering an approved service to the public at a rate different

from its rates on file with the Commission, Atlas Communications, Ltd. d/b/a ACS Communications shall notify the Commission of the change.

5. Atlas Communications, Ltd. d/b/a ACS Communications is exempted from NH Admin. Rules, Puc 406.03 Accounting Records; Puc 407 Forms Required of All Telephone Utilities; and Puc 409 Uniform System of Accounts for Telecommunications Companies. Atlas Communications, Ltd. d/b/a ACS Communications also requested waiver of Puc 1603.03. As Puc 1603.03 specifies those items to be filed in a rate filing and is not pertinent to the provision of competitive intrastate, interexchange service, there is no need to exempt Atlas Communications, Ltd. d/b/a ACS Communications from this requirement.

6. Atlas Communications, Ltd. d/b/a ACS Communications shall maintain its book and records in accordance with Generally Accepted Accounting Principles.

7. Atlas Communications, Ltd. d/b/a ACS Communications 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. Atlas Communications, Ltd. d/b/a ACS Communications 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. Atlas Communications, Ltd. d/b/a ACS Communications shall compensate the appropriate Local Exchange Company for all originating and terminating access used by Atlas Communications, Ltd. d/b/a ACS

Communications pursuant to NET Tariff N.H.P.U.C. 79, Switched Access Service Rate or its successors or its relevant equivalent contained in the tariffs of the Independent Local Exchange Companies.

10. New Service offerings filed for approval with the Commission shall be accompanied by tariff pages describing the service, rates and effective dates; and it is

FURTHER ORDERED, that the authority granted herein remains in full force and effect until the Commission orders otherwise; and it is

FURTHER ORDERED, that nothing contained in this Order shall be construed to allow Atlas Communications, Ltd. d/b/a ACS Communications to operate outside of the conditions set forth in appropriate Local Exchange Company tariffs; and it is

FURTHER ORDERED, that Atlas Communications, Ltd. d/b/a ACS Communications 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 August 20, 1996, and an affidavit proving publication shall be filed with the Commission on or before August 27, 1996; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, et seq., Atlas Communications, Ltd. d/b/a ACS Communications 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 September 3, 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 September 10, 1996; and it is

FURTHER ORDERED, this Order *Nisi* shall be effective September 12, 1996, unless the Commission provides otherwise in a supplemental order issued prior to the effective date and it is

FURTHER ORDERED, that Atlas Communications, Ltd. d/b/a ACS Communications shall file a compliance tariff with the Commission on or before September 12, 1996, in accordance with NH Admin. Rules, Puc 1601.01 (b).

By order of the Public Utilities Commission of New Hampshire this thirteenth day of August, 1996.

Notice of Conditional Approval of
Atlas Communications, Ltd. d/b/a ACS
Communications

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

On March 12, 1996, Atlas Communications, Ltd. d/b/a ACS Communication, a Pennsylvania corporation, filed with the New Hampshire Public Utilities Commission (Commission) a petition to do business as a telecommunications public utility in the State of New Hampshire, specifically to provide intrastate long distance telecommunications services.

In Order No. 22,277, issued in Docket No. DE 96-066, the Commission granted Atlas Communications, Ltd. d/b/a ACS Communications conditional approval to operate as of September 12, 1996, subject to the right of the public and interested parties to comment on Atlas Communications, Ltd. d/b/a ACS Communications 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 Atlas Communications, Ltd. d/b/a ACS Communications's petition to do business in the State must be submitted in writing no later than September 3, 1996, and reply comments no later than September 10, 1996, to:

Dr. Sarah P. Voll
Executive Director and Secretary
Public Utilities Commission
8 Old Suncook Road
Concord, New Hampshire 03301-7319

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Generic Investigation into IntraLATA Toll Competition Access Rates, DE 90-002, Order No. 20,916, 78 NH PUC 365, Aug. 2, 1993. [N.H.] Re Long Distance North of New Hampshire, Inc., et al., DE 87-249, Order No. 21,851, 80 NH PUC 628, Oct. 3, 1995.

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NH.PUC*08/15/96*[89291]*81 NH PUC 621*Northern Utilities, Inc.

[Go to End of 89291]

81 NH PUC 621

Re Northern Utilities, Inc.

DR 96-168
Order No. 22,278

New Hampshire Public Utilities Commission

August 15, 1996

ORDER approving a special interruptible gas transportation service contract between a natural gas local distribution company and the New Hampshire Air National Guard so as to prevent bypass by the Guard to a nearby interstate gas pipeline. The commission notes, however, that the issue of competitive retail service by interstate pipelines is not yet ripe for consideration.

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1. RATES, § 373

[N.H.] Natural gas rate design — Interruptible transportation service — By special antibypass contract — Local distribution company. p. 621.

2. RATES, § 384

[N.H.] Natural gas rate design — Interruptible transportation service — Special contract arrangements — So as to prevent bypass. p. 621.

3. SERVICE, § 332

[N.H.] Natural gas — Interruptible transportation service — Via special contract — So as to prevent bypass — Local distribution company. p. 621.

4. MONOPOLY AND COMPETITION, § 58

[N.H.] Natural gas — Pipeline transportation service — Antibypass contracts — Retail service by interstate pipelines — Issue as not yet ripe for consideration. p. 621.

BY THE COMMISSION:

ORDER

[1-4] The Petitioner, Northern Utilities, Inc. (Northern), on May 24, 1996, filed with the New Hampshire Public Utilities Commission (Commission) a petition for approval of a Special Interruptible Transportation Contract (Special Contract) between Northern and the New Hampshire Air National Guard (NHANG). In support of the petition, Northern stated that the NHANG had the capability to by-pass Northern by installing a direct connection to Granite State Gas Transmission, Inc., an interstate pipeline with facilities located in New Hampshire and Maine. In addition, Northern stated that the estimated cost of $43,788 for a 2,000 foot line extension to connect with Northern's facilities would be borne by the NHANG, and that the revenues resulting from the proposed rate exceeded the annual marginal revenue requirements associated with providing the service.

On April 2, 1996, in anticipation of a filing by Northern, Alan M. Robertson, P.E., Major, NHANG, submitted a Memorandum requesting expedited approval of the Special Contract. In support of his position, Major Robertson stated that approval of the contract would result in an estimated annual savings of $100,000 per year in fuel costs, 25 percent of which would directly benefit the State of New Hampshire.

On July 11, 1996, the Commission Staff (Staff) and Northern conducted a technical session to discuss the merits of the Special Contract. On July 31, 1996, Northern filed an amendment to the Special Contract executed between Northern and the NHANG. On August 12, 1996, Northern filed a memorandum of clarification pertinent to the treatment of revenues and any potential cost overruns.

On August 15, 1996, Staff, with concurrence from the Office of Consumer Advocate (OCA), submitted a letter recommending approval of the Special Contract, as amended. In support of its recommendation, Staff stated that the anticipated incremental revenues received for providing the new service would exceed the incremental costs, and that the net margins would benefit firm ratepayers via a direct pass through of these margins in subsequent Cost of Gas Adjustment (CGA) proceedings. In addition, Staff noted that all parties have agreed that firm ratepayers will not bear the burden of any costs associated with the installation of the new facilities. Finally, Staff noted that the petition raises significant legal questions related to the issue of an interstate transmission pipeline by-passing the local distribution company. Staff explained that should the Commission find that the Special Contract is in the public interest, a decision on the legality of by-pass becomes unnecessary. However, if the Commission finds the opposite, and the NHANG pursues the interstate alternative, Staff recommended that the Commission examine the legality of such action.

We have reviewed the filing and the Staff recommendation. We find that the Special Contract between Northern and the NHANG is in the public interest. The Commission recognizes that providing the new service will decrease gas costs to firm ratepayers without risk

of incurring additional expenses. With respect to the legal issues related to by-pass, we note that our approval of this Special Contract means that the issue of retail service by interstate pipelines is not ripe for our consideration at this time.

Based upon the foregoing, it is hereby

ORDERED *Nisi*, that the petition of Northern Utilities, Inc. for approval of the Special Interruptible Transportation Contract to serve Pease New Hampshire Air National Guard Base, as amended, 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 regional newspaper of general circulation, such publication to be no later than Monday, August 19, 1996, and to be documented by affidavit filed with this office on or before August 21, 1996; and it is

FURTHER ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or file a written request for a hearing on this matter before the Commission no later than Monday, August 26, 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 Wednesday, August 28, 1996; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective Thursday, August 29, 1996, unless the Commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this fifteenth day of August, 1996.

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NH.PUC*08/16/96*[89292]*81 NH PUC 622*One Call Communications, Inc., dba Opticom

[Go to End of 89292]

81 NH PUC 622

Re One Call Communications, Inc., dba Opticom

DS 96-229
Order No. 22,279

New Hampshire Public Utilities Commission

August 16, 1996

ORDER authorizing an interexchange telephone carrier to modify its rules on toll-free services and to add "888" dialing to its "800" service offerings.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Toll-free "800" service — Addition of

toll-free "888" dialing capability — Modification of associated service rules — Interexchange telephone carrier. p. 623.

Page 622

BY THE COMMISSION:

ORDER

[1] On July 15, 1996, the New Hampshire Public Utilities Commission (Commission) received a request from One Call Communications, Inc., d/b/a Opticom (Opticom) requesting authority to introduce toll-free service number regulations, to revise rates and to make minor text changes, for effect August 15, 1996.

Proposed regulations for toll-free (800/888) numbers specify terms and conditions for customers of Opticom's toll-free service. Minor text revisions include the addition of 888 as a toll-free NXX and clarification of the description of two services, Rate One and Alternative.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize Opticom to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of Opticom's tariff, NHPUC No. 1 are approved for effect as filed:

10th Revised Page 2

6th Revised Page 2.1

9th Revised Page 2.2

1st Revised Page 36.1 in lieu of Original

2nd Revised Page 48

2nd Revised Page 49

3rd Revised Page 50

2nd Revised Page 50.1

1st Revised Page 51

2nd Revised Page 56

3rd Revised Page 57;

and it is

FURTHER ORDERED, that Opticom file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this sixteenth day of August, 1996.

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NH.PUC*08/16/96*[89293]*81 NH PUC 623*AmeriVision Communications, Inc.

[Go to End of 89293]

81 NH PUC 623

Re AmeriVision Communications, Inc.

DS 96-235
Order No. 22,280

New Hampshire Public Utilities Commission

August 16, 1996

ORDER authorizing an interexchange telephone carrier to introduce prepaid debit card calling card service.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Prepaid calling card service — Introduction of new debit card product — Interexchange carrier. p. 623.

BY THE COMMISSION:

ORDER

[1] On July 19, 1996 the New Hampshire Public Utilities Commission (Commission) received a petition from AmeriVision Communications, Inc., (AmeriVision) requesting authority to introduce debit card service for effect August 22, 1996.

Debit cards allow customers to pay a fixed amount in advance for long distance calling. The card is debited for each minute of use.

We find the proposed changes to be in the public good. New services expand the choice of telephone services and foster competition in the New Hampshire intrastate toll market which allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize the introduction of debit card service.

Based upon the foregoing, it is hereby

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ORDERED, that the following pages of AmeriVision's tariff, NHPUC No. 1 are approved for

effect as filed:

1st Revised Page 1

Original Page 16.1

Original Page 20.1

Original Page 26;

and it is

FURTHER ORDERED, that AmeriVision file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this sixteenth day of August, 1996.

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NH.PUC*08/16/96*[89294]*81 NH PUC 624*IntraLATA Presubscription

[Go to End of 89294]

81 NH PUC 624

Re IntraLATA Presubscription

DE 96-090
Order No. 22,281

172 PUR4th 69

New Hampshire Public Utilities Commission

August 16, 1996

ORDER requiring local exchange telephone carriers (LECs) to implement intraLATA presubscription (ILP).

Commission finds that the most reasonable measure for provisioning ILP is one which allows a customer to presubscribe to an interLATA carrier to handle interLATA toll calls and to the same or different carrier to handle intraLATA toll calls — i.e., the "2 Primary Interexchange Carrier" (2 PIC) method.

Accordingly, the commission orders ILP to be implemented by affirmative customer choice. However, until such time as a customer affirmatively chooses another intraLATA carrier, the incumbent presubscribed intraLATA toll carrier (NYNEX) shall continue to carry those intraLATA toll calls that are not prefaced by "10XXX" dialing. Customers may change their intraLATA toll carrier by calling their LEC directly or by calling their chosen intraLATA toll carrier, who in turn shall contact the LEC to complete the change.

With respect to new customers, the LEC must inquire as to whom they select for both inter- and intraLATA toll calls. If the LEC fails to ask for a new customer's intraLATA choice, then

the customer's intraLATA toll calls shall default to its interLATA carrier, where possible.

Commission finds that the costs of implementing ILP should be shared by all intrastate toll carriers and charged as an equal charge per originating minute of use. But the costs of implementation shall are not to include lost billing and collection revenues.

Customers may make one PIC change without charge during a 90-day grace period following ILP implementation. Thereafter, a $5 charge must be paid by the carrier or customer requesting the change. If a customer makes a PIC change to NYNEX, then NYNEX shall impute $5 to itself in the event that the $5 charge is not paid by the requesting customer.

Marketing restrictions are imposed on LECs to safeguard against anticompetitive practices, such that an LEC may not impose an intraLATA PIC freeze on a customer without an affirmative request by the customer.

Certain types of calls are excluded from ILP, including directory assistance, 611 calls, 911 calls, and 976 calls. Moreover, until new software is available, "0-" (operator) calls likewise are excluded from ILP. A decision on payphone presubscription is deferred pending a ruling on the issue by the Federal Communications Commission.

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1. SERVICE, § 468

[N.H.] Telecommunications — Toll services — IntraLATA presubscription —

Page 624

Parameters for implementation. p. 633.

2. MONOPOLY AND COMPETITION, § 50

[N.H.] Factors affecting institution of competition — Customer preference — As to toll telephone services — Requirements for intraLATA presubscription — To give customers choice as to both inter- and intraLATA interexchange carriers. p. 633.

3. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Toll services — IntraLATA presubscription — Preferred method of provisioning — "2 PIC" method — Reliance on two primary interexchange carriers. p. 633.

4. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Toll services — IntraLATA presubscription — Calls excluded from presubscription requirements — Operator, 911, 611, and 976 calls. p. 633.

5. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Toll services — IntraLATA presubscription — Carrier selection — Affirmative customer choice — Provisions for default carrier. p. 633.

6. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Toll services — IntraLATA presubscription — Carrier

selection — Fair marketing — Safeguards against anticompetitive practices. p. 634.

7. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Toll services — IntraLATA presubscription — Carrier selection — Customer education initiatives. p. 634.

8. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Toll services — IntraLATA presubscription — Recovery of associated implementation costs — Equal charge per originating minute of use. p. 635.

9. 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. p. 635.

10. EXPENSES, § 140

[N.H.] Telephone carriers — IntraLATA presubscription — Implementation costs — Means of recovery — Equal charge per originating minute of use. p. 635.

11. 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. p. 635.

12. RATES, § 582

[N.H.] Telecommunications rate design — Toll services — IntraLATA presubscription — Charge for change in carrier. p. 635.

13. RATES, § 311

[N.H.] Telecommunications — Toll services — IntraLATA presubscription — Charge for change in carrier. p. 635.

14. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Toll services — IntraLATA presubscription — Schedule for implementation. p. 636.

15. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Toll services — IntraLATA presubscription requirements — Inapplicability to resellers. p. 636.

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16. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Toll services — IntraLATA presubscription — Call blocking service — As required offering of local exchange carriers — But not required of other competitive carriers. p. 637.

17. SERVICE, § 470

[N.H.] Telecommunications — Toll services — Restrictions — Call blocking — Under intraLATA presubscription requirements — Local exchange versus competitive carriers. p. 637.

18. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Toll services — IntraLATA presubscription — Effect of change in carrier — On optional calling plans. p. 637.

19. RATES, § 582

[N.H.] Telecommunications rate design — Toll services — IntraLATA presubscription — Effect of change in carrier — Negation of previously applicable calling plan option. p. 637.

APPEARANCES: Victor D. Del Vecchio, Esq. for New England Telephone and Telegraph; Robert Aurigema, Esq. and Mark Perkell, Esq. for AT&T; Downs, Rachlin & Martin by Holly Ernst Groschner, Esq. and Nancy M. Malmquist, Esq. 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; Stephen Murray and Leland Willette for Chichester Telephone Company, Meriden Telephone Company, and Kearsarge Telephone Company, James R. Anderson, Esq. and Thomas S. Lyle for the Office of the Consumer Advocate for residential ratepayers; and E. Barclay Jackson, Esq. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On April 15, 1996, the New Hampshire Public Utilities Commission (Commission) issued an Order of Notice commencing this intraLATA presubscription (ILP) docket, which would establish dialing parity for intraLATA toll customers.[1(73)] 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, the evidence that vigorous competition has not yet reached the residential toll market, and the current technical capability of implementing ILP. The Order of Notice required all local exchange carriers (LECs) to submit proposals to implement ILP by October 1, 1996.

By letter dated May 9, 1996, New England Telephone and Telegraph Company (NYNEX) requested that the Commission clarify or reconsider its apparent ordering of ILP by October 1, 1996 and on May 13, 1996, Union Telephone Company (Union) supported NYNEX's request. By letter dated May 15, 1996, 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 Independents) requested clarification and/or reconsideration of the Order of Notice.

The Commission responded to the parties' letters by Secretarial Letter dated May 24, 1996. Reaffirming its belief that the October 1, 1996

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implementation date would be appropriate, the Commission clarified that it would entertain evidence regarding the implementation date for each particular company. Further, the Commission ordered Staff to prepare an issues list based upon review of the plans submitted pursuant to the Order of Notice.

Proposals for ILP implementation were filed by Chichester Telephone Company, Kearsarge Telephone Company and Meriden Telephone Company (collectively, TDS), Union, the 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).

At the Commission's request, NYNEX filed a supplement to its proposal. On June 21, 1996, Staff filed a memorandum identifying the issues in this docket. By Secretarial Letter dated June 25, 1996, the Commission notified parties of the order of witnesses for the hearing scheduled for June 27, 1996. The Commission held evidentiary hearings on June 27, July 2, and July 5, 1996.

II. POSITIONS OF THE PARTIES

Based upon the plans submitted and comments received, Staff identified 10 major issues needing resolution in order to implement ILP.

Although some parties provided more detail on the ten issues identified by Staff, none objected to using those issues to delineate the scope of the docket. The 10 issues are:

1. Methods of Provisioning ILP
2. Calls Excluded from ILP
3. Carrier at the Outset of ILP
4. Procedures for Executing the Customer's PIC Choice
5. Marketing and Safeguards Against Anti-Competitive Practices
6. Customer Education
7. Costs of Implementation
8. Cost Recovery
9. Charges to Customers
10. Dates of Implementation

The parties' positions are presented below with reference to the identified issues. Where a party's position is not specifically stated, that party expressed no position. Staff did not take a

position on any issue.

l. *Methods of Provisioning ILP*

With the exception of Dixville Telephone Company (Dixville)[2(74)] all parties agreed that the most reasonable method for provisioning ILP is one which allows a customer to presubscribe to an *inter*LATA carrier to handle interLATA toll calls and to the same or a different carrier to handle *intra*LATA toll calls. This is known as the 2 PIC method (PIC stands for Primary Inter/intraLATA Carrier).

As part of its detailed plan, NYNEX asserted that a trunking forecast from all competitors, four months in advance of the trunking needs, would be necessary to provision ILP. AT&T argued that such a trunking forecast is unnecessary, as six month forecasts are already provided to NYNEX. MCI stated that current trunking arrangements were likely to prove sufficient and that current practice regarding trunking arrangements for switched access service generally is adequate for ILP. An additional trunking forecast, MCI claimed, would merely impose an additional administrative burden without additional benefit.

2. *Calls Excluded from ILP*

Certain types of calls were identified by all parties as necessary to be excluded from ILP for technical reasons. They include Directory Assistance calls (both 411 and 555-1212), 611 calls (used for LEC repairs), 911 calls, 976 calls, and calls completed by NYNEX Directory Assistance Call Completion (DACC). NYNEX, the Independents, and Union also proposed to exclude 0- calls until such time as new software is available.[3(75)] The Independents averred that party lines must also be excluded from ILP for technical reasons.

NYNEX, Union and the Independents, which are New Hampshire's incumbent LECs,

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currently provide municipal calling by which customers in the same municipality but with different exchange prefixes can call one another without incurring toll charges. Municipal calling is provided by routing intra-municipal interexchange calls over the LEC-toll network and then by having NYNEX remove the resultant toll charges from the customer's billing records before the customer's bill is prepared or printed. NYNEX stated that the LECs likewise strip toll access charges from access bills to carriers for municipal calls. NYNEX, the Independents, and Union argued that the availability of municipal calling would have to be determined by individual competitors as NYNEX will not be in a position to provide that "bill-stripping" function after the implementation of ILP. All parties agreed, after discussion, that an industry working group would investigate and devise a method by which municipal calling service can continue.

NYNEX, the Independents, and Union argued that calls made from LEC payphones should be excluded from ILP because ILP on payphones will not increase customer choice in that the customers are transient.

NYNEX argued further that if the Commission were to include payphones in ILP, then the owner of the payphone should retain the right to select the PIC. This would insure that the company whose brand name is on the payphone carries the calls and that NYNEX should have the same opportunity that COCOTs have to select the PIC.

AT&T argued that payphone calls should be included in ILP in order to be consistent with section 276(b)(1)(E) of the Telecommunications Act of 1996 (Tact).[4(76)] That section, according to AT&T, authorizes the premise owner to choose an intraLATA carrier for ILP just as the premise owner chooses an interLATA carrier for interLATA toll calls.

3. *Carrier at the Outset of ILP*

All parties agreed that balloting and allocation of a PIC to existing customers, as was done for *inter*LATA presubscription, is not necessary or in the public interest except in those few remaining exchanges which are still to ballot for *inter*LATA service. Union, the Independents, AT&T and NYNEX propose that NYNEX remain a customer's PIC until such time as the customer chooses otherwise. All commenters agree with this proposal, although most point out that it provides a competitive advantage for NYNEX to begin ILP with a 100% market share.

4. *Procedures for Executing the Customer's PIC Choice*

Except for a 90 day transition period, NYNEX proposed to refuse a customer's direct request for any PIC change other than a PIC to NYNEX. A requesting customer would be instructed to contact the competing carrier directly. The competing carrier would then forward a mechanized PIC change request to NYNEX, which NYNEX would accept. Likewise, NYNEX would presume a new local customer was choosing NYNEX for ILP and would not initiate any discussion with the customer regarding ILP.

During the proposed 90 day transition period, NYNEX offered to direct customer requests for ILP information to a competing carrier or an 800 number. In addition, during the transition period only, NYNEX would process a customer's specific PIC choice even if it were to choose a carrier other than NYNEX.

AT&T opposed NYNEX's proposal, arguing that NYNEX's current position as the monopoly provider of local exchange service means that NYNEX is not just another competitor. NYNEX has an obligation, according to AT&T, to remain neutral in the intraLATA and interLATA toll marketplace during customer requests for ILP service, whether an existing or a new customer makes the request. Neutrality is not maintained when NYNEX agrees to provide ILP information about NYNEX but not about other carriers. NYNEX's procedures create, at the inauguration of a new competitive market, a bias toward one carrier to the detriment of all others. AT&T suggested that, at a minimum and not for only a short transition period, NYNEX should inform an existing customer if a specific requested carrier provides intraLATA services and NYNEX should place the customer's order

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without trying to convince the customer not to switch carriers. For new customers, AT&T averred, NYNEX should present a clear choice of intraLATA toll providers.

Union's plan contains two options for executing a customer's PIC choice. PICs can be executed either by a request from the competing carrier accompanied by a letter of agency from the customer subject to confirmation by Union. PICs can also be executed by direct customer request to Union so long as the competing carrier has an agency arrangement with Union. For new customers, Union proposes to provide a list of carriers and complete the customer's PIC

choice if it is with a carrier that has an agency arrangement with Union. Otherwise Union will direct the customer to contact the PIC choice directly and provide a letter of agency. New customers which make no choice will be assigned to NYNEX for ILP.

The Independents recommended two options: direct request from the customer to the Independent or request via a letter of agency with a competing carrier.

Sprint argued for non-discriminatory business office procedures applying the Federal Communications Commission (FCC) PIC verification procedures to the ILP process.[5(77)] Sprint recommended that the Commission establish a separate bureau to process PIC changes in order to prevent LECs from leveraging their monopoly position in the local market to the benefit of their competitive market services. The bureau, or the LEC if so required, should meet the same requirements that the New York Public Service Commission imposed after acknowledging that NYNEX controls the ILP order processing function. The four New York requirements are: (1) inform the customers of the availability of ILP, (2) identify the participating carriers, (3) ask customers to make a PIC choice, and (4) process the PIC choice to complete the PIC. Sprint argued that these requirements should be imposed permanently or, at a minimum, during a transition period.

5. *Marketing and Safeguards Against Anti-Competitive Practices*

NYNEX, as indicated above, intends to market its intraLATA toll service at every opportunity including customer-initiated contact for the purpose of PIC changes, just as it believes other companies will do.

NYNEX cited its New York experience where 96% of PIC changes have been accomplished by an automated process. Extrapolating from that experience, NYNEX claimed that the automated procedure, which insures that NYNEX marketing and sales groups will have no knowledge of the PIC change before other carriers receive similar information about customers who have left those carriers, means that only negligible marketing advantages will accrue to NYNEX.

The TRA urged the Commission to prohibit NYNEX or any other LEC from using Customer Proprietary Network Information (CPNI), received as a result of the LEC's local monopoly or nearly monopoly status, for marketing purposes. TRA argued that such misuse of CPNI will retard the development of competition.

NYNEX proposes to protect customers from "slamming," the practice of changing a customer's PIC without the customer's prior approval or knowledge, by administratively "freezing" certain customers' *intra*LATA PIC to NYNEX. The freeze would apply to those customers who have already requested a freeze on their *inter*LATA PIC and to NYNEX employees and retirees who receive concession service from NYNEX. The freeze would be lifted only upon receipt of a letter of agency from the customer.

The Independents recommended that FCC rules designed to protect against slamming for interLATA presubscription should apply to intraLATA presubscription.

Atlantic Long Distance and MCI argued that NYNEX's pre-emptive plan to freeze intraLATA accounts to itself is an anti-competitive practice and urged the Commission to prohibit it. Atlantic Long Distance further recommended that the Commission adopt the FCC

authorization rules or develop a New Hampshire approach to policing inappropriate carrier behavior.

AT&T averred that it is in favor of properly used PIC freezes to protect a customer's

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PIC choice. It follows, AT&T pointed out, that a customer's PIC choice must occur prior to instigating the freeze. When no choice has occurred, as here where NYNEX is the monopoly provider, such a freeze inhibits competition. AT&T recommended sending a separate letter to current interLATA PIC freeze customers explaining that they will soon have a choice of intraLATA carrier and also have an opportunity to freeze that choice.

TRA recommended that any freeze plan include Commission review of marketing materials to assure that customers fully understand its effect. TRA cautioned that the timing of NYNEX's freeze should be carefully considered, as it could limit the development of intraLATA competition.

Sprint found NYNEX's proposed freeze anti-competitive, akin to slamming, and contrary to NYNEX's own procedures for interLATA freezes. Sprint suggested additional marketing restrictions on NYNEX. Specifically, NYNEX should be prohibited from using any Commission ordered three-way-call verification procedure as a sales opportunity; NYNEX should be required to respond to PIC change requests in a timely manner; and the Commission should provide for appropriate sanctions or penalties for failure to act according to the Commission's order.

6. *Customer Education*

NYNEX proposed to inform all customers of the advent of ILP by sending a bill insert at least 30 days prior to implementation. The insert would merely describe ILP; it would not identify the other carriers authorized to provide intraLATA toll service in New Hampshire. NYNEX proposed informing those existing customers who call with inquiries that an 800 number, established by NYNEX, has a pre-recorded listing of all other authorized intraLATA carriers. The 800 number would not be provided on the bill insert.

NYNEX bases its implementation proposal upon three principles relating to customer interaction. The NYNEX principles are: (1) each carrier bears the responsibility for attracting, informing, negotiating, and processing a PIC; (2) procedures used for implementing *inter*LATA presubscription are not necessarily applicable to ILP implementation; and (3) NYNEX will market its own services on every possible occasion. Therefore, NYNEX proposes to provide inquiring customers with no information other than the 800 number described above.

Union also proposed to send a bill insert to its customers 30 days prior to implementation. Unlike NYNEX's, Union's bill insert would contain a list of ILP carriers within Union's service area.

The Independents proposed to send a "competitively neutral" bill insert or separate mailing to their customers 30 days prior to implementation.

MCI suggested that any informational material be submitted to the Commission for review and approval after a sufficient comment period.

AT&T identified four elements of effective customer education on ILP: (1) explanation of ILP; (2) how customers are affected; (3) identification of the participating carriers; and (4) how to contact the participating carriers. AT&T suggested that these elements be prepared by an industry workgroup and mailed as a stand alone bill insert 60 days prior to ILP implementation.

Atlantic Long Distance recommended that NYNEX's basic plan for customer education be reviewed and expanded by an industry workgroup.

NYNEX's plan provides no customer education to new customers. For new customers, NYNEX proposed that it will have no responsibility to query what PIC the new customer desires. NYNEX asserted that the competitive carriers bear the burden of marketing the ILP product.

In addition, NYNEX proposed that new customers who express no explicit PIC choice should automatically default to NYNEX. AT&T opposed that part of the NYNEX plan, urging instead that they should default to their chosen interLATA PIC if technically possible and, if not possible, then default to NYNEX. AT&T claims this would provide an incentive for NYNEX to provide notice to new customers

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that a choice is offered.

7. *Costs of Implementation*

All parties agreed that ILP will require expenditures. Union, TDS, the Independents, Atlantic Long Distance, and MCI asserted that the costs may include unspecified amounts for software modifications to upgrade switches and install or activate the necessary feature package, and necessary administrative costs such as billing and support systems, personnel training and customer education. The Independents argued that the costs should also include the Independents' foregone billing and collection revenues previously received from NYNEX, for those customers who choose carriers other than NYNEX.

Union estimated that its ILP costs are approximately $30,000.

NYNEX testified that the costs would amount to $1,410,139, including $520,445 for network related direct costs, $429,894 in costs allocated to New Hampshire for start-up costs common to two or more NYNEX New England jurisdictions, and $459,800 in capital costs allocated to New Hampshire for the purchase and installation of information services and systems.

MCI objected to the inclusion of NYNEX's network costs incurred for the construction of additional switched access facilities, necessitated by usage shifts or stimulation. MCI argued that these costs are already recovered through switched access rates and should not be recovered again through an ILP surcharge.

Both MCI and AT&T cautioned that ILP costs should be limited to the specific software modifications and administrative costs necessary to install ILP. This would exclude the New England common costs and the capital costs in NYNEX's cost estimation.

8. *Cost Recovery*

Union recommended that the costs for conversion be recovered over a two year period as a per minute surcharge on intrastate access. The charge should be levied on all ILP providers, including NYNEX. According to Union, the cost recovery from customers should be limited to recovery of those costs incurred by that LEC.

TDS recommended a three year amortized conversion charge to be recovered from the intraLATA toll providers.

The Independents argued that costs should be recovered in the same manner as they were in the FCC's interLATA equal access docket, set forth in FCC DA-1541, collected in the year the cost is incurred. They proposed that each Independent file a cost recovery rate element based upon total intrastate access minutes, both originating and terminating. They argued that the rate element should apply to the interexchange carriers (IXCs) only, and not to NYNEX.

NYNEX argued that only IXCs will benefit from ILP. NYNEX contended, therefore, that only IXCs should bear the costs of ILP. Apportionment of the identified costs, tracked by NYNEX and allocated by the Commission on the basis of proportionate presubscribed lines, would be paid over a two year period.

The OCA recommended following the cost recovery methods used in New York and Connecticut, which authorized a per line charge over a five year amortization period.

Arguing that ILP benefits all New Hampshire customers through the effects of greater competition, AT&T and MCI recommended that costs should be borne by all toll carriers, including NYNEX and the IXCs. AT&T and MCI called for allocation by originating minutes of use (MOU). They favored the MOU methodology as more equitable than the proportionate presubscribed line methodology because usage is actual rather than inferred. AT&T suggested a 5 to 8 year period for cost recovery; MCI recommended a 5 year period. MCI contended that a 2 year period is short enough to encourage some IXCs to stay out of the market until after the initial ILP costs are recovered, thus delaying competition.

In Sprint's view, it would be unfair to single out one group to bear the costs of making changes that benefit the public as a whole. Therefore, Sprint recommended that cost recovery charges should be levied on all intraLATA toll providers, including NYNEX.

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9. *Charges to Customers*

Union, the Independents, NYNEX, and Atlantic Long Distance agreed that a tariffed charge of $5 for PIC changes is a reasonable one.[6(78)] The OCA and AT&T argued that only one $5 charge should apply when the PIC change includes a simultaneous change of ILP carrier and interLATA toll carrier, whether the changes are a move to the same or different companies. Union would include a service charge in addition to the $5 PIC change charge.

The Independents recommended that no charge be imposed for the first PIC change. The costs of processing initial PIC changes, the Independents suggest, should be recovered as part of the cost of implementation via the surcharge discussed in section 8 above.

10. *Dates of Implementation*

Union testified that it could implement ILP by October 1, 1996 if no changes were made to its proposed plan.

TDS testified that Kearsarge could implement ILP by October 1, 1996. Its other two companies, Meriden and Chichester, however, could not implement ILP until after the switches are replaced in the fourth quarter of 1996.

The Independents first proposed that they implement ILP seven months subsequent to their receipt of a bona fide request from an authorized carrier. Then, by letter of May 15, 1996, the Independents stated that implementation could be accomplished by December 31, 1996. The Independents' plan included the opportunity to obtain a waiver from ILP upon a demonstration that the cost of implementation is greater than the benefits, or that implementation is inconsistent with section 252(f)(2) of the Tact.

NYNEX's plan proposed flash-cutting all digital switches on June 2, 1997, if the Commission were to approve the plan by June 30, 1996. NYNEX stated that two analog switches are scheduled for replacement by June 1997. In order to facilitate implementation of ILP for the remaining analog switches, NYNEX volunteered to advance the replacement of Hampton's 2B and West Lebanon's 1A switches to July 1997 and Salem's 1A switch to September 1997.

At the hearing, NYNEX presented a detailed time line of activities necessary to implement ILP while minimizing customer confusion or operational failures. NYNEX contended that advancing the June 2, 1997, start date would jeopardize the success of the conversion.

The OCA recommended that the Commission require implementation before June 1997. The OCA argued against delaying implementation until a flash-cut of all switches is possible, as NYNEX proposed. In addition, the OCA suggested that customers be permitted to begin ordering PICs prior to implementation, for completion at the time of implementation.

MCI argued for implementation on December 1, 1996 or January 1, 1997.

AT&T argued for implementation in October or at the latest December 1996. They contend that because NYNEX has been on notice to prepare for ILP since April 15, 1996, to delay implementation until June 1997 is merely an effort to maintain the monopoly as long as possible. The ILP experience gained by NYNEX in New York should decrease the time necessary for conversion in New Hampshire.

Sprint recommended implementation by NYNEX within six months of the Commission's order and by other LECs within twelve months of the order.

Atlantic Long Distance rejected NYNEX's proposed implementation date as unsupported by evidence. Many of the activities included in NYNEX's plan are not relevant to what Atlantic Long Distance referred to as the "critical paths" of software modification and administration. Atlantic Long Distance recommended the Commission maintain its October 1, 1996 start date.

III. COMMISSION ANALYSIS

In June 1993, we announced our intention to open a docket on presubscription at an appropriate time. Then, in Order No. 22,107 addressing the expansion of extended area service (EAS), we determined that increased competition in the intrastate toll market, as encouraged by ILP, is an appropriate solution to specific

customer concerns regarding short distance toll. Section 251(b) of the Tact buttresses our decision not to change existing EAS boundaries but instead to encourage intraLATA competition by requiring that all local exchange carriers provide dialing parity (presubscription) to competitors.

[1-3] In sum, presubscription for intraLATA toll calls is an important step towards full competition and serves the public interest of New Hampshire. It should, therefore, be implemented as soon as possible. The Tact's purpose of promoting competition in order to secure lower prices and higher quality services for telecommunications consumers nationwide is furthered by moving ahead with ILP in New Hampshire now.

In order to make a smooth transition, we will order a simultaneous and uniform implementation of ILP throughout the state (with the possible exception for the independent LECS, as discussed further below). We have carefully considered all of the evidence, exhibits, and testimony. Suggestions made by parties which are not included in the following resolutions have been considered and purposefully omitted.

1. *Methods of Provisioning*

We find that the 2 PIC method of provisioning ILP, recommended by all parties, is the one which will give New Hampshire consumers the necessary latitude for choosing intraLATA telecommunications carriers. In provisioning 2 PIC ILP, NYNEX requires adequate notice regarding the use of trunking facilities. We find that the six-month trunking forecasts currently being provided to NYNEX act as sufficient notice. We will not require the four-month, additional, trunking forecasts requested by NYNEX.

2. *Calls Excluded from ILP*

[4] We find that the calls which are reasonably excluded from ILP are Directory Assistance (555-1212 and 441 calls), 611, 911, 976 calls and Directory Assistance Call Completion (DACC) calls.[7(79)] Until new software is available, it is reasonable to exclude 0-calls from ILP.

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.

The question of payphone presubscription is currently being addressed by the FCC in Docket No. 96-128 which considered Section 276(b) of the Tact. The Commission defers ruling on the payphone-ILP issue until the FCC ruling, which is expected in November 1996. Should we determine that payphones are to be included in ILP, we will consider the appropriate implementation date for conversion of those phones.

3. *Carrier at Outset of ILP*

[5] Currently a customer who wishes to choose an intraLATA toll carrier other than NYNEX

must make that choice at the time of each intraLATA toll call by dialing 10-XXX in front of the desired phone number. Thus, the only presubscribed intraLATA carrier is NYNEX. One of the benefits of ILP is to introduce the element of choice. Under ILP, customers will now be able to presubscribe to any intraLATA toll carrier.

In the process of introducing choice to the *inter*LATA toll market, existing customers were polled as to their choice of carrier. Those existing customers who failed to make an affirmative choice were assigned a carrier by default, based upon the polling results. Although all parties advised against a similar polling process, the question arises whether the Commission should assign a presubscribed carrier to customers before the customer is permitted to choose, based upon the customer's *inter*LATA choice or some other criterion.

Delay in implementation does not serve the best interests of the public. Unlike the situation when interLATA presubscription was introduced, there are carriers ready, willing and able

to market and carry intraLATA traffic. Further, we see no advantage or sound methodology to assign portions of the intraLATA market to any particular carrier. For these reasons, we will order ILP to be implemented via affirmative customer choice. Therefore, until a customer affirmatively chooses another intraLATA carrier, NYNEX shall continue to carry intraLATA toll calls which are not prefaced with 10-XXX, as recommended by the parties.

4. *Procedures for Executing the Customer's ILP Choice*

[6, 7] In order to avert slamming, we considered procedures for customers' affirmative PIC choice that would either permit the customer to make a direct request to NYNEX for the change via a 3-way call with the chosen carrier or one which required the customer to provide a letter of agency to the chosen carrier by which the customer authorizes that carrier to make the request to NYNEX. However, recognizing NYNEX's competitive advantage of being the PIC at the outset of ILP, the customer inertia that must be overcome to obtain a letter of agency, the delay caused by a several step process to implement a PIC change, and the efficacy of current FCC rules recently adopted to stop slamming, we will order less cumbersome procedures for changing a PIC. The procedures explained here are applicable to initial PIC changes at the beginning of ILP as well as to later PIC changes.

Changing the PIC is within the control of the LEC; as such we find it reasonable for the LEC to perform the service upon a customer's request. The same will be true for competing LECs when they appear. Therefore, a new or existing customer shall be able to effect a PIC change by calling the LEC directly and requesting a PIC change. The LEC shall complete the requested PIC change to the chosen other carrier without making any effort to dissuade the customer. As discussed below in section 5, this restriction on marketing applies only to customer-initiated calls during which a PIC change request is made.

In addition, a new or existing customer shall be able to effect a PIC change by calling the chosen ILP carrier directly. The chosen carrier shall complete the PIC change by contacting the customer's LEC. The chosen carrier shall observe the current FCC rules for verification which are described *infra* at footnote 5.

We intend, by the above procedures, to make clear that the LEC must inquire of new customers whom they select for interLATA and intraLATA toll calls. For example, if NYNEX fails to ask for a new customer's intraLATA choice, then the customer's intraLATA toll calls shall default to the customer's interLATA choice of carrier, where possible.

The Commission will monitor the actions of all entities involved in PIC changes and, pursuant to RSA 365:42, respond to any instance of slamming of customers.

5. *Marketing and Safeguards against Anti-Competitive Practices*

Fair marketing safeguards are critical, given that the incumbent LEC begins with 100% of the customers by virtue of its monopoly legacy. The extent of permissible marketing depends upon who initiates the action opening the door of opportunity. A customer who initiates a call to the current ILP carrier for the purpose of making a PIC change cannot, at that time, be persuaded against the change.

A customer's desire for a PIC change constitutes CPNI. NYNEX may not initiate any marketing attempts until after the call is completed and the change order has been initiated. NYNEX is forbidden from giving the information to any NYNEX marketing or sales force until the same time the information is provided to other carriers. This restriction on marketing applies whether NYNEX is the current ILP carrier, as is now the case, or another ILP carrier, as may be the case in the future. No marketing for retention of the PIC may occur during a customer-initiated call to change the PIC.

Similarly, NYNEX's possession of CPNI regarding a customer's request for an interLATA PIC freeze cannot be parlayed into a competitive advantage by automatically freezing those customers to NYNEX as the intraLATA PIC. Just as a PIC change requires

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affirmative action on the part of the customer, a PIC freeze requires affirmative action on the part of the customer. Instead of an automatic intraLATA PIC freeze, customers shall be educated on the opportunity to freeze the PIC. The educational materials outlined in section 6 below shall include information about the PIC freeze opportunity and shall explain to those who already have frozen their interLATA PIC that a similar freeze is available on the intraLATA side.

6. *Customer Education*

We consider customer education to be an extremely important element of any plan to implement ILP. An ILP customer education program must contain enough depth to permit customers to inform themselves about what ILP is and to go about implementing a PIC change if they choose. An ILP customer education program must also comprise enough breadth to reach the entire market. Neither NYNEX's nor any other submitting carrier's program is sufficient to accomplish those twin goals. Customer notification that does not provide full information for accomplishing a change is not useful to a customer; programs that are limited to a single customer notice are unlikely to reach the entire market.

In order to induce customers to make an affirmative ILP choice we will order extensive customer education. The parties and Staff shall submit for our approval a customer notice to be

sent out at least 30 days in advance of the implementation date for ILP. The mailer, a stand-alone document, shall explain the benefits of ILP and its relation to and effect on competition, indicate where and when a list of the participating carriers and their telephone numbers (the List) will be published and how to obtain the List, identify the date ILP will be implemented, and explain the process and availability of an ILP PIC freeze.

The Commission shall publish the List and accompanying informational statement in a statewide newspaper of general circulation within a week after the customer notices are mailed. The Commission will furnish a copy of the List to those customers who request it. We will also post the List on the Commission's WEBsite at http://www.state.nh.us/puc/puc.html and will be provide it to New Hampshire municipal offices and town libraries.

We will accept NYNEX's offer to provide an 800 number for the first year of ILP implementation. However, we are unconvinced that the recorded information NYNEX proposed to offer over the 800 number would be useful. Therefore, we require that the information to be provided over an 800 number be general in nature, similar to that provided in the customer notice, brief, competitively neutral, and prepared jointly by the parties and Staff. The customer notice shall be in the form of either a bill insert or a separate mailing and we will await a recommendation from the parties on February 1, 1996 on which is the better way to proceed.

The customer notice and language for the 800 number shall be submitted to the Commission for approval by February 1, 1997.

7. *Costs of Implementation*

[8-13] The costs of implementation necessarily will vary by LEC. Because we find that ILP will benefit all New Hampshire telephone users, we shall include those costs incurred for customer education and for processing PIC changes during the 90 day grace period discussed in section 9 below, as well as those for software upgrading, and administrative costs. The costs of implementation shall not include lost billing and collection revenues.

8. *Cost Recovery*

Presubscription will benefit all intrastate toll customers and therefore cost recovery shall be shared by all intrastate toll carriers, including NYNEX. Having considered all of the proposed cost recovery methods, we find that cost recovery shall not be allocated per carrier but shall be charged as an equal charge per originating minute of use (MOU) with charges imposed per MOU over two years unless paid off sooner. NYNEX shall account for the equivalent of one access MOU for each minute of intraLATA toll originated. The charge per MOU shall be determined in separate technical sessions with Staff

and the parties after issuance of this order, based on figures submitted by individual LECs for the costs of ILP implementation and the total number of NYNEX intraLATA toll and originating minutes of use for calendar year 1996. Proposed charges shall be submitted to the Commission for approval no later than March 15, 1997.

9. *Charges to Customers*

During the 90 days immediately following the date of implementation, customers may make one PIC change without charge. After the 90 day grace period, and for additional PIC changes during the 90 day grace period, LECs shall levy a $5 charge for PIC changes. If a customer pays a $5 fee for an interLATA PIC change, no additional $5 fee may be imposed for an intraLATA PIC change made at the same time. Other charges, such as equipment charges or service charges, are not permitted for PIC changes.

The $5 charge, at the discretion of the requesting ILP carrier, may be paid by the requesting ILP carrier or the requesting customer.

When a customer makes a PIC change to NYNEX from a competing carrier, NYNEX shall impute a $5 charge to the itself in the event that the $5 charge is not paid by the requesting customer.

Carriers shall not levy any PIC charge for ILP selection during a new installation of phone service.

10. *Dates of Implementation*

[14] Our Order of Notice required plans for implementation of ILP by October 1, 1996. Having reviewed the proposed plans and comments, we must balance the competitive opportunity costs which are incurred by carriers and customers against the expense of implementation and any operational loss.

It would be our preference to have a single date for statewide implementation of ILP, in order to avoid customer confusion. We recognize, however, that there may be legitimate claims asserted by the independent LECs that would justify earlier implementation dates. Any such request must be filed within 45 days of this order.

NYNEX's proposal is for implementation by June 2, 1997 for all but those switches which are currently technologically incapable of providing ILP. While we believe that the cut-over date could be earlier than the date proposed by NYNEX, we are convinced that the schedule presented by NYNEX is one which can be implemented on time and with accuracy. It is based upon NYNEX's experience in New York and a careful assessment of the tasks which must be completed.

We are not convinced that NYNEX's schedule is reasonable for upgrading the technology of those few switches that would remain incapable of ILP on June 2, 1997. Neither the cost nor the technical upgrades or replacements are unreasonable.

Based on our findings and the evidence presented, we will order that Dixville shall be exempt from implementing ILP. For the other carriers we will order one of two implementation date options. The first option is for NYNEX and the other LECs to implement ILP for all switches which serve New Hampshire, excluding Dixville, on or before June 2, 1997. Under this option, NYNEX shall upgrade or replace all analog switches in time to implement ILP statewide on June 2, 1997. The second option is for NYNEX and the other carriers to partially implement ILP for all but the remaining five analog switches on or before April 1, 1997. Under this option, NYNEX shall upgrade or replace all analog switches in accordance with its proposed schedule.[8(80)]

NYNEX shall inform the Commission and parties of its chosen implementation date within 30 days of this order.

11. *Other Issues Raised*

A. Resellers

[15] Atlantic Connections, which did not appear at the hearings, filed comments regarding the application of ILP to resellers. We find that resellers are not required to provide their customers with an ILP choice. With

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presubscription, the calls handled by resellers will be routed according to the reseller's choice of carrier(s). By selecting the reseller, the customer has in effect selected its intraLATA carrier(s).

B. Blocking

[16, 17] In Docket No. 93-003, we ordered LECs to provide customers with an option to block all intraLATA toll calls unless the caller dials 1 plus the state area code as a prefix to the 7-digit number (the blocking option). In this docket NYNEX and the Independents argued that all competitive LECs should be required to provide the blocking option. We disagree. Our decision in Docket No. 93-003, Order No. 20,938, rejected a plan to require that all intraLATA toll calls in New Hampshire utilize eleven-digit dialing. Proponents of the eleven-digit dialing plan considered the prefix to be a significantly helpful signal to consumers that a toll call would ensue, causing higher charges than a local call. Though proponents of 11 digit dialing argued it was the soundest way to protect consumers, we reasoned that, increasingly, customers will face complex and important decisions about their telecommunications services and that New Hampshire customers are capable of making those choices. We will not, as part of this docket, order competitive LECs to provide the blocking option, though we see it as a potential marketing opportunity.

C. Optional Calling Plans

[18, 19] NYNEX's plan includes removing certain Optional Calling Plans (OCPs) and their concomitant lower per minute and standard monthly charges from customers who make a PIC change from NYNEX to a different ILP carrier. OCPs are not traffic sensitive; the OCP recurring charges occur as fixed charges. NYNEX's proposal under which a customer switching from NYNEX and therefore no longer receiving the OCP lower per minute charges will no longer be billed the standard monthly charges is reasonable and will be approved.

Finally, we put the parties on notice that we shall impose penalties for failure to comply with this order. We are particularly concerned about slamming and other unfair business practices. Carriers in violation of this order shall be subject to fines pursuant to RSA 365:42 and possible criminal prosecution.

Based upon the foregoing, it is hereby

ORDERED, that the 2 PIC method of provisioning ILP shall be implemented in New Hampshire; and it is

FURTHER ORDERED, that Dixville shall be exempt from implementing ILP; and it is

FURTHER ORDERED, that the following types of calls shall not be included in ILP: Directory Assistance (555-1212 and 411), 611, 911, 976, 0- (until software is available to provide 0- ILP) and DACC; and it is

FURTHER ORDERED, that within 90 days the parties shall submit a plan to resolve the billing issues necessary to permit municipal calling with ILP; and it is

FURTHER ORDERED, that the issue of whether payphone calls shall be included in ILP is deferred until after the FCC issues its rules on the matter; and it is

FURTHER ORDERED, 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; and it is

FURTHER ORDERED, that customers shall affirmatively choose an ILP carrier by contacting either the LEC or the selected ILP carrier for intraLATA toll as delineated in section 4 above; and it is

FURTHER ORDERED, that when dealing with new LEC customers, NYNEX and other LECs shall ask what carrier the customer wishes to carry his or her intraLATA toll calls, clearly indicating that other carriers than NYNEX are available; and it is

FURTHER ORDERED, that failure to ask for the customer's ILP carrier choice shall result in assignment of that customer's intraLATA toll calls to the customer's interLATA toll carrier; and it is

FURTHER ORDERED, that failure to comply with this order shall result in penalties pursuant to RSA 365:42; and it is

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FURTHER ORDERED, that no ILP marketing activities shall occur during customer-initiated calls to incumbent LECs for local service or during customer-initiated calls to make a PIC change; and it is

FURTHER ORDERED, that NYNEX shall not allow communication of ILP data to any of its marketing or sales force prior to the time that information is released to the particular competitor selected in a PIC change; and it is

FURTHER ORDERED, that no ILP PIC freeze shall be implemented by any carrier prior to its receipt of the customer's affirmative choice of ILP PIC freeze; and it is

FURTHER ORDERED, that on or before February 1, 1997, the parties and Staff shall submit for our review and approval a proposed bill insert providing customers with relevant ILP information as described in section 6 above; and it is

FURTHER ORDERED, that the approved bill insert shall be mailed to customers 30 days prior to the ILP cut-over date; and it is

FURTHER ORDERED, that by February 1, 1997, the parties and Staff shall submit for our review and approval language on ILP for dissemination of ILP information over an 800 number

provided by NYNEX, pursuant to our specifications in section 6 above; and it is

FURTHER ORDERED, that the costs of ILP shall be shared by all intraLATA toll carriers, including NYNEX, as provided in section 8 above; and it is

FURTHER ORDERED, that the costs of ILP shall include customer education, initial PIC changes made during a 90 day grace period, necessary software modifications and related administrative costs; and it is

FURTHER ORDERED, that the costs of ILP shall not include lost billing and collection revenues; and it is

FURTHER ORDERED, that recovery of the costs of ILP shall be achieved by a charge per MOU as detailed in section 8 above; and it is

FURTHER ORDERED, that a PIC charge of $5 is authorized pursuant to our findings in section 9 above; and it is

FURTHER ORDERED, that carriers shall implement ILP statewide on one date certain; and it is

FURTHER ORDERED, that the ILP date of implementation shall be either April 1, 1997 or June 2, 1997, at NYNEX's discretion, pursuant to our discussion in section 10 above; and it is

FURTHER ORDERED, that NYNEX shall inform the Commission and parties of its chosen implementation date within 30 days of this order; and it is

FURTHER ORDERED, that any independent LEC seeking an earlier date of implementation than the date selected by NYNEX shall notify the Commission within 45 days of this order; and it is

FURTHER ORDERED, that NYNEX's proposal for removing OCP charges from certain customers, as delineated in section 11 above, is approved.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of August, 1996.

FOOTNOTES

[1]Without intraLATA presubscription, customers must dial a five digit code in order to access an intraLATA toll carrier other than NYNEX.

[2]Dixville has 568 access lines, of which over 400 serve the Mount Washington Hotel. Dixville takes the position that ILP is uneconomic and impractical for a company of its size and seeks a waiver of any requirement to implement ILP.

[3]0- calls are calls to the operator by dialing 0. Software which would allow ILP implementation on these calls is currently anticipated to be available in the second quarter of 1998.

[4]Pub.L.No. 104-104, 110 Stat. 56 (1996)(to be codified at 47 U.S.C. section 151, *et seq.*)

[5]The FCC's rules require an interexchange carrier, prior to releasing an authorized PIC change request to the LEC, to obtain verification from the customer in one of four ways. The

IXC must either (1) obtain the customer's written authorization, (2) obtain the customer's electronic authorization by use of an 800 number, (3) obtain the customer's oral authorization verified by an independent third party, or (4) send an information package, including a prepaid returnable postcard, within three days of the customer's request, and wait 14 days before

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submitting the customer's order to the LEC in order to allow sufficient time for receipt of the postcard denying or canceling the order. *See*, Matter of Policies and Rules Concerning Unauthorized Changes of Consumer's Long Distance Carriers, Report and Order, 10 F.C.C. Rcd. 9560, 9563 (1995).

[6]The charge is identical to that currently charged for interLATA PIC changes in NECA Tariff F.C.C. No. 5.

[7]DACC announcements, which are those offering to complete a call after the customer received Directory Assistance, shall indicate the carrier completing the call. This will provide the customer with additional pertinent information when making the choice to use DACC. We will order this type of branding for DACC.

[8]NYNEX's Implementation Plan, dated May 29, 1996, at page 25, proposed statewide ILP by June 2, 1997 in all exchanges except Hampton and Salem. Hampton and Salem would be capable of ILP by July and September 1997, respectively.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Investigation into New England Telephone's Long Distance Dialing Plan for New Hampshire, DE 93-003, Order No. 20,938, 78 NH PUC 446, Aug. 20, 1993. [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*08/19/96*[89295]*81 NH PUC 639*AmeriConnect, Inc.

[Go to End of 89295]

81 NH PUC 639

Re AmeriConnect, Inc.

DS 96-236
Order No. 22,282

New Hampshire Public Utilities Commission

August 19, 1996

ORDER authorizing an interexchange telephone carrier to make numerous revisions to more

than 50% of its tariffs, including the addition of WilTel as an underlying carrier.

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1. SERVICE, § 162

[N.H.] Company rules and regulations — Interexchange telephone carrier — Tariff revisions — As to conditions of service — Notice of additional new underlying carrier. p. 639.

BY THE COMMISSION:

ORDER

[1] On July 18, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from AmeriConnect, Inc., (AmeriConnect) requesting authority to revise more than 50 percent of its existing tariff and therefore, to introduce a new tariff, NHPUC No. 2 for effect August 17, 1996.

The proposed changes include the addition of WilTel as an underlying carrier and corrections to the tariff required by NH Admin. Rules, Puc 1200. Additionally, AmeriConnect is including some new conditions of service, and increasing some rates.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize AmeriConnect to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of AmeriConnect's tariff, NHPUC No. 2 are approved for effect as filed:

Original Pages 1-11

1st Revised Page 12 in lieu of Original

Original Pages 13-14

1st Revised Page 15 in lieu of Original

Original Page 16;

and it is

FURTHER ORDERED, that AmeriConnect file properly annotated tariff pages in

compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this nineteenth day of August, 1996.

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NH.PUC*08/19/96*[89296]*81 NH PUC 640*EnergyNorth Natural Gas, Inc.

[Go to End of 89296]

81 NH PUC 640

Re EnergyNorth Natural Gas, Inc.

DR 96-239
Order No. 22,283

New Hampshire Public Utilities Commission

August 19, 1996

ORDER suspending a natural gas local distribution company's proposed introduction of a new natural gas engine firm transportation rate.

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1. RATES, § 248

[N.H.] Schedules and procedure — Suspension — Of proposed new service rate — To allow for adequate investigatory period — Natural gas engine firm transportation rate — Local gas distributor. p. 640.

2. RATES, § 382

[N.H.] Natural gas rate design — Proposed gas engine firm transportation rate — For customers with high load factors but relatively uniform load shapes — Necessity of suspension — To allow for adequate investigatory period — Local distribution company. p. 640.

BY THE COMMISSION:

ORDER

[1, 2] On July 25, 1996, EnergyNorth Natural Gas, Inc. (EnergyNorth) petitioned to introduce a natural gas engine firm transportation tariff for effect August 26, 1996. The tariff is designed to provide a cost based rate for customers with very high load factors and relatively uniform load shapes.

Staff requires time to investigate the filing and material filed in support of the proposed tariff and therefore has requested that the proposed tariff pages be suspended.

We have reviewed Staff's request and will suspend the proposed filing to allow a thorough review of the tariff filing and the accompanying supporting materials.

Based upon the foregoing, it is hereby

ORDERED, that the following tariff pages of EnergyNorth are suspended:

NHPUC No. 2 - GAS, Original Pages 77 and 78.

By order of the Public Utilities Commission of New Hampshire this nineteenth day of August, 1996.

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NH.PUC*08/19/96*[89297]*81 NH PUC 640*EnergyNorth Natural Gas, Inc.

[Go to End of 89297]

81 NH PUC 640

Re EnergyNorth Natural Gas, Inc.

DR 96-214
Order No. 22,284

New Hampshire Public Utilities Commission

August 19, 1996

ORDER adopting procedural schedule as to a natural gas local distribution company's proposed 1996-97 demand-side management programs.

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1. CONSERVATION, § 1

[N.H.] Demand-side management plans — Proposed 1996-97 programs — As to residential and small commercial customers — Local

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gas distribution company — Adoption of procedural schedule. p. 641.

2. GAS, § 7

[N.H.] Operation — Demand-side management — Proposed 1996-97 programs — Adoption of procedural schedule — Local distribution company. p. 641.

APPEARANCES: McLane, Graf, Raulerson, and Middleton by Steven V. Camerino, Esquire, for EnergyNorth Natural Gas, Inc.; Office of the Consumer Advocate by Kenneth Traum for residential ratepayers; Paul W. Gromer for Massachusetts Energy Efficiency Council; and Stephen Frink for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

[1, 2] On June 28, 1996, EnergyNorth Natural Gas, Inc. (ENGI or the Company) filed with the New Hampshire Public Utilities Commission (Commission) its Full-Scale Residential and Small Commercial customer Demand Side Management (DSM) Program proposal for the program year July 1, 1996 through June 30, 1997.

By an Order of Notice issued July 24, 1996, the Commission scheduled a prehearing conference for August 12, 1996, 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 August 7, 1996, the Massachusetts Energy Efficiency Council (MEEC) filed a petition to intervene and the Commission granted the motion at the prehearing conference August 12, 1996. The Office of the Consumer Advocate (OCA) is a statutorily recognized intervenor.

At the prehearing conference, ENGI, MEEC, the OCA, 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.]

Data Requests by Staff and    August 15, 1996
Intervenors

Company Data Responses        August 29, 1996

Technical Session           September 9, 1996

Testimony by Staff and     September 18, 1996
Intervenors

Settlement Conference      September 20, 1996

Filing of Settlement       September 26, 1996
Agreement, if any

Hearing                       October 3, 1996
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With regard to the filing, ENGI stated that the experience gained from the pilot program provided valuable insights into the development of the program now being proposed and that combining the two pilot programs into one DSM initiative will provide customers with the greatest benefit at the lowest cost. The Company also stated its desire to have the proposed DSM program in place for the start of the heating season, when the market is strongest for those services.

MEEC had not received a copy of the filing and therefore had not formulated any position.

The OCA stated that it questioned the allocations, free riders, low income participation in the efficient heating equipment program, and the development of administrative costs.

Staff stated that it believed that the significant issues to be addressed in this proceeding are: 1) an evaluation of the performance results of the pilot program; 2) the details supporting the costs for the 1996/1997 program budget; 3) the lack of documentation supporting various amounts presented in the filing; 4) the ability of ENGI to achieve projected participation levels; and 5) a schedule of Monitoring and Evaluation reporting to be

adhered to by the Company.

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 nineteenth day of August, 1996.

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NH.PUC*08/19/96*[89298]*81 NH PUC 642*Kearsarge Telephone Company

[Go to End of 89298]

81 NH PUC 642

Re Kearsarge Telephone Company

DR 96-080
Order No. 22,285

New Hampshire Public Utilities Commission

August 19, 1996

ORDER approving a local exchange telephone carrier's proposed introduction of enhanced custom calling services, its withdrawal of two special service features, and its restructuring of associated package discount rates and connection charges.

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1. SERVICE, § 449

[N.H.] Telephone — Special services — Enhanced custom calling services — Components — Call conferencing — Call forwarding with features of other services — Personal ring identification — Local exchange carrier. p. 643.

2. RATES, § 553

[N.H.] Telephone rate design — Enhanced custom calling services — Discount options — For joint subscription to two or more special services — Local exchange carrier. p. 643.

3. SERVICE, § 275

[N.H.] Discontinuance — Of special service options — Local exchange telephone carrier — Factors — Incompatibility of services with newly upgraded switch — Technological obsolescence. p. 644.

4. RATES, § 309

[N.H.] Connection charges — For special telephone service features — Reductions in connection rate schedules — Institution of special promotional rates as well — Local exchange carrier. p. 644.

BY THE COMMISSION:

ORDER

On March 20, 1996, Kearsarge Telephone Company (Kearsarge) filed tariff pages proposing to offer Enhanced Custom Calling Services for effect April 22, 1996. In support of its filing, the Company filed forecasts of revenues and expenses associated with the proposed features. On April 19, 1996, the Commission issued Order No. 22,106, suspending the proposed tariff pages to allow Staff time to review the filing and supporting materials. On May 6, 1996, the Executive Director of the Commission received a letter from Mr. Dave Colter, a customer of Kearsarge, urging the Commission to expedite its decision in this docket.

On July 15, 1996, the Commission issued Order No. 22,238, suspending the proposed tariff pages and directing Staff to complete its review within thirty days.

Following discussions with Staff, on August 15, 1996, Kearsarge submitted revised tariff pages reflecting some modifications to the language in the proposed tariff, for effect August 16, 1996.

Kearsarge proposes the introduction of the following Enhanced Custom Calling Services: Call Forwarding Busy; Call Forwarding No Answer; Call Forwarding After Call Waiting; Call Forwarding Remote Access; Call Conferencing 3 Way Calling w/ Call Transfer; Call

Page 642

Conferencing 6 Way Calling; Call Hold; Enhanced Intercom; Hot Line; Toll Restriction with Authorization Code; and Personal Ringing.

Staff's review of this filing revealed that the proposed tariff pages also (1) alter the Discount Packages offered for Custom Calling Services; (2) delete two service offerings (Call Minder and Do-Not-Disturb) as obsolete; (3) introduce a Custom Calling Service Order Charge of $5.00 and (4) introduce a six-month promotional program waiving the proposed $5.00 Charge. The modified tariff pages remove the six-month promotional program which Kearsarge has submitted by letter under Section 1, Original Sheet 8 of its tariff with a proposed effective date concurrent with the proposed Enhanced Custom Calling Services tariff pages.

A. *Introduction of Enhanced Custom Calling Services*

[1] Kearsarge has provided forecasts of costs and revenues associated with the Enhanced Custom Calling Services listed above. The forecasts indicate that the proposed prices would cover the costs associated with the new services and provide a contribution. While these forecasts do not include a deduction for the possible effect of customers availing themselves of the Discount Package (current or proposed), Kearsarge has stated that the Company expects

approximately 5% of customers to subscribe to more than one service. Although an exact figure has not been provided, the revenue effect of the discount will reduce the contribution made by Enhanced Custom Calling Services. It is expected that stimulation in demand caused by the discount will offset any lost revenues from the discount plan.

Staff recommended that the Commission approve the introduction of Enhanced Custom Calling Services as proposed in Kearsarge's tariff filing as modified. Staff recommended that the Commission require that Kearsarge file an annual report after the first year of service, detailing the actual results and comparing actual results to the forecast provided with this filing, including an analysis of the effect of the discount plan.

The Commission has reviewed the Staff recommendation and finds that the proposed introduction of Enhanced Custom Calling Services is in the public interest. We will require that Kearsarge file an annual report after the first year of service, detailing the actual results and comparing actual results to the forecast provided with this filing, including an analysis of the effect of the discount plan.

B. *Proposal for Modification of Discount Plan*

[2] Kearsarge has included a change in the discount applied to Custom Calling Services in the proposed tariff pages. The proposal is to offer $.50 (fifty cents) off the price of each service when two or more service features are ordered. The discount would apply to all Custom Calling Services.

Currently, four of the Custom Calling Services (Call Waiting; Call Forwarding; Conference Calling; and 8 Number Speed Calling) are referred to as Discount Package Features and may be purchased in combinations of 2, 3 or 4 of the features. The customers currently subscribed under the old discount plan will generally face a rate increase under the new discount plan, assuming they remain with the services currently subscribed to.

Staff recommended that the Commission approve of the discount plan as proposed in Kearsarge's tariff filing as modified because while existing Custom Calling Service customers may see a rate increase, all customers will have the opportunity to receive a discount on all Custom Calling Services not merely the current Discount Package Features. Further, Staff recommended that, to ensure that rates adjusted for the discount continue to cover the costs of these services, the Commission require Kearsarge to include an analysis of the effect of the discount plan when determining the actual results of the Enhanced Custom Calling Services tariff.

The Commission has reviewed the Staff recommendation and finds that the proposed discount plan is in the public interest. As described above regarding Enhanced Custom Calling Services, we will require that Kearsarge include an analysis of the effect of the discount plan in its report.

Page 643

C. *Withdrawal of Services*

[3] Kearsarge has proposed an administrative change to the tariff pages to delete references to Call Minder and to Do Not Disturb services. Call Minder service permitted a customer to

register a specific time to receive a recorded wake-up call. Do-Not-Disturb service permitted a customer to restrict incoming calls by dialing a specific access code, terminating calls would then be transferred automatically to an announcement trunk without ringing the customer's telephone but the customer could make outgoing calls while the service was activated. Both of these services are no longer available due to the March 28, 1996 upgrade of the Kearsarge switch. Kearsarge has informed Staff that written notice was sent to subscribed customers approximately 13 days prior to the discontinuation of the services, including a commitment to cease billing for those services on the date of the upgrade of the switch. The notice to this Commission was the filing of this docket on March 20 with no explicit reference to the impending withdrawal of services. Staff reports that the Commission has not received any complaints about the discontinuation of these services.

Staff recommended that the administrative change be approved because Kearsarge asserts that Call Minder and Do Not Disturb are obsolete and not available in the current switch. Staff recommended that the Commission instruct Kearsarge to confirm that customers have not been billed for these services after March 28, 1996 and to direct Kearsarge to improve its notification to the Commission of this type of change.

The Commission will approve the administrative change of deletion of references to Call Minder service and Do Not Disturb service. We will require Kearsarge to confirm that customers were not billed for these services after March 28, 1996.

We remind Kearsarge that N.H. Admin. Rule Puc 1601.05(a)(1) requires that utilities notify the Commission 30 days in advance of any change to the tariff, and we expect Kearsarge to abide by this requirement in the future.

D. *Change to Service Connection Charge*

[4] Kearsarge has included a change in the Service Connection Charge applied to Custom Calling Services in its proposed tariff pages, as modified. The change would replace cross-references to the Section 4 Service Charges with a Custom Calling Service Order Charge of $5.00.

The proposed $5.00 charge would be a reduction from the current charge for the addition of these services. Currently, those charges are $21.00 for residential customers and $25.50 for business customers.

Kearsarge expects the nonrecurring revenues earned at the $5.00 Charge to exceed the revenues which would have been earned at the higher Service Order Charge because of the revenues generated by the expected increase in customers subscribing to Custom Calling Services.

While Kearsarge has not provided cost support for the $5.00 charge, the promotional program submitted by the Company will waive that charge for the first six months this tariff is in effect. Therefore, there should be sufficient time for Kearsarge to provide the Commission with more detail regarding the cost basis for the $5.00.

Staff recommended that the Commission approve Kearsarge's proposal of a Custom Calling Service Order Charge of $5.00 to replace the Section 4 Service Connection Charges for these services, as modified and on the condition that Kearsarge submit cost support for this charge

within the proposed six-month promotional period during which they are waiving the service connection charge.

The Commission has reviewed the Staff recommendation and finds that the Custom Calling Service Order Charge of $5.00 with the condition that Kearsarge provide the Commission with the cost basis for the $5.00 within the six month promotional period during which the service connection charge is being waived.

E. *Promotional Offering*

In its original filing, Kearsarge included a paragraph introducing a 6-month trial period

program which would waive the proposed $5.00 service connection charge. Kearsarge has removed that paragraph, substituting a promotional letter in accordance with the Kearsarge "Promotional and Market Trial Program" tariff (Section 1, Original Sheet 8).

Staff recommended, for convenience and benefit of customers, that the promotional waiver be implemented concurrent with the effective date of the new tariff pages; effectively considering the March 1996 filing in this docket to be the date of notification to the Commission regarding the promotional program and, to the extent necessary, effectively waiving the thirty-day notice requirement contained in the promotional and market trial program tariff.

The Commission has reviewed the Staff recommendation and will allow the promotional program waiving the Custom Calling Service Order Charge to become effective as of the date of this order.

As the proposed tariff pages, as modified on August 15, 1996, incorporate the findings we have made above, the Commission will approve the proposed tariff pages, as modified, for effect on the date of this order. To the extent that this approval applies to the Custom Calling Service Order Charge, the approval is conditional on the submission of cost support described above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages, as modified on August 15, 1996, of Kearsarge Telephone Company are approved for effect on the date of this order:

NHPUC No. 7 Section 3 -

Second Revised Sheet 2, superseding First Sheet 2 Original Sheet 2.1 Second Revised Sheet 3, issued in lieu of First Revised Sheet 3 Second Revised Sheet 3.1, issued in lieu of First Revised Sheet 3.1 Fourth Revised Sheet 4, issued in lieu of Third Revised Sheet 4 Second Revised Sheet 5, issued in lieu of First Sheet 5

FURTHER ORDERED, that Kearsarge provide the Commission with the cost basis for the $5.00 Custom Calling Service Order Charge within the six month promotional period during which the service connection charge is being waived; and it is

FURTHER ORDERED, that Kearsarge file an annual report after the first year of service, detailing the actual results and comparing actual results to the forecast provided with this filing, including an analysis of the effect of the discount plan; and it is

FURTHER ORDERED, that Kearsarge begin the six-month promotional program waiving the Custom Calling Service Order Charge on the date of this order; and it is

FURTHER ORDERED, that Kearsarge provide the Commission with confirmation that billing for Call Minder service and Do-Not-Disturb service ceased on March 28, 1996; and it is

FURTHER ORDERED, that Kearsarge file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05(k).

By order of the Public Utilities Commission of New Hampshire this nineteenth day of August, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Kearsarge Telephone Co., DR 96-080, Order No. 22,106, 81 NH PUC 288, April 19, 1996. [N.H.] Re Kearsarge Telephone Co., DR 96-080, Order No. 22,238, 81 NH PUC 555, July 15, 1996.

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NH.PUC*08/26/96*[89299]*81 NH PUC 646*Town of Hudson v. Consumers New Hampshire Water Company

[Go to End of 89299]

81 NH PUC 646

Town of Hudson
v.
Consumers New Hampshire Water Company

DE 96-227
Order No. 22,286

New Hampshire Public Utilities Commission

August 26, 1996

ORDER noting interventions and establishing a procedural schedule for addressing a municipality's action to take jurisdictional water utility assets by eminent domain.

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1. EMINENT DOMAIN, § 9

[N.H.] Procedural schedule — Proposed action by municipality — To disaggregate a water utility — Taking of utility property within city limits — Issues of valuation and compensation. p. 646.

BY THE COMMISSION:

ORDER

[1] On July 11, 1996, the Town of Hudson (Hudson or the Town) filed with the New Hampshire Public Utilities Commission (Commission) a Declaration of Taking against Consumers New Hampshire Water Company (Consumers).

By Order of Notice dated July 22, 1996, the Commission set a prehearing conference for August 15, 1996, set a deadline for intervention requests and called for initial positions of the Parties and Commission Staff (Staff).

The towns of Litchfield (Litchfield), Windham (Windham), Derry and Londonderry (Derry and Londonderry) jointly, and the New Hampshire Municipal Association (NHMA) submitted written motions seeking intervention, all without objection though the proper role of the NHMA was questioned. At the pre-hearing conference Hudson resident and former state legislator, Leonard Smith (Smith), made an oral motion to intervene and indicated that he would file a written motion to intervene following the hearing, also without objection. The Office of Consumer Advocate (OCA) is a statutorily recognized intervenor.

On August 12, 1996, Consumers filed a Motion to Bifurcate Proceedings. The motion seeks to create two separate proceedings: one proceeding to determine whether it is in the public interest pursuant to RSA 38:10 for Hudson to take Consumers' property by eminent domain, and a second proceeding, if necessary, to establish the amount of compensation owing to Consumers for the taking.

On August 12, 1996, Consumers also filed a Motion to Dismiss. The deadline for responses to Consumers' motions was August 22, 1996. Although, in accordance with the Order of Notice, the parties presented their initial positions on the issues presented by Hudson's petition, all parties reserved their rights to respond in writing to Consumers' motions.

Hudson stated that the primary issue is valuation of Consumers' assets necessary for the taking and that the public interest would be served by the taking, as evidenced by the Town's Warrant Article and vote. Hudson opposed Consumers' motions to bifurcate and to dismiss.

Consumers stated that it believed the most significant issue to be addressed in this proceeding is whether an integrated multi- community water system can be disassembled and valued on a per town basis consistent with the public interest. Consumers argued that valuation should not be investigated unless and until the Commission found that the public interest would be served by such a disassembly.

Intervenor Derry and Londonderry stated that disassembling the Consumers water system would have a negative impact on delivery of water within those towns. Intervenor Litchfield stated that it was neutral regarding the proceeding but that it questioned whether the proposed action would be in Litchfield's best interests.

The OCA did not take a position on bifurcation, stating that more information is necessary.

Staff agreed that the public interest issue is crucial to the case and opposed bifurcation of the proceeding in that valuation is inextricable from the question of public interest.

At the prehearing conference all participants agreed to the following procedural schedule for a non-bifurcated proceeding:

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

Data Requests by Hudson to
Consumers                                   8/30/96
Data Responses by Consumers to
Hudson                                     10/29/96
Testimony of Hudson at 10 a.m.              1/06/97
Data Requests by All Parties to
Hudson                                      2/06/97
Data Responses by Hudson to
All Parties                                 3/06/97
Technical Session at 10 a.m.                3/17/97
Testimony of Consumers                      5/01/97
Data Requests by All Parties to
Consumers                                   5/16/97
Data Responses by Consumers to
All Parties                                 5/30/97
Testimony of Intervenors &
Staff 10 a.m.                               6/23/97
Data Requests by all to Intervenors/        6/30/97
Staff (work sheets, etc.)
Data Responses by Intervenors/Staff         7/10/97
Settlement Conference, 10 a.m.              7/24/97
Rebuttal Testimony by Hudson                7/31/97
Surrebuttal Testimony by All                9/05/97
File Settlement Agreement, if any           9/10/97
Hearing on merits, 10 a.m.           9/15-19/97 and
                                         9/22-26/97
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The Parties agreed that in a bifurcated proceeding, the schedule would be identical except that only one week of hearings would be necessary.

We find the proposed procedural schedule to be reasonable and will approve it for the duration of the case. We will rule on the Motion for Bifurcation and on the Motion to Dismiss in a subsequent order, after consideration of any written responses to the motions.

Based upon the foregoing, it is hereby

ORDERED, that Windham, Litchfield, Derry and Londonderry, NHMA and Smith 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 twenty-sixth day of August, 1996.

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NH.PUC*08/26/96*[89300]*81 NH PUC 647*Least-cost Planning for Water Utilities

[Go to End of 89300]

81 NH PUC 647

Re Least-cost Planning for Water Utilities

DE 93-029
Order No. 22,287

New Hampshire Public Utilities Commission

August 26, 1996

ORDER clarifying the scope of a docket examining the least-cost planning practices of water utilities, to specifically exclude consideration of management contracts executed between local water utilities and their parent companies.

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1. VALUATION, § 211

[N.H.] Property included or excluded — Overdevelopment and excess capacity — Oversized mains — As issue in least-cost planning docket — Water utilities. p. 648.

2. WATER, § 13

[N.H.] Utility operations — Least-cost planning practices — Investigatory proceeding — Scope of issues — Exclusion of management contracts with parent companies. p. 648.

3. EXPENSES, § 84

[N.H.] Payments to affiliates — For management services — As issue in least-cost

Page 647

planning investigatory proceeding — Scope of issues — Exclusion of management contracts with parent companies — Water utilities. p. 648.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

[1-3] The New Hampshire Public Utilities Commission (Commission) opened this proceeding with its final order in Docket DR 89-224 wherein it specifically identified for further investigation the issue of risk allocation where a water utility had prudently installed mains sized for anticipated growth but were not currently used and useful. *Re Southern New Hampshire Water Company*, 76 NH PUC 521, 529 (1991). This issue, along with what appeared to be suspect long term planning and economic analyses by this water utility among other issues, led the Commission to open a proceeding to address least cost planning by New Hampshire's largest jurisdictional water utilities.

On April 24, 1996 the Office of the Consumer Advocate (OCA) filed a motion to clarify and determine scope of issues. The OCA generally requested that the Commission prevent the scope of the docket from becoming too restrictive to meet its original goals. Specifically, the OCA requested that the Commission clarify that the docket includes an examination of management

contracts between local water utilities and their parent companies. On April 26, 1996 and May 3, 1996 Pennichuck Water Works and Consumers New Hampshire Water Company, formerly known as Southern New Hampshire Water Company, respectively filed objections to the motion.

While we recognize the OCA's concern relative to management contracts, we believe this issue should be addressed on an individual rather than a generic basis. Because each affiliate contract has its own individual characteristics, we believe it is more appropriate to examine them either in a rate case docket or a proceeding required by RSA 366:3.

Based upon the foregoing, it is hereby

ORDERED, Office of the Consumer Advocate's motion for clarification is DENIED.

By order of the Public Utilities Commission of New Hampshire this twenty-sixth day of August, 1996.

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NH.PUC*08/26/96*[89301]*81 NH PUC 648*Northern Utilities, Inc.

[Go to End of 89301]

81 NH PUC 648

Re Northern Utilities, Inc.

DE 95-345, 95-346
Order No. 22,288

New Hampshire Public Utilities Commission

August 26, 1996

ORDER approving a natural gas local distribution company's proposed special service agreement for the provision of liquefied natural gas storage service for Granite State Gas Transmission, Inc., but rejecting a proposed special service agreement for the provision of transportation service for Portland Natural Gas Transmission System (PNGTS), where the Maine Public Utilities Commission had already disapproved the PNGTS arrangement.

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1. SERVICE, § 332

[N.H.] Gas — Transportation service — Special service agreement — To facilitate construction of interstate pipeline — Factors affecting disapproval — Rejection by neighboring commission — Dispute as to excessive supply commitment and capacity release terms — Local gas distribution company. p. 650.

2. GAS, § 10.1

[N.H.] Storage service — For liquefied natural gas — Special service agreement — Factors affecting approval — Increased reliability of supply — Local gas distribution company. p. 650.

APPEARANCES: LeBoeuf, Lamb, Greene, and MacRae by Paul B. Dexter, Esq. for Northern Utilities, Inc.; Office of Consumer Advocate by Kenneth E. 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 December 11, 1995 Northern Utilities, Inc. (Northern) filed with the New Hampshire Public Utilities Commission (Commission), pursuant to RSA 366, a 20 year precedent agreement with Granite State Gas Transmission, Inc. (Granite State) for liquified natural gas (LNG) storage services, docketed as DE 95-345. Granite State seeks to develop a storage facility for LNG in Wells, Maine (the Wells facility). Northern asserts the facility is necessary to meet the future needs of its firm customers given the impending expiration of leased capacity on the Portland pipeline, a converted oil pipeline now serving these customers.

On the same date, Northern filed a 20 year precedent agreement with Portland Natural Gas Transmission System (PNGTS) for natural gas transportation service, docketed as DE 95-346. PNGTS seeks to develop an interstate pipeline to transport natural gas from the Canadian border in Vermont through Maine to Haverhill, Massachusetts, anticipated to be operational by November 1, 1998.

The Commission issued an Order of Notice for joint proceedings. Maritimes & Northeast Pipeline (Maritimes) and PNGTS sought and were granted limited intervention. *See*, Order No. 22,061 (March 18, 1996). The Office of Consumer Advocate (OCA) is a statutorily authorized intervenor. There were no other intervenors.

Pursuant to the agreed upon procedural schedule, on March 1, 1996 Northern submitted direct testimony and schedules of Dwight G. Curley. On April 1, 1996, Northern submitted a revised agreement with PNGTS and on July 9, 1996 a revised agreement with Granite State.

Commission Staff (Staff), on June 14, 1996, notified the Commission of two developments which significantly affected these dockets: 1) Northern had entered into a preliminary agreement with another party for release of 50% of the capacity associated with the Wells facility; and 2) Northern had reached a settlement with the State of Maine, Office of the Public Advocate and Maritimes in the Maine Public Utilities Commission Dockets 95-480 and 95-481. Northern, OCA and Staff recommended that in light of these developments, Staff and intervenor testimony be delayed pending further investigation, without disturbing the scheduled hearing date.

Northern, on June 17, 1996, submitted direct testimony of Peter H. Kind. On July 19, 1996, Staff submitted a Settlement Agreement (Settlement) reached between Northern, the OCA, and Staff. On July 25, 1996, Staff submitted direct testimony and exhibits of Robert F. Egan.

The Commission heard evidence in support of the Settlement on July 30, 1996.

On August 5, 1996, in its Deliberative Session, the Maine Public Utilities Commission (Maine Commission) rejected Northern's precedent agreement with PNGTS on the grounds that Northern's total winter service capacity commitment of 60,800 MMBtu/day is significantly greater than its long run optimal supply portfolio level of approximately 34,000 MMBtu/day. A written order was issued on August 9, 1996.

II. SETTLEMENT AGREEMENT

The Settlement addresses both dockets and was entered into by Northern, the OCA, and Staff. While the OCA did not present testimony in this proceeding, it did actively participate in the negotiations of the Settlement. The terms, which are more fully detailed in the Settlement, are as follows:

Release of capacity. Under an agreement with Gaz Metropolitain and Company, Limited Partnership, Northern will release 1 Bcf of capacity, coincident with the in-service date of the PNGTS pipeline, for the remainder of the 20 year agreement, at a price that is designed to recover 64% of 50% of the total annual cost of service of the Wells facility charged to Northern.

Page 649

Financing. Northern requests that Granite State seek financing for the Wells facility that will result in the lowest long-run cost to Northern and Granite State. Granite State has committed to comply with Northern's request.

Reduce commitments. Northern agrees to undertake all practicable, reasonable and prudent actions to reduce its pipeline transportation and storage capacity commitments to long-run optimal levels. Optimal levels, to be determined over time and reviewed by the Commission, shall take into account alternatives available to Northern and the fact that gas consumers may utilize other suppliers.

Cost Recovery. Northern shall recover the costs incurred pursuant to the two agreements through its cost of gas adjustment (CGA) proceedings.

Obligation to Manage Capacity. Northern shall continue to manage its upstream capacity in a manner that results in just and reasonable rates for firm services. The Commission shall review the prudence of Northern's management of its upstream capacity and disallow the cost of any upstream capacity which it finds was not managed in a reasonable manner.

Limit Rate Impact. Northern shall limit the rate impact of these agreements by phasing in the costs incurred in accordance with limitations set forth in the Settlement. Northern shall meet with the OCA and Staff to determine additional details needed to implement the phase-in of costs prior to the initial CGA proceeding in which these costs are to be recovered.

Interconnection for Competitive Options. Northern shall cooperate in a non-discriminatory and good faith manner with third parties who apply for interconnection and services on its system. This is to foster the development of competitive options for existing and new customers.

Stranded Capacity. If the Commission should determine that any of the capacity procured pursuant to the agreements becomes stranded, and if Northern seeks to recover any or all of these costs, Northern shall do so on a competitively neutral basis with respect to both transportation

and sales customers. Nothing in the Settlement, however, will bind the Commission or any party to the recovery of any stranded costs.

III. COMMISSION ANALYSIS

[1, 2] Upon review of the precedent agreements, Settlement and testimony presented in support thereof, we find the terms of the Settlement to be consistent with the public interest. We would have approved it in its entirety but for information received that the Maine Commission, in similar proceedings, rejected the PNGTS agreement "because of the excessive supply commitment." Maine Public Utilities Commission Order in Docket 95-481, dated August 9, 1996, page 4. Because it is necessary to have both the Maine and New Hampshire Commissions' approval in order to obtain financing, the PNGTS pipeline cannot move forward. Given that our approval alone will not effect the development of the PNGTS pipeline, we will not approve the PNGTS agreement or those aspects of the Settlement which pertain to PNGTS.

We find that even without the PNGTS pipeline, the Wells facility and Settlement terms are consistent with the public interest and will result in just and reasonable rates. The facility will ensure reliable supply to serve Northern's firm sales and transportation customers at a time when there is great uncertainty of supply due to the expiration of the leased Portland pipeline now serving a significant portion of Northern's load. Although the Wells facility will result in somewhat higher rates, on the order of 10 to 15 percent, the increase is justified by the greatly enhanced reliability of supply.

In the event the Maine Commission reaches a different conclusion regarding PNGTS in the future, Northern should re-file the agreement for further consideration by this Commission.

Based upon the foregoing, it is hereby

ORDERED, that the precedent agreement between Northern and Granite State is consistent with the public good and is APPROVED; and it is

FURTHER ORDERED, that the Settlement submitted by Northern, the OCA and Staff will result in just and reasonable rates and is APPROVED except to the extent it relates to the PNGTS pipeline.

By order of the Public Utilities Commission of New Hampshire this twenty-sixth day of August, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Northern Utilities, Inc., DR 95-345, Order No. 22,061, 81 NH PUC 198, Mar. 18, 1996.

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NH.PUC*08/26/96*[89302]*81 NH PUC 651*Public Service Company of New Hampshire

[Go to End of 89302]

81 NH PUC 651

Re Public Service Company of New Hampshire

DE 95-194
Order No. 22,289

New Hampshire Public Utilities Commission

August 26, 1996

ORDER adopting settlement under which an electric utility agrees to improve its vegetation control and tree-trimming practices in an effort to better assure the reliability of its transmission and distribution systems.

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1. ELECTRICITY, § 4

[N.H.] Operating practices and efficiency — Reliability of distribution and transmission systems — Vegetation control and tree-trimming practices as a factor — Implementation of aggressive reliability improvement program — Settlement. p. 652.

2. SERVICE, § 326

[N.H.] Electric — Distribution and transmission systems — Factors affecting reliability — Vegetation control and tree-trimming practices — Implementation of aggressive reliability improvement program — Components — Vertical trimming, tree removals, voltage conversions, mowing, and herbicide management — Alternative maintenance methods — Settlement. p. 652.

APPEARANCES: Gerald M. Eaton, Esq. and Devine, Millimet and Branch by Frederick J. Coolbroth, Esq. for Public Service Company of New Hampshire; J. Michael Joyal, Esq. for the City of Dover; 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 July 12, 1995, the New Hampshire Public Utilities Commission (Commission) opened docket DE 95-194 at the request of Commission Staff (Staff), who reported in a memo of that date that Public Service Company of New Hampshire's (PSNH) reliability indices had declined and questioned PSNH's tree trimming and other vegetation control activities on its distribution and transmission system. The Commission issued an Order of Notice on July 14, 1995 scheduling a prehearing conference and first technical session which, after a number of continuances, was held on October 13, 1995.

The Office of Consumer Advocate (OCA) is a statutorily authorized intervenor. The City of Dover (Dover) requested and was granted full intervention. The Public Utility Policy Institute (PUPI) requested and was granted limited intervention.

Upon completion of the prehearing conference, the Commission authorized Staff to undertake a formal investigation, including written discovery, and ordered Staff to report to the Commission upon conclusion of its investigation, at which time the Commission would determine if further action were warranted. *See*, Order No. 21,896 (November 6, 1995).

PSNH, on December 8, 1995, filed a Motion for Protective Order regarding particular details of PSNH's vegetation control efforts and budget, which the Commission granted in Order No. 21,956 (December 28, 1995). On January 19, 1996, PSNH filed a second protective order request regarding protection of a report on

vegetation control prepared by a Northeast Utilities team. After discussion with Staff, PSNH withdrew its January 19, 1996 motion.

Negotiations among PSNH, Dover, OCA (collectively, the Parties) and Staff continued over the next few months, which resulted in a Settlement Agreement (Settlement) filed on May 31, 1996. As a limited intervenor, PUPI did not participate in the Settlement. The Commission heard evidence in support of the Settlement on July 11, 1996. Staff recommended that similar investigations into the vegetation control practices of other electric utilities be commenced as soon as possible.

II. SETTLEMENT AGREEMENT

[1, 2] The Parties and Staff agreed that PSNH's current vegetation control practices and recently adopted reliability improvement program are "consistent with its obligation to provide reliable service and represent good utility practice." They also recognized that the Settlement was designed to maintain the reliability of the PSNH system while providing PSNH with "the flexibility required to contain costs." They stated that "PSNH has initiated of its own accord an aggressive reliability improvement program intended to provide its customers with the highest order of service."

The Parties and Staff agreed to the following specific terms, which are more fully described in the Settlement:

Tree trimming. By December 31, 2000, PSNH shall have completed the trimming of its distribution system (an effort begun in 1995), with added focus on vertical trimming. In addition, by the end of the first quarter of 1998, PSNH shall develop a cyclical schedule for distribution trimming that considers, among other things, voltage levels and growing conditions.

Mowing. PSNH shall investigate whether to conduct tests of various mowing practices and undertake such tests if appropriate.

Public notice. Prior to the use of herbicides on its transmission rights of way, PSNH shall notify the public generally, as well as certain property owners defined in the Settlement, providing them with a contact person to respond to inquiries and explain one's rights to

alternative maintenance methods, pursuant to RSA 374:2-a.

Reporting to the Commission. In its reliability reports to the Commission, PSNH shall include information, gathered on an annual basis, regarding temporary interruptions measured by device operations. The reliability reports shall also include a listing of current reliability related projects undertaken pursuant to the Settlement and their costs.

Reliability improvement program. From 1996 through 2000, PSNH shall spend an additional $4 million as part of its reliability improvement program. The program shall include, among other things, voltage conversions, additional distribution back up facilities, moving sections of line, installing reliability- enhancing equipment and removing certain dangerous trees in conjunction with municipalities or landowners.

III. COMMISSION ANALYSIS

Having reviewed the Settlement and testimony in support of its terms, we are persuaded that PSNH has implemented sound vegetation control measures and that the Settlement should ensure improved reliability in coming years. Therefore, we will approve the Settlement. For purposes of clarification, however, we note that the regulations specified in section 4 of the Settlement are found at N.H. Code of Administrative Rules, Part Pes 505 and RSA 374:2-a. We also note that the trimming specifications identified in section 1 of the Settlement are those contained in Exhibit 2 of this docket.

We face significant changes in the regulation of electric service as a result of legislative and other initiatives. *See, e.g.* RSA 374-F, which mandates restructuring of the electric industry and commencement of full competition in electric supply in 1998. As we enter a competitive electricity market, it is critical that the transmission and distribution systems are reliable. Maintenance of these systems cannot be allowed to diminish. The terms agreed to in the Settlement should ensure that system reliability will continue to be a high priority for PSNH's transmission and distribution system operators.

In accordance with Staff's recommenda

Page 652

tion, we are proceeding with similar investigations into the reliability status and vegetation control practices of the other electric utilities within our jurisdiction.

Based upon the foregoing, it is hereby

ORDERED, that the Settlement Agreement reached between the Parties and Staff is APPROVED.

By order of the Public Utilities Commission of New Hampshire this twenty-sixth day of August, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DE 95-194, Order No. 21,896, 80 NH PUC

719, Nov. 6, 1995.

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NH.PUC*08/27/96*[89303]*81 NH PUC 653*Union Telephone Company

[Go to End of 89303]

81 NH PUC 653

Re Union Telephone Company

DR 95-177
Order No. 22,290

New Hampshire Public Utilities Commission

August 27, 1996

ORDER affording protective treatment to certain toll usage and intrastate revenue data which a local exchange telephone carrier uses in calculating customer refunds it was directed to make pursuant to Order No. 21,913 (80 NH PUC 744). The refund order resulted from the discovery that the carrier had unilaterally and unlawfully ceased applying credits to intraLATA toll customers that had been required as part of an approved settlement agreement, with such actions leading to overcollections and excess earnings for the carrier.

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1. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective treatment — Of underlying usage and revenue data used to calculate mandated refunds — Pursuant to settlement — Local exchange telephone carrier — Benefits of nondisclosure as outweighing those of disclosure. p. 653.

2. REPARATION, § 39

[N.H.] Method of calculation — Underlying usage and revenue data — Protective treatment — Competitive sensitivity of data — Refund as being pursuant to settlement — Local exchange telephone carrier. p. 653.

BY THE COMMISSION:

ORDER

On June 30, 1995, Union Telephone Company (Union) filed with the New Hampshire Public Utilities Commission (Commission) a Motion for Protective Treatment seeking confidentiality of the data and calculations based on the toll usage and revenue data of New England Telephone and Telegraph Company (NYNEX) within Union's service territory. The Commission granted Union's Motion for Protective Treatment by Order No. 21,732 on July 11, 1995. On November 20, 1995 the Commission found by Order No. 21,913 that Union had failed to comply with the terms of two prior Commission orders and instructed it to refund certain monies to its ratepayers

due to wrongful discontinuance of a toll credit.

On August 8, 1996, Union filed with the Commission a Motion for Protective Treatment seeking protection of the same type of data protected in Order No. 21,732 but covering the time period from October 1, 1993, to November 18, 1995. The data is necessary to complete the refund mandated in Order No. 21,913.

[1, 2] Union stated that the protective treatment was necessary because:

1) The information is competitively sensitive involving a limited geographic area regarding certain segments of competitive toll markets

Page 653

in New Hampshire and is exempt from public disclosure pursuant to RSA 91-A:5(IV);

2) Union has the information for the purposes of billing and collecting toll for NYNEX, and earlier in this docket the Commission granted NYNEX's request for protective treatment of this type of information;

3) Union believes that NYNEX regularly seeks to prevent this information from being publicly disclosed and that failure to seek protective treatment would allow competitive disadvantage. Thus, Union seeks to protect the information concerning other carriers that is commercially sensitive and intended for specific purposes such as billing and collecting toll;

4) The public good is best served by according protective treatment; and

5) The Commission granted protective treatment for the same type of information covering an earlier time period.

Union was not able to reach Staff and NYNEX prior to filing the motion. The Office of Consumer Advocate took no position.

The Commission recognizes that the information identified above is critical to review of the issues raised by Order No. 21,708. We agree that the toll usage and revenue data filed by Union appear to fall within the provisions of our confidentiality rules, N.H. Admin. Rules, Puc 204.08 and the exceptions to public disclosure under RSA 91-A:5,IV.

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 Union of non-disclosure in this case appear to outweigh the benefits to the public of disclosure.

Based upon the foregoing, it is hereby

ORDERED, that Union's Second Motion for Protective Treatment is GRANTED; and it is

FURTHER ORDERED, that this order is subject to the on-going rights of the Commission to reconsider this order in light of RSA 91-A, should circumstances so warrant.

By order of the Public Utilities Commission of New Hampshire this twenty-seventh day of August, 1996.

EDITOR'S APPENDIX

Citations in Text
[N.H.] Re Union Telephone Co., DR 95-717, Order No. 21,708, 80 NH PUC 378, June 21, 1995.
[N.H.] Re Union Telephone Co., DR 95-717, Order No. 21,913, 80 NH PUC 744, Nov. 20, 1995.
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NH.PUC*08/27/96*[89304]*81 NH PUC 654*Union Telephone Company

[Go to End of 89304]

81 NH PUC 654

Re Union Telephone Company

DR 95-311
Order No. 22,291

New Hampshire Public Utilities Commission

August 27, 1996

ORDER granting motion for confidentiality of certain data requested pursuant to an investigatory proceeding relating to alleged excess earnings by a local exchange telephone carrier.

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1. PROCEDURE, § 16

[N.H.] Discovery and inspection — Confidentiality — As to data requests in earnings investigation — Granted as to commercially sensitive information about unregulated affiliates — Local exchange telephone carrier. p. 655.

BY THE COMMISSION:

ORDER

On July 23, 1996, Union Telephone Company (Union) filed with the New Hampshire Public Utilities Commission (Commission), concurrent with its filing of Data Responses, a Second Motion for Protective Treatment, pursuant to Puc 203.04. The Second Motion should properly have been filed pursuant to Puc 204.08 and we will treat it as such.

The Second Motion sought protection of

Page 654

Data Responses to the Commission Staff's Data Requests Set 2, numbers 2 and 3; and of two of Union's responses to requests contained in a letter from Commission Finance Director dated June 12, 1996 (hereinafter, the information for which Union seeks protection shall be referred to collectively as the Responses).

Union was not able to reach Staff prior to filing the motion and the Office of Consumer Advocate took no position.

In its motion Union argues that the Responses should be afforded protective treatment because it is within the exemptions permitted by RSA 91-A:5:IV, as demonstrated by information submitted pursuant to N.H. Admin. Rules, Puc 204.08(b).

[1] Union states that the Responses contain commercially sensitive data regarding the provision of goods and services of unregulated companies. The Responses include a balance sheet, income statement and a listing of revenues, specified by number and description, from unregulated subsidiaries of UNEX, an unregulated holding company. The Responses also include tax return information belonging to UTEL. The unregulated companies, Union further states, regularly seek to prevent dissemination of the data in the ordinary course of business and it is not known by the general public.

Union asserts that if the information were made public, it would cause competitive harm to UNEX and its subsidiaries. Because the Responses are in reference to unregulated companies we need not hold Union to the strict tests of Puc 204.08 in demonstrating the particular harm which could occur.

We recognize that the Responses are critical to review of the issues raised in DR 95-311. We find that the Responses, to the extent necessary, fall within the provisions of our confidentiality rules, N.H. Admin. Rules, Puc 204.08 and the exceptions to public disclosure under RSA 91-A:5,IV.

Based upon the foregoing, it is hereby

ORDERED, that Union's Second Motion for Protective Treatment is GRANTED; and it is

FURTHER ORDERED, that this order is subject to the on-going rights of the Commission to reconsider this order in light of RSA 91-A, should circumstances so warrant.

By order of the Public Utilities Commission of New Hampshire this twenty-seventh day of August, 1996.

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NH.PUC*08/27/96*[89305]*81 NH PUC 655*Dunbarton Telephone Company

[Go to End of 89305]

81 NH PUC 655

Re Dunbarton Telephone Company

DR 96-084
Order No. 22,292

New Hampshire Public Utilities Commission

August 27, 1996

ORDER approving a local exchange telephone carrier's proposed introduction of new direct

inward dialing, digital, and switched services, the rates for which would mirror those employed by the state's dominant local exchange carrier for the same services.

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1. RATES, § 553

[N.H.] Telephone rate design — New service offerings — Direct inward dialing — Digital and switched data transmission services — Mirroring of dominant carrier's rates — No immediate need for independent cost studies — Local exchange carrier. p. 657.

2. SERVICE, § 449

[N.H.] Telephone — Special services — Direct inward dialing — Digital and switched data transmission services — Mirroring of dominant carrier's tariffs — Annual report on customer subscription levels — Local exchange carrier. p. 657.

BY THE COMMISSION:

ORDER

Page 655

On March 25, 1996 Dunbarton Telephone Company (Dunbarton) filed tariff pages proposing to introduce Direct Inward Dialing (DID) Service, DS1 1.544 Megabits per second (Mbps) Digital Service and Switched 56 Kilobit per second (Kbps) Service for effect April 22, 1996. In support of its filing, the Company stated it was mirroring NYNEX rates for the proposed services in order to incur minimal costs. In addition, on April 19, 1996, the Company resubmitted tariff pages P.U.C. - N.H. No. 5, Section 3 Sheet Q-1 Original and Section 3, Sheet Q-3 Original, correcting cross-references which were inadvertently omitted from the initial filing. On April 19, 1996 the Commission issued Order No. 22,108, suspending the proposed tariff pages. Subsequently, on April 25, 1996, the Commission revised Order No. 22,108 to correct the inadvertent omission of references, as described in the Executive Director's April 26, 1996 letter to the Parties.

On July 12, 1996 Dunbarton revised Section 3 Sheet P-4 as part of its conformance in DRM 93-221.

On July 16, 1996 the Commission issued Order No. 22,240 suspending the proposed tariff pages and directing Staff to complete its review of the filing within thirty days.

Dunbarton has corresponded with Staff regarding changes to the proposed tariff pages. Although Dunbarton has not submitted a formal revision to the original filing, Staff has provided a listing of the modifications and corrections made to date. Staff's recommendation is based upon the proposed tariff pages with these modifications and corrections, omitting the change made in conformance with DRM 93-221.

For all three services included in this filing, Dunbarton has requested rates which mirror NYNEX rates for similar services. Assuming that Dunbarton's costs are similar to those of

NYNEX, the proposed rates should allow Dunbarton to recover its costs of providing these services and provide a contribution. To the extent that Dunbarton's actual costs are less than NYNEX's, the proposed rates will increase the amount of contribution received through these services and could be a source of overearnings.

While the lack of cost support is a concern, that concern is mitigated by the precedent for mirroring NYNEX rates (Order No. 21,664 of May 22, 1995 in which Custom Local Area Signalling Services and Additional Custom Calling Services were introduced). In addition, customers have expressed an interest in obtaining at least one of these services, cost studies would delay implementation further and result in further expenses, and there is a general public interest in the availability of advanced telecommunications services.

Dunbarton's filing involves three separate services.

A. *Direct Inward Dialing (DID) Service*

Among its other attributes, DID Service is one of the services mentioned in the Commission's Draft Local Competition Rules (DRM 95-091) as a means of providing Interim Number Portability. In fact, the current draft of Puc 1309.04(a) requires that DID be a tariffed service by incumbent local exchange carriers.

Dunbarton has proposed that the rates it charges for DID Service mirror the NYNEX rates for NYNEX's "Direct Inward Dialing Service for PBX Customers." Dunbarton has not provided any cost support for these rates but has responded to Staff questioning about costs. Staff has advised the Commission that the revenue effect caused by using NYNEX rates for Dunbarton's DID Service may be minimal depending on the actual difference between NYNEX costs and Dunbarton costs and the quantity demanded of the service.

Staff has recommended that the Commission approve Dunbarton's proposed tariff pages for Direct Inward Dialing (DID) Service, subject to the modifications and corrections in Attachment A to the Staff memo. Staff has also recommended that the Commission require that Dunbarton submit a report after the first year of DID service, detailing the number of customers subscribing to the DID service and the actual costs and revenues generated by this service.

B. *DS1 1.544 Mbps Digital Service*

Dunbarton has proposed that it mirror

Page 656

NYNEX rates for NYNEX's SUPERPATH(R) 1.544 Mbps Service. Dunbarton's proposal as modified includes NYNEX's minimum service period of three months but does not include NYNEX's Variable Term Payment Plan or Provisioning and Maintenance Warranties.

Dunbarton has not provided any cost support for DS1 1.544 Mbps Digital Service. Again, there is precedent for not requiring Dunbarton to provide such cost support. Staff has advised the Commission that the revenue effect in terms of possible excess contribution caused by using NYNEX rates for Dunbarton's DS1 1.544 Mbps Digital Service may be minimal depending on the actual difference between NYNEX costs and Dunbarton costs and the quantity demanded of the service.

Staff has recommended that the Commission approve the proposed tariff pages, subject to the modifications and corrections in Attachment A to the Staff memo. Again, Staff has recommended that the Commission require that Dunbarton submit a report after the first year of DS1 1.544 Mbps Digital Service, detailing the number of customers subscribed and the actual costs and revenues generated by this service.

C. *Switched 56 Kilobit Per Second (Kbps) Service*

Switched 56 Kbps Service is a possible substitute for Integrated Services Digital Network (ISDN) Services.

Dunbarton proposes mirroring NYNEX's rates for Switched 56 Kbps Service (NYNEX's SWITCHWAY(R) Switched 56 Kbps Service), including the minimum service period requirement of one month.

As with the other two services, Dunbarton did not provide any cost support with its filing. Staff has advised the Commission that the revenue effect caused by using NYNEX rates may be minimal depending on the actual difference between NYNEX and Dunbarton costs and the quantity demanded of the service.

Although Dunbarton has not conducted a customer survey regarding demand for Switched 56 Kbps Service, there have been inquiries from customers regarding ISDN service.

Staff has recommended that the Commission approve the proposed tariff pages, subject to the modifications and corrections in Attachment A to the Staff memo. Staff has recommended that the Commission require that Dunbarton submit a report after the first year of Switched 56 Kbps Service, detailing the number of customers subscribed and the actual costs and revenues generated by this service.

[1, 2] The Commission finds that Dunbarton's introduction of DID Service, DS1 Mbps Digital Service and Switched 56 Kbps Service are in the public interest. Our precedent for permitting Dunbarton to mirror NYNEX rates and the public interest to be served by ensuring that advanced telecommunications services are available throughout New Hampshire counter the possible revenue effects caused by using NYNEX rates for Dunbarton services. Therefore, we will approve the proposed tariff pages, subject to the modifications and corrections in Attachment A to the Staff memo. Further, we will require that Dunbarton submit a report after the first year of these services, detailing the number of customers subscribing to each service and the actual costs and revenues generated by these services.

Based upon the foregoing, it is hereby

ORDERED, that the following tariff pages of Dunbarton Telephone Company are approved subject to the modifications and corrections in Attachment A to the Staff memo and explicitly excluding the change made in conformance with DRM 93-221 from this approval for effect as of the date of this order:

NHPUC No. 5

Section 3 - Sheets O-1, O-2, P-1, P-2, P-3, P-4, P-5, P-6, P-7, P- 8, P-9, P-10, Q-1, Q-2, Q-3, Q-4, Q-5, and Q-6; and it is

FURTHER ORDERED, that Dunbarton file reports after the first year of each service,

detailing the number of customers subscribing to the particular service and the actual costs and revenues generated by the particular service; and it is

FURTHER ORDERED, that Dunbarton file properly annotated tariff pages in compliance with this Commission order no later than

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30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05(k).

By order of the Public Utilities Commission of New Hampshire this twenty-seventh day of August, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Dunbarton Telephone Co., DR 95-106, Order No. 21,664, 80 NH PUC 283, May 22, 1995. [N.H.] Re Dunbarton Telephone Co., DR 96-084, Order No. 22,108, 81 NH PUC 298, Apr. 19, 1996. [N.H.] Re Dunbarton Telephone Co., DR 96-084, Order No. 22,240, 81 NH PUC 557, July 16, 1996.

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NH.PUC*08/27/96*[89306]*81 NH PUC 658*National Telephone and Communications, Inc.

[Go to End of 89306]

81 NH PUC 658

Re National Telephone and Communications, Inc.

DS 96-223
Order No. 22,293

New Hampshire Public Utilities Commission

August 27, 1996

ORDER authorizing an interexchange telephone carrier to eliminate certain of its calling card products, to introduce certain new "Sure$aver" prepaid calling card products, and to offer four other new toll or billing services.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Calling card products — Elimination of certain features and introduction of others — "Sure$aver" program — Interexchange carrier. p. 658.

2. SERVICE, § 468

[N.H.] Telephone — Toll services — Tariff revisions — Elimination of certain offerings and introduction of others — Billing options — Interexchange carrier. p. 658.

BY THE COMMISSION:

ORDER

[1, 2] On July 10, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from National Telephone & Communications, Inc., (NTC) requesting authority to make various revisions to its tariff for effect August 26, 1996.

Revisions include the removal of one of NTC's calling card products, Call Saver Service, and the resultant reformatting of the necessary tariff pages.

Language is being added to the prepaid card services, Sure$aver and Sure$aver Gold, which specifies expiration of the service. According to a company representative, these services cannot be purchased without a contract which explains that the card expires after 6 months of inactivity.

Four new services are being introduced: Easy One Dial-1 service, Easy One Flag Card service, Save Our Schools (SOS), and No Surprises-Business.

Easy One Dial-1 service offers a 30 percent discount for customers who select billing by the local exchange carrier.

Easy One Flag Card service is a calling card service accessed by dialing a toll free (800 or 888) number.

SOS is an affinity service that provides discounted outbound toll, inbound toll-free and travel card service. NTC donates a percentage of the customer's monthly billing to the organization that enrolls the customer to NTC's SOS service. The enrolling organization distributes the donation to designated schools.

No Surprises-Business is a flat rate outbound product that offers discounts based on total monthly usage and promptness of

Page 658

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payment.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize NTC to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of NTC's tariff, NHPUC No. 1 are approved for effect as filed:

1st Revised Page 1 1st Revised Page 18 1st Revised Page 19 1st Revised Page 20 1st

Revised Page 21 1st Revised Page 22 2nd Revised Page 23 in lieu of 1st Revision 2nd Revised Page 24 in lieu of 1st Revision 1st Revised Page 25 Original Page 25.1 Original Page 25.2 Original Page 25.3 1st Revised Page 26 2nd Revised Page 27 in lieu of 1st Revision;

and it is

FURTHER ORDERED, that NTC file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this twenty-seventh day of August, 1996.

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NH.PUC*08/27/96*[89307]*81 NH PUC 659*MCI Telecommunications Corporation

[Go to End of 89307]

81 NH PUC 659

Re MCI Telecommunications Corporation

DS 96-240
Order No. 22,294

New Hampshire Public Utilities Commission

August 27, 1996

ORDER approving an interexchange telephone carrier's proposed tariff revisions for "Friends and Family" Option C service and for service to persons using text telephone equipment.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll services — Tariff revisions — "Friends and Family" Option C features — Redesign of text telephone discounts — Interexchange carrier. p. 659.

2. RATES, § 572.1

[N.H.] Telephone rate design — Text telephone service — Toll services — Tariff revisions — Simplification of text telephone discount plan — Interexchange carrier. p. 659.

BY THE COMMISSION:

ORDER

[1, 2] On July 25, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from MCI Telecommunications Corporation (MCI) requesting authority to

introduce Friends and Family Option C and MCI Disconnect, and grandfather existing customers who receive the Text Telephone Discount, for effect August 23, 1996.

Friends and Family Option C offers a discount schedule for Dial One usage, and enrollment in Personal 800 Plan R. Customers with

Page 659

usage greater than $9.50 per month also receive a 50 percent discount on credit card calls.

MCI Distinct is a new discount plan for people who use a text telephone (TTY). MCI Distinct will replace and simplify the Text Telephone Discount for new customers. The Text Telephone Discount plan is being grandfathered for existing customers.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize MCI to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of MCI's tariff, NHPUC No. 1 are approved for effect as filed:

55th Revised Page 1

32nd Revised Page 2

31st Revised Page 3

36th Revised Page 3.1

5th Revised Page 3.2

Original Page 25.3.1

3rd Revised Page 25.4

Original Page 25.6;

and it is

FURTHER ORDERED, that MCI file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this twenty-seventh day of August, 1996.

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NH.PUC*08/27/96*[89308]*81 NH PUC 660*AT&T Communications of New Hampshire, Inc.

[Go to End of 89308]

Re AT&T Communications of New Hampshire, Inc.

DS 96-241
Order No. 22,295

New Hampshire Public Utilities Commission

August 27, 1996

ORDER authorizing an interexchange telephone carrier to revise its method for measuring the mileage associated with several services, including software defined network service and virtual telecommunications network service.

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1. RATES, § 583

[N.H.] Telephone rate design — Toll service — Mileage distances as a factor — Methods of measuring — Modification — As to certain distance-sensitive toll services — Interexchange telephone carrier. p. 660.

BY THE COMMISSION:

ORDER

[1] On July 25, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from AT&T Communications of New Hampshire, Inc., (AT&T) requesting authority to modify the method by which mileage is calculated for several services, for effect August 26, 1996.

Proposed revisions apply to the mileage calculation for Software Defined Network Service (SDN), State Calling Service (SCS), UniPlan and Virtual Telecommunications Network Service (VTNS) calls. Mileage will be measured from the rate center closest to the customer premises (the customer's central office), rather than from the AT&T Central Office. For Action Point Numbers (a number that routes to

a specific trunk group) mileage will be calculated from the AT&T Central Office. AT&T stated in its petition that the proposed method of calculating mileage will not affect a customer's monthly bill.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize AT&T to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of AT&T's tariff, NHPUC No. 1 are approved for effect

as filed:

Table of Contents

1st Revised Page 20

2nd Revised Page 21

Section 1

7th Revised Page 23

Section 2

8th Revised Page 3

Section 18

2nd Revised Page 2

1st Revised Page 3

Section 19

1st Revised Page 3

Original Page 3.1

Section 23

2nd Revised Page 2

2nd Revised Page 3;

and it is

FURTHER ORDERED, that AT&T file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this twenty-seventh day of August, 1996.

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NH.PUC*08/27/96*[89309]*81 NH PUC 661*Tilton-Northfield Aqueduct Company

[Go to End of 89309]

81 NH PUC 661

Re Tilton-Northfield Aqueduct Company

DF 96-210
Order No. 22,296

New Hampshire Public Utilities Commission

August 27, 1996

APPLICATION by water utility for authority to borrow an additional $64,318 so as to upgrade a new transmission facility to accommodate greater fire flow capacity; granted.

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1. SECURITY ISSUES, § 58

[N.H.] Issuance of notes — Purposes — Additions and betterments — Water utility — Upgrading of transmission facilities — To accommodate greater fire flow capacity — Water utility. p. 661.

2. WATER, § 12

[N.H.] Utility practices — Construction and equipment — Transmission facilities — Increase in mains from 12 inches to 16 inches — To accommodate greater fire flow capacity. p. 661.

BY THE COMMISSION:

ORDER

[1, 2] The New Hampshire Public Utilities Commission (Commission) authorized the Petitioner, Tilton-Northfield Aqueduct Company (Tilton-Northfield) in Docket DF 95-185 by Order No. 21,876 to issue securities in an amount not to exceed $3,124,398.13. Order No. 21,876 also found the proposal to finance the

construction of gravel packed wells in Northfield and a new transmission system to comply with the Safe Drinking Water Act (SDWA) a prudent use of the funds.

On June 26, 1996 Tilton-Northfield filed a petition with the Commission requesting authority to borrow an additional $64,317.83 to upgrade the portions of the proposed transmission facilities from 12 inch mains to 16 inch mains in order to achieve acceptable fire flows for new businesses being constructed along the route of the transmission facilities. The June 26, 1996 petition also requested authority to borrow an additional $84,000.00 to construct a modified roof over the proposed reservoir to decrease operation and maintenance expenses, but withdrew this request by letter dated August 20, 1996.

The terms and conditions for the transmission facilities financing are the same as those approved in Order No. 21,876, and we again find them reasonable. We further find that increasing the size of the transmission main to provide fire protection for new businesses is in the public interest.

ORDERED *Nisi*, that Tilton-Northfield Aqueduct Company is authorized to borrow an additional $64,317.83 under the terms and conditions set forth in Order No. 21,876 in DF 95-185; and it is

FURTHER ORDERED, the use of these additional funds to provide additional fire protection

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 September 4, 1996 and to be documented by affidavit filed with this office on or before September 18, 1996; and it is

FURTHER ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or file a written request for a hearing on this matter before the Commission no later than September 11, 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 September 18, 1996; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective September 25, 1996, unless the Commission provides otherwise in a supplemental order issued prior to the effective date; and it is

FURTHER ORDERED, that the Petitioner shall file 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-seventh day of August, 1996.

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*08/28/96*[89310]*81 NH PUC 662*Northern Utilities, Inc.

[Go to End of 89310]

81 NH PUC 662

Re Northern Utilities, Inc.

DR 96-089
Order No. 22,297

New Hampshire Public Utilities Commission

August 28, 1996

ORDER approving a natural gas local distribution company's proposed special rate contract for providing firm transportation service to the University of New Hampshire, as a precursor to the company's system expansion plans for extending a pipeline from Dover to Madbury and Durham.

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1. RATES, § 384

[N.H.] Gas rate design — Firm transportation service — Special rate contract — Components — Ten-year term — Minimum volume take — Financial analyses as relying on the discounted cash flow method — Local distribution

Page 662

company. p. 663.

2. SERVICE, § 199

[N.H.] Gas utility — Planned system expansion — Preliminary action — Execution of special rate contract for firm transportation service for expansion customer — Conversion contributions to customer from utility — Local distribution company. p. 663.

3. VALUATION, § 181

[N.H.] Charges to capital — Capital contributions to customer — For conversion of boiler equipment — Amortization schedule for — As part of system expansion plan — Local gas distribution company. p. 663.

APPEARANCES: LeBoeuf, Lamb, Greene, and MacRae by Scott Meuller, Esquire, on behalf of Northern Utilities, Inc.; Office of Consumer Advocate by Kenneth E. Traum, on behalf of the Residential Ratepayers of New Hampshire; and Eugene F. Sullivan, III, Esquire, on behalf of the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On March 28, 1996, Northern Utilities, Inc. (Northern or Company) filed with the New Hampshire Public Utilities Commission (Commission) a petition for approval of (i) a firm gas transportation agreement (Special Contract) between Northern and the University of New Hampshire (UNH or University) and (ii) the discounted cash flow (DCF) methodology underlying the Company's financial analyses. These analyses were made in support of Northern's plans to extend natural gas service to UNH and to the towns of Madbury and Durham, New Hampshire by extending an 8 inch steel line from Dover, New Hampshire through Madbury to Durham. However, in its petition, Northern made it clear that it was not seeking preapproval of the expenditures incurred by the Company associated with this system expansion.

In the Order of Notice issued on April 17, 1996, the Commission set a prehearing conference for May 7, 1996, set a deadline for intervention requests and prefiled testimony, and required the Parties and Commission Staff (Staff) to summarize their initial positions with regard to the filing for the record. Apart from the Office of Consumer Advocate (OCA), which is a statutorily recognized intervenor, no other individuals petitioned to intervene in this docket.

On July 19, 1996, Staff filed the direct testimony of Stephen P. Frink and Kenneth E. Yasuda, Sr. Staff's testimony strongly supported the Company's two-prong petition, but raised concerns related to the appropriate ratemaking treatment of certain capital cost allocations and whether portions of the expansion project were prudent and used and useful, both of these issues to be determined in Northern's next general rate case. Attached to Staff's filing was a Stipulation and Agreement (Settlement Agreement) reached in this proceeding. A duly noticed hearing to present evidence in support of the Settlement Agreement was held on August 7, 1996.

II. SETTLEMENT AGREEMENT

[1-3] The Settlement Agreement was entered into between Northern, the OCA, and Staff. While the OCA did not present prefiled testimony in this proceeding, it did actively participate in the negotiations of the Settlement Agreement. The terms, which are more fully detailed in the Settlement Agreement, are as follows:

Approval of the Special Contract. The Special Contract obligates Northern to provide firm transportation service to UNH. Key components include the "must take" minimum volume condition of 300,000 dekatherms (Dths) or MMBtus per year and the 10 year contract term. Both of these provisions are considerably more

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binding than Northern's standard tariff language for firm transportation service. The Special Contract's flat non-seasonal rate of $0.60 per MMBtu was designed to compete with the University's alternative energy costs while being sufficiently high to recover the capital investment to serve UNH sufficiently and to generate a revenue stream that clears the Company's marginal cost requirements.

Approval of the DCF Methodology. The DCF methodology which underlies the Company's financial analyses essentially compares the revenue and cost streams associated with the Durham/UNH expansion project. The Parties and Staff agree that the DCF framework is the appropriate methodology to use in evaluating the financial viability of large system expansion projects.

Rate Making Treatment Issues. The Settlement Agreement identified two major issues. First, the Parties and Staff agree that only prudently incurred system expansion costs would be included in Northern's rate base and total revenue requirement at the Company's next general rate case and it will be Northern's burden to demonstrate that the two-prong standard of RSA 378:28 has been met. Second, Northern's capital contribution of $495,000 to convert the University's boiler plant and to rehabilitate its propane system shall be included in Account No. 1303 "Miscellaneous Intangible Property" and will be amortized over 10 years. This contribution will not be included in rate base but the amortization will be included as a cost item in the Company's next general rate case.

System Expansion Cost Reporting. Northern agrees to submit to the Commission a schedule that contains actual construction and installation costs of the entire system expansion project and that distinguishes between the UNH project and the Durham and Madbury system expansion. These actual costs shall be compared with the baseline projected costs submitted in this

proceeding. This submission shall take place within 120 days of completion of the expansion project's construction and installation.

III. COMMISSION ANALYSIS

We have reviewed the record in this proceeding, specifically the individual testimonies, the Special Contract, and the Settlement Agreement, and will approve the Settlement Agreement. We find the terms and conditions of the Special Contract, as explained in the various testimonies and the Settlement Agreement, to be in the public interest. We also agree that the DCF methodology is the appropriate framework in which to evaluate the financial viability of large system expansion projects. Approval of the Settlement Agreement encompasses both the Special Contract and the DCF methodology.

Based upon the foregoing, it is hereby

ORDERED, that the Settlement Agreement, including the Special Contract and the use of the DCF methodology, is APPROVED; and it is

FURTHER ORDERED, that consistent with the Settlement Agreement, Northern will report to the Commission the actual cost of the entire system expansion project within 120 days of completion of the project's construction and installation.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of August, 1996.

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NH.PUC*08/29/96*[89311]*81 NH PUC 664*Concord Steam Corporation

[Go to End of 89311]

81 NH PUC 664

Re Concord Steam Corporation

DR 96-131
Order No. 22,298

New Hampshire Public Utilities Commission

August 29, 1996

ORDER adopting settlement authorizing a steam heating company to increase rates by $343,345. The company is allowed to recover associated rate case expense in the amount of $4,114 via a surcharge of two cents per thousand pounds of steam.

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1. RATES, § 392

[N.H.] Steam heating rate design — Factors — Weatherization adjustment — Inclusion of

certain fuel costs removed from the energy cost adjustment — Prevention of rate shock — Settlement. p. 666.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 11

[N.H.] Direct energy costs — Fuel costs — Energy cost adjustment (ECA) clause — Steam heating utility — Summer ECA — Removal of certain fuel costs to base rates — As representing summer-season maintenance requirements — Settlement. p. 666.

3. EXPENSES, § 89

[N.H.] Rate case expense — Minimization of expense — Recovery via surcharge — On basis of per thousand pounds of usage rather than per customer — Steam heating utility — Settlement. p. 666.

APPEARANCES: Peter G. Bloomfield, President, on behalf of Concord Steam Corporation; Stephen P. Frink for the Staff of the Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On June 5, 1996, Concord Steam Corporation (Concord Steam) filed with the New Hampshire Public Utilities Commission (Commission) a petition for a permanent rate increase with supporting testimony and exhibits. The petition requested an increase in revenues of $324,201 on an annual basis, an increase of 11.85% over test year revenues. Concord Steam requested that the increase be implemented in two steps, one half to be effective September 1, 1996 and the remainder effective September 1, 1997. Concord Steam did not request temporary rates.

By order of notice, the Commission sought intervenors. The Office of Consumer Advocate (OCA) is a statutorily authorized intervenor but did not appear. There were no requests for intervention.

On July 2, 1996, the Commission issued Order No. 22,222 approving the proposed procedural schedule and suspending the tariff pages.

Commission Staff (Staff) on August 1, 1996 submitted pre-filed testimony of Stephen P. Frink and Todd M. Bohan.

Concord Steam filed revised testimony on August 16, 1996. The revised filing corrected the tax effect which had been miscalculated in the original filing and increased the requested revenue by $19,144, for a total revenue increase of $343,345. Concord Steam also requested that the Energy Cost Adjustment system be modified to remove certain overhead costs. The proposed modification moved overhead costs from the fuel charge to base rates and is, therefore, revenue neutral.

On August 20, 1996 Concord Steam and Staff filed a Settlement Agreement (Settlement) resolving all issues in the rate case. The Commission appointed Executive Director and Secretary

Dr. Sarah P. Voll as Hearings Examiner to hear testimony regarding the Settlement on August 27, 1996, pursuant to RSA 363:17. Concord Steam and Staff testified in favor of the Settlement; no one appeared in opposition.

On August 22, 1996 Concord Steam filed with Staff documentation supporting rate case expenses of $4,114 and requested that the rate case expenses be collected through a $0.02 surcharge per thousand pounds of steam used over a period of 12 months.

II. RECOMMENDATIONS OF CONCORD STEAM AND THE STAFF

The issues that have been resolved by the Settlement fall into the following categories: A) Revenue Increase; B) Modification of the Energy Cost Adjustment; and C) Recoupment Surcharge.

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A. *Revenue Increase*

[1] Concord Steam and the Staff agreed that, using traditional ratemaking methodology, Concord Steam should be entitled to an annual increase in its base revenues of $462,074. However, due to its concerns of "rate shock," Concord Steam agreed to file tariff pages designed to produce additional annual base revenue of only $343,345, and to forego half of the increase in the first year. They further agreed that this amount is sufficient for Concord Steam to meet its obligation to provide efficient and effective steam service to ratepayers while remaining competitive in the marketplace.

Concord Steam and the Staff agreed that the rate base for rate making purposes is $3,409,665; that the test year proforma utility operating income (loss) is ($1,087); and that the overall cost of capital during the test year, determined using Staff's discounted cash flow (DCF) analysis, was 8.63%, consisting of a cost of equity of 8.5%, a cost of long term debt of 10.19%, and a cost of short term debt of 9.25%.

Concord Steam and the Staff agreed to utilize the weather normalization methodology employed by Staff in its testimony as well as the Staff's adjusted steam volumes and revenue figures stemming from the application of that weather normalization methodology to the test year.

B. *Modification of the Energy Cost Adjustment*

[2] Concord Steam and the Staff agreed to remove $76,500 of fuel costs used to maintain the distribution system during the summer months' Energy Cost Adjustment calculation and include those costs in base rates. For each month from May through September, Concord Steam will deduct $15,300 from the fuel costs used in calculating the monthly Energy Cost Adjustment. Concord Steam and the Staff agreed that these fuel costs are necessary to maintain the integrity of the system and are therefore more appropriately included in base rates.

C. *Recoupment Surcharge*

[3] Concord Steam and the Staff agreed that a Rate Case Expense Recoupment Surcharge of a uniform amount per thousand pounds of steam used, calculated to reimburse Concord Steam

for its rate case expenses, should be collected over a period of time no less than 12 months. When all the approved rate case expenses have been recouped, Concord Steam shall terminate the Surcharge and promptly file a reconciliation of the expenses with the revenues collected therefrom.

After having filed the Settlement with the Commission, Concord Steam filed documentation with the Staff supporting rate case expenses of $4,114 and requested that the rate case expenses be collected over 12 months through a $0.02 surcharge per thousand pounds of steam used. Staff reviewed the documentation and supported the proposal.

III. REPORT OF THE HEARINGS EXAMINER

The Hearings Examiner reviewed the Settlement and supporting testimony presented at the August 27, 1996 hearing and has recommended that the Commission approve the Settlement as filed. In the view of the Hearings Examiner, the terms will result in just and reasonable rates, are an acceptable resolution of the matters raised in this case, and appropriately balance the interests of ratepayers and Concord Steam's investors under current economic circumstances. The requested revenue increase, $343,345, is considerably less than the $462,074 amount judged allowable by the Staff under traditional ratemaking standards. The Company stated it believed that the requested amount was sufficient to cover its increased costs while maintaining its rates at a level competitive with the natural gas services that are also available to its customers. The modification of the Energy Cost Adjustment appropriately shares the burden of providing enough steam during the summer to maintain the system, currently borne solely by the approximately 25 summer customers, with the larger customer base of winter customers.

Further, the case has been handled efficiently and with a minimum of rate case

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expense, for which both Concord Steam and the Staff can be commended. The recoupment of rate case expenses as a surcharge per thousand pounds of steam, rather than per customer, is the methodology that Concord Steam has employed in the past.

The Hearings Examiner opined that the lesser revenue increase figure requested, the new Energy Cost Adjustment system, and the level and handling of the recoupment surcharge are all appropriate and consistent with other Commission Orders. The first phase of the new rates are effective for service rendered on or after September 1, 1996.

IV. COMMISSION ANALYSIS

We have reviewed the Settlement and the Report of the Hearings Examiner and agree that the terms will result in just and reasonable rates, are an acceptable resolution of the matters raised in this case, and appropriately balance the interests of ratepayers and Concord Steam's investors under current economic circumstances. We will instruct Concord Steam, therefore, to file appropriate tariffs in accordance with this Order.

Based upon the foregoing, it is hereby

ORDERED, that the Settlement entered into between Concord Steam and Staff is

APPROVED; and it is

FURTHER ORDERED, that Concord Steam be allowed to recoup rate case expenses totaling $4,114 over 12 months; and it is

FURTHER ORDERED, that Concord Steam 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 twenty-ninth day of August, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Concord Steam Corp., DR 96-131, Order No. 22,222, 81 NH PUC 512, July 2, 1996.

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NH.PUC*08/30/96*[89312]*81 NH PUC 667*Integrated Water Systems, Inc.

[Go to End of 89312]

81 NH PUC 667

Re Integrated Water Systems, Inc.

DR 94-094
Order No. 22,299

New Hampshire Public Utilities Commission

August 30, 1996

ORDER accepting settlement to provide a water utility with an increase in its monthly customer charge from $13 to $15 and an increase in consumption charges from $3.73 per thousand gallons to $5.30 per thousand gallons, to offset significant unaccounted-for water losses.

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1. RATES, § 604

[N.H.] Water rate design — Fixed charges and usage charges — Factors affecting need for additional increase — Substantial unaccounted-for water losses — Increase in monthly customer charge from $13 to $15 — Increase in consumption charge from $3.73 to $5.30 per thousand gallons. p. 668.

2. EXPENSES, § 147

[N.H.] Water utility — Leaks — Significant unaccounted-for water losses — Acceleration of leak detection efforts — Minimum of 10 hours per week. p. 668.

BY THE COMMISSION:

ORDER

On July 22, 1996, Integrated Water Systems, Inc. (Integrated or the Company) filed with the New Hampshire Public Utilities Commission (Commission) a petition to increase its fixed charges from $13 to $15 and its consumption charges from $4.83 to $5.30 per thousand

gallons. The Company stated that the increases correct the effects of a discrepancy between water production and the actual metered consumption of water, resulting in undercollection of approved revenues, and do not represent an increase to approved revenues.

In Order No. 22,041, the Commission approved the Company's current charges at the time Integrated installed meters, based upon Staff's calculations employing the Company's reported usage of 34,688,000 gallons and intended to enable the Company to earn the revenue requirement approved in Order No. 21,547, dated February 22, 1995. In its petition, Integrated represented that, according to the meter measurement of actual water consumption, usage is substantially less than that used to calculate the approved rates. Actual water consumption, derived from meter readings for April through July 1996, is approximately 22,068,000. Hence, Integrated is pumping thousands of gallons of unaccounted for water, presumed to be returning to the ground through leaks. As a result, Integrated experienced losses amounting to approximately 23.29%, during April through July, 1996. Unless the rates could be corrected upward, Integrated projected a revenue loss of $47,500 annually.

Integrated and Staff presented a Settlement Agreement to the Commission at a duly noticed hearing on August 13, 1996. The Locke Lake Colony Association (Locke Lake) was also present, participated in the hearing, and joined in the Settlement Agreement. As the result of discovery and discussions, Integrated, Locke Lake, and Staff agreed to modify the Company's rate design by increasing the fixed charge from $13 to $15 and the consumption charge from $3.73 per thousand gallons to $5.30 per thousand gallons. The new rate design will increase the average monthly customer bill from $24.17 to $30.87, an increase of 28%. The new rate design implements the revenue requirement approved by the Commission in Order No. 21,547.

Staff, Integrated, and Locke Lake further agreed that the Company shall submit to the Staff, by the 15th day of each month, monthly production and consumption reports, including a summary of progress made toward reducing the amount of unaccounted for water. Integrated agreed to increase the time spent on leak detection tasks to ten hours per week, continuing to use a listening device for the purpose.

The Settlement Agreement reached between Staff and Integrated did not contain an effective date for the increased rates. In its petition, Integrated requested an effective date of July 1, 1996. By a Motion to Amend its petition filed on August 13, 1996, the date of the hearing, Integrated requested an effective date of April 1, 1996. Integrated argued that the Company's losses from April forward were caused by miscalculation of actual consumption and that the rate approved

by the Commission was intended to result in collection of the approved revenues. Staff recommended that the rates should be effective for bills rendered September 1, 1996.

The Company also argued in its Motion to Amend that notice to customers of the increase is not required prior to the effective date. Staff disagreed, stating that the Commission's policy has been to allow customers to adjust consumption based on knowledge of the rates being charged and that RSA 378:3 requires notice to customers prior to changes in rates. The Commission requested Memoranda of Law on the subject of notice. Memoranda were submitted by Staff and Integrated.

[1, 2] We find the Settlement Agreement presented by the parties and Staff to be reasonable and in the public interest. We find that the modification to Integrated's rate design should be implemented as soon as possible. Because of the time constraints which accompany our decision to implement the rate design modification as soon as possible, we will not, in this order, rule on the question of retroactive recovery of the revenues which Integrated claims to have lost between April and August, 1996.

Based upon the foregoing, it is hereby

ORDERED, that Integrated's rate design be modified as outlined above; and it is

FURTHER ORDERED, that the rate design modification is effective for bills rendered on and after September 1, 1996; and it is

FURTHER ORDERED, that notice of the rate design modification shall be given to customers in the bills rendered for on or after

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September 1, 1996; and it is

FURTHER ORDERED, that Integrated submit monthly production and consumption reports and increase time spent on leak detection tasks to ten hours per week, both as outlined above; and it is

FURTHER ORDERED, that a Supplemental Order shall issue on or before September 30, 1996, regarding recovery, if any, of the revenues claimed by Integrated to have been lost between April 1 and August 1, 1996.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of August, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Integrated Water Systems, Inc., DR 94-094, Order No. 21,547, 80 NH PUC 95, Feb. 22, 1995. [N.H.] Re Integrated Water Systems, Inc., DR 94-094, Order No. 22,041, 81 NH PUC 166, Mar. 4, 1996.

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NH.PUC*09/03/96*[89313]*81 NH PUC 669*Retail Competition Pilot Program

[Go to End of 89313]

81 NH PUC 669

Re Retail Competition Pilot Program

DR 95-250
Order No. 22,300

New Hampshire Public Utilities Commission

September 3, 1996

MOTION by Cabletron Systems, Inc., for the convening of a technical session so as to determine how best to collect, analyze, and disseminate information and data pertinent to implementation of a pilot initiative for competitive electric services; granted.

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1. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric service — Pilot program for retail competition — Implementation issues — Sharing of information and data — Holding of technical session — To determine data collection, analysis, and dissemination procedures. p. 669.

2. PROCEDURE, § 16

[N.H.] Discovery and inspection — Information essential for implementation of a pilot program for retail electric competition — Holding of technical session — To determine data collection, analysis, and dissemination procedures. p. 669.

BY THE COMMISSION:

ORDER

[1, 2] On July 25, 1996, Cabletron Systems, Inc. (Cabletron) filed a motion with the New Hampshire Public Utilities Commission (Commission) relative to the retail electric competition pilot program (Pilot) which we established pursuant to RSA 374:26-a. In its motion, Cabletron requests that the Commission convene a technical session for the purpose of allowing interested parties "to develop a program for the collection, analysis and distribution of information, data and other materials related to the Pilot Program." Motion at 6. On August 5, 1996, Green Mountain Energy Partners, L.L.C. (GMEP) filed a partial objection to Cabletron's motion in which it argues that Cabletron's request is "over-inclusive in describing what is public data\&..." Objection at 1.

We believe that Cabletron's request is reasonable and could lead to the development of proposals that will maximize the opportunity to learn from the Pilot. Accordingly, we grant

Cabletron's motion, but reserve any determination relative to the data to be collected and what confidentiality, if any, should be accorded in the monitoring and evaluation process. We have scheduled the technical session for September

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25, 1996 at 10:00 A.M. In order to help structure the technical session, interested parties should submit written proposals to the Commission on or before September 18, 1996 in order to assist Staff in developing an agenda. We encourage interested parties to seek consensus on the issues raised in Cabletron's motion and will consider specific requests for data collection, confidentiality of that data and for monitoring and evaluating programs only after such efforts are undertaken.

Based upon the foregoing, it is hereby

ORDERED, that a technical session relative to the foregoing is scheduled for September 25, 1996 at 10:00 A.M., and shall be held at the Commission's offices at 8 Old Suncook Road, Concord New Hampshire.

By order of the Public Utilities Commission of New Hampshire this third day of September, 1996.

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NH.PUC*09/03/96*[89314]*81 NH PUC 670*Retail Competition Pilot Program

[Go to End of 89314]

81 NH PUC 670

Re Retail Competition Pilot Program

Applicant: Public Service Company of New Hampshire

DR 95-250
Order No. 22,301

New Hampshire Public Utilities Commission

September 3, 1996

APPLICATION by electric utility for approval of a schedule of charges for the provision of customer load and usage data to competitive suppliers under a pilot initiative for competitive electric services; granted on a temporary basis.

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1. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric service — Pilot program for retail competition — Provision of customer information to competitive suppliers — Sharing of customer-specific load, usage, and demand data — Schedule of charges for — Temporary approval. p. 670.

2. RATES, § 332

[N.H.] Electric rate design — Special charges — Under pilot program for retail competition — Provision of customer information to competitive suppliers — Sharing of customer- specific load, usage, and demand data — Proposed charges for — Temporary approval. p. 670.

BY THE COMMISSION:

ORDER

[1, 2] On July 26, 1996, Public Service Company of New Hampshire (PSNH) filed with the New Hampshire Public Utilities Commission (Commission) several proposed charges and a supporting workpaper relating to the provision of customer-specific load and usage data to competitive suppliers. PSNH requests that the Commission approve the charges, which allegedly reflect the incremental costs to produce the data. The data in question includes:

- Customer-specific usage data for customers who did not previously release it.
- Average load shapes by class.
- Historical interval demand data for large customers.
- Interval demand data for intermediate customers in the Pilot.

On August 5, 1996, Green Mountain Energy Partners L.L.C. (GMEP) filed an objection to PSNH's request. GMEP asserts that the one page workpaper submitted by PSNH is inadequate to establish that the proposed costs reflect PSNH's incremental cost as required by the Final Guidelines. *See*, Order No. 22,033, at 24. In support of its objection, GMEP disputes PSNH's claim that it takes an analyst 30 minutes to extract from a computer 12 months of

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data for a single customer. Accordingly, GMEP recommends that the Commission not approve the charges until the issue of PSNH's incremental costs have been investigated.

We agree with GMEP that the one page workpaper submitted by PSNH does not provide sufficient support to assure us that the proposed charges will produce revenue only to recover incremental costs. Nonetheless, we will approve the charges temporarily pending the outcome of our audit of PSNH's Pilot-related administrative costs. In the event that our audit supports GMEP's contention that the assumptions underlying the charges are unreasonable, we will direct PSNH to refund all revenues which exceed incremental cost.

Based upon the foregoing, it is hereby

ORDERED, that PSNH's proposed charges are approved on a temporary basis and will be effective as of the date of this order.

By order of the Public Utilities Commission of New Hampshire this third day of September, 1996.

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.

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NH.PUC*09/03/96*[89315]*81 NH PUC 671*Concord Electric Company

[Go to End of 89315]

81 NH PUC 671

Re Concord Electric Company

Additional applicant: Exeter and Hampton Electric Company

DR 96-034
Order No. 22,302

New Hampshire Public Utilities Commission

September 3, 1996

ORDER again requiring an electric utility group to modify its proposed 1996/1997 demand-side management (DSM) program budget so as to make its DSM endeavors more cost-effective and in keeping with total resource cost ratio guidelines.

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1. ELECTRICITY, § 4

[N.H.] Operating practices — Demand-side management (DSM) programs — Annual DSM budget filing — Necessity of modification — Factors — Low avoided-cost assumptions — Noncompliance with total resource cost ratio guidelines. p. 672.

2. CONSERVATION, § 1

[N.H.] Affiliated electric utilities — Demand-side management (DSM) programs — Annual DSM budget filing — Necessity of modification — Factors — Low avoided-cost assumptions — Noncompliance with total resource cost ratio guidelines — But no redesign of entire DSM initiative. p. 672.

BY THE COMMISSION:

ORDER

On February 1, 1996, Concord Electric Company and Exeter & Hampton Electric Company (collectively, Unitil) filed with the New Hampshire Public Utilities Commission (Commission) its Demand Side Management (DSM) proposal for the program year July 1, 1996 through June

30, 1997. Unitil proposed a DSM program budget for 1996/1997 of $848,626, which is approximately 60% of the approved budget for the program year 1995/1996.

On July 1, 1996, by Order No. 22,211, we approved a continuation of the existing DSM programs and surcharge, pending further analysis of the programs' Total Resource Cost (TRC) ratios.[1(81)] We ordered Unitil to recalculate, on a program by program basis, the TRC ratios, using its avoided cost based on the traditional methodology, *i.e.*, 5 Megawatt decrement methodology rather than a market price

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methodology. We directed Commission Staff (Staff) to review the new calculations and make a recommendation regarding the 1996/1997 proposed program. Pending final resolution, we ordered a continuation of the existing DSM programs and surcharge.

As ordered, Unitil submitted its revised calculations on July 9, 1996. With this modification and use of the traditional avoided cost methodology, the programs were either below or only marginally above the TRC ratios of 1.2 to 1 for residential programs and 1.5 to 1 for commercial and industrial programs, which were established as guidelines by Order No. 20,767 (February 16, 1993).[2(82)] Unitil noted that since the issuance of that order, particular programs with lower TRC ratios have been approved.

Staff reviewed the submission and by memorandum dated July 18, 1996, recommended rejection of Unitil's 1996/1997 programs due to the poor TRC ratios. Staff further recommended that Unitil be directed to file redesigned programs that would satisfy the Commission's TRC test.

Unitil opposed Staff's recommendation, stating in its response dated July 26, 1996 that it had already searched for ways to modify its programs to improve their ratios. It argued that redesigning the programs will not address the fundamental factor of low avoided costs, and therefore cannot meaningfully improve the cost- effectiveness of the programs. Contained within this letter was a commitment to forego $40,000 in Design, Administration and Marketing (DA&M) costs associated with DSM. It urged the Commission to approve the 1996/1997 programs as modified.

[1, 2] We have studied Unitil's submissions and Staff's recommendation, searching for a resolution of this impasse. Meeting or exceeding the TRC ratios is important not only to program participants but to other ratepayers, as program costs are borne by all. Unitil's programs are below or just barely above our guidelines.

To simply reject the filing, however, and instruct Unitil to begin again is not an appropriate response. The future of electric utility DSM obligations is a significant issue in the electric restructuring efforts before the New Hampshire Legislature and this Commission. The parameters for DSM a year or two from now may be substantially changed. This is not the appropriate time, therefore, to order Unitil to redesign its entire DSM effort.

Though we recognize that Unitil has stated that there may be no further room for modification of its programs, we will nevertheless instruct Unitil, OCA and Staff to meet once again to work on modification of its programs that are now falling below the Commission's TRC guidelines. The Commission recognizes that the issue of DSM programs will be considered in

the electric restructuring docket (DR 96-150) and it anticipates that another meeting between Staff and Unitil will lead to some agreement so that Unitil can proceed with the DSM programs for the upcoming year.

Staff should report to us within 30 days any program modifications, additions or deletions.

Based upon the foregoing, it is hereby

ORDERED, that Unitil, Staff and OCA, if it so chooses, meet and report within 30 days any additional program modifications, additions or deletions for our consideration; and it is

FURTHER ORDERED, that the existing DSM programs and surcharge remain in effect unless and until ordered otherwise.

By order of the Public Utilities Commission of New Hampshire this third day of September, 1996.

FOOTNOTES

[1]The TRC ratio is calculated by dividing the total monetary value of a program's benefits by the total monetary value of its costs. The TRC is the traditional methodology used by the Commission. It differs from the benefit-cost ratio methodology employed by Unitil in that the B/C ratio only includes the direct costs incurred by the Company and ignores the costs paid by program participants.

[2]Staff further recalculated Unitil's program ratios, using a 10 year program period rather than 20 years as Unitil had done. As Staff stated in its memo, use of 20 years was inappropriate given Unitil's testimony in an earlier phase of this docket that one could not plan meaningfully beyond 10 years.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Concord Electric Co., DR 92-184, Order No. 20,767, 78 NH PUC 102, Feb. 16, 1993.
[N.H.] Re Concord Electric Co., DR 96-034, Order No. 22,211, 81 NH PUC 491, July 1, 1996.

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NH.PUC*09/04/96*[89316]*81 NH PUC 673*Town of Hudson v. Consumers New Hampshire Water Company

[Go to End of 89316]

81 NH PUC 673

Town of Hudson
v.
Consumers New Hampshire Water Company

DE 96-227
Order No. 22,303

New Hampshire Public Utilities Commission

September 4, 1996

ORDER noting further interventions and declining to bifurcate a proceeding addressing a municipality's action in eminent domain against a water utility. A proposal had sought bifurcation into two phases, one to address the public interest in the taking and one to examine valuation/compensation issues.

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1. EMINENT DOMAIN, § 9

[N.H.] Procedure — Proposed action by municipality — To take water utility property — No bifurcation of proceedings into separate public interest and valuation/compensation phases. p. 674.

2. PROCEDURE, § 8

[N.H.] Joinder or severance — Proposed bifurcation of eminent domain proceeding — Factors affecting denial — Inextricable nature of public interest and valuation/compensation issues. p. 674.

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). By Order No. 22,286 (August 26, 1996) the Commission granted intervention requests filed by the New Hampshire Municipal Association, Hudson resident Leonard A. Smith, and the Towns of Litchfield, Windham, Derry and Londonderry. The Commission also approved a procedural schedule for the docket.

On August 12, 1996, Consumers filed a Motion to Dismiss, arguing that Hudson's authority regarding the Declaration of Taking was too narrow to include plant and property outside the municipality of Hudson. Hudson, on August 19, 1996, objected to the Motion to Dismiss, noting that the warrant article authorizing the pursuit of the Declaration of Taking was not limited to plant and property within Hudson. Commission Staff (Staff), on August 22, 1996, also objected to the Motion to Dismiss, arguing that even if there were a flaw in Hudson's authority it could be cured during the course of the proceeding.

We find no basis to grant Consumers' Motion to Dismiss. The warrant article submitted by Hudson plainly indicates on its face that it is not limited to plant and property within Hudson's municipal boundaries. In addition, as Staff points out, if there is a flaw, the schedule provides time to cure the problem. The Motion to Dismiss, therefore, is denied.

On August 12, 1996 Consumers filed a Motion to Bifurcate Proceedings (Motion to Bifurcate), arguing that whether the public interest is served by the taking should be litigated separately from the valuation of the plant and property to be taken. On August 19, 1996, Hudson objected to the Motion to Bifurcate, asserting that bifurcation would extend the time frame for concluding this docket, preclude the possibility of settlement, and make it difficult to assess the public interest in that the analysis of the rate impact on other Consumers ratepayers

could not be complete until valuation had been determined. Although at the prehearing conference Staff stated that its preliminary view was that the issues were too intertwined to make bifurcation workable, in its August 22, 1996 response, Staff supported the Motion to Bifurcate the docket into two phases. The public interest phase would include discovery on issues of valuation where relevant, followed by the valuation phase.

[1, 2] While we understand the basis for the request to separate the issues for adjudication, we believe that such an approach would ultimately be unworkable. The public good analysis will involve details of the proposed taking, including the engineering necessary to separate the systems, expense and revenue changes and the rate impact due to loss of Hudson customers as well as reduction in costs associated with no longer providing service to Hudson, and the rate impact associated with transfer of the property. We do not believe the public interest can be evaluated without all other issues, including valuation, being fully developed on the record. The Motion to Bifurcate, therefore, is denied.

At the prehearing conference Hudson resident Donald B. White, who is also a state legislator, requested limited intervention. Subsequently, on August 23, 1996, he filed a request for full intervention. There has been no objection to the request. We will grant the request.

Finally, we should note, as we did at one of the early stages of Consumers' recent rate case proceeding, that we will carefully scrutinize any request Consumers might file for recovery of expenses associated with this proceeding. Consumers, and all regulated utilities, are on notice that we will question whether representation by multiple lawyers is necessary at our proceedings, as was the case at the August 15, 1996 prehearing conference.

Based upon the foregoing, it is hereby

ORDERED, that Consumers' Motion to Bifurcate is DENIED; and it is

FURTHER ORDERED, that Consumers' Motion to Dismiss is DENIED; and it is

FURTHER ORDERED, that Donald B. White's request for full intervention is GRANTED.

By order of the Public Utilities Commission of New Hampshire this fourth day of September, 1996.

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*09/04/96*[89317]*81 NH PUC 674*Beebe River Water System

[Go to End of 89317]

81 NH PUC 674

Re Beebe River Water System

DE 95-271
Order No. 22,304

New Hampshire Public Utilities Commission

September 4, 1996

ORDER temporarily appointing commission staff as receiver for a small community water system, pending hearings to resolve ongoing disputes as to ownership of the system. Lakes Region Water Company is temporarily appointed as an agent of the commission to manage actual operations of the utility in receivership.

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1. RECEIVERS, § 3

[N.H.] Commission jurisdiction — As to appointment of a receiver — Temporary appointment — Commission staff as receiver — Pending hearings to settle ownership disputes over affected utility — Appointment of separate party as interim operator — Water utility. p. 675.

Page 674

BY THE COMMISSION:

ORDER

[1] The New Hampshire Department of Justice (DOJ) filed with the New Hampshire Public Utilities Commission (Commission) on September 25, 1995 requesting that the Commission appoint a receiver of the Beebe River Water System, pursuant to RSA 374:47-a. Because a proposed settlement agreement between the purported owners of the water system and the DOJ was not finalized, the DOJ again requested by pleading dated May 28, 1996 that the Commission appoint a receiver.

At the present time there is no operator of the Beebe River Water System and its ownership is in question. Thus, there is a failure to provide adequate and reasonable service to the

customers of the utility, and such failure creates a serious and imminent threat to the health and welfare of the customers of the utility.

Pursuant to RSA 374:47-a the Commission may appoint a receiver for 30 days where there is a serious and imminent threat to the health and welfare of customers. Therefore, we will appoint Commission Staff as a temporary receiver of the water system for 30 days to provide sufficient time to hold hearings on the issues of receivership and system ownership. A hearing on the issue of continuing receivership shall be held at September 25, 1996 at 10:00 a.m.

Because Lakes Region Water Company is familiar with the system and its many shortfalls, we will appoint it as our agent to operate the system until the date of the above referenced hearings. The rates for the services of the agent will be determined at the September 25th hearing.

Based upon the foregoing, it is hereby

ORDERED, that Lakes Region Water Company is hereby appointed our agent to act as receiver of the Beebe River Water System effective September 3, 1996 and for 30 days thereafter, pursuant to RSA 374:47-a; and it is

FURTHER ORDERED, that a hearing on the continued appointment of a receiver is scheduled for September 25, 1996 at 10:00 a.m. at the Commission.

By order of the Public Utilities Commission of New Hampshire this fourth day of September, 1996.

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NH.PUC*09/04/96*[89318]*81 NH PUC 675*Allnet Communications Services, Inc., dba Frontier Communications

[Go to End of 89318]

81 NH PUC 675

Re Allnet Communications Services, Inc., dba Frontier Communications

DS 96-245
Order No. 22,305

New Hampshire Public Utilities Commission

September 4, 1996

ORDER authorizing an interexchange telephone carrier to offer various new toll services as add-ons to existing interstate toll services. The services consist of both inbound and outbound products, as well as calling card options, and are available to both residential and business customers.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Introduction of various new products — For both residential and business subscribers — Inbound, outbound, and calling card features — Interexchange telephone carrier. p. 675.

BY THE COMMISSION:

ORDER

[1] On August 1, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from Allnet Communication Services, Inc., d/b/a Frontier Communications (Frontier) requesting authority to introduce new services for effect September 1, 1996.

Page 675

The proposed new services include Frontier's Home Connections 1+, Simplicity, Dimension, and Common Sense. Each of the services is an add-on to the interstate product. Home Connections 1+ is primarily targeted to residential customers. Simplicity, Dimension and Common Sense are primarily business products that offer various rates for inbound, outbound and travel card services depending on the type of access used, term commitment and minimum monthly usage.

We find the proposed changes to be in the public good. New services expand the choice of telephone services and foster competition in the New Hampshire intrastate toll market which allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize the introduction of Home Connections 1+, Simplicity, Dimension and Common Sense.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of Frontier's tariff, NHPUC No. 2 are approved for effect as filed:

Original Page 61.2

Original Page 61.3

Original Page 61.4

Original Page 61.5

Original Page 69.1

Original Page 69.2

Original Page 84.1

Original Page 84.2

Original Page 84.3

Original Page 84.4;

and it is

FURTHER ORDERED, that Frontier file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this fourth day of September, 1996.

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NH.PUC*09/04/96*[89319]*81 NH PUC 676*VarTec Telecom, Inc.

[Go to End of 89319]

81 NH PUC 676

Re VarTec Telecom, Inc.

DS 96-244
Order No. 22,306

New Hampshire Public Utilities Commission

September 4, 1996

ORDER approving an interexchange telephone carrier's plan to rename its "Common Cents" service "Common Line" service, to introduce enhanced prepaid calling card options, and to reduce to $5 the monthly access fee for "DimeClub" plan membership.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Calling card services — Introduction of enhanced prepaid card service — Interexchange carrier. p. 676.

2. RATES, § 582

[N.H.] Telephone rate design — Toll service — Tariff revisions — Renaming of service features — Adjustment of monthly fee for "DimeClub" package discount plan — Interexchange carrier. p. 676.

BY THE COMMISSION:

ORDER

[1, 2] On July 31, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from VarTec Telecom, Inc., (VarTec) requesting authority to introduce new services and make various revisions to its tariff for effect September 1, 1996.

Dime Works, Dime Works 800, VarTec Signature Series, VarTec Varsity Line, and Procom Gold I services are being introduced. An enhanced PrePaid Calling Card option is being added to

the PrePaid Calling Card service.

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Language to allow special promotions on seven days notice to the Commission is being introduced. Common Cents Service is being renamed to Common Line Service and various other minor textual revisions are being made. In addition, the DimeClub monthly access fee is being reduced to $5.00.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize VarTec to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, the following pages of VarTec's tariff, NHPUC No. 1 are approved for effect as filed:

2nd Revised Page 1 2nd Revised Page 3 2nd Revised Page 4 2nd Revised Page 36 in lieu of 1st Revision 1st Revised Page 42 1st Revised Page 43 1st Revised Page 46 Original Page 48.2 Original Page 48.3 Original Page 48.4 2nd Revised Page 57 1st Revised Page 59 1st Revised Page 62 Original Page 63 Original Page 64 Original Page 65 Original Page 66;

and it is

FURTHER ORDERED, that VarTec file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this fourth day of September, 1996.

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NH.PUC*09/04/96*[89320]*81 NH PUC 677*Union Telephone Company

[Go to End of 89320]

81 NH PUC 677

Re Union Telephone Company

DR 95-311
Order No. 22,307

New Hampshire Public Utilities Commission

September 4, 1996

ORDER declining to address rate case expense issues with respect to an investigatory proceeding relating to alleged excess earnings by a local exchange telephone carrier, where the

investigation was still merely in the preliminary discovery stage.

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1. EXPENSES, § 89

[N.H.] Rate case expense — Timing of consideration — Upon conclusion of proceeding — No midcourse reviews — Excess earnings investigation — Local exchange telephone carrier. p. 678.

BY THE COMMISSION:

ORDER

On November 7, 1995, the New Hampshire Public Utilities Commission (Commission) opened Docket DR 95-311 to investigate the level of earnings of Union Telephone Company (Union) and stated its intention to fully audit Union's accounting procedures and practices to determine if the rates being charged by Union are just and reasonable. The docket is now proceeding through discovery, with hearings anticipated in the fall of 1996.

The Office of Consumer Advocate (OCA) filed on August 14, 1996 a Motion for Determination of Rate Case Expense Responsibilities (OCA Motion). There were no responses filed thereto.

OCA asserts that Union is contesting this

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case "for no other reason than to delay the implementation of rate reductions that [Union's] ratepayers are entitled to" and, therefore, all rate case expenses should be the sole responsibility of shareholders.

[1] We have reviewed OCA's Motion and consider it premature at this time. Generally speaking, we determine the level of recovery of rate case expenses at the conclusion of a rate case. Because this proceeding is in the discovery phase, and because in the absence of a dispute, the Commissioners are not privy to discovery information, we are not in a position to determine if Union's efforts are designed to stall the eventual resolution of the case, as OCA asserts. OCA is free to file a motion to this effect at a later point in the proceeding if warranted, at which point we will evaluate the evidence.

Based upon the foregoing, it is hereby

ORDERED, that the OCA's Motion is DENIED WITHOUT PREJUDICE.

By order of the Public Utilities Commission of New Hampshire this fourth day of September, 1996.

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81 NH PUC 678

Re Public Service Company of New Hampshire

DR 96-285
Order No. 22,308

New Hampshire Public Utilities Commission

September 9, 1996

ORDER giving an electric utility a choice within its next fuel and purchased power adjustment clause proceeding as to whether to consider outages at the Millstone 3, Connecticut Yankee, and Maine Yankee nuclear power plants or to defer such consideration, recognizing that no associated replacement power costs would be recoverable for that deferral period.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 12

[N.H.] Direct energy costs — Fuel and purchased power adjustment clause — Scope of proceeding — Nuclear generating costs as significant issue — Impact of extended, unplanned outages — Millstone 3, Connecticut Yankee, and Maine Yankee power plants — Possible deferral of issue — Conditioned on nonrecovery of replacement power costs for the deferral period — Electric utility. p. 679.

2. ELECTRICITY, § 4

[N.H.] Generating plant — Operating practices — Nuclear station outages — At Millstone 3, Connecticut Yankee, and Maine Yankee units — Consideration within fuel and purchased power adjustment clause proceeding versus deferral of issue — Conditions for deferral. p. 679.

3. EXPENSES, § 122

[N.H.] Electric utility — Commodity costs — Replacement power costs — During nuclear plant outages — Reasonableness review — Effect of deferral — No presumption of prudence during deferral period — No recovery of replacement power costs during deferral period. p. 679.

BY THE COMMISSION:

ORDER

On August 13, 1996, the New Hampshire Public Utilities Commission (Commission) issued an Order of Notice in this proceeding at the request of Public Service Company of New Hampshire (PSNH). PSNH had not, and as yet has not, filed the proposed Fuel and Purchased Power Adjustment Clause (FPPAC) rate or supporting testimony and exhibits for the period December 1, 1996 through May 30, 1997.

In the Order of Notice we listed certain issues that would be addressed in this proceeding,

including "current outages of nuclear units

that financially affect PSNH \&... ." On August 21, 1996, PSNH filed a Motion to Defer Issues (Motion).

The Motion requested that the Commission defer consideration of the prudence of current outages at three nuclear units in which PSNH has a financial interest, namely, Millstone 3, Connecticut Yankee and Maine Yankee. For various reasons, all three units were taken out of service and were directed to remain out of service by the Nuclear Regulatory Commission (NRC). Subsequently, Maine Yankee was allowed to return to service and is currently operating. In support of this Motion, PSNH averred that the outages are ongoing and no "root cause" for the outages has been determined. PSNH further averred that the personnel needed to provide testimony relative to the outages and their root causes are now working to restore the units to service and are not available. PSNH also noted that ratepayers would not be harmed by such a deferral because any replacement power costs incurred as a result of imprudence at these units would be returned to ratepayers in the future with interest.

On August 30, 1996, Commission Staff (Staff) filed an objection to PSNH's Motion, arguing that the Commission should address these outages in this proceeding. Staff argued that it believed that the three outages in question were the result of NRC orders that would explain the root cause of the outages and, therefore, no testimony from Northeast Utilities' (NU) employees would be necessary. Staff argued in the alternative that if any of these issues were deferred, replacement power costs should not be recovered until the prudence of the outages were substantiated by PSNH. Staff noted that PSNH would not be harmed by such a deferral mechanism because it could recover these costs with interest when it established the prudence of the outages.

[1-3] On September 5, 1996, PSNH filed a Response to Staff's Objection to Motion to Defer Issues. In its response, PSNH argued that the premise of Staff's Objection, *i.e.*, that the NRC ordered Millstone 3, Connecticut Yankee and Maine Yankee to shut down, is false, as NU management made the decision to shut down the plants prior to any order of the NRC. PSNH further argued that the compilation of documents and complete analysis of the Maine Yankee event would take three to six months. PSNH further argued that it is not appropriate for replacement power costs to be deferred until the Commission takes up the outages and additionally indicated that its energy costs would decrease as a result of the outages.

We have reviewed the pleadings by PSNH and Staff and at the outset must state that we do not accept PSNH's argument that as a matter of law there is a presumption of prudence and inclusion of power costs when issues are deferred, though that has at times occurred in the past. Although we believe that it is possible to conduct an inquiry into the prudence of the three nuclear outages as part of this FPPAC proceeding, given PSNH's arguments concerning staffing constraints we will give PSNH two options. First, we can address the three nuclear outages as part of this FPPAC proceeding. The second option would be to defer consideration of the three nuclear outages, during which time no replacement power costs may be recovered. We direct PSNH to indicate which option it chooses by the date on which PSNH's petition and direct

testimony are due.

Based upon the foregoing, it is hereby

ORDERED, that PSNH is directed to file no later than the date on which it files its petition and direct testimony which of the two options it chooses regarding consideration of its three nuclear outages.

By order of the Public Utilities Commission of New Hampshire this ninth day of September, 1996.

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NH.PUC*09/09/96*[89322]*81 NH PUC 679*Public Service Company of New Hampshire

[Go to End of 89322]

81 NH PUC 679

Re Public Service Company of New Hampshire

DR 96-231
Order No. 22,309

New Hampshire Public Utilities Commission

September 9, 1996

ORDER granting protective treatment of an

Page 679

agreement between an electric utility and a cable provider for the installation of a fiber optic cable system.

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1. ELECTRICITY, § 6

[N.H.] Wires and cables — Fiber optic cable system — Installation agreement — Protective treatment. p. 681.

2. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective treatment — As to installation agreement for a fiber optic cable system — Factors — Unregulated status of cable provider — Sensitivity of commercial data cited therein. p. 681.

BY THE COMMISSION:

ORDER

The New Hampshire Public Utilities Commission (Commission) through the Commission

Staff (Staff) commenced an investigation into a proposed arrangement between Public Service Company of New Hampshire (PSNH) and FiveCom, Inc., (FiveCom), a fiber optic cable provider, after receipt of a February 21, 1996 submittal by PSNH. Pursuant to discovery requests and discussions with Staff, PSNH produced in March, May and July 1996 materials regarding a proposed fiber optic cable venture involving PSNH and its parent company, Northeast Utilities (NU), and FiveCom and a related entity, NECOM.

PSNH, on July 15, 1996, filed a Motion for Protective Order in the Matter of Fiber Optic Cable Installation on PSNH's 34.5 kV, 115 kV and 345 kV Transmission Corridors in New Hampshire (Motion). The motion sought protection for the following documents:

1) The Agreement for the Provision of Fiber Optic Facilities and Services between PSNH, Northeast Utilities, Connecticut Light and Power, Western Massachusetts Electric and FiveCom dated September 27, 1994;

2) Amendments made to Sections 16.1, 16.3, 28 and 32 of the above mentioned agreement;

3) FiveCom Project Cash Flows Diagram and FiveCom Project Estimated Annual Cash Flow Chart; and

4) NECOM Organization Chart.

PSNH stated that the protective treatment was necessary because:

1) The documents contain confidential, commercial and financial information which is exempt from public inspection and disclosure pursuant to RSA 91-A:5 IV. The agreement, amendments and charts contain specific and detailed information about the business arrangements between FiveCom and NU relating to a fiber optic network system to be constructed and operated in New Hampshire and New England, including such financial information as costs, expenses and revenues of the system. The organization chart contains financial information relative to capital investment and equity interests of the project relating to FiveCom and PSNH;

2) The information does not constitute general knowledge nor has it been published elsewhere;

3) The parties have taken measures to prevent dissemination and have contractually agreed to maintain confidentiality of proprietary information acquired during the course of performance of the agreement and to limit publicity of the agreement;

4) Competitive disadvantage is likely to occur to the companies if the information were to be made public; and

5) Non-disclosure would benefit the companies in that competitive harm to them would be avoided.

Staff concurred with the Motion. The Office of Consumer Advocate (OCA) opposed the Motion on July 24, 1996, arguing that because it was unaware of the NU/FiveCom proposal, it could not evaluate whether

confidential treatment were appropriate.

[1, 2] 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 PSNH of non-disclosure in this case appear to outweigh the benefits to the public of disclosure. We recognize that a non-regulated entity such as FiveCom is reluctant to enter into business arrangements with a regulated entity if by so doing its financial information becomes public. Consistent with our treatment of customer information in special contract filings and our application of the balancing test under RSA 91-A, we find no basis on which to require disclosure of FiveCom's confidential information.

We are sympathetic to OCA's argument that it is unable to assess the confidentiality request until it has an opportunity to understand the NU/FiveCom project. We will, therefore, order the Executive Director to deliver a set of the confidential materials to OCA for review subject to the terms of this order. Further, we direct Staff to brief OCA on the terms of the proposed NU/FiveCom project within the next two weeks.

Based upon the foregoing, it is hereby

ORDERED, that PSNH's Motion for Protective Treatment is GRANTED; and it is

FURTHER ORDERED, that this order is subject to the on-going authority of the Commission to reconsider this order in light of RSA 91-A, should circumstances so warrant.

By order of the Public Utilities Commission of New Hampshire this ninth day of September, 1996.

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NH.PUC*09/10/96*[89323]*81 NH PUC 681*Consolidated Water Company, Inc.

[Go to End of 89323]

81 NH PUC 681

Re Consolidated Water Company, Inc.

DF 96-256
Order No. 22,310

New Hampshire Public Utilities Commission

September 10, 1996

ORDER authorizing a water utility to issue up to $110,000 in one promissory note and up to $50,000 in another, so as to finance the acquisition of the Carleton Water Company Trust. The $50,000 note is financed by Carleton Water itself.

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1. SECURITY ISSUES, § 58

[N.H.] Issuance of promissory notes — Purpose — Additions and betterments —

Acquisition of another utility — Water utility — Financing of second note by company being acquired — Term of note as an issue. p. 682.

2. SECURITY ISSUES, § 120

[N.H.] Issuance of promissory notes — Conditions and restrictions — Change in term of one note — To extend repayment period — Water utility. p. 682.

BY THE COMMISSION:

ORDER

Consolidated Water Company, Inc. (Company or Consolidated), on August 13, 1996, filed with the New Hampshire Public Utilities Commission (Commission) a Petition for Authority to Issue Promissory Notes to Finance a Portion of the Acquisition Cost of the Assets of the Carleton Water Company Trust (Carleton). The Commission by Order No. 22,203 (June 18, 1996) authorized Consolidated to purchase the assets of Carleton, and to provide water service to its customers in the towns of Thornton, Middleton, Tuftonboro, and North Conway.

Consolidated had intended to use equity capital of approximately $250,000 to purchase the assets of Carleton. However, Integrated Water Systems, Inc. (Integrated), a public utility operated by the same principals as Consolidated and providing water service to approximately 614 customers in the Locke Lake area of the

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Town of Barnstead, New Hampshire, recently spent approximately $170,000 to install two new wells in its franchise area. Integrated's request for bank financing for the well project was denied and, as a result, the principals elected to use the funds set aside for Consolidated's Carleton asset purchase to install the wells.

As a substitute to 100% equity financing for the Carleton asset purchase, Consolidated requested and received approval from Community Bank & Trust Company (the Bank) for financing in the amount of $110,000 (the Bank Note). The Bank Note is for 15 years with an initial interest rate of 11.25%, said rate to be adjusted biannually based on the Bank's two-year certificate of deposit rate plus 5.5%, rounded up to the nearest 1/4%. The Bank Note is to be secured by a mortgage on the Carleton land and improvements located in the franchise areas, together with a security interest in all equipment, inventory, and accounts receivable, as well as an assignment of the stock of Consolidated.

In addition, Carleton has agreed to finance $50,000 of the purchase price (the Carleton Note). The Carleton Note is extended to Consolidated with a term of one year, with interest at the prime rate of interest, payable in quarterly installments. The Carleton Note is to be secured by a second mortgage on the land and improvements of the Carleton systems, and a security interest in all equipment, inventory, and accounts receivable.

Commission Staff recommends that this petition be approved with a modification to the terms of the Carleton note. Staff has revised projections of Consolidated's cash flow and has

serious concerns as to whether Consolidated will be able to meet its obligations under the proposed notes. According to Staff, the projections of cash flow, which include both water revenues and recoupments from Carleton's prior rate proceedings, leave no room for contingencies, given the one year repayment required in the Carleton Note. Staff indicates that a one year term for the Carleton Note requires quarterly payments of approximately $13,151; a two year term would require quarterly payments of approximately $6,844.

[1, 2] We have reviewed the petition of Consolidated and the recommendation made by Staff. We are reluctant to approve a request for financing which could leave a utility in a situation where its service to its customers may be hindered by lack of cash. In addition, we are concerned that Consolidated's ability to adequately service its debt under those conditions could cause future credit problems. As an alternative to denying the petition outright, we find it reasonable to approve the petition with modifications.

With the modifications to payment over two years, we find the petition to be consistent with the public good. We will, therefore, approve Consolidated's request to execute the Bank Note as proposed, but we will only approve financing from Carleton at a term of at least two years. The difference in quarterly payments due from Consolidated to Carleton should provide a cushion to meet any contingencies that arise, and should protect Consolidated and its customers from the harm that may arise from any possible damage to its creditworthiness.

We further note that Consolidated's principals, in using equity funds at Locke Lake rather than for the purchase of Carleton as intended, have altered their stated intentions with respect to the financing as outlined at the hearing in DE 95-300 and DE 95-331. We caution Consolidated that, because Integrated and Consolidated are separate corporations, there should be no intermingling of funds between the two. In addition, we expect proper accounting procedures to be employed to account for any and all transactions that may occur between the affiliated entities.

Based upon the foregoing, it is hereby

ORDERED, that Consolidated's request for authority, pursuant to RSA 369, to borrow from the Community Bank and Trust Company, at the terms as described herein, is approved; and it is

FURTHER ORDERED, that Consolidated's request for authority to borrow from Carleton is approved as modified, with a repayment term of no less than two years; and it is

FURTHER ORDERED, that Consolidated

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file copies of all loan documents with this Commission upon the closing of both loans.

By order of the Public Utilities Commission of New Hampshire this tenth day of September, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Integrated Water Systems, Inc., DR 95-300, Order No. 22,203, 81 NH PUC 475, June

18, 1996.

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NH.PUC*09/10/96*[89324]*81 NH PUC 683*Integrated Water Systems, Inc.

[Go to End of 89324]

81 NH PUC 683

Re Integrated Water Systems, Inc.

DF 96-264
Order No. 22,311

New Hampshire Public Utilities Commission

September 10, 1996

ORDER authorizing a water utility to issue up to $60,000 in a promissory note, so as to finance the purchase of land for a new well field.

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1. SECURITY ISSUES, § 58

[N.H.] Issuance of promissory note — Purpose — Additions and betterments — Purchase of land for a new well field — Water utility — Approval conditioned upon strengthening of equity position. p. 683.

2. SECURITY ISSUES, § 50.1

[N.H.] Factors affecting authorization — Status of capital structure — Effect of issuance of promissory note — Reduction in equity — Necessity of improving equity portion — Water utility. p. 683.

BY THE COMMISSION:

ORDER

[1, 2] On August 19, 1996, Integrated Water Systems, Inc. (Integrated or Company), a public utility providing water service in the portion of the Town of Barnstead, New Hampshire known as Locke Lake Colony, filed a petition with the New Hampshire Public Utilities Commission (the Commission) seeking authority, pursuant to RSA 369, to finance a portion of the acquisition cost of land for a new well field. The Company proposes to issue a Note (the Note) and Mortgage to Roger B. and Margaret Locke Emerson.

The Note is for $60,000 at a rate of interest of 10.5%, payable in monthly installments of principal and interest of $663.23 over 15 years. The Emersons are to hold a mortgage on the property.

Having reviewed the petition, we find the Company's proposal to finance a portion of the

well field land, and the terms and conditions of the Note, to be in the public good, and we will therefore approve the proposal. We note, however, that Staff in its recommendation to us has pointed out that the debt to equity ratio, as illustrated in the Company's Exhibit B to the petition, is becoming heavily weighted toward debt. After this proposed financing is completed, the Company will have a ratio of 74% debt to 26% equity. We are particularly concerned that Integrated, as shown on its Exhibit C, will continue to experience operating losses which depress the equity portion of the capital structure. Integrated should address this problem by strengthening its equity position. Finally, the Company has received a waiver from this Commission, in DE 96-233, to file for an expedited rate proceeding under N.H. Admin. Rules PART Puc 611 to include the cost of the new wells in rates. It should file the expedited rate request promptly.

Based upon the foregoing, it is hereby

ORDERED, that Integrated's request for authority, pursuant to RSA 369, to borrow from Roger B. and Margaret Locke Emerson, at the terms as described herein, is approved; and it is

FURTHER ORDERED, that Integrated file

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copies of all loan documents with this Commission upon the closing of the loan. By order of the Public Utilities Commission of New Hampshire this tenth day of September, 1996.

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NH.PUC*09/10/96*[89325]*81 NH PUC 684*Lakeland Management Company, Inc.

[Go to End of 89325]

81 NH PUC 684

Re Lakeland Management Company, Inc.

DR 96-002
Order No. 22,312

New Hampshire Public Utilities Commission

September 10, 1996

APPLICATION by water utility for authority to increase rates by $26,150 (79%); granted as modified pursuant to settlement in the amount of $12,847 (38.8%).

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1. VALUATION, § 213

[N.H.] Property included or excluded — Excess capacity — Plant designed to serve additional future customers — Partial recognition in current rate base — Partial deferral for future recovery — Well system — Water utility — Settlement. p. 684.

2. RATES, § 604

[N.H.] Water rate design — Service charges — Fixed quarterly charge — Consumption charge per hundred cubic feet — Separate schedules for residential and commercial customers — Settlement. p. 685.

3. SERVICE, § 191

[N.H.] Extensions — Burden of cost — As additional customers connect to system — Effect on revenue requirement — Impact of development not being fully constructed — Future rate adjustments — Water utility —
Settlement. p. 685.

4. EXPENSES, § 89

[N.H.] Rate case expense — Recovery via quarterly surcharge — Water utility —
Settlement. p. 685.

BY THE COMMISSION:

ORDER

Lakeland Management Company, Inc. (Lakeland or Company), filed with the New Hampshire Public Utilities Commission (Commission), on January 2, 1996, a petition for a rate increase for its water division pursuant to N.H. Admin. Rules PART Puc 611. Lakeland provides both water and sewer service to 103 customers in the Town of Belmont. The requested increase amounted to $26,150 or an increase of 79% over existing water revenues.

The Company indicated that its rate of return for 1994, as reported in its Annual Report to the Commission, was 1.23% and submitted evidence of capital investments and increases in operating expenses which provided the basis for the requested increase in revenues. In 1992, the Company expended $14,230 for a booster pump station, and in 1994 expended a total of $88,341 for the installation of a well and pumping equipment and a main to expand the supply of water as required by the N.H. Department of Environmental Services (DES).

Based on a generic rate of return as developed by the Commission's Economics Department in accordance with Puc 611.03, the Company requested a return on its plant investment of $10,555. With depreciation expense of $4,817, estimated electric costs of $3,300, land lease costs of $2,000, and tax effect of $5,478, the Company's total requested additional revenues of $26,150 is obtained.

[1] On May 20, 1996, the Staff of the Commission (Staff), pursuant to Puc 611.06, submitted its recommendation to the Commission for a modified rate increase for Lakeland.

Page 684

Staff recommended that the Company be authorized to increase its water revenues by $12,692, or 38.33% over existing levels. Staff recommended that 50% of the cost of the well and related assets be deferred for future recovery since the well has substantial capacity to serve

additional customers. We are aware that the principals of Lakeland are constructing a housing development known as Briarcrest within the existing franchise area. The total amount recommended for deferral was $8,009. In addition, Staff provided a corrected amount for tax effect on the return on plant, a lesser amount for electric costs based on a Company response to a discovery request, and a lesser amount for depreciation expense based on corrected service lives for some of the assets.

Pursuant to Puc 611.07, Staff and the Company met on June 17, 1996 to discuss the Staff's recommendation. The Company had objected to Staff's recommendation in a May 31, 1996 letter, indicating that it disagreed with the Staff's allocation of some costs for future recovery, and that it disagreed with the Staff's allocation of $50,000 of the plant costs to mains. As a result of the June 17 meeting, the Staff and the Company developed a Joint Recommendation of the Parties (the Joint Recommendation) which resolves all outstanding issues and provides an immediate revenue increase of $12,847 for Lakeland, or 38.8% over existing revenue, effective for service rendered on or after July 1, 1996.

[2] This increase would result in a fixed quarterly residential water charge of $62 plus a consumption charge of $3.4617 per one hundred cubic feet. For an average user of 1,500 cubic feet per quarter, the quarterly bill would total $113.92. For the Company's one Commercial A customer, the fixed quarterly charge would be $833 with a consumption charge of $12.1873 per hundred cubic feet, while the two Commercial B customers would pay a fixed quarterly charge of $278 and a consumption charge of $4.2729 per hundred cubic feet.

[3] In addition, the Joint Recommendation provides for an analysis, each October 1, from 1997 through 2001, of the number of new customers added to the system and provides for a portion of the $8,166 in deferred revenue to be added to customer rates in proportion to the number of new customers added out of total projected customers. Rates for all customers then taking service will be adjusted according to the newly calculated revenue requirement, for service rendered on or after October 1 in each year.

If the Briarcrest development is not fully built-out by October 1, 2001, the balance, if any, of the deferred revenue will be added to the revenue requirement and rates for all customers will, as a result, again be adjusted upward. The Staff and the Company also agree in the Joint Recommendation that additional expenditures for improvements to the system needed to serve Briarcrest will be factored into the annual analysis as described above.

Finally, the Joint Recommendation provides for $35,000 to be classified as mains, with a resulting change in depreciation; for procedural expenses associated with this docket to be recovered at the conclusion of the Company's existing surcharge; and for a change in the Company's sewer multiplier, the basis for its sewer billings to its customers, effective with service rendered July 1, 1996 and at such times the water rates may change as contemplated in the Joint Recommendation.

[4] On September 5, 1996, the Company submitted its request for $3,122 in procedural expenses related to this docket. Staff has recommended that this amount be reduced by $65 to $3,057, as one hour of time charged by the Company's consultant was for an audit matter unrelated to this proceeding. Therefore, according to the Joint Recommendation, the existing surcharge of $3.62 per customer per quarter should be continued beginning at the end of the

existing surcharge from a prior proceeding, until the amount of $3,057 is recovered.

We have reviewed the Joint Recommendation submitted by Staff and Lakeland and believe it to be a reasonable solution to the issues raised by Lakeland's filing. We will approve the Joint Recommendation, and authorize the Company to increase its water rates accordingly for service rendered on or after July 1, 1996. Based on the review of Staff, we find the capital additions made by the Company, to the extent they are recoverable at this time as

Page 685

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described, to be prudently incurred and to be used and useful in the provision of water service to Lakeland's customers. Additionally, we approve the recovery of $3,057 in procedural expenses as submitted by Lakeland. The Company should track the recovery of its procedural expenses to avoid any over-recovery of the amount expended in this proceeding.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that Lakeland Management Company, Inc. is authorized to increase its rates for water service rendered on or after July 1, 1996 to recover additional revenues of $12,847; and it is

FURTHER ORDERED, that Lakeland is authorized to recalculate its water rates annually as provided for herein, said rates to be effective for service rendered on or after October 1 of that year; and it is

FURTHER ORDERED, that Lakeland is authorized to recover $3,057 in procedural expenses related to this docket in a surcharge to its customers, said surcharge to begin once the existing surcharge has ended; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules, Puc 1601.05, Lakeland shall provide a copy of this Order *Nisi* to each of its customers no later than September 17, 1996 and to be documented by affidavit filed with this office on or before September 24, 1996; and it is

FURTHER ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or file a written request for a hearing on this matter before the Commission no later than October 1, 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 October 8, 1996; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective October 10, 1996, unless the Commission provides otherwise in a supplemental order issued prior to the effective date; and it is

FURTHER ORDERED, that Lakeland shall file compliance tariffs for both its water and sewer divisions with the Commission on or before October 10, 1996, in accordance with N.H. Admin. Rules, Puc 1601.04(b).

By order of the Public Utilities Commission of New Hampshire this tenth day of September, 1996.

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NH.PUC*09/16/96*[89326]*81 NH PUC 686*Public Service Company of New Hampshire

[Go to End of 89326]

81 NH PUC 686

Re Public Service Company of New Hampshire

DR 95-022
Order No. 22,313

New Hampshire Public Utilities Commission

September 16, 1996

MOTION by electric utility for an order compelling the commission staff's chief economist to testify as to his impressions of the status of negotiations as to an electric utility's "best efforts" to renegotiate certain power purchase agreements with wood-fired small power producers, as had been mandated previously; denied, where the economist was considered a liaison to negotiation sessions but not a formal party to the instant proceeding.

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1. PROCEDURE, § 19

[N.H.] Discovery and inspection — Availability of commission records — Availability of commission staff to testify — Party status as a factor — Liaison to negotiation team versus formal party standing — No compelling of staff testimony for mere liaison position — Discovery generally conducted through written data requests only. p. 688.

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

of Bridgewater Power Company, BioEnergy Corporation, Hemphill Power and Light Company, Pinetree Power, Inc., Pinetree Power-Tamworth, Inc. and Whitefield Power and Light Company; Dean, Rice and Howard by Mark W. Dean, Esq. for New Hampshire Electric Cooperative, Inc.; Charles E. Niebling and Eric Kingsley for New Hampshire Timberland Owners Association; Office of the Consumer Advocate by Michael W. Holmes, Esq. on behalf of Residential Ratepayers; Robert J. Frank, Esq. on behalf of Commission Chief Economist, Thomas C. Frantz; and Eugene F. Sullivan, III, Esq. on behalf of all other members of the Staff of the New Hampshire Public Utilities Commission.

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 (PSNH) and the six remaining "non-settling" woodburning small power producers, pursuant to Order No. 21,495 (January 9, 1995). Negotiations resulted in new agreements between PSNH and Bridgewater Power Company, BioEnergy Corporation, Hemphill Power and Light Company, Whitefield Power and Light Company, Pinetree Power, Inc. and Pinetree Power-Tamworth, Inc. (collectively the SPPs), which are now pending before the Commission.

PSNH, the SPPs, the Office of Consumer Advocate (OCA) and a State team consisting of Assistant Attorney General Wynn E. Arnold, Commission Chief Economist Thomas C. Frantz and Ernst and Young consultant Alan P. Kessler participated in the negotiations. The State team was included at the request of PSNH and the SPPs, in hopes that its presence would further negotiations that had reached an impasse. Because the State team was not representing the Commissioners or the Commission Staff (Staff) as a whole, Mr. Frantz was "bifurcated" in accordance with RSA 363:30-36. Throughout this case, Staff has been identified as Staff 1 (all Staff but Mr. Frantz) and Staff 2 (Mr. Frantz).

Each of the renegotiated agreements was assigned a docket number in the order they were filed with the Commission.[1(83)] At PSNH's request, the individual dockets and DR 94-300 were consolidated for hearing purposes and for administrative efficiency.

By Order No. 22,052 (March 12, 1996), the Commission held that it had jurisdiction to address whether PSNH has used its best efforts in renegotiating these agreements. On April 11, 1996, PSNH filed a Consolidated Motion for Clarification and Rehearing, which the Commission denied by Order No. 22,152 (May 17, 1996). The Commission stated, however, that the issue of PSNH's best efforts in these renegotiations will be addressed in Docket DR 96-148.

On July 26, 1996, PSNH filed a Request for Procedural Clarification and Expedited Consideration in which PSNH and the SPPs asked the Commission to require Mr. Frantz to provide testimony describing the general efforts of the State team and Mr. Frantz's view of the results. The Commission denied the request, by letter of the Executive Director dated July 29, 1996. In that letter the Commission stated that none of the prior orders in this docket required that Mr. Frantz file testimony as an advocate of the results of the negotiations. The Commission stated it would leave to Mr. Frantz and his counsel the determination of whether his testimony is required to assure that the Commission has a full record before it on which to make an informed decision.

Staff, on August 5, 1996 filed direct testimony of Eugene F. Sullivan, Jr., Michael D. Cannata, Jr. and Patrick J. Moast. Mr. Frantz did not file testimony.

Subsequently, in August PSNH propounded data requests on Mr. Frantz, to which Staff 2 counsel Robert J. Frank objected. After further discussions between PSNH and Staff 2 counsel, PSNH, on September 4, 1996, filed a Motion to Compel Responses to Data Requests Propounded to Thomas Frantz and/or Staff 2 and to Suspend Procedural Schedule (Motion to

Compel). Staff 1, the OCA and the New Hampshire Electric Cooperative, Inc. (NHEC) consented to that portion of the Motion to Compel regarding the delay in filing PSNH's rebuttal testimony. Staff 2 objected to the Motion to Compel on September 6, 1996.

Hearings on the renegotiated agreements are scheduled for September 18 and 19, 1996. This order will address the Motion to Compel.

II. POSITIONS OF THE PARTIES AND STAFF

A. *PSNH*

PSNH argues that Mr. Frantz should be compelled to testify, since Staff 2 is a party to the docket and should not be immune from responding to data requests, regardless of whether he files testimony. It contends that Mr. Frantz can assist the Commission in determining if the agreements are in the public interest by describing his role in the negotiations. Finally, PSNH argues that Mr. Frantz will not violate the non-disclosure agreement among those in the negotiation sessions by answering these questions and questions which Mr. Frantz believes would require the disclosure of confidential information can be modified or withdrawn on a case by case basis.

PSNH also sought to suspend the procedural schedule because Staff Data Requests were not received on time. Although PSNH sought suspension of the entire schedule, including settlement discussions and presumably the hearings, it also stated it had agreed with Staff 1 to an extension of one week to file its rebuttal testimony, from September 5 to September 11, 1996. Staff 1, OCA and NHEC consented to the request; Staff 2 took no position regarding this request. Other parties could not be reached on this issue.

B. *STAFF 2*

Staff 2 objected to the Motion to Compel, arguing that the State team is not a party to this proceeding and that Mr. Frantz's role ceased upon completion of the negotiations. Further, the Commission denied PSNH's request to compel Mr. Frantz to testify. The use of data requests was "an attempt to obtain indirectly what PSNH was unable to obtain directly." Finally, in Staff 2's view, some of the requests seek information which PSNH already possesses while others call for legal conclusions which Mr. Frantz is not competent to present.

C. *STAFF 1 AND OCA*

Staff 1 stated that while it did not represent Mr. Frantz, it was concerned that PSNH's inquiries would elicit certain confidential information while attempting to protect other information as confidential. In its view, further efforts to elicit the information favorable to PSNH while blocking information that might be unfavorable would cause Staff 1 to seek discovery on all parties to the negotiations. OCA joined Staff 1 in the statement of concern.

III. COMMISSION ANALYSIS

[1] As stated in the Executive Director's letter of July 29, 1996, we do not see a basis on which to compel Mr. Frantz to testify in this proceeding. We consider PSNH's filing of data requests on Mr. Frantz to be an effort to elicit direct testimony from him, and therefore will deny the Motion to Compel.

In litigated dockets, the Commission generally conducts discovery through written data requests filed on the sponsor of written testimony, to elicit further explanation or clarification of factual assertions or justification for recommendations contained in that testimony. In reviewing the data requests propounded to Mr. Frantz, it appears to us that the questions are not designed to clarify or explain factual information or recommendations. Most of them call for information regarding the negotiations that is equally shared by other participants in the negotiations. It does not appear to us, therefore, that Mr. Frantz's recitation of the negotiations is necessary to complete the record.

If in the course of the hearings Mr. Frantz finds he needs to rebut statements made by any witness, or clarify any misunderstanding that might be apparent on the record, he and his

counsel are free to request that he testify. He will be subject to cross-examination as would any witness before the Commission.

Though we are denying the Motion to Compel, we understand that the request for an extension of time in which to file rebuttal testimony was presumed granted, in that PSNH filed its rebuttal testimony on September 11 rather than on September 5, 1996 as ordered. We will not explore further the arguments for or against the extension request, as the testimony has now been filed. We must, however, express our resolve to see these agreements move to hearing as scheduled. The New Hampshire Legislature directed us to review expeditiously any renegotiated agreements. RSA 362-A:4-c (effective June 8, 1994). The consolidated dockets will be heard on September 18 and 19, 1996.

Based upon the foregoing, it is hereby

ORDERED, the PSNH's Motion to Compel is DENIED.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of September, 1996.

FOOTNOTES

[1]The individual dockets are: 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), and Pinetree Power, Inc. and Pinetree Power-Tamworth, Inc. (DR 95-246).

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. [N.H.] Re Public Service Co. of New Hampshire, DR 94-300, Order No. 22,052, 81 NH PUC 185, Mar. 12, 1996. [N.H.] Re Public Service Co. of New Hampshire, DR 94-300, Order No. 22,152, 81 NH PUC 382, May 17, 1996.

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[Go to End of 89327]

81 NH PUC 689

Re New Hampshire Electric Cooperative, Inc.

DR 96-213
Order No. 22,314

New Hampshire Public Utilities Commission

September 16, 1996

ORDER suspending and proposing a procedural schedule for an electric cooperative's proposed rate increase of $3 million (3.9%).

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1. CONSERVATION, § 1

[N.H.] Electric cooperative — Demand-side management plans — Proposed changes — As part of rate increase filing — Procedural schedule and suspension. p. 689.

2. RATES, § 248

[N.H.] Schedules and procedure — Suspension — As to proposed rate increase — To allow for adequate investigatory period — Proposed procedural timetable — Electric cooperative. p. 689.

3. RATES, § 432

[N.H.] Electric cooperative — Proposed rate increase — Suspension and proposed procedural schedule — To allow for adequate investigatory period — Issues to be addressed — Changes in demand-side management programs — Right-of-way clearing projects — Capital transactions. p. 689.

BY THE COMMISSION:

ORDER

[1-3] The New Hampshire Electric

Page 689

Cooperative, Inc. (NHEC), filed with the New Hampshire Public Utilities Commission (Commission) on June 27, 1996, a notice of intent to file rate schedules. On August 26, 1996, NHEC filed its Base Rate Application seeking an increase in annual revenues by approximately $3 million or 3.9%. Subsequently, on September 3, 1996, NHEC submitted a motion asking that

its requested level of permanent rates be allowed to go into effect on a temporary basis effective October 1, 1996.

The filing raises, *inter alia*, issues related to the appropriate level, allocation and design of both temporary and permanent rates. Specific issues include a change in recovery practice for Demand Side Management programs, unequal allocation of the proposed rate increases by class, a project for right of way clearing ($1 million) and other significant refinancing transactions ($3.3 million), patronage capital transactions ($0.6 million), interest on Power Cost Adjustment deferrals ($0.3 million) and Allowance for Funds Used During Construction due to construction of the Saco 115 kV transmission line and substation ($0.1 million).

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 October 3, 1996 at 10:00 a.m. at which each party will provide a preliminary summary of its position; and it is

FURTHER ORDERED, that, immediately following the Prehearing Conference, NHEC, the Staff of the Commission and the Intervenors hold a First Technical Session and allow NHEC to provide any updates or amendments to its filing; and it is

FURTHER ORDERED, that the parties discuss the following proposed schedule prior to the prehearing conference:

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

Staff and Intervenor             October 14, 1996
Testimony on Temporary
Rates
Responses to Oral Data Requests  October 18, 1996
Propounded at the 1st
Technical Session
Hearing on Temporary Rates       October 24, 1996
Data Requests by Staff and       October 29, 1996
Intervenors
Company Data Responses          November 22, 1996
Technical Session                December 2, 1996
Written Responses to Data       December 13, 1996
Requests Propounded at
Technical Session
Testimony by Staff and           January 17, 1997
Intervenors
Data Requests by the Company     January 31, 1997
Data Responses by Staff and     February 14, 1997
Intervenors
Settlement Conference           February 20, 1997
Filing of Settlement            February 27, 1997
Agreement if any
Hearing                            March 6, 1997;
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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, NHEC notify all persons desiring to be heard at this hearing by publishing a copy of this Order of Notice no later than September 20, 1996, in a statewide newspaper of general circulation, publication to be documented by affidavit filed with the Commission on or before October 4, 1996; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.02, any party seeking to intervene in the proceeding shall submit to the Commission an original and eight copies of a Petition to Intervene with copies sent to NHEC and the Office of the Consumer Advocate on or before September 30, 1996, such

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Petition stating the facts demonstrating how its rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding, as required by N.H. Admin. Rule Puc 203.02 (a)(2); and it is

FURTHER ORDERED, that any party objecting to a Petition to Intervene file said Objection on or before October 3, 1996; and it is

FURTHER ORDERED, that NHEC shall prefile all direct testimony and exhibits on the issue of temporary rates with the Commission and known parties on or before September 27, 1996; and it is

FURTHER ORDERED, that NHEC's proposed tariff, NHPUC No. 17 - Electricity, is hereby suspended pending further review and decision.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of September, 1996.

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NH.PUC*09/16/96*[89328]*81 NH PUC 691*Merrimack County Telephone Company

[Go to End of 89328]

81 NH PUC 691

Re Merrimack County Telephone Company

DR 96-081
Order No. 22,315

New Hampshire Public Utilities Commission

September 16, 1996

ORDER approving a local exchange telephone carrier's proposed introduction of advanced digital services and of basic rate interface integrated services digital network (ISDN) service, conditioned upon submission of further cost support data and a report in one year as to customer subscription levels for these services.

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1. SERVICE, § 433

[N.H.] Telephone — Introduction of advanced digital services (ADS) and basic rate interface integrated services digital network (ISDN) service — Conditions for approval — Submission of

further cost support data — Report in one year on ADS and ISDN subscription levels and revenues — Local exchange carrier. p. 691.

BY THE COMMISSION:

ORDER

On March 21, 1996, Merrimack County Telephone Company (Merrimack) filed tariff pages proposing to introduce Advanced Digital Services, Basic Rate Interface ISDN for effect April 22, 1996. In support of its filing, Merrimack filed incremental cost study support materials associated with the proposed features. On April 19, 1996, the New Hampshire Public Utilities Commission (Commission) issued Order No. 22,109 suspending the tariffs pages to allow Staff time to review the filing and materials.

On July 16, 1996, the Commission issued Order No. 22,239 suspending the proposed tariff pages and directing Staff to complete its review within thirty days. On August 16, 1996, Staff filed a status memorandum with the Commission regarding this docket and identifying a complicating issue in the rate design proposed by Merrimack.

[1] Staff has recommended that the Commission approve the proposed tariff pages subject to modifications to some of the proposed tariff pages. The modifications to Part III-General, Section 1 (all pages referred to are Originals) recommended are: (1) insertion of notification language in Paragraph III. B. of Page 4; (2) deletion of Paragraph 6 on Page 6; and (3) deletion of Paragraph 7 on Page 7. Staff has also recommended that Merrimack clarify the relationship between Municipal Calling Service (MCS) and the "normal toll charges" and "local service calling area" referred to in Paragraph IV.4.a and insert language regarding MCS, if necessary. In addition, Staff has recommended that the Commission require further information from Merrimack regarding (1)

details on its ADS capabilities, including information regarding the costs associated with offering a per channel rate; (2) detail regarding the inputs provided by Merrimack to Bellcore for this cost support so that Staff has the opportunity to review the details; and, (3) the cost support for the $35 nonrecurring charge by January 1997.

Further, Staff recommends that the Commission require Merrimack to report, one year from the effective date of this tariff, on the number of customers subscribed to the service and the actual costs and revenues generated by the service.

Based on our review of the filing and Staff's recommendation the Commission finds that the public interest is best served by approving the proposed tariff pages subject to the modifications recommended by Staff. We will require Merrimack to provide the information set forth above.

We will require that, one year and three months from the effective date of these tariff pages, Merrimack provide a report detailing the number of customers subscribed to this service and the actual costs and revenues generated by this service.

Based upon the foregoing, it is hereby

ORDERED, that the following tariff pages of Merrimack are approved for effect on September 16, 1996:

NHPUC No. 7

Part III - General

Original Pages 1, 2, 3, and 5;

and it is

FURTHER ORDERED, that tariff page NHPUC No. 7, Part III-General, Section 1, Page 4 of Merrimack is approved for effect on September 16, 1996 subject to the insertion of the following language at the end of the second paragraph in Paragraph III.B.: "The Company will notify customers of changes in any of the equipment, operations, or procedures of the Company utilized in the provision of Advanced Digital Services that 1) render any facilities provided by the customer obsolete, 2) require modification or alteration of such customer's equipment or systems, and/or 3) otherwise affects its use or performance."; and it is

FURTHER ORDERED, that tariff page NHPUC No. 7, Part III-General, Section 1, Page 6 of Merrimack is approved for effect on September 16, 1996 subject to the deletion of Paragraph IV.6; and it is

FURTHER ORDERED, that tariff page NHPUC No. 7, Part III-General, Section 1, Page 7 of Merrimack is approved for effect on September 16, 1996 subject to the deletion of Paragraph IV.7; and it is

FURTHER ORDERED, that Merrimack will cooperate with Staff to provide the additional information described above; and it is

FURTHER ORDERED, that, one year and three months from the effective date of these tariff pages, Merrimack will provide a written report to this Commission detailing the number of customers subscribed to this service and the actual costs and revenues generated by this service; and it is

FURTHER ORDERED, that Merrimack file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this sixteenth day of September, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Merrimack County Telephone Co., DR 96-081, Order No. 22,109, 81 NH PUC 299, Apr. 19, 1996. [N.H.] Re Merrimack County Telephone Co., DR 96-081, Order No. 22,239, 81 NH PUC 556, July 16, 1996.

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[Go to End of 89329]

81 NH PUC 693

Re Statewide Electric Utility Restructuring Plan

DR 96-150
Order No. 22,316

New Hampshire Public Utilities Commission

September 17, 1996

PETITION by Public Service Company of New Hampshire (PSNH) for rehearing of Order No. 22,244 (81 NH PUC 564, *supra*), in which the commission had addressed various procedural issues relative to a proceeding examining a restructuring of the state's electric utility industry but had declined to designate the proceeding as either purely adjudicative or a rulemaking; denied.

Claiming denial of due process arising from the failure to apply adjudicatory procedures to all aspects of the proceeding, PSNH had sought to recharacterize the entire proceeding as an adjudication. In rejecting that argument, the commission first notes that PSNH has not been "singled out" in the proceeding and then explains that procedural aspects of both adjudication and rulemaking will need to be employed, depending on the particular matter at issue.

Commission reiterates that the proceeding relates more to establishment of policy than to resolution of contested facts, thus negating the necessity for adjudicatory procedures for every phase of the proceeding. It also reminds all electric utilities that specific issues of contested fact may be raised for resolution via adjudication through individual filings for such.

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1. PROCEDURE, § 2

[N.H.] Commission authority to determine procedural direction — Adjudicative versus rulemaking proceedings — Issues of fact versus policy as a factor — Use of adjudicatory versus rulemaking procedures for different phases of proceeding — Affirmation. p. 695.

2. COMMISSIONS, § 46

[N.H.] Investigation and action — Choice of procedures — Adjudication versus rulemaking — Factors — Issues of fact, law, or policy — Formal adjudicatory procedures required only when contested facts at issue — Rulemaking procedures appropriate for resolving issues of law or policy — Phasing of proceeding if both facts and policy at issue. p. 695.

3. PROCEDURE, § 2

[N.H.] Commission decision governing procedural direction — In proceeding addressing restructuring of electric utility industry — Reliance on rulemaking versus adjudicatory procedures for most phases — But actual promulgation of rules not required — Use of

adjudicative procedures on issue-by-issue basis only — Affirmation. p. 695.

4. CONSTITUTIONAL LAW, § 20

[N.H.] Due process rights — As to notice and hearing requirements — In proceeding addressing restructuring of electric utility industry — Rejection of use of adjudicatory procedures for whole proceeding — Adjudicative procedures on issue-by-issue basis only — Factors — Proceeding as involving more policy than fact issues — No denial of due process by reliance more on rulemaking than adjudicatory procedures. p. 695.

BY THE COMMISSION:

ORDER

I. INTRODUCTION

This order addresses a motion for rehearing (Motion) filed with the New Hampshire Public Utilities Commission (Commission) by Public Service Company of New Hampshire

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(PSNH) relative to Commission Order No. 22,244 (July 22, 1996).

RSA 374-F directs the Commission to undertake a "generic proceeding to develop a statewide electric utility restructuring plan \&... and \&... issue a final order no later than February 28, 1997." RSA 374-F:4,II. In response to this directive, the Commission initiated this proceeding by Order of Notice issued on May 30, 1996 which stated that the Commission intended to conduct this proceeding primarily through "non-adjudicative processes." On June 21, 1996, PSNH filed a Motion for an Adjudicative Proceeding, for Designation of Staff, and for Other Relief (Initial Motion). In Order No. 22,244 (Order), the Commission denied PSNH's request to use adjudicative procedures to resolve "every issue" in this proceeding.[1(84)] The Commission noted that the development of a statewide restructuring plan requires policy decisions which will have a prospective and general application, and such issues call for decision-making which is legislative in character. The Commission agreed, however, that interim stranded cost charges should be determined through formal adjudication.[2(85)] The Commission further stated that it

> did not foreclose the possibility of making adjudicative procedures available to address other issues, but [that it] will require PSNH and other parties to specify those aspects of RSA 374-F for which they seek such procedures.

Order at 11. PSNH subsequently failed to identify any such issues and instead filed its motion for rehearing on August 21, 1996. Timely objections to the Motion were filed by Green Mountain Energy Partners, L.L.C. (Green Mountain) and Retail Merchants Association of New Hampshire (RMA).[3(86)] The Commission deliberated the issues raised in PSNH's Motion at its September 10, 1996 public meeting.

II. POSITION OF THE PARTIES

A. *PSNH'S Motion for Rehearing*

PSNH's rehearing request sets forth three separate but interrelated arguments in support of its contention that the Commission erred in refusing to characterize this entire proceeding as "adjudicative" in nature.[4(87)] These arguments are summarized below.

First, PSNH contends that the Commission incorrectly interpreted *In re Toczko*, 136 N.H. 480 (1992). Unlike the appellants in *Tockzo*, PSNH argues that it was "singled out" by the New Hampshire Legislature as the "primary target of the plan to restructure the electric utility industry." Motion at 3. PSNH bases this allegation on two grounds. First, it points out that it is the only electric utility specifically named in House Bill 1392.[5(88)] Second, it alleges that RSA 374-F:4,IV "by its terms act [sic] to require PSNH to implement a restructuring plan as a condition to any other electric utility in the state having to so implement a similar restructuring plan."[6(89)] Motion at 3, n.1. PSNH contends that because it has been "singled out," this proceeding implicates PSNH's private rights which in turn requires the Commission to use formal adjudicative procedures to resolve every issue in this proceeding.

Next, PSNH contends that the due process clause of the New Hampshire Constitution entitles it to an adjudicative proceeding for the entire docket. In support of its due process claims, PSNH relies primarily on the New Hampshire Supreme Court decision, *In re Concord Steam Corp.*, 543 A.2d 905 (N.H. 1988).[7(90)]

Finally, PSNH argues that the Commission misinterpreted RSA 374-F and the New Hampshire Administrative Procedure Act (APA), RSA 541-A. According to PSNH, the Legislature directed the Commission to utilize either the formal adjudication or rulemaking procedures set forth in the APA. PSNH alleges that the Commission may not "flaunt" the APA's procedural requirements by adopting a hybrid proceeding. Despite PSNH's contention that the Commission must adopt adjudicative procedures, it argues that the Commission could instead institute a formal rulemaking proceeding.

B. *RMA's Objection*

RMA argues that PSNH has failed to

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identify any legal basis for its alleged right to an adjudicative proceeding. According to RMA, PSNH has not been "singled out" in the present proceedings. RMA agrees with the Commission that the development of a statewide restructuring plan requires legislative-type decision-making. Finally, RMA disputes PSNH's claim that its procedural due process rights will be violated simply because it alleges its "private rights" will be affected by all aspects of the restructuring plan.

C. *Green Mountain*

Green Mountain contends that the Commission has historically served quasi-judicial and legislative functions. According to Green Mountain, PSNH's "private rights" analysis is misplaced. For instance, Green Mountain points out that PSNH may have a "private right" to just and reasonable rates under current regulation, but it does not have a "private right" to functional

unbundling of assets or to Commission legal decisions relative to state-federal jurisdiction. Green Mountain agrees with RMA that PSNH's due process rights are not compromised by the use non-adjudicative procedures in this proceeding. Finally, Green Mountain contends that the APA does not preclude the use of non-adjudicatory procedures such as the one proposed by the Commission.

III. COMMISSION ANALYSIS

[1-4] At the outset, it is critical to understand the nature of the relief requested in PSNH's Motion. PSNH has not requested, and we have not precluded, the use of formal adjudication relative to any particular issue of contested fact. Instead, PSNH requests that we broadly characterize this entire proceeding as an adjudication under the APA and allow PSNH to utilize the APA's formal adjudicatory procedures to resolve "every issue related to the restructuring of the electric utility industry."[8(91)] Motion at 2. Specifically, with regard to "every issue" related to industry restructuring, PSNH seeks to "present evidence and witnesses, the opportunity to cross-examine witnesses and all other procedural safeguards contained in RSA 541-A:31-36." Motion at 9. We interpret that request to mean that PSNH seeks to utilize those procedures for every issue which we consider in this proceeding, whether the issue is one of law, policy or fact. PSNH claims that it should not be required to identify those issues for which it desires adjudicative procedures because RSA 541-A:31,V(a) does not place the burden on a party to make such a request. We address each of PSNH's supporting arguments in the order they appear in its Motion.

A. *PSNH's Alleged "Private Rights"*

As described above, PSNH contends that "New Hampshire law requires that the Commission grant PSNH's motion for an adjudicative proceeding for the entire docket." Motion at 2. In support of this contention, PSNH relies primarily upon *In Re Toczko*, 136 N.H. 480 (1992).

By relying upon *Toczko*, PSNH seems to argue that New Hampshire case law can compel an administrative agency to utilize adjudicative procedures beyond those which are required by statute or by the New Hampshire Constitution. We have located no authority for this proposition. On the contrary, the United States Supreme Court has squarely rejected this argument in the context of federal administrative agency action. See, *Pension Benefit Guaranty Corp. v. LTV Corp.*, 110 S.Ct. 2668, 2679 (1990), cited in I *Kenneth C. Davis & Richard J. Pierce, Administrative Law Treatise*, § 8.2 (1994).

Similarly, PSNH's reliance on *In re Boston & Maine Corp.*, 109 N.H. 324 (1969) is misplaced. In that case, the Court considered the constitutionality of legislation that overturned an act of the Public Utilities Commission which the Court deemed a "judicial decision." The Court concluded that the Legislature cannot reverse an agency decision that is judicial in character because to do so would violate the separation of powers doctrine of the New Hampshire Constitution. 109 N.H. at 328. Moreover, even if that case had any applicability here, the facts are easily distinguishable and support a conclusion that is contrary to the one advanced by PSNH. The "private rights"

implicated in *Boston & Maine* involved a Commission decision to grant a utility's request to close a rail crossing. Unlike *Boston & Maine*, this proceeding is generic and requires the Commission to develop policies and standards which will be applied to all jurisdictional electric utilities.

B. *PSNH's Alleged Due Process Rights*

According to PSNH, "the due process clause [of the New Hampshire Constitution] demands that the Commission conduct an adjudicative proceeding for the entire docket." Motion at 6. Again, we interpret this assertion to mean that PSNH believes it is constitutionally entitled to a prospective guarantee that trial-like procedures will be used to resolve every contested issue in this case, whether the issue is one of law, policy or fact. This argument lacks merit.

Under the New Hampshire Constitution, no person may be denied life, liberty or property except in accordance with the "law of the land." N.H. Const. Part 1, article 15. The New Hampshire Supreme Court has consistently interpreted "law of the land" to mean due process of law. *See, Appeal of Portsmouth Trust Co.*, 120 N.H. 753, 756 (1980). The due process requirements that apply to administrative fact-finding procedure differ from those that bind judicial procedure. For instance, administrative agencies may accept hearsay and limit or deny cross-examination of witnesses. *See, Roy v. Water Supply Co.*, 112 N.H. 87, 92 (1972).

In determining whether particular government procedures violate the procedural due process requirements of the State Constitution, the Court applies a two-part analysis. *Id.*; *Riblet Tramway Co. v. Stickney*, 129 N.H. 140, 145 (1987). The first test is whether the challenged procedures concern a constitutionally protected interest. If so, the Court next determines whether the action was accompanied by "appropriate procedural safeguards." *Portsmouth Trust*, 120 N.H. at 756. In considering the necessary procedural safeguards required by the State Constitution, the New Hampshire Supreme Court considers the same factors considered by the United States Supreme Court when it evaluates due process claims under the Federal Constitution:

> First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Portsmouth Trust, 120 N.H. at 753, *quoting Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

We agree that PSNH has economic interests at stake in the restructuring of the electric industry, *Id.* at 756,[9(92)] but PSNH is not constitutionally entitled to trial-like decision-making procedures to resolve every issue in this case. It is a black letter principle of constitutional and administrative law that due process requires a trial-type hearing only when an agency engages in decision-making that involves the resolution of contested fact involving private rights. *Society for Protection of N.H. Forests v. Site Evaluation Committee*, 115 N.H. 163, 168 (1975); *See*, II *Kenneth C. Davis & Richard J. Pierce, Administrative Law Treatise* § 9.2 (1994); See also, 2 *Ronald D. Rotunda & John E. Nowak, Treatise on Constitutional Law*, § 17.8 (1992). Trial-type hearings are not required when the contested issue is one of law or policy. *Davis & Pierce*, supra, §9.5. The clear implication of PSNH's request is that it seeks to present evidence and call

witnesses on legal and policy issues. There is absolutely no basis in law for such a request.

In *Portsmouth Trust* the New Hampshire Supreme Court determined that parties in an administrative proceeding had a right to examine a confidential report of a bank examiner which contained evidence relied upon by the agency. The Court found that the aggrieved parties should have been afforded an opportunity to challenge the evidence in the report because it would "further the fact-finding process and reduce the risk of error." 120 N.H. at 758. In this

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case, PSNH has not been denied any procedural safeguard relative to a "fact-finding process." As we noted in Order No. 22,244, we have not precluded PSNH or any other party from seeking trial-like procedures relative to contested facts. PSNH has yet to identify any issue of contested fact for which it seeks procedural due process safeguards.[10(93)]

We continue to believe that the development of a statewide electric utility restructuring plan pursuant to RSA 374-F primarily requires the establishment of policy, as opposed to decisions which require fact-finding for which formal adjudication is required under the New Hampshire Constitution. If during the course of this proceeding, there develops contested issues of fact affecting private rights, we will make appropriate adjudicative procedures available to parties consistent with the protections afforded by the APA and the New Hampshire Constitution. We have already determined that the establishment of interim stranded cost charges should be conducted through formal adjudicative procedures. PSNH will be provided all of the procedural safeguards set forth in RSA 541-A:31-36 during this phase of the proceeding. We reiterate, however, that trial-type procedures will be available only for disputed issues of fact. The current procedural schedule already provides PSNH and other parties the opportunity to submit written comments on issues of policy, and in the event that any issue of law is raised by PSNH or any other party, we intend to provide an opportunity for the submission of written briefs. These procedures are more than sufficient to protect PSNH's and other parties' due process rights.

Based upon the foregoing considerations, we conclude that PSNH's due process claims are without merit.

C. *Alleged Errors of Statutory Interpretation*

Finally, PSNH contends that we misinterpreted RSA 374-F regarding the nature of the proceeding which the Legislature directed us to undertake. According to PSNH, RSA 374-F:4, XI "commands the Commission to utilize either adjudication or rulemaking as provided in the Administrative Procedure Act ... " Motion at 7. Again, it is instructive to remember the relief that PSNH seeks. PSNH has asked for unlimited use of formal adjudicative procedures to resolve "every issue" associated with the development of a statewide industry restructuring plan. Specifically, it insists on the opportunity to "present evidence and witnesses, the opportunity to cross-examining witnesses, and all other procedural safeguards contained in RSA 541-A:31-36."

We conclude that even if we declared this entire proceeding an "adjudication," the APA only requires the use of trial-like procedures to resolve issues of contested adjudicative fact. We would not be required under the APA to offer those procedures to resolve issues of policy or law.

Again, this is a black letter principle of administrative law. *See, Davis & Pierce*, supra, § 8.4.

More importantly, we continue to believe that the Legislature intended to grant us the procedural flexibility necessary to develop a statewide restructuring plan no later than February 28, 1997. If PSNH were given the opportunity to present testimony and cross examine witnesses on every issue of policy which we consider in this proceeding, we believe that it would be impossible to fulfill our legislative mandate.

Moreover, PSNH acknowledges that under New Hampshire law, it is not entitled to the formal adjudication procedures established by RSA 541-A:31-36 unless we engage in decision-making that implicates PSNH's "private rights." *See, Appeal of Toczko*, 136 N.H. 480, 485 (1992). In defining a "contested case" under RSA 541-A:1, IV, *Toczko* correctly distinguishes between legislative-type activities of an agency and those which "single out" a party. PSNH contends it was "singled out" in this proceeding because it is the only utility whose name was mentioned in HB 1392 and because under that law other utilities will not be required to implement a restructuring plan until PSNH does. This argument fails when one examines the various express and implied directives of RSA 374-F which affect not only PSNH's rights and interests, but those of other electric utilities and the general public. *Toczko*, 136

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N.H. at 485. The bill does not "single out" PSNH. The bill requires the Commission to promulgate and implement a plan for restructuring the electric industry. The bill sets out a large number of principles to which the plan must adhere. None of these requirements "singles out" PSNH. The principles apply to all electric utilities, and the plan must apply to all electric utilities. When there are implementation events which require company-specific facts, these events will be treated appropriately.

Finally, as we found in Order No. 22,244, we do not believe that the Legislature intended to direct us to undertake a formal rulemaking in this proceeding. RSA 374-F:4, II directs us to "... undertake a generic proceeding to develop a statewide industry restructuring plan ... [and] issue a final order no later than February 28, 1997." RSA 374-F:4, II (emphasis added). In our view, the directive to issue an "order" which establishes a "restructuring plan" does not, in our view, support the conclusion that Legislature intended for us to implement RSA 374-F through a formal rulemaking. Cf., RSA 365:8 and 374:50.

D. *Designation of Staff*

As we noted in Order No. 22,244, RSA 363:33 allows us to separate this proceeding into adjudicative and non-adjudicative "phases or segments" for purposes of designating Staff. At a minimum, we indicated our intention to set interim stranded costs through adjudication. Therefore, we will entertain requests to designate Staff pursuant to RSA 363:32 for that segment of this proceeding. If any other issues develop during the course of this proceeding which fall within the APA's definition of a "contested case" (RSA 541-A:1, IV), we will further segment this proceeding and designate Staff accordingly.

IV. CONCLUSION

In conclusion, PSNH has no constitutional or statutory right to formal adjudicative

procedures in this proceeding except with respect to issues of adjudicative fact. On September 10, 1996, we released our preliminary restructuring plan. If PSNH or any other party seeks trial-like procedures to determine issues of adjudicative fact, those issues should be identified. Again, we have already determined that the establishment of interim stranded cost charges will require utility-specific factual inquiries for which such procedures are appropriate. Any party seeking to present evidence or call witnesses in this proceeding relative to any other issue of adjudicative fact should file a request with the Commission by September 27, 1996. Any such request should clearly identify each factual issue and specify the witness(es) who would testify and the estimated time needed for such testimony.

Based upon the foregoing, it is hereby

ORDERED, that PSNH's Motion is DENIED; and it is

FURTHER ORDERED, that any party who seeks to raise issues of contested fact in this proceeding must do so by filing with the Commission the information described above no later than September 27, 1996.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of September, 1996.

FOOTNOTES

[1]*See*, PSNH's Initial Motion, p.1-2.

[2]The Commission also denied PSNH's request to designate Staff as either advisory or adjudicative pursuant to RSA 363:32 at this early stage of the proceeding, but indicated that it would consider any such requests when it undertook an adjudication relative to specific issues. For instance, the Commission indicated that it was inclined to grant a request to bifurcate Staff relative to setting interim stranded cost charges. Order No. 22,244 at 13.

[3]Granite State Taxpayers, Inc., the City of Claremont and EnerDev, Inc., joined in RMA's Objection.

[4]PSNH requests that if the Commission grants its rehearing request relative to the nature of this proceeding, that the Commission also designate Staff pursuant to RSA 363:33.

[5]In its legislative findings, the General Court observed that "New Hampshire has the highest average electric rates in the nation and ... electric rates for most citizens may further increase during the remaining years of the (PSNH) rate agreement ... "

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Chapter 129:1, I. (HB 1392)

[6]That portion of the restructuring legislation provides that "no utility shall be required to implement its compliance filing resulting from the provisions of this chapter, until compliance filings representing at least 70 percent of retail electric rates (measured in kilowatt hours per year) have been or are being implemented." RSA 374-F:4,IV.

[7]Throughout the Motion, PSNH refers to New Hampshire Supreme Court decisions without

citing to the official reporter for such decisions, New Hampshire Reports. Because the Commission library does not maintain Atlantic Reports, in the future we would prefer citations to New Hampshire Reports. *Concord Steam Corp.* is located at 130 N.H. 422 (1988).

[8]Those procedures are set forth in RSA 541-A:31-36. They include, *inter alia*, the opportunity for parties to present evidence and argument on all issues, cross examine witnesses, and require agencies to make separate findings of fact and rulings of law.

[9]In that case the Court determined that a validly chartered bank has a legally protected right to engage in the business of banking even though its charter did not entitle the plaintiff to be free from competition. Similarly, in this case PSNH has been granted a franchise to provide electric service as a public utility, even though it does not have a legally protected right to be free from competition. See, Appeal of Public Service Co. of New Hampshire, N.H. (1996), 676 A2d. 101 (N.H. 1996).

[10]This is a fundamental principle of administrative law that is derived from the concept of summary judgment in civil procedure. Davis & Pierce, supra, at § 9.5. In addition, the U.S. Supreme Court distinguishes between contested "adjudicative" facts and those which are "legislative" in character. *Id.* Adjudicative facts pertain to parties and their conduct. Legislative facts involve general facts that help a tribunal decide questions of law, policy and discretion. Id. A trial-type hearing is only required for the determination of adjudicative facts.

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.

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NH.PUC*09/17/96*[89330]*81 NH PUC 699*Public Service Company of New Hampshire

[Go to End of 89330]

81 NH PUC 699

Re Public Service Company of New Hampshire

DR 96-231
Order No. 22,317

New Hampshire Public Utilities Commission

September 17, 1996

ORDER declaring the entity providing the installation of a fiber optic cable system for an electric utility not to be a public utility subject to commission regulation.

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1. PUBLIC UTILITIES, § 64

[N.H.] Cable provider — As installing fiber optic cable system for electric utility — No control or operation of system thereafter — Cable provider as not serving general public — No public utility status. p. 700.

BY THE COMMISSION:

ORDER

The New Hampshire Public Utilities Commission (Commission), through the Commission Staff (Staff) in February 1996 commenced an investigation into the fiber optic cable installation proposed by the Northeast Utilities System (NU), including Public Service Company of New Hampshire (PSNH) and FiveCom, Inc. (FiveCom). By Order No. 22,309 (September 9, 1996), the Commission granted protective treatment over the agreement for provision of fiber optic facilities and other information regarding financing and control of the project. PSNH is one of the signatories to the agreement.

PSNH and FiveCom propose a fiber optic cable on PSNH's transmission corridors in New Hampshire. FiveCom, upon completion of the installation, will have no control over the

system that is reserved for PSNH. Further, the rest of the system will be used by FiveCom's customers, who are "regulated carriers" as defined by the Federal Communications Commission or this Commission.

FiveCom, on September 9, 1996, submitted a statement stating its intention to deal only with "regulated carriers." FiveCom further stated it would not provide retail services or any service to the public, and "shall not do so until and unless it has approval from [this Commission]."

FiveCom stated that in particular circumstances it would seek Commission interpretation of whether service to a "specialized entity" such as a cable television operator transporting lightpath between franchises it operates, a radio station communicating between its studio tower or a broadcast television station moving carriage from studio to tower would require it to become regulated as a public utility. FiveCom stated it would not enter into service with a specialized entity until so authorized by the Commission. *See*, Statement of Victor Colantonio, President of FiveCom.

[1] Based on the commitments of FiveCom in the September 9, 1996 letter, it appears that FiveCom is not providing service to the public, a necessary element of a public utility operation. We find, therefore, that FiveCom's operations do not fall within the meaning of a public utility, as defined by RSA 362:2. We will not exercise jurisdiction over FiveCom provided it continues to operate within the confines set forth in the September 9, 1996 statement.

Whether PSNH's role in operation of a portion of the fiber optic cable makes it a telecommunications utility as well as an electric utility is now being evaluated by the Commission Staff. This order should in no way be construed as a finding regarding PSNH's

participation in the proposed project.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that according to the statement of its President, FiveCom is not a public utility pursuant to RSA 362:2 and shall not be regulated by the Commission; 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 September 24, 1996 and to be documented by affidavit filed with this office on or before October 1, 1996; and it is

FURTHER ORDERED, that all persons interested in responding to this order 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 8, 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 October 15, 1996; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective October 17, 1996, unless the Commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of September, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 96-231, Order No. 22,309, 81 NH PUC 679, Sept. 9, 1996.

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NH.PUC*09/17/96*[89331]*81 NH PUC 700*Nuclear Emergency Planning

[Go to End of 89331]

81 NH PUC 700

Re Nuclear Emergency Planning

DE 96-289
Order No. 22,318

New Hampshire Public Utilities Commission

September 17, 1996

ORDER, pursuant to petition by the state's Office of Emergency Management, assessing North Atlantic Energy Service Corporation $1.319 million for the estimated costs of maintaining the state's radiological emergency response plan for the Seabrook nuclear power plant.

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. 701.

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. 701.

BY THE COMMISSION:

ORDER

The New Hampshire Office of Emergency Management (NHOEM) submitted a letter on August 22, 1996 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 1997 consists of two parts: (1) $1,319,553 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	$ 365,062
16 Non-Classified Employees	$ 33,000
18 Duty Officer	$ 3,500
20 Current Expenses	$ 50,000
28 Rent	$ 29,891
30 Equipment	$ 20,000
40 Indirect Cost	$ 15,001
46 Consultants	$ 38,000
49 DPHS	$ 250,000
50 Personnel-Temporary/Overtime	$ 64,094
60 Fringe Benefits	$ 148,430
70 In State Travel	$ 15,000
80 Out of State Travel	$ 6,500
91 Rockingham County	$ 47,214
94 Local Support	$ 167,736
96 State Agencies	$ 32,125

97 Other Support Agencies	$ 34,000
TOTAL ASSESSMENT	$ 1,319,553

The NHOEM requests that payments of the above assessment be made in monthly installments. The NHOEM also requests that it be allowed to adjust monthly cash draws based on previous monthly expenditures in order to minimize excess funds at the end of the fiscal year.

[1, 2] 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

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> generating facility which affects municipalities under RSA 107-B:1, II, in such proportions as the chairman of the public utilities commission determines to be fair and equitable.

The NHOEM submits, and the supporting schedules support, that the above stated costs will provide the resources and personnel required by the various State agencies and outside agencies.

Pursuant to RSA 107-B:1, I have reviewed the NHOEM's request and supporting data. I find that the budget costs contained therein relate to preparing the plan and providing equipment and materials necessary to implement it. I also find that the direct assessment of equipment and/or services is related to preparing the RERP and providing equipment and/or services necessary to implement it. I, therefore, approve the assessment of $1,319,553 for Fiscal Year 1997 and the direct provision of equipment and/or services as specified above.

The NHOEM proposed billing mechanism is reasonable. Accordingly, NHOEM is authorized to require that North Atlantic payment of this assessment be drawn on anticipated monthly expenditures and, further, NHOEM is authorized to adjust monthly cash draws based on previous monthly expenditures. It should be noted that the Fiscal Year 1996 assessment was $58,485 in excess of actual costs.

Based upon the foregoing, it is hereby

ORDERED, that $1,319,553 for Fiscal Year 1997 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 $1,319,553 on a monthly basis; and it is

FURTHER ORDERED, that the payments of this assessment by North Atlantic be drawn on anticipated monthly expenditures; and it is

FURTHER ORDERED, that the NHOEM is authorized to adjust monthly cash draws based on previous monthly expenditures; and it is

FURTHER ORDERED, that NHOEM provide the Treasurer of the State of New Hampshire with the amount of each monthly installment by the 15th day of the previous month (with an information copy to be provided to the Chairman of the Commission) so that the Treasurer may then bill North Atlantic in accordance with the NHOEM statement; and it is

FURTHER ORDERED, that North Atlantic make payment on or before the end of the same month.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of September, 1996.

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NH.PUC*09/17/96*[89332]*81 NH PUC 702*GE Capital Communications Services Corporation

[Go to End of 89332]

81 NH PUC 702

Re GE Capital Communications Services Corporation

DS 96-253
Order No. 22,319

New Hampshire Public Utilities Commission

September 17, 1996

ORDER authorizing an interexchange telephone carrier to introduce several new residential outbound switched access services.

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1. RATES, § 592

[N.H.] Telephone rate design — Toll service — Switched access service options — New outbound calling plans — For residential customers — Interexchange carrier. p. 702.

BY THE COMMISSION:

ORDER

[1] On August 9, 1996, the New Hampshire Public Utilities Commission

(Commission) received a petition from GE Capital Communication Services Corporation (GE Exchange) requesting authority to introduce its tariff, NHPUC No. 2, for effect September 9, 1996.

GE Exchange's tariff No. 2 introduces several new services: Multi-dwelling Unit (MDU) Residential Outbound Switched Access Service, Residential Outbound Switched Access Service, Prepaid Calling Card Service and Ultimate Affinity Calling Card Service. In addition, revisions to GE Exchange's tariff introduced in this filing include revised language regarding rendering and payment of bills for residential customers and an increase in Operator Toll Assistance rates.

MDU Residential Outbound Switched Access Service and Residential Switched Access Service are both outbound toll products offered to residential customers distinguished by whether the customer lives in a multi-dwelling unit or not.

Prepaid Calling Card Service is GE Exchange's proposed debit card service. Ultimate Affinity Calling Card Service allows customers to bill charges for a call to a credit card.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize GE Exchange to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

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

FURTHER ORDERED, that GE Exchange file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this seventeenth day of September, 1996.

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NH.PUC*09/17/96*[89333]*81 NH PUC 703*Lakes Region Water Company, Inc.

[Go to End of 89333]

81 NH PUC 703

Re Lakes Region Water Company, Inc.

DF 96-249
Order No. 22,320

New Hampshire Public Utilities Commission

September 17, 1996

ORDER authorizing retroactively a water utility's issuance of 20 shares of stock, where the utility had inadvertently failed to obtain prior commission approval.

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1. SECURITY ISSUES, § 38

[N.H.] Necessity of commission authorization — Prior to issuances of stock. p. 703.

2. SECURITY ISSUES, § 31

[N.H.] Commission authority — To ratify unauthorized issuances — Stock distribution to corporate owners — Water utility. p. 703.

BY THE COMMISSION:

ORDER

[1, 2] On August 5, 1996, the Petitioner, Lakes Region Water Co., Inc. (Lakes Region), filed with the New Hampshire Public Utilities Commission (Commission), a petition to retroactively authorize and ratify issuance of Lake Region stock which occurred without Commission approval as required by RSA 369:1. On July 18, 1995, Lakes Region issued ten shares to each of the corporation's owners, Thomas Adam Mason and Barbara G. Mason, in the total amount of $10,000. The capital contribution for the 20 shares of Lakes Region stock has been paid.

The Petitioner states that the failure to obtain Commission approval prior to issuing the stock was an oversight. The Petitioner contends

Page 703

that the Commission's approval and ratification of the stock issuance provides greater certainty concerning the operations of Lakes Region, affords stability for its consumers and allows for planning by the owners.

We concur in Lakes Region's assessment that the stock issuance is in the public good. Although Lakes Region should have obtained Commission approval prior to issuance, we will accept that this was an oversight and take no further action against Lakes Region for the error.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that Lakes Region's issuance of ten shares of Lakes Region stock to each of the Corporation's owners, Thomas Adam Mason and Barbara G. Mason, is consistent with the public good and is APPROVED; and it is

FURTHER ORDERED, that the Petitioner shall file the Order of the Commission with the Secretary of State's Office pursuant to New Hampshire RSA 369:16; and it is

FURTHER ORDERED, that Lakes Region 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 September 24, 1996 and to be documented by affidavit filed with this office on or before October 1, 1996; and it is

FURTHER ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or file a written request for a hearing on this matter before the Commission no later than October 8, 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 October 15, 1996; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective October 17, 1996, unless the Commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of September, 1996.

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NH.PUC*09/18/96*[89334]*81 NH PUC 704*Cable and Wireless, Inc.

[Go to End of 89334]

81 NH PUC 704

Re Cable and Wireless, Inc.

DS 96-254
Order No. 22,321

New Hampshire Public Utilities Commission

September 18, 1996

ORDER approving an interexchange telephone carrier's proposed offering of alternative channel service, under which a customer has both inbound and outbound toll calling capability using either switched or dedicated access.

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1. RATES, § 592

[N.H.] Telephone rate design — Toll services — Switched or dedicated access — New alternative channel service — Minimum monthly usage requirements — Monthly recurring charges — Interexchange carrier. p. 704.

BY THE COMMISSION:

ORDER

[1] On August 9, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from Cable & Wireless, Inc. (CWI), requesting authority to introduce a service called CTC LD for effect September 9, 1996.

CTC LD is an Alternative Channel Service which offers outbound and inbound calling using either switched or dedicated access. Minimum monthly usage requirements apply as well as monthly recurring charges.

We find the proposed changes to be in the public good. New services expand the choice of telephone services and foster competition in the New Hampshire intrastate toll market which allow the Commission to analyze the effects of such competition. Therefore, the Commission

will authorize the introduction of CTC LD.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of CWI's tariff, NHPUC No. 3 are approved for effect as filed:

2nd Revised Page 1

2nd Revised Page 2

1st Revised Page 20.1

Original Page 20.2

1st Revised Page 41

Original Page 41.1;

and it is

FURTHER ORDERED, that CWI file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this eighteenth day of September, 1996.

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NH.PUC*09/18/96*[89335]*81 NH PUC 705*AT&T Communications of New Hampshire, Inc.

[Go to End of 89335]

81 NH PUC 705

Re AT&T Communications of New Hampshire, Inc.

DS 96-263
Order No. 22,322

New Hampshire Public Utilities Commission

September 18, 1996

ORDER authorizing an interexchange telephone carrier to extend an interstate offering on an

intrastate basis as to its "UniPlan" service, under which flat per-minute rates apply to toll, toll-free, and calling card calls for either switched or dedicated access.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — "UniPlan" service — Extension of interstate plan on intrastate basis — Availability of flat per-minute charges for all calls — Interexchange telephone carrier. p. 705.

BY THE COMMISSION:

ORDER

[1] On August 15, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from AT&T Communications of New Hampshire, Inc. (AT&T), requesting authority to introduce AT&T UniPlan Basic Service Option for effect September 15, 1996.

AT&T UniPlan Basic Service Option offers flat, per minute rates for toll, toll-free and calling card calls for both switched and dedicated access. The service is an add-on to AT&T's interstate offering.

We find the proposed changes to be in the public good. New services expand the choice of telephone services and foster competition in the New Hampshire intrastate toll market which allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize the introduction of AT&T UniPlan Basic Service Option.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of AT&T's tariff, NHPUC No. 1 are approved for effect as filed:

Section 19

Original Pages 16-19;

and it is

FURTHER ORDERED, that AT&T file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this eighteenth day of September, 1996.

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NH.PUC*09/18/96*[89336]*81 NH PUC 706*Inacom Communications, Inc.

[Go to End of 89336]

81 NH PUC 706

Re Inacom Communications, Inc.

DS 96-265
Order No. 22,323

New Hampshire Public Utilities Commission

September 18, 1996

ORDER authorizing an interexchange telephone carrier to revise its SDN and INACALL service offerings and to introduce a new home business advantage package.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Introduction of home business advantage package — Revision of SDN and INACALL offerings — Increase in available discounts — Interexchange carrier. p. 706.

BY THE COMMISSION:

ORDER

[1] On August 16, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from Inacom Communications, Inc. (Inacom), requesting authority to revise various terms and conditions of the Inacom SDN and INACALL products and introduce Home Business Advantage for effect September 15, 1996.

Revisions include higher discounts for SDN customers with monthly usage above $2,500. The minimum monthly usage for the INACALL 1+ Term Plan is raised from $500 to $1,500 and usage rates are revised.

Home Business Advantage is a toll product offered to residential customers who subscribe to INACALL business service.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize Inacom to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of Inacom's tariff, NHPUC No. 2 are approved for effect as filed:

1st Revised Page 1

1st Revised Page 25

1st Revised Page 26

1st Revised Page 27

1st Revised Page 28

1st Revised Page 32

1st Revised Page 33

1st Revised Page 34

Original Page 34.1

1st Revised Page 35

1st Revised Page 36

1st Revised Page 38

Original Page 38.1

1st Revised Page 45

1st Revised Page 46

1st Revised Page 47;

and it is

FURTHER ORDERED, that Inacom file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this eighteenth day of September, 1996.

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NH.PUC*09/18/96*[89337]*81 NH PUC 707*Dial and Save of New Hampshire, Inc.

[Go to End of 89337]

81 NH PUC 707

Re Dial and Save of New Hampshire, Inc.

DS 96-266
Order No. 22,324

New Hampshire Public Utilities Commission

September 18, 1996

ORDER authorizing an interexchange telephone carrier to introduce a new prepaid debit calling card as well as a sweepstakes promotion aimed at residential toll customers.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Special sweepstakes promotion — For residential customers — New prepaid debit calling card offering — Interexchange carrier. p. 707.

BY THE COMMISSION:

ORDER

[1] On August 20, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from Dial & Save of New Hampshire, Inc. (D&S) requesting authority to introduce Prepaid Debit Card, Dial & Win Sweepstakes and Prime Business Select II services, for effect September 19, 1996.

Prepaid Debit Card service allows a customer to pay a fixed amount in advance for long distance calling and is debited each time the card is used.

Dial & Win Sweepstakes is a promotional offering for residential toll customers. Customers who subscribe to the promotion before June 30, 1997, will receive the product's discounted rates indefinitely. The rates are mileage and time-of-day sensitive and are billed in one minute increments. Despite the name, the service does not appear to involve a game of chance or other form of gambling.

Prime Business Select II is a combined toll, toll-free and calling card product. Rates vary depending on monthly usage and term commitment.

We find the proposed changes to be in the public good. New services expand the choice of telephone services and foster competition in the New Hampshire intrastate toll market which allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize the introduction of Prepaid Debit Card, Dial & Win Sweepstakes and Prime Business Select II services.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of D&S' tariff, NHPUC No. 1 are approved for effect as filed:

3rd Revised Page 2

Original Page 2.1

Original Pages 46-54;

and it is

FURTHER ORDERED, that D&S file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this eighteenth day of

September, 1996.

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NH.PUC*09/18/96*[89338]*81 NH PUC 707*The Furst Group, Inc.

[Go to End of 89338]

81 NH PUC 707

Re The Furst Group, Inc.

DS 96-267
Order No. 22,325

New Hampshire Public Utilities Commission

September 18, 1996

ORDER authorizing an interexchange telephone carrier to introduce a prepaid calling card service.

Page 707

1. RATES, § 582

[N.H.] Telephone rate design — Toll services — Introduction of prepaid calling card product — Interexchange carrier. p. 708.

BY THE COMMISSION:

ORDER

[1] On August 20, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from The Furst Group, Inc. (FGI), requesting authority to introduce Prepaid Card Service and notification of rate reductions for effect September 23, 1996.

Prepaid Card Service allows a customer to pay a fixed amount in advance for long distance calling and is debited each time the card is used. The maximum rate per minute of use for FGI's prepaid card service is $0.35.

We find the proposed changes to be in the public good. New services expand the choice of telephone services and foster competition in the New Hampshire intrastate toll market which allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize the introduction of Prepaid Card Service.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of FGI's tariff, NHPUC No. 1 are approved for effect as filed:

1st Revised Page 7

1st Revised Page 15

1st Revised Page 16

1st Revised Page 17;

and it is

FURTHER ORDERED, that FGI file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this eighteenth day of September, 1996.

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NH.PUC*09/18/96*[89339]*81 NH PUC 708*Manchester Water Works

[Go to End of 89339]

81 NH PUC 708

Re Manchester Water Works

DE 96-237
Order No. 22,326

New Hampshire Public Utilities Commission

September 18, 1996

ORDER authorizing a municipal water utility to further extend service within the Town of Bedford, where there was no opposition to the move, no other utilities were in that vicinity, and the municipal's water supplies were sufficient for serving the additional area.

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1. SERVICE, § 204

[N.H.] Extensions — By municipal utility — Within corporate limits — Factors affecting approval — Lack of other service providers — Lack of opposition or challenge — Sufficiency of utility's supply — Water service. p. 708.

BY THE COMMISSION:

ORDER

[1] The Petitioner, Manchester Water Works (Manchester), filed with the New Hampshire Public Utilities Commission (Commission), on July 22, 1996, a petition to extend its existing service area in the Town of Bedford, New Hampshire. Manchester intends to provide service to 22 contiguous lots in the Bowman Parade Road area of Bedford under the terms of its existing tariff.

The Town of Bedford and Pennichuck Water Works, which has existing franchise rights in another portion of the Town of Bedford, have provided written support for the proposed extension. In addition, the Department of Environmental Services has confirmed the suitability and availability of Manchester's water

supply.

As there are no other water utilities in the vicinity of the proposed extension and consent from the relevant parties has been obtained, the Commission finds that allowing Manchester to extend its service area as requested is in the public good.

Based upon the foregoing, it is hereby

ORDERED *Nisi*, that Manchester's petition to extend its service area in the Town of Bedford is granted; and it is

FURTHER ORDERED, that Manchester is granted permission pursuant to RSA 374:22 and 26 to extend its service area into a limited area of Bedford consisting of Lots 31-1 through 31-14, 38, 40, 41, 42-1, 42-2, 42-3, 42-4, and 74-31 as shown on Tax Map 12; and it is

FURTHER ORDERED, that the Petitioner shall serve a copy of this Order *Nisi* on the Bedford Town Clerk via first class mail and 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 September 25, 1996 and to be documented by affidavit filed with this office on or before October 2, 1996; and it is

FURTHER ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or file a written request for a hearing on this matter before the Commission no later than October 9, 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 October 16, 1996; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective October 18, 1996, 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 September, 1996.

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NH.PUC*09/23/96*[89340]*81 NH PUC 709*Pittsfield Aqueduct Company, Inc.

[Go to End of 89340]

81 NH PUC 709

Re Pittsfield Aqueduct Company, Inc.

DF 95-016
Order No. 22,327

New Hampshire Public Utilities Commission

September 23, 1996

ORDER approving stipulation under which a water utility is authorized to borrow up to $1.2 million so as to finance construction of a filtration plant necessary for assuring compliance with the Safe Drinking Water Act. The cost of the borrowing is to be recovered via a concomitant step rate increase.

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1. SECURITY ISSUES, § 58

[N.H.] Borrowings — Purpose — Additions and betterments — Construction of filtration plant as required by the Safe Drinking Water Act — Stipulation — Water utility. p. 711.

2. RATES, § 597

[N.H.] Water rate design — Special factors — Necessity of new filtration plant — Safe Drinking Water Act requirements — Step rate increase for recovery of associated financing costs — Stipulation. p. 711.

APPEARANCES: Ransmeier and Spellman by Dom S. D'Ambruoso, Esq. for Pittsfield Aqueduct Company; David Barker, Town Administrator for Town of Pittsfield; Office of Consumer Advocate by Thomas Lyle 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

Pittsfield Aqueduct Company, Inc. (Pittsfield) provides water to customers in the Town of Pittsfield, utilizing surface water from Berry Pond in Pittsfield. On January 27, 1995, Pittsfield filed with the New Hampshire Public Utilities Commission (Commission) a Petition for Authority to Borrow up to $1.4 Million and a Petition for a Step Increase. The Petitions relate to Pittsfield's need to undertake a capital project in order to comply with the Safe Drinking Water Act (SDWA).

The Commission granted requests of the Town of Pittsfield Water Rates Study Committee

and Board of Selectmen for full intervention but consolidated the two parties' participation. The Commission also notified the Office of Attorney General regarding the docket, so that the Department of Environmental Services (DES) would be aware of the issues raised herein. *See*, Order No. 21,639 (May 2, 1995). The Office of Consumer Advocate is a statutorily authorized intervenor.

Pittsfield has been seeking financing for the filtration of Berry Pond or the development of a groundwater source of supply to replace Berry Pond. Lending institutions, however, have been reluctant to commit the necessary capital to Pittsfield for compliance with SDWA without an assurance from the Commission that amounts expended for such compliance will be recovered in rates.

The initial filing proposed construction of a water treatment plan for Berry Bond. In subsequent technical sessions and correspondence, Staff stated its position that Pittsfield must adequately evaluate the groundwater alternative in order to complete a valid comparison of both alternatives.

Commission Staff (Staff), on August 9, 1995, filed direct testimony of Douglas W. Brogan addressing concerns about Pittsfield's water treatment plant proposal and the need to further evaluate the groundwater alternative and supporting certain adjustments to cost estimates for both options. Soon thereafter, on August 21, 1995, Staff notified Pittsfield that in its view, in order to demonstrate prudent utility management, Pittsfield should file a petition for condemnation of potential ground water sites to determine the economic viability of those sites. Pittsfield responded, on August 24, 1995, with a Motion For Commission Determination Regarding the Need For Condemnation, to which Staff responded on August 28, 1995.

Throughout this period, DES was in negotiations with Pittsfield regarding Pittsfield's efforts to filter its surface water source or provide alternative groundwater sources.

Pittsfield, on July 26, 1996, following further efforts toward evaluation of both alternatives, submitted supplemental testimony and attachments of Cedric H. Dustin, Jr. and supplemental testimony and attachments of Richard Hertrick. It also filed a Motion for Immediate Hearing, which the Commission granted on August 9, 1996, to consider financing for the construction and installation of a water storage facility and to establish a procedural schedule for the remainder of the proceeding. On August 14, 1996, Staff filed direct testimony of Douglas W. Brogan in anticipation of the August 16, 1996 hearing.

On September 6, 1996, Pittsfield and Staff filed a Stipulation Between Pittsfield Aqueduct Company and The Staff (Stipulation). The Town of Pittsfield was not a signatory but was aware of its terms and did not object. Subsequently, on September 12, 1996, Pittsfield notified the Commission that the Investment Committee of the Bank of New Hampshire (BNH) approved earlier action taken by the Loan Committee and gave final approval to Pittsfield's borrowing of up to $1.2 million. The Commission heard evidence on the Stipulation on September 13, 1996.

II. STIPULATION

The Stipulation provides in part as follows:

A. *Treatment Facility and Prudent Management*

Pittsfield will construct a microfloc water treatment facility at Berry Pond, which the signatories assert is a prudent means of

Page 710

compliance with the SDWA and represents prudent management and good utility or business practice.

B. *Financing, Rate Treatment*

Pittsfield should be authorized to borrow up to $1.2 million from BNH, secured by a mortgage of Pittsfield's real estate. The terms of the borrowing and purposes are described in BNH's commitment letter attached to the Stipulation.

In order to repay BNH, Pittsfield shall be allowed a step increase in its rates to include the capital additions installed to comply with the SDWA, effective for service rendered from the date these capital additions provide service to the public. This step increase shall be based upon traditional ratemaking principles in accordance with a methodology attached to the Stipulation.

C. *DES Grant Program*

DES has approved Pittsfield to receive payments under the State Filtration Grant Program, which are subject to legislative appropriation in future budget periods. If Pittsfield receives such payments, they will be accounted for as Contributions in Aid of Construction as they are received.

D. *Other Pittsfield Obligations*

Pittsfield commits to obtain meter readings that ensure customers are not billed for services rendered prior to the provision for service from the new capital additions. Pittsfield shall also file an embedded cost of service study with the Commission by January 1, 1997. It shall submit to the Commission quarterly reports of metered production and consumption for one year following the approval of this agreement and shall file the results of a leak detection survey with the Commission by December 31, 1996. Pittsfield will provide Staff with all relevant information required as expeditiously as possible in order to implement the rates set forth in the Stipulation. Finally, Pittsfield will meter all customers not yet metered by May 1, 1997.

III. COMMISSION ANALYSIS

[1, 2] We have reviewed the prefiled testimony, Stipulation and evidence presented at the August 16 and September 13, 1996 hearings. We find the Stipulation to be a reasonable settlement of the issues raised in this matter and that Pittsfield's plan for compliance with the SDWA is prudent. We find the building of a filtration plant to be in the public interest and will approve the financing necessary to complete the project. We are pleased to note that the cost of compliance is now lower than originally anticipated.

The Stipulation did not address rate case expenses and we are not aware that Pittsfield intends to seek recovery for any of the expenses associated with this docket. Should it seek recovery of any expenses as part of the step increase portion of this docket, we will review the request at that time.

Based upon the foregoing, it is hereby

ORDERED, that the Stipulation between Pittsfield and Staff is APPROVED.

By order of the Public Utilities Commission of New Hampshire this twenty-third day of September, 1996.

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.

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NH.PUC*09/23/96*[89341]*81 NH PUC 711*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 89341]

81 NH PUC 711

Re New England Telephone and Telegraph Company dba NYNEX

DS 96-274
Order No. 22,328

New Hampshire Public Utilities Commission

September 23, 1996

ORDER suspending a local exchange telephone

Page 711

carrier's proposed offering of a prepaid calling card service.

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1. SERVICE, § 449

[N.H.] Telephone — Special service — Prepaid calling card product — For local, coin, and toll calls — Suspension of proposed tariffs. p. 712.

2. RATES, § 248

[N.H.] Schedules and procedure — Suspension — Of proposed new service offering — To allow for adequate investigatory period — Prepaid calling card product — Local exchange telephone carrier. p. 712.

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. As described by NYNEX, Prepaid Calling Service would provide customers with an alternative method for paying for local, coin and toll calls within the State of New Hampshire. Customers would buy a printed card containing the stated value, the 800 access number, authorization code, and dialing instructions. Customers could place a call from any residence, business or pay telephone by dialing 1-800-NYNEX-95. A computer would deduct the value of the call in whole minute increments during the conversation and a warning tone would alert the customer that he has only one remaining conversation minute. The call would end when the customer hangs up or the value of the card is consumed. 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 the Consumer Advocate (OCA) filed a letter with the Commission regarding this docket. Among other items, the OCA requests that the Commission "approve a NYNEX [Prepaid Calling Service] tariff revision only if the charges reflect the current time of day tariff rates." In the alternative, the OCA requests the Commission suspend the tariff and conduct a full hearing on the issues, and, if necessary, impose regulations on all providers of Prepaid Calling Services.

Staff notified the Commission that Staff requires time to investigate the filing, and, therefore, has requested that the proposed tariff pages be suspended.

We have reviewed Staff's request and will suspend the proposed filing to allow a thorough review of the filing and consideration of the September 18, 1996 letter received from the OCA.

Based upon the foregoing, it is hereby

ORDERED, that the following tariff pages of NYNEX are suspended:

NHPUC No. 77
Exchange and Network Services
Part A:

Section 5 Page 17 First Revision Canceling Original Section 8 Page 3 First Revision Canceling Original Section 9 Page 16 Original Section 9 page 17 Original

NHPUC No. 77
Rates and Charges
Part M

Page 31 Second Revision Canceling First Revision.

By order of the Public Utilities Commission of New Hampshire this twenty-third day of September, 1996.

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NH.PUC*09/23/96*[89342]*81 NH PUC 713*MCI Telecommunications Corporation

[Go to End of 89342]

81 NH PUC 713

Re MCI Telecommunications Corporation

DS 96-275
Order No. 22,329

New Hampshire Public Utilities Commission

September 23, 1996

ORDER approving an interexchange telephone carrier's proposed tariff revision to clarify the definition of a calling circle for purposes of its "Friends and Family" service products.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll services — Tariff revisions — Clarification of definition of calling circle — As to "Friends and Family" service features — Interexchange carrier. p. 713.

BY THE COMMISSION:

ORDER

[1] On August 27, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from MCI Telecommunications Corporation (MCI) requesting authority to make clarifying changes to the Calling Circle definition, for effect September 25, 1996.

The Calling Circle definition describes telephone numbers associated with the discount in the Friends & Family product. The proposed revision clarifies the definition.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize MCI to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of MCI's tariff, NHPUC No. 1 are approved for effect as filed:

56th Revised Page 1

3rd Revised Page 7;

and it is

FURTHER ORDERED, that MCI file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this twenty-third day of September, 1996.

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NH.PUC*09/23/96*[89343]*81 NH PUC 713*GTE Card Services, Inc.

[Go to End of 89343]

81 NH PUC 713

Re GTE Card Services, Inc.

DS 96-277
Order No. 22,330

New Hampshire Public Utilities Commission

September 23, 1996

ORDER authorizing an interexchange telephone carrier to make various revisions to its prepaid calling card services, including changes in basic rate increments and the offering of more billing options.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Calling card offerings — Prepaid service plans — Revisions — As to basic rate increments — As to billing options — Payment by credit card — Interexchange carrier. p. 714.

BY THE COMMISSION:

Page 713

ORDER

[1] On August 27, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from GTE Card Services, Inc. (GTE) requesting authority to make various revisions to its Prepaid Calling Card service, for effect September 27, 1996.

Revisions include the introduction of units for Prepaid Calling Card service. Units are elements used as a rate measure and generally correspond to one minute increments. The per unit rate in this instance declines as the number of units purchased increases. Language has been added to indicate that the cards expire 180 days after first use, unless the customer requests an extension of the expiration date.

Three new types of prepaid service are being introduced: Unit Based, Subscription and Promotional Prepaid Calling Card Service. Unit Based Prepaid Calling Card Service is priced

depending on the number of units purchased. Subscription Prepaid Calling Service allows the customer to be automatically billed through a credit card. Promotional Prepaid Calling Service offers the same per minute rate as Basic Prepaid Calling Service but is designed for commercial customers to use in promotions.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize GTE to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of GTE's tariff, NHPUC No. 1 are approved for effect as filed:

2nd Revised Page 2

1st Revised Page 3

2nd Revised Page 7

1st Revised Page 11

3rd Revised Page 12

2nd Revised Page 13

Original Page 13.1

2nd Revised Page 14

Original Page 14.1

1st Revised Page 15;

and it is

FURTHER ORDERED, that GTE file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this twenty-third day of September, 1996.

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NH.PUC*09/23/96*[89344]*81 NH PUC 714*Public Service Company of New Hampshire

[Go to End of 89344]

81 NH PUC 714

Re Public Service Company of New Hampshire

DR 96-285
Order No. 22,331

New Hampshire Public Utilities Commission

September 23, 1996

ORDER granting interventions and adopting a procedural schedule for an electric utility's fuel and purchased power adjustment clause proceeding, upon the utility electing not to consider outages at the Millstone 3, Connecticut Yankee, and Maine Yankee nuclear power plants within the context of the proceeding, mindful that such deferral means that associated replacement power costs will not be recoverable for that deferral period.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 12

[N.H.] Direct energy costs — Fuel and purchased power adjustment clause — Scope of proceeding — Nuclear generating costs as significant issue — Deferral of issue of outages at the Millstone 3, Connecticut Yankee, and Maine Yankee power plants — Nonrecovery of replacement power costs for the deferral period — Adoption of procedural schedule — Electric

Page 714

utility. p. 715.

2. EXPENSES, § 122

[N.H.] Electric utility — Commodity costs — Replacement power costs — During nuclear plant outages — Deferral of issue during fuel cost adjustment clause proceeding — No recovery of replacement power costs during deferral period. p. 715.

BY THE COMMISSION:

ORDER

On August 6, 1996, Public Service Company of New Hampshire (PSNH) filed with the New Hampshire Public Utilities Commission (Commission) a letter requesting the Commission to open a proceeding for its Fuel and Purchased Power Adjustment Clause (FPPAC). On August 13, 1996, the Commission issued an Order of Notice setting forth the preliminary issues, scheduling a prehearing conference for September 17, 1996, and setting forth a proposed procedural schedule.

[1, 2] On August 21, 1996, PSNH filed a motion to defer consideration of the prudence of replacement power purchases incurred as a result of nuclear outages at Millstone 3, Connecticut Yankee and Maine Yankee. On August 30, 1996, Commission Staff filed an objection to the motion, and on September 5, 1996 PSNH filed a response to the objection. On September 9, 1996, we issued Order No. 22,308 providing PSNH with the option to address the issues in this FPPAC proceeding or defer recovery of replacement power costs until the Commission had determined the prudence of the outages. By letter dated September 12, 1996, PSNH chose to defer recovery of replacement power costs until the issue of prudence had been addressed by the Commission.

On September 12, 1996, PSNH filed supporting testimony and exhibits supporting its proposed FPPAC rate for the period of December 1, 1996 through May 30, 1996.

The New Hampshire Electric Cooperative (NHEC) and the Campaign For Ratepayers Rights (CRR) sought full intervention, without objection. EnerDev made an oral motion for limited intervention relating solely to compliance with the Clean Air Act, also without objection.

At the prehearing conference PSNH, NHEC, CRR, EnerDev, the Office of Consumer Advocate (OCA), which is a statutorily recognized intervenor, and Staff agreed to the following procedural schedule:

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

Technical Session-majority  September 30, 1996
of Data Requests propounded 9 a.m.
(Orally)

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

Staff and Intervenors fax        October 1, 1996
Data Requests to PSNH/NUSCO
Remaining Data Requests from     October 2, 1996
Staff and Intervenors, in hand
or by fax
PSNH/NUSCO notify Staff and      October 3, 1996
Intervenors of problematic Data
Requests
Responses to Staff's and        October 15, 1996
Intervenors's Data Requests
Technical Session/Settlement    October 21, 1996
Conference - Oral follow-up               1 p.m.
data requests
Responses to 10/21 requests     October 24, 1996
Updated Exhibits                October 29, 1996

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

Staff and Intervenor testimony     November 1, 1996
Written Rebuttal Testimony         November 6, 1996
Statement of issues
Hearings on the merits         November 12-14, 1996
Revised statement of issues       November 21, 1996
Briefs                            November 25, 1996
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In accordance with the Order of Notice, PSNH stated that it believed the significant issues to be addressed in this proceeding are: 1) two outages at Seabrook; 2) the Maine Yankee refueling extension; 3) Clean Air Act Amendments of 1990 costs; and, 4) the sale of Unit II

Page 715

parts.

NHEC stated that it took no specific position at this time and that it intended to monitor the investigation, particularly as to how it relates to its customers and to its wholesale purchase of power.

OCA stated that it believed the significant issues to be addressed in this proceeding, in addition to those raised by PSNH, are: 1) the assumed dates that Millstone Point, Units I, II and III would return to service; and, 2) the modification of the FPPAC formula for sales of power in

the pilot in retail competition.

Staff stated it believed the significant issues to be addressed in this proceeding, in addition to those raised by PSNH and the OCA, are: 1) Joint Dispatch Savings; 2) the delivery efficiency factor; and, 3) the proper treatment of FPPAC credits in the event paragraph B.(K) deferrals are retired during this FPPAC period.

We will grant NHEC and CRR's requests for full intervention. We will grant EnerDev's request for limited intervention. We find the proposed procedural schedule to be reasonable and will approve it for the duration of the case. Finally, we reserve the right to consider in the future any additional or deferred issues regarding this FPPAC period.

Based upon the foregoing, it is hereby

ORDERED, that NHEC and CRR are each granted full intervention in this case; and it is

FURTHER ORDERED, that EnerDev is granted limited 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 twenty-third day of September, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 96-285, Order No. 22,308, 81 NH PUC 678, Sept. 9, 1996.

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NH.PUC*09/24/96*[89345]*81 NH PUC 716*Excel Telecommunications, Inc.

[Go to End of 89345]

81 NH PUC 716

Re Excel Telecommunications, Inc.

DS 96-273
Order No. 22,332

New Hampshire Public Utilities Commission

September 24, 1996

ORDER authorizing an interexchange telephone carrier to make various tariff revisions, including the introduction of certain special holiday rates, the establishment of monthly fees for account codes, and the offering of new products.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll services — Tariff revisions — New product offerings — Introduction of special holiday rates — Monthly fees for account codes — Interexchange carrier. p. 716.

BY THE COMMISSION:

ORDER

[1] On August 23, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from Excel Telecommunications, Inc., (Excel) requesting authority to make various revisions to its tariff NHPUC No. 2, which affect more than 50 percent of the pages and requires the company to introduce a new tariff pursuant to NH Admin. Rules, Puc 1601.05(b)(2). As a result, Excel filed a proposed new tariff, NHPUC No. 3, for effect September 24, 1996.

Revisions include the introduction of new products, establishment of a monthly fee for account codes, implementation of holiday rates for Excel Simply One and My 800 customers,

and textual changes and clarifications to various services. In addition, Commission Staff requested that Excel revise some of the proposed pages to comply with the recently adopted NH Admin. Rules, Puc 1200.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize Excel to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of Excel's tariff, NHPUC No. 3 are approved for effect as filed:

Original Title Sheet

1st Revised Page 1 in lieu of Original

Original Pages 2-12

1st Revised Page 13 in lieu of Original

1st Revised Page 14 in lieu of Original

1st Revised Page 15 in lieu of Original

Original Pages 16-20

1st Revised Page 21 in lieu of Original

Original Pages 22-27

1st Revised Page 28 in lieu of Original

Original Pages 29-34;

and it is

FURTHER ORDERED, that Excel file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this twenty-fourth day of September, 1996.

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NH.PUC*09/24/96*[89346]*81 NH PUC 717*Meriden Telephone Company, Inc.

[Go to End of 89346]

81 NH PUC 717

Re Meriden Telephone Company, Inc.

DS 96-279
Order No. 22,333

New Hampshire Public Utilities Commission

September 24, 1996

ORDER suspending a local exchange telephone carrier's proposed introduction of advanced calling services such as call return, call rejection, priority ringing, Caller ID, and others. The suspension period will allow the carrier an opportunity to supplement its filing with more cost and revenue support data.

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1. SERVICE, § 463

[N.H.] Telephone — Proposal for advanced calling services — Components — Caller ID — Call rejection, return, and trace — Blocking — Priority ringing and repeat dialing — Suspension of proposal — To allow for adequate investigatory period — To supplement cost and revenue data — Local exchange carrier. p. 717.

2. RATES, § 248

[N.H.] Schedules and procedure — Suspension — Of proposed service offerings — To allow for adequate investigatory period — To supplement the cost data record — As to advanced calling services such as Caller ID — Local exchange telephone carrier. p. 717.

BY THE COMMISSION:

ORDER

[1, 2] On August 29, 1996, Meriden Telephone Company (Meriden) filed with the New

(Commission) proposed tariff pages to introduce Advanced Calling Services (ACS) for effect September 29, 1996. The Advanced Calling Services included in the proposed tariff pages are Anonymous Call Rejection, Call Rejection, Call Return, Preferred Call Forwarding, Priority Ringing, Repeat Dialing, Special Call Acceptance, Caller ID, Caller ID Blocking and Call Trace.

In its filing, Meriden included proposed notifications to be sent to Meriden subscribers describing ACS and blocking services as well as TDS Telecom's (Meriden's Parent company) Call Trace Policy. Meriden has asserted that it will meet with law enforcement agencies and domestic violence programs affected by this tariff filing and service offering. In addition, Meriden is willing to meet with any agency that requests information on this offering.

While Meriden has asserted that "[f]oregone revenues and expenses incurred by this new service offering will be recovered within 12 months of recurring revenues," no materials were provided to support this statement. It is expected that Meriden will cooperate with Staff to supplement its filing with the necessary information.

Staff recommends that the Commission suspend the proposed tariff pages to permit Meriden to supplement its filing with supporting revenues and cost information and to allow Staff time to review this filing, including the proposed notification, Call Trace Policy and any supplemental materials.

We have reviewed Staff's recommendation and will suspend the proposed filing to allow a thorough review of the filing and to permit Meriden the opportunity to provide supporting materials regarding revenues and costs. We expect Meriden to cooperate fully with Staff to supplement its filing with the necessary supporting materials.

Based upon the foregoing, it is hereby

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

NHPUC No. 4

Index, Third Revised Page 1 Superseding Second Revised Page 1 Section 3, Original Pages Q-1 through Q-10

By order of the Public Utilities Commission of New Hampshire this twenty-fourth day of September, 1996.

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NH.PUC*09/24/96*[89347]*81 NH PUC 718*Chichester Telephone Company

[Go to End of 89347]

81 NH PUC 718

Re Chichester Telephone Company

DS 96-280
Order No. 22,334

New Hampshire Public Utilities Commission

September 24, 1996

ORDER suspending a local exchange telephone carrier's proposed introduction of advanced calling services such as call return, call rejection, priority ringing, Caller ID, and others. The suspension period will allow the carrier an opportunity to supplement its filing with more cost and revenue support data.

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1. SERVICE, § 463

[N.H.] Telephone — Proposal for advanced calling services — Components — Caller ID — Call rejection, return, and trace — Blocking — Priority ringing and repeat dialing — Suspension of proposal — To allow for adequate investigatory period — To supplement cost and revenue data — Local exchange carrier. p. 719.

2. RATES, § 248

[N.H.] Schedules and procedure — Suspension — Of proposed service offerings — To allow for adequate investigatory period — To supplement the cost data record — As to advanced calling services such as Caller ID — Local exchange telephone carrier. p. 719.

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BY THE COMMISSION:

ORDER

[1, 2] On August 29, 1996, Chichester Telephone Company (Chichester) filed with the New Hampshire Public Utilities Commission (Commission) proposed tariff pages to introduce Advanced Calling Services (ACS) for effect September 29, 1996. The Advanced Calling Services included in the proposed tariff pages are Anonymous Call Rejection, Call Rejection, Call Return, Preferred Call Forwarding, Priority Ringing, Repeat Dialing, Special Call Acceptance, Caller ID, Caller ID Blocking and Call Trace.

In its filing, Chichester included proposed notifications to be sent to Chichester subscribers describing ACS and blocking services as well as TDS Telecom's (Chichester's parent company) Call Trace Policy. Chichester has asserted that it will meet with law enforcement agencies and domestic violence programs affected by this tariff filing and service offering. In addition, Chichester is willing to meet with any agency that requests information on this offering.

While Chichester has asserted that "[f]oregone revenues and expenses incurred by this new service offering will be recovered within 12 months of recurring revenues," no materials were provided to support this statement. It is expected that Chichester will cooperate with Staff to

supplement its filing with the necessary information.

Staff recommends that the Commission suspend the proposed tariff pages to permit Chichester to supplement its filing with supporting revenues and cost information and to allow Staff time to review this filing, including the proposed notification, Call Trace Policy and any supplemental materials.

We have reviewed Staff's recommendation and will suspend the proposed filing to allow a thorough review of the filing and to permit Chichester the opportunity to provide supporting materials regarding revenues and costs. We expect Chichester to cooperate fully with Staff to supplement its filing with the necessary supporting materials.

Based upon the foregoing, it is hereby

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

NHPUC No. 3

Index, Seventh Revised Page 1 Superseding Sixth Revised Page 1 Section 3, Original Pages 36 through 45

By order of the Public Utilities Commission of New Hampshire this twenty-fourth day of September, 1996.

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NH.PUC*09/24/96*[89348]*81 NH PUC 719*Northern Utilities, Inc.

[Go to End of 89348]

81 NH PUC 719

Re Northern Utilities, Inc.

DR 96-295
Order No. 22,335

New Hampshire Public Utilities Commission

September 24, 1996

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 winter cost-of-gas adjustment proceeding.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 10

[N.H.] Direct energy costs — Winter cost-of-gas adjustment proceeding — Protective treatment — As to supplier identities — As to commercially sensitive contract terms — Local

distribution company. p. 720.

2. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective treatment — As to supplier identities — As to commercially sensitive contract terms — Winter cost-of-gas adjustment proceeding — Benefits of nondisclosure as outweighing those

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of disclosure — Local distribution company. p. 720.

BY THE COMMISSION:

ORDER

[1, 2] On September 16, 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 Cost of Gas Adjustment (CGA) proceeding in both the discovery and hearing phases of this docket.

Northern states that its 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). 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 PSNH 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 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 contractual terms, Northern 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, 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-fourth day of September, 1996.

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NH.PUC*09/24/96*[89349]*81 NH PUC 720*EnergyNorth Natural Gas, Inc.

[Go to End of 89349]

81 NH PUC 720

Re EnergyNorth Natural Gas, Inc.

DR 96-301
Order No. 22,336

New Hampshire Public Utilities Commission

September 24, 1996

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 winter cost-of-gas adjustment proceeding.

Page 720

1. AUTOMATIC ADJUSTMENT CLAUSES, § 10

[N.H.] Direct energy costs — Winter cost-of-gas adjustment proceeding — Protective treatment — As to supplier identities — As to commercially sensitive contract terms — Local distribution company. p. 721.

2. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective treatment — As to supplier identities — As to commercially sensitive contract terms — Winter cost-of-gas adjustment proceeding — Benefits of nondisclosure as outweighing those of disclosure — Local distribution company. p. 721.

BY THE COMMISSION:

ORDER

[1, 2] On September 17, 1996, EnergyNorth Natural Gas, Inc., (ENGI) filed with the New Hampshire Public Utilities Commission (Commission) a request for protective treatment for information that would identify ENGI's gas suppliers and certain terms of the gas supply agreements negotiated by ENGI with its 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.

ENGI states that its 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. ENGI also states that it does not disclose the identity of its suppliers or the terms of its gas supply contracts 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). 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 PSNH 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 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 contractual 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 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-fourth day of September, 1996.

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NH.PUC*09/24/96*[89350]*81 NH PUC 722*Commonwealth Long Distance Company

[Go to End of 89350]

81 NH PUC 722

Re Commonwealth Long Distance Company

DE 96-067
Order No. 22,337

New Hampshire Public Utilities Commission

September 24, 1996

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

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1. CERTIFICATES, § 123

[N.H.] Telephone carrier — Intrastate intraLATA long-distance services — Interim authority — Assessment of competitive impacts — Exclusion of local exchange services. p. 722.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate intraLATA toll services — Interim authority — Assessment of competitive impacts — Exclusion of local exchange services. p. 722.

BY THE COMMISSION:

ORDER

[1, 2] On March 12, 1996, Commonwealth Long Distance Company, a Pennsylvania corporation, petitioned the New Hampshire Public Utilities Commission (Commission) for authority to do business as a telecommunications public utility in the State of New Hampshire (petition) pursuant to, *inter alia*, RSA 374:22 and RSA 374:26. Commonwealth Long Distance Company has demonstrated the financial, managerial and technical ability to offer service as conditioned by this order. The Commission previously approved numerous, similar petitions filed during the Trial Period, pursuant to the Modified Stipulation Agreement (Stipulation) in Docket No. DE 90-002, approved by Order No. 20,916 (August 2, 1993). Our orders in those numerous dockets granted the petitioner(s) interim authority to offer intraLATA toll service, specifically excluding local exchange service, for the service territory of the entire State of New Hampshire, during the Trial Period, in order to allow the Commission to analyze competition during the two-year Trial Period.

Because the Trial Period identified by the Stipulation expired on September 30, 1995, we have explicitly clarified that the authority we had granted remains in effect until we specifically modify or revoke that authority, after analysis of the Trial Period. *See* Order No. 21,851 (October 3, 1995). Likewise, our grant of authority ordered herein remains in effect until we specifically modify or revoke that authority.

The public good is served by permitting such competition by telecommunications companies. The Commission permits competitive entry in order to foster competition in the New Hampshire

intrastate toll market and to allow the Commission to analyze the effects of such competition.

The public should be provided an opportunity to respond in support of, or in opposition to, this petition.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that Commonwealth Long Distance Company is granted interim authority to offer as a telecommunications public utility intraLATA toll service, specifically excluding local exchange service, for the service territory of the entire State of New Hampshire, subject to the following conditions:

1. The services shall be offered by approved tariffs.

2. The services shall be offered until the Commission orders otherwise.

3. Commonwealth Long Distance Company shall file tariffs for new services and changes in approved services (other than rate changes), with effective dates of no less than 30 days after the date the tariffs are filed with the Commission.

4. Within one business day of offering an

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approved service to the public at a rate different from its rates on file with the Commission, Commonwealth Long Distance Company shall notify the Commission of the change.

5. Commonwealth Long Distance Company is exempted from the following NH Admin. Rules: Puc 406.03 Accounting Records; Puc 407 Forms Required of All Telephone Utilities; and Puc 409 Uniform System of Accounts for Telecommunications Companies.

6. Commonwealth Long Distance Company shall maintain its book and records in accordance with Generally Accepted Accounting Principles.

7. Commonwealth Long Distance Company 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. Commonwealth Long Distance Company 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. Commonwealth Long Distance Company shall compensate the appropriate Local Exchange Company for all originating and terminating access used by Commonwealth Long Distance Company pursuant to NET Tariff N.H.P.U.C. 79, Switched Access Service Rate or its successors or its relevant equivalent contained in the tariffs of the Independent Local Exchange Companies.

10. New Service offerings filed for approval with the Commission shall be accompanied by tariff pages describing the service, rates and effective dates; and it is

FURTHER ORDERED, that the authority granted herein remains in full force and effect until the Commission orders otherwise; and it is

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

FURTHER ORDERED, that Commonwealth Long Distance Company shall publish a copy of the Notice of Conditional Approval attached to this Order once in a statewide newspaper of general circulation. Said publication shall occur no later than October 1, 1996, and an affidavit proving publication shall be filed with the Commission on or before October 8, 1996; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, et seq., Commonwealth Long Distance Company shall pay all assessments levied upon it by the Commission based on the amount of gross revenues received as a result of doing business in New Hampshire; and it is

FURTHER ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or file a written request for a hearing on this matter before the Commission no later than October 15, 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 October 22, 1996; and it is

FURTHER ORDERED, this Order *Nisi* shall be effective October 24, 1996, unless the Commission provides otherwise in a supplemental order issued prior to the effective date and it is

FURTHER ORDERED, that Commonwealth Long Distance Company shall file a compliance tariff with the Commission on or before October 24, 1996, in accordance with NH Admin. Rules, Puc 1601.01 (b).

By order of the Public Utilities Commission of New Hampshire this twenty-fourth day of September, 1996.

Notice of Conditional Approval of
Commonwealth Long Distance Company

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

On March 12, 1996, Commonwealth Long Distance Company, a Pennsylvania corporation, filed with the New Hampshire Public Utilities

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Commission (Commission) a petition to do business as a telecommunications public utility in the State of New Hampshire, specifically to provide intrastate long distance telecommunications services.

In Order No. 22,337, issued in Docket No. DE 96-067, the Commission granted Commonwealth Long Distance Company conditional approval to operate as of October 24, 1996, subject to the right of the public and interested parties to comment on Commonwealth Long Distance Company 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 Commonwealth Long Distance Company's petition to do business in the State must be submitted in writing no later than October 15, 1996, and reply comments no later than October 22, 1996, 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 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*09/30/96*[89351]*81 NH PUC 724*Connecticut Valley Electric Company, Inc.

[Go to End of 89351]

81 NH PUC 724

Re Connecticut Valley Electric Company, Inc.

DR 96-170
Order No. 22,338

New Hampshire Public Utilities Commission

September 30, 1996

ORDER adopting a procedural schedule for an electric utility's proposed $1.59 million (8.8%) rate increase and approving a 5.4% temporary rate increase in the interim.

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1. RATES, § 630

[N.H.] Temporary or emergency rate increase — Factors affecting approval — Ten-year period since last rate increase — Loan covenants — Protracted nature of rate cases — Prevention of rate shock for ratepayers — Electric utility. p. 725.

BY THE COMMISSION:

ORDER

On July 23, 1996, 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 seeks approval of an 8.8% permanent base rate increase to generate approximately $1,591,616 in annual revenues, pursuant to RSA 378:28.

Pursuant to RSA 378:27, CVEC also requested that a portion of the permanent rate increase be effective on a temporary rate basis, subject to refund, for bills rendered on or after August 23, 1996 and until permanent rates are approved and in effect. The requested 5.4% temporary rate increase would generate approximately $923,778 in annual revenues. The temporary and permanent rate increases would be applied uniformly over all rate classes. The Commission suspended the proposed rates on August 12, 1996 in order to evaluate the Petition.

The Commission scheduled a prehearing conference and temporary rate hearing for September 20, 1996, set a deadline for intervention requests, proposed a procedural schedule and called for initial positions of the Parties and

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Commission Staff (Staff).

The City of Claremont (Claremont), a CVEC customer, sought intervention, without objection. Although Claremont was represented by counsel at the prehearing conference, it indicated that it had authorized EnerDev, Inc. to act as its agent in this case. The Office of Consumer Advocate (OCA) is a statutorily recognized intervenor.

At the prehearing conference CVEC, Claremont, OCA and Commission Staff (Staff) agreed to the procedural schedule set forth in the Order of Notice.

Also at the prehearing conference, in accordance with the Order of Notice, the Parties and Staff presented their preliminary views. CVEC stated that it was facing significant losses and, absent a rate increase, was at risk of defaulting on its financing. The rates of return on common equity for 1994 and 1995 were 0.8% and (8.3%), respectively, and for the 12 month period ended May 31, 1996, the rate of return on common equity was (15.3%). CVEC has not had a base rate increase since 1983. Since then it has made significant improvements and additions to its plant and equipment.

Claremont opposed the permanent and temporary rate increases, stating that CVEC should reduce its expenses rather than increase rates in order to alleviate its financial pressures. In particular, it noted that payments made by CVEC to Connecticut Valley Power Service (CVPS), CVEC's parent company, should be accounted for differently so that they do not affect CVEC's earnings levels.

OCA stated that it agreed permanent rates should be increased to some extent, but questioned a number of elements of the rate case filing, including changes in methodology for cost allocations and payments from CVEC to CVPS.

Staff stated it particularly intended to review: 1) the findings of the CVEC audit now nearing completion; 2) the management contract between CVEC and CVPS; 3) the cost of common

equity proposed by CVEC for permanent rates; and 4) plant additions now proposed to be included in rate base.

Regarding temporary rates, CVEC argued that it was in need of temporary rate relief in order to avoid default on certain loans, despite a cash infusion of $1.2 million from CVPS. This is in part due to loan covenants that in January 1997 will require a greater level of common equity (an increase from $3.2 million to $3.4 million) to keep the note from being recalled by the lender.

CVEC stated that even if the permanent rate increase were less than requested, it seriously doubted that the increase would be less than 5.4% and therefore no refunds would be necessary. CVEC would not be able to refund the full $923,778 without risking default on its loans.

Claremont opposed CVEC's request for temporary rates for the same reasons that it opposed the permanent rate request.

OCA opposed the temporary rate request, stating that it questioned the validity of the books and records on file with the Commission in that there were significant increases in certain categories of expenses that CVEC seemed unable to explain or justify. OCA also challenged the use of 9.5% for the cost of common equity in calculating temporary rates. It questioned CVEC's ability to repay temporary rates that might be refunded at the close of the permanent rate phase of this case, given its stated "cash crunch." OCA suggested instead that the Commission approve temporary rates at the current level, subject to reconciliation with interest at the close of the permanent rate phase. In its view, residential ratepayers would be better off having the full 8.8% rate increase imposed at a later date (if the permanent rate request were approved) as well as a surcharge for the months under temporary rates, than having the 5.4% increase imposed at this stage.

Staff supported CVEC's temporary rate request, finding temporary rates were justified on the basis of the books and records on file with the Commission.

We will grant Claremont's request for full intervention. We find the proposed procedural schedule to be reasonable and will approve it for the duration of the case.

[1] We have considered the arguments in support and in opposition to the request for temporary rates. We are mindful of CVEC's contention that if it fails to meet its loan covenants it

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may face serious consequences, to the detriment of its ratepayers. We also recognize that this company has not sought an increase in base rates in over ten years and is likely to be entitled to some degree of permanent rate increase for new additions to plant and property.

We are not persuaded by OCA's position that there exists a reasonable basis to question the figures in CVEC's reports that would lead us to bar a temporary rate increase under RSA 378:27. Our analysis of a temporary rate request need not be as exhaustive as a permanent rate request. *See, New England Telephone and Telegraph Co. v. State*, 95 N.H. 515 (1949). While questions may exist regarding the figures in this filing, we do not deem them so significant as to bar the temporary rate relief sought by CVEC.

Assuming that we find a permanent rate increase of some amount to be justified, after full

discovery and hearing on the merits, we believe it would be preferable for ratepayers to see that increase in two phases. The alternative would be to establish temporary rates at the current level subject to reconciliation, which would require a surcharge for the temporary rate period in addition to the permanent increase itself. A surcharge on top of an increase could have a considerable impact on ratepayers. In order to ensure that CVEC meets its loan covenants and to lessen the impact on ratepayers, therefore, we find that the temporary rate adjustment sought by CVEC is appropriate and consistent with the public interest.

Based upon the foregoing, it is hereby

ORDERED, that Claremont's request for full intervention is GRANTED; and it is

FURTHER ORDERED, that the procedural schedule set forth in Order No. 22,274 (August 12, 1996) is APPROVED; and it is

FURTHER ORDERED, that CVEC's request for temporary rates is GRANTED; and it is

FURTHER ORDERED, that CVEC file tariff pages for temporary rates on or before October 15, 1996.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of September, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Connecticut Valley Electric Co., Inc., DR 96-170, Order No. 22,274, 81 NH PUC 614, Aug. 12, 1996.

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NH.PUC*09/30/96*[89352]*81 NH PUC 726*Sprint Communications Company of New Hampshire, Inc.

[Go to End of 89352]

81 NH PUC 726

Re Sprint Communications Company of New Hampshire, Inc.

DS 96-278
Order No. 22,339

New Hampshire Public Utilities Commission

September 30, 1996

ORDER authorizing an interexchange telephone carrier to offer new prepaid calling card products in conjunction with other commercial enterprises such as Kroger, Exxon, and Sam's Club.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Tariff revisions — Development of new prepaid calling card products — Joint venture with other commercial enterprises — Interexchange telephone carrier. p. 726.

BY THE COMMISSION:

ORDER

[1] On August 29, 1996, the New Hampshire Public Utilities Commission

Page 726

(Commission) received a petition from Sprint Communications Company of New Hampshire, Inc., (Sprint) requesting authority to introduce new Prepaid Card options for effect October 1, 1996.

The new Prepaid Card options include Sprint/Kroger, Sprint/Exxon and Sprint/Sam's Club Prepaid Calling Cards. Each of the new options offers customers prepaid calling cards at various prices as well as different per minute rates.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize Sprint to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

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

31st Revised Page 1

4th Revised Page 60

2nd Revised Page 61

2nd Revised Page 61.1

1st Revised Page 61.2

8th Revised Page 89

1st Revised Page 89.1

1st Revised Page 89.2

1st Revised Page 89.3

Original Page 89.4;

and it is

FURTHER ORDERED, that Sprint file properly annotated tariff pages in compliance with

this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this thirtieth day of September, 1996.

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NH.PUC*09/30/96*[89353]*81 NH PUC 727*Preferred Telecom, Inc.

[Go to End of 89353]

81 NH PUC 727

Re Preferred Telecom, Inc.

DE 96-072
Order No. 22,340

New Hampshire Public Utilities Commission

September 30, 1996

ORDER denying an interexchange telephone carrier authority to offer intrastate long-distance services, where it had failed to demonstrate financial viability.

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1. CERTIFICATES, § 76

[N.H.] Denial of — Factors — Failure to show financial competence — Operations at deficit — Interexchange telephone carrier. p. 727.

BY THE COMMISSION:

ORDER

On March 13, 1996, Preferred Telecom, Inc. (Preferred), a Delaware corporation, petitioned the New Hampshire Public Utilities Commission (Commission) for authority to do business as a telecommunications utility in the State of New Hampshire pursuant to, *inter alia*, RSA 374:22 and RSA 374:26. Preferred is a non-facilities based telecommunications reseller proposing to provide resale of intrastate interexchange telecommunications between various points within the State of New Hampshire.

[1] Preferred is a publicly held corporation. Exhibit D of Preferred's petition provides extensive financial information which Commission Staff (Staff) has reviewed in detail. The exhibit indicates that Preferred continues to operate with deficits and significant cash advances from its principals, which raises serious concern about Preferred's financial viability. It is Staff's recommendation that Preferred's petition be denied based on the evidence that it lacks the necessary financial qualifications.

Based upon Staff's review of the record, we agree with Staff's recommendation that the public good would not be served by approving the petition before us. We will, therefore, deny the petition without prejudice. Preferred, therefore, is free to submit a new petition when and if its financial position is improved.

Based upon the foregoing, it is hereby

ORDERED, that Preferred Telecom, Inc. is DENIED authority to conduct business as a public utility in the State of New Hampshire, without prejudice.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of September, 1996.

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NH.PUC*10/07/96*[89354]*81 NH PUC 728*IntraLATA Presubscription

[Go to End of 89354]

81 NH PUC 728

Re IntraLATA Presubscription

DE 96-090
Order No. 22,341

New Hampshire Public Utilities Commission

October 7, 1996

ORDER setting June 2, 1997, as the date by which all local exchange telephone carriers are to implement intraLATA presubscription (ILP) within the state. Commission also clarifies certain provisions of Order No. 22,281 (81 NH PUC 624, *supra*) in which the commission had mandated ILP.

Commission determines that until such time as a customer affirmatively chooses an intraLATA carrier different from its interLATA carrier, the customer will access intraLATA toll calls through "10XXX" dialing.

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1. SERVICE, § 468

[N.H.] Telecommunications — Toll services — IntraLATA presubscription — Implementation date of June 2, 1997. p. 729.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Toll services — IntraLATA presubscription — Implementation date of June 2, 1997. p. 729.

3. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Toll services — IntraLATA presubscription requirements — Inapplicability to toll resellers. p. 729.

4. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Toll services — IntraLATA presubscription — Calls excluded from presubscription requirements — Special numbers for repair services — No blanket exemption for 555-NXX numbers. p. 729.

5. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Toll services — IntraLATA presubscription — Carrier selection — Affirmative customer choice — Provisions for default carrier — Default to "10XXX" dialing — Mirroring of federal provisions for interLATA presubscription. p. 729.

BY THE COMMISSION:

ORDER

The New Hampshire Public Utilities Commission (Commission), on August 16, 1996, issued Order No. 22,281 which set the terms for implementation of presubscription of intraLATA toll carriers. The Order provided for two alternative implementation dates, based on certain technical capabilities and upgrade plans being considered by New England Telephone and Telegraph Company (NYNEX). We gave NYNEX the option to implement presubscription on either April 1, 1997 with some switches still technically incapable of presubscription or June 2, 1997, with all switches upgraded to meet presubscription. NYNEX had until September 16, 1996 to notify the Commission of its

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implementation date selection.

In addition, the Commission allowed any independent telephone company that sought to implement presubscription earlier than the date selected by NYNEX to notify the Commission by September 30, 1996. NYNEX, on September 13, 1996, notified the Commission that it would implement intraLATA presubscription by June 2, 1997. No independent telephone company filed for an earlier implementation date.

[1, 2] We will approve June 2, 1997 as the date for statewide implementation of intraLATA presubscription, subject to the conditions set forth in Order No. 22,281.[1(94)] We remind the Parties and Commission Staff (Staff) of the customer education provisions of Order No. 22,281 and the February 1, 1997 deadline for filing language for the bill insert and 800 number. We also remind the Parties that they must file no later than November 14, 1996 a plan to resolve the billing issues to permit municipal calling with intraLATA presubscription.

[3] When notifying the Commission of its implementation date selection, NYNEX requested that we confirm that our discussion of resellers in Order No. 22,281 addressed only toll resellers

and not local exchange resellers. NYNEX's reading of the Order is correct, and to the extent it is necessary, we will confirm that our discussion of resellers refers only to toll resellers.

NYNEX also noted that its original implementation plan mistakenly referred to 611 calls as repair service calls that should be exempt from presubscription, which the Commission incorporated in Order No. 22,281. NYNEX stated in its September 13, 1996 letter that 611 calls are used for repairs in New York but, in New Hampshire, repair calls are 555-1611 or 603 555-1611 (for residence repairs) and 555-1515 or 603 555-1515 (for business repairs). NYNEX asked that all 555-NXX numbers be exempt from presubscription.

[4] We will amend our order to remove the reference to 611 calls, but will not approve NYNEX's request to exempt all 555-NXX calls from presubscription. We will exempt the repair numbers specifically identified by NYNEX, that is, 555-1611 or 603 555-1611 (for residence repairs) and 555-1515 or 603 555-1515 (for business repairs).

NYNEX also requested clarification of Order No. 22,281 regarding new customers who, after a period of time, have not affirmatively selected an intraLATA carrier. The Federal Communications Commission (FCC), on August 8, 1996, ordered that a new customer who does not affirmatively select an intraLATA carrier will have to dial a carrier access code, often referred to as defaulting to 10- XXX, until it so specifies. NYNEX suggests that the Commission adopt the FCC's approach so that for a new customer who does not select an intraLATA carrier, the customer will default to 10-XXX until it so specifies.

[5] We find NYNEX's suggestion that new customers who do not select an intraLATA toll carrier default to 10-XXX until they so specify to be a sound one, in that it tracks the FCC's approach to interLATA presubscription and may help to alleviate some customer confusion between the two selection requirements. A customer who is provided new basic exchange service on or after June 3, 1997 will have to select an intraLATA toll carrier. If the customer does not make such a selection, the customer will immediately default to 10- XXX calling, which will remain in effect until the customer affirmatively selects an intraLATA toll carrier.

Based upon the foregoing, it is hereby

ORDERED, that intraLATA presubscription will be implemented statewide no later than June 2, 1997; and it is

FURTHER ORDERED, that the reference to resellers in Order No. 22,281 addresses toll resellers and not local exchange resellers; and it is

FURTHER ORDERED, that the exemption of 611 calls from presubscription in Order No. 22,281 is amended, and the only repair numbers to be exempt are 555-1611, 603 555-1611, 555-1515 and 603 555-1515; and it is

FURTHER ORDERED, that a customer who is provided new basic exchange service on or after June 3, 1997 shall select an intraLATA toll carrier; failing to do so, the customer will immediately default to 10-XXX and remain so until the customer affirmatively makes such a selection.

By order of the Public Utilities

Commission of New Hampshire this seventh day of October, 1996.

FOOTNOTES

[1]As stated in Order No. 22,281, the area served by Dixville Telephone Company is excluded from intraLATA presubscription.

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*10/07/96*[89355]*81 NH PUC 730*New Hampshire Electric Cooperative, Inc.

[Go to End of 89355]

81 NH PUC 730

Re New Hampshire Electric Cooperative, Inc.

DR 96-213
Order No. 22,342

New Hampshire Public Utilities Commission

October 7, 1996

ORDER adopting a procedural schedule for an electric cooperative's proposed rate increase of $3 million (3.9%) and noting issues to be addressed therein.

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1. RATES, § 432

[N.H.] Electric cooperative — Proposed rate increase — Adoption of procedural schedule — Issues to be addressed — Changes in demand-side management programs — Right-of-way clearing projects — Capital transactions — Transmission line project. p. 730.

BY THE COMMISSION:

ORDER

[1] 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 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).

The filing raises, *inter alia*, issues related to the appropriate level, allocation and design of both temporary and permanent rates. Specific issues include a change in recovery practice for demand side management programs, unequal allocation of the proposed rate increases by class, a project for right of way clearing ($1 million) and other significant refinancing transactions ($3.3 million), patronage capital transactions ($0.6 million), interest on Power Cost Adjustment deferrals ($0.3 million) and Allowance for Funds Used During Construction due to construction of the Saco 115 kV transmission line and substation ($0.1 million).

The Commission scheduled a prehearing conference for October 3, 1996, set a deadline for intervention requests, proposed a procedural schedule and called for initial positions of the Parties and Commission Staff (Staff). A hearing on the temporary rate request is scheduled for October 24, 1996.

The Office of Consumer Advocate (OCA) is a statutorily recognized intervenor.

At the prehearing conference and in the subsequent technical session, NHEC, OCA and Staff agreed to the following procedural schedule:

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

Responses to Oral Data Requests Propounded at the 1st Technical Session	October 16, 1996
Staff and OCA Testimony on Temporary Rates	October 18, 1996
Hearing on Temporary Rates at 10 a.m.	October 24, 1996
Data Requests by Staff and OCA	October 29, 1996
Company Data Responses	November 22, 1996
Technical Session	December 2, 1996
Written Responses to Data Requests Propounded at Technical Session	December 13, 1996
Testimony by Staff and OCA	January 17, 1997
Data Requests by the Company	January 31, 1997
Data Responses by Staff and OCA	February 14, 1997
Settlement Conference	February 20, 1997
Filing of Settlement Agreement if any	February 27, 1997
Hearing	March 6, 1997

Also at the prehearing conference, OCA stated that it currently could take no position on the filing, but based on its preliminary view, it would explore: 1) rate design for temporary and permanent rates; 2) costs of the right-of-way clearing project; 3) issues related to FAS 106; 4) debt service coverage levels; 5) the shift of expenses of the power cost adjustment to base rates; 6) employee staffing levels; and, 7) application of the matching principle.

Staff stated that as noticed in Order No. 22,314, it particularly intended to review: 1) rate

treatment of the incremental costs of demand side management programs; 2) the allocation of the proposed rate increase by class for both temporary and permanent rates; 3) the right of way clearing project's costs and reliability goals; 4) financing transactions; and, 5) construction of the Saco 115 kV transmission line and substation. As in any rate increase, the cost of common equity will be scrutinized as will NHEC's operation and maintenance expenses.

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 seventh day of October, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New Hampshire Electric Co-op., Inc., DR 96-213, Order No. 22,314, 81 NH PUC 689, Sept. 16, 1996.

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NH.PUC*10/07/96*[89356]*81 NH PUC 731*EnergyNorth Natural Gas, Inc.

[Go to End of 89356]

81 NH PUC 731

Re EnergyNorth Natural Gas, Inc.

DR 96-239
Order No. 22,343

New Hampshire Public Utilities Commission

October 7, 1996

ORDER granting interventions and adopting a procedural schedule as to a natural gas local distribution company's proposed introduction of a new natural gas engine firm transportation rate.

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1. PARTIES, § 18

[N.H.] Intervenors — Standing — Customers of applicant utility — Impact of proposed new service rate on existing customers — Natural gas engine firm transportation rate — Local gas distributor. p. 733.

2. RATES, § 382

gas engine firm transportation rate — For certain qualifying customers — Adoption of procedural schedule — Scope of proceeding — Reasonableness of proposed rate — Exclusion of issue of competitive impacts — Local distribution company. p. 733.

BY THE COMMISSION:

ORDER

On July 25, 1996, EnergyNorth Natural Gas, Inc. (ENGI) filed with the New Hampshire Public Utilities Commission (Commission) a petition for approval of a Natural Gas Engine Transportation Tariff and supporting testimony and exhibits.

By Order No. 22,283 (August 19, 1996) the Commission suspended the proposed filing to allow a thorough review of the tariff filing and accompanying supporting materials. On August 22, 1996, ENGI submitted a letter to the Commission requesting an expedited procedural schedule.

The Commission set a prehearing conference for October 1, 1996, set a deadline for intervention requests and called for initial positions of the Parties and Commission Staff (Staff). Concord Electric Company (CEC), Hannaford Bros. Co. (Hannaford) and Public Service Company of New Hampshire (PSNH) each sought intervention.

Hannaford filed an objection to the Petition to Intervene of PSNH and asserted that PSNH had no specific interest in the proposed tariff and that PSNH could use its participation in this docket for anti-competitive purposes. PSNH supported its Motion to Intervene by stating that it is a customer of ENGI, that it could be required under LEEPA or PURPA to purchase the output of generation occurring under the proposed tariff and that it did not seek to intervene to delay or obstruct the proceeding. There were no other objections to the Petitions to Intervene of PSNH, CEC or Hannaford. The Office of Consumer Advocate (OCA) is a statutorily recognized intervenor.

At the prehearing conference ENGI, CEC, Hannaford, PSNH and Staff agreed to the following procedural schedule:

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

Rolling Data Requests to ENGI    October 8, 1996

Technical Session at 10 a.m.    October 17, 1996

Rolling Responses from ENGI    October 21 , 1996

Staff and Intervenor Testimony November 12, 1996

Settlement Conference, 10 a.m. November 18, 1996

Rebuttal Testimony              December 3, 1996
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Hearing on Merits              December 30, 1996
                                    at 1:30 P.M.
                                             and
                               December 31, 1996
                                   at 10:00 A.M.
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Also at the prehearing conference, in accordance with the Order of Notice, ENGI stated that in this proceeding it sought to provide a tariff for high load factor gas transportation customers with small power production facilities.

Hannaford stated that it presently operated approximately 9 store sites in the service area of ENGI and that it would take service under the proposed tariff for self-generation of electricity and other energy options.

PSNH stated that if ENGI incurred new load during peak periods it could result in increased peak shaving costs and cause a rise in prices. PSNH also asserted that the tariff raised the issue of utility on utility competition.

Staff stated that the proposed tariff should not be limited to end-users cogenerating or self generating electricity. Staff asserted that if the cost study included with the filing supported the rate it should be available to all customers meeting the specified load characteristics. Staff also asserted that the issue of utility on utility competition should be outside the scope of this proceeding concluding that the only issue should be an analysis of the cost study and whether it supported the proposed rate.

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[1, 2] We will grant the request for full intervention by CEC, Hannaford and PSNH. In so doing, we rely on PSNH's representations that its participation in the proceeding will not result in disruptions or delays. We find the proposed procedural schedule to be reasonable and will approve it for the duration of the case.

With respect to the scope of this proceeding, we will confine our inquiry to an analysis of whether the proposed tariffed rates are just and reasonable, and will not undertake an examination of whether the tariffed rates enhance ENGI's competition position with respect to electric utilities.

Based upon the foregoing, it is hereby

ORDERED, that CEC, Hannaford and PSNH 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 seventh day of October, 1996.

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.

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NH.PUC*10/08/96*[89357]*81 NH PUC 733*Integrated Water Systems, Inc.

[Go to End of 89357]

81 NH PUC 733

Re Integrated Water Systems, Inc.

DR 94-094
Order No. 22,344

New Hampshire Public Utilities Commission

October 8, 1996

ORDER affirming that the effective date for new rates approved for a water utility via settlement should be September 1, 1996, with no retroactive recovery to April 1, 1996. For the earlier decision accepting the settlement, see Order No. 22,299 (81 NH PUC 667, *supra*).

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1. RATES, § 249

[N.H.] Schedules and procedure — Effective date of new filings — Sufficiency of customer notice as a factor — Prospective recovery versus retroactive recovery — Future effective date as allowing customers time to adjust consumption patterns — Water utility. p. 734.

2. RATES, § 604

[N.H.] Water rate design — Fixed charges and usage charges — Increases in monthly customer and consumption charges — Effective date — Sufficient customer notice as a factor — No retroactive recovery. p. 734.

BY THE COMMISSION:

ORDER

On July 22, 1996, Integrated Water Systems, Inc. (Integrated) filed with the New Hampshire Public Utilities Commission (Commission) a petition to increase its monthly fixed charges from $13 to $15 and its monthly consumption charges from $4.83 to $5.30 per thousand gallons. Integrated contended that the increases are necessary to correct the effects of a discrepancy between water production and the actual metered consumption of water which had resulted in undercollection of approved revenues. The increases would not result in an increase to approved revenues.

In Order No. 22,041 (March 4, 1996), the Commission approved rates for Integrated that were premised upon Integrated's reported usage of 34,688,000 gallons. These rates would have enabled Integrated to earn the revenue requirement approved in Order No. 21,547 (February 22,

1995).

In its July, 1996 petition, Integrated

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represented that, based on newly installed meters, actual water consumption was substantially less than that used to calculate the approved rates. For the period studied, almost 24% of water pumped was being lost through leaks into the ground. Unless the rates could be corrected upward to make up for this lost water, Integrated projected a revenue loss of $47,500 annually.

Integrated, Locke Lake Colony Association (Locke Lake) and Commission Staff (Staff) presented a Settlement Agreement, which increased the fixed charge from $13 to $15 and the consumption charge from $3.73 per thousand gallons to $5.30 per thousand gallons and required Integrated to submit monthly reports of its progress in leak detection control. The Commission approved the Settlement Agreement in Order No. 22,299 (August 30, 1996).

The Settlement Agreement did not address the effective date for the increased rates. In its petition, Integrated requested an effective date of July 1, 1996. By a Motion to Amend its petition filed on August 13, 1996, the date of the hearing, Integrated requested an effective date of April 1, 1996. Integrated argued that the losses from April forward were caused by miscalculation of actual consumption and that the rate approved by the Commission was intended to result in collection of the approved revenues. Integrated also argued that customer notice of the increase is not required prior to the effective date as this change is similar to the reconciliation allowed for temporary rates at the conclusion of the permanent rate case.

Staff recommended that the rates should be effective for bills rendered September 1, 1996. Staff disagreed with the position that notice was not required, stating that the Commission's policy has been to allow customers to adjust consumption based on knowledge of the rates being charged and that RSA 378:3 requires notice to customers prior to changes in rates.

[1, 2] When approving the Settlement Agreement, we authorized the new rates as of September 1, 1996 and deferred ruling on whether the effective date should be altered to April 1, 1996 for retroactive recovery of losses incurred between April 1, 1996 and August 31, 1996.

We have reviewed the arguments and memoranda of law submitted on the issue of the appropriate effective date and conclude that the effective date of the new rates should remain September 1, 1996, with no retroactive recovery for losses between April 1, 1996 and August 31, 1996. Pursuant to RSA 378:3, a utility must provide the Commission with 30 days' notice of changes in rates, unless ordered otherwise by the Commission. We see no basis on which to deviate from the 30 day requirement in this case.

One of the purposes of metered rates is to allow customers to develop an awareness of their water usage and respond to rate changes accordingly. Because customers were not notified of the potential increase in rates 30 days prior to April 1, 1996, they were not able to conform their water usage from April through August and, therefore, retroactive imposition of the rate change would not be fair.

We are not persuaded by Integrated's arguments that this rate change is akin to temporary

rates that can be reconciled at the conclusion of the permanent rate case. As stated in Order No. 22,299, this is a case of rate redesign. As such, we believe, the full 30 days' notice is appropriate.

Integrated should continue to devote at least ten hours per week on leak detection efforts and submit monthly production and consumption reports as required by Order No. 22,229.

Based upon the foregoing, it is hereby

ORDERED, that Integrated's request for a retroactive April 1, 1996 effective date for new rates approved in the Settlement Agreement is DENIED.

By order of the Public Utilities Commission of New Hampshire this eighth day of October, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Integrated Water Systems, Inc., DR 94-094, Order No. 21,547, 80 NH PUC 95, Feb. 22,

Page 734

1995. [N.H.] Re Integrated Water Systems, Inc., DR 94-094, Order No. 22,041, 81 NH PUC 166, Mar. 4, 1996. [N.H.] Re Integrated Water Systems, Inc., DR 94-094, Order No. 22,299, 81 NH PUC 667, Aug. 30, 1996.

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NH.PUC*10/08/96*[89358]*81 NH PUC 735*Target Telecom, Inc.

[Go to End of 89358]

81 NH PUC 735

Re Target Telecom, Inc.

Additional applicant: TTI National, Inc.

DE 96-134
Order No. 22,345

New Hampshire Public Utilities Commission

October 8, 1996

ORDER authorizing the transfer of all customer lists and accounts and of certificate operating authority from Target Telecom, Inc., to TTI National, Inc., a subsidiary of WorldCom, Inc.

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1. CONSOLIDATION, MERGER, AND SALE, § 23

[N.H.] Transfer of customer lists, accounts, and other assets — Factors affecting approval —

Corporate and economic efficiencies — Enhanced jurisdictional offerings — Transparent effect on customers — Compliance with standard of no net harm — Telecommunications carriers. p. 736.

2. CERTIFICATES, § 137

[N.H.] Transfer of certificate operating authority — Factors affecting approval — Corporate and economic efficiencies — Transparent effect on customers — Telecommunications carriers. p. 736.

BY THE COMMISSION:

ORDER

On April 23, 1996, Target Telecom, Inc. (Target), TTI National, Inc. (TTI) and WorldCom, Inc. d/b/a LDDS WorldCom (Worldcom), (collectively, the Petitioners) filed with the New Hampshire Public Utilities Commission (Commission) a petition (Petition) for approval to transfer selected assets and Certificate of Authority from Target to TTI.

The Commission, in Docket No. DE 94-273 by Order No. 21,539 (March 17, 1995), granted Target, a New Jersey corporation, authority to operate in the State of New Hampshire.

WorldCom, a publicly held Georgia corporation, is the parent company of TTI and a number of other companies operating as interexchange carriers. WorldCom Network Services, Inc. d/b/a WilTel, Inc., a subsidiary of WorldCom, was granted authority to operate in the State of New Hampshire in Docket No. DE 91-165 by Order No. 20,632 (October 13, 1992).

TTI, a Delaware corporation, is wholly owned by WorldCom. TTI is a corporation formed specifically for the purpose of facilitating the acquisition of Target's assets by WorldCom. TTI has evidenced that it is fully registered with the New Hampshire Secretary of State pursuant to RSA 374:25.

Target seeks to sell to WorldCom, through WorldCom's subsidiary TTI, the following assets: (a) customer accounts, including all subscription agreements, contracts, arrangements and other understandings between Target and its customers; (b) all lists relating to the assets or the business including lists of existing, potential or prior customers and existing, potential or prior vendors; (c) accounts receivable; and, (d) all books, records, files, promotional materials and other documents relating to the business. The Petitioners also request Target's existing Certificate of Authority be transferred to TTI.

TTI represents that the transfer of assets will be essentially transparent to the customers, as it proposes to adopt Target's existing tariffed

rates and services currently on file with the Commission. The Petitioners anticipate the transfer will enable WorldCom to expand its operations, thereby resulting in enhanced services to New Hampshire customers.

TTI further represents that as a wholly owned subsidiary of WorldCom, currently the nation's fourth largest IXC, that TTI is qualified to provide telecommunications services to Target's customers. TTI will have access to WorldCom's technical, managerial and financial resources. TTI will be managed by WorldCom personnel.

WorldCom evidenced technical, managerial and financial competence in the record of DE 91-165. Staff has reviewed updated financial information filed with this Petition and believes Petitioners remain financially qualified to conduct business in New Hampshire.

[1, 2] We find that the transfer of certain assets from Target to TTI and the transfer of Target's Certificate of Authority to TTI will result in no net harm. The transfer of assets and control may in fact produce net benefits to Target's affected customers. We will, therefore, approve the Petition.

Based upon the foregoing, it is hereby

ORDERED that the Petition for approval for the sale of certain Target assets and the transfer of authority from Target to TTI as described in the Petition is granted; and it is

FURTHER ORDERED, that TTI file a properly annotated compliance tariff page adopting the tariff of Target on or before November 7, 1996; and it is

FURTHER ORDERED, that TTI shall notify affected customers of the transaction in the next billing cycle.

By order of the Public Utilities Commission of New Hampshire this eighth day of October, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Target Telecom, Inc., DE 94-273, Order No. 21,539, 80 NH PUC 82, Feb. 15, 1995.
[N.H.] Re WilTel of New Hampshire, Inc., DE 91-165, Order No. 20,632, 77 NH PUC 649, Oct. 13, 1992.

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NH.PUC*10/08/96*[89359]*81 NH PUC 736*Holiday Acres Water and Wastewater Services

[Go to End of 89359]

81 NH PUC 736

Re Holiday Acres Water and Wastewater Services

DR 96-242
Order No. 22,346

New Hampshire Public Utilities Commission

October 8, 1996

ORDER granting interventions and adopting a procedural schedule as to a water utility's application for a franchise to serve a previously unfranchised area composed of several mobile home parks near Allenstown.

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1. PARTIES, § 19

[N.H.] Intervenors — Associations — Tenant groups from mobile home parks — Water utility franchise proceeding. p. 737.

2. FRANCHISES, § 3

[N.H.] Necessity of securing — Application for — Procedural schedule — Issues to be addressed — Proposed rate treatment — Proposed plant additions — Impact of previous bankruptcy proceeding — Water utility. p. 737.

BY THE COMMISSION:

ORDER

On July 26, 1996, Holiday Acres Water & Wastewater Services (Holiday Acres) filed with the New Hampshire Public Utilities Commission (Commission), along with supporting testimony and exhibits, a petition for authority to establish and operate a combination water and

Page 736

wastewater utility in a limited area in the Town of Allenstown, New Hampshire (Petition). The current system, which is not franchised, serves 297 customers within the Holiday Acres Mobile Home Park (Park) and 23 customers outside the Park along Chester Turnpike. The Petition states that Holiday Acres acquired the system in 1995 as part of its purchase of the Holiday Acres Mobile Home Park, which was sold in bankruptcy to Holiday Acres Joint Venture Trust, and has been operating the systems since that time.

The Petition seeks to establish separate tariffs for permanent water and wastewater service rates and to establish temporary rates for both water and wastewater services. Initially, Holiday Acres proposes to charge a flat monthly rate of $19.92 for water service and $27.74 for wastewater service, for a total of $47.66. The proposed rates were reduced overall in supplemental testimony filed on September 30, 1996. Accordingly, the proposed monthly water rate is $11.38; the proposed monthly sewer rate is $30.24, for a total of $41.62.

Holiday Acres plans to install meters in 1997, at which time it would file metered rates. The metered rate will not be set as part of the pending docket.

The Commission scheduled a prehearing conference for September 30, 1996, set a deadline for intervention requests, proposed a procedural schedule and called for initial positions of the Parties and Commission Staff (Staff). Holiday Acres' request for temporary rates was subsequently withdrawn.

[1, 2] The Rocky Road Tenants Association (Rocky Road Association) and the Mobile/Manufactured Home Owners and Tenants Association (MOTA) both sought limited intervention, without objection. Rocky Road Association is made up of many of the residents of Holiday Acres park. MOTA is a statewide association that is an advocate of mobile and manufactured home owners and tenants. One of the Chester Turnpike residents asked to be placed on the limited intervenor service list in order to be kept informed, but did not seek intervention.

At the prehearing conference, Holiday Acres, Rocky Road Association, MOTA and Staff agreed to the following procedural schedule:

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

Responses to Oral Data Requests
Propounded at 1st Technical
Session                           October 7, 1996
Data Requests by Staff to
Holiday Acres                    October 17, 1996
Data Responses from Holiday
Acres                            October 31, 1996
Technical Session at 10 a.m.     November 6, 1996
Testimony by Staff              November 14, 1996
Data Requests by Holiday Acres  November 27, 1996
Data Responses by Staff          December 9, 1996
Settlement Conference, 10 a.m.  December 12, 1996
File Settlement Agreement,
if any                          December 17, 1996
Hearing on merits, 10 a.m.      December 20, 1996
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Also at the prehearing conference, in accordance with the Order of Notice, Holiday Acres stated that the ownership of the water and wastewater system has changed and that numerous improvements have been made to the system since taking possession. It was also noted that, inasmuch as Holiday Acres will be newly regulated, it will develop books and records in accordance with Commission standards. Furthermore, Holiday Acres intends to explore with Allenstown its billing of the Chester Turnpike customers, so that they will not be billed twice for the same services.

The representative of Rocky Road Association and MOTA stated she was concerned that the residents of the Park not lose any of their protections under RSA 205-A, Regulation of Manufactured Housing Parks, as a result of the creation of a public utility. She noted that the Park rent has always included payment for water and sewer services and expressed concern about the impact of additional charges.

Chester Turnpike residents stated that in addition to the concerns about possible double billing, they considered the water quality to be

Page 737

poor (high radon content and a belief that the bacteria level was high). They alleged poor response in the past to their complaints and a lack of communication when repairs or outages were necessary, which they contend is because they are not a part of the Park.

Staff stated it particularly intended to review: 1) the managerial, technical and financial competence of Holiday Acres; 2) the rate treatment of those customers outside the park who now

receive wastewater services from Allenstown; 3) plant and additions made since the purchase of the system out of bankruptcy; and, 4) operation and maintenance costs.

We will grant the requests of Rocky Road Association and MOTA for limited intervention. We find the proposed procedural schedule to be reasonable and will approve it for the duration of the case.

Based upon the foregoing, it is hereby

ORDERED, that Rocky Road Association and MOTA are granted limited intervention in this case; and it is

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

By order of the Public Utilities Commission of New Hampshire this eighth day of October, 1996.

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NH.PUC*10/08/96*[89360]*81 NH PUC 738*OneStar Direct Access, Inc.

[Go to End of 89360]

81 NH PUC 738

Re OneStar Direct Access, Inc.

DS 96-269
Order No. 22,347

New Hampshire Public Utilities Commission

October 8, 1996

ORDER approving changes to more than 50% of an interexchange telephone carrier's tariffs, inclusive of the introduction of four new outbound toll services and two new inbound toll products.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Introduction of new outbound and inbound toll products — General tariff revisions — Interexchange telephone carrier. p. 738.

BY THE COMMISSION:

ORDER

[1] On August 21, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from OneStar Direct Access Inc., (OneStar) requesting authority to revise more than 50 percent of the existing tariff pages and thus, pursuant to NH Admin. Rules, Puc

1601.05(b) (2), introduce NHPUC Tariff No. 5.

The proposed tariff introduces new services and renumbers existing paragraphs for formatting purposes. The new services include four new outbound toll products: OneStar Call Direct, OneStar Flat Rate 14, OneStar AmeriCall and OneStar WATS II. Two new toll-free inbound services are also being introduced: OneStar Call Direct 800 and OneStar Flat Rate 12.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize OneStar to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of OneStar's tariff, NHPUC No. 5 are approved for effect as filed, as of the date of this order:

Original Title Page Original Pages 1-18 1st Revised Pages 19-21 in lieu of Originals Original Pages 22-49;

Page 738

and it is

FURTHER ORDERED, that OneStar file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this eighth day of October, 1996.

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NH.PUC*10/08/96*[89361]*81 NH PUC 739*SmarTalk Teleservices, Inc.

[Go to End of 89361]

81 NH PUC 739

Re SmarTalk Teleservices, Inc.

DS 96-292
Order No. 22,348

New Hampshire Public Utilities Commission

October 8, 1996

ORDER approving an interexchange telephone carrier's proposed tariff revisions, so as to update its corporate address and introduce several new outbound toll services as well as the ability for debit cards to be recharged using a commercial credit card.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Debit calling card products — Recharging via commercial credit card — Concomitant introduction of other outbound toll services — Interexchange carrier. p. 739.

BY THE COMMISSION:

ORDER

[1] On September 6, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from SmarTalk TeleServices, Inc., (SmarTalk) requesting authority to introduce new services and update SmarTalk's corporate address on the revised pages, for effect October 6, 1996.

New services being introduced include SmarTalk Advantage and SmarTalk Retail Advantage, both outbound long distance toll products. Usage Advantage is a debit card being introduced. SmarTalk Online Recharge allows customers to recharge debit cards using a commercial credit card and SmarTalk Recharge at Retail allows customers to recharge debit cards at participating retail establishments.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize SmarTalk to revise its tariff as outlined above.

The proposed revisions, however, require a change to more than 50 percent of the existing tariff. NH Admin. Rules, Puc 1601.05(b) (2), require "when more than 50% of the pages of a complete tariff are effected in a single filing a complete new tariff shall be filed." Therefore, SmarTalk must file a completely new tariff.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of SmarTalk's tariff, NHPUC No. 1 are approved for effect as filed:

2nd Revised Page 2 in lieu of Original 1st Revised Page 3 1st Revised Page 7 1st Revised Page 8 1st Revised Page 9 1st Revised Page 10 1st Revised Page 11 1st Revised Page 12 2nd Revised Page 14 in lieu of 1st Revision 1st Revised Page 15 1st Revised Page 16 1st Revised Page 17 1st Revised Page 18 1st Revised Page 19 1st Revised Page 20 1st Revised Page 21 Original Page 24 1st Revised Page 25 in lieu of Original;

and it is

FURTHER ORDERED, that SmarTalk file a new tariff, SmarTalk NHPUC No. 2, incorporating the changes approved above with the existing approved pages in SmarTalk's NHPUC No. 1, in compliance with Puc 1601.05(b) (2), and properly annotated as required by

N.H. Admin. Rules, Puc 1601.05 (k), no later than 30 days from the issuance date of this order.

By order of the Public Utilities Commission of New Hampshire this eighth day of October, 1996.

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NH.PUC*10/08/96*[89362]*81 NH PUC 740*LDDS Communications, Inc.

[Go to End of 89362]

81 NH PUC 740

Re LDDS Communications, Inc.

DS 96-281
Order No. 22,349

New Hampshire Public Utilities Commission

October 8, 1996

ORDER approving an interexchange telephone carrier's plan to expand its prepaid calling card services and to offer additional promotional incentives under its "WorldOne" service plans.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Prepaid calling card services — Expansion of — "WorldOne" service packages — Additional promotional incentives — Interexchange carrier. p. 740.

BY THE COMMISSION:

ORDER

[1] On August 29, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from LDDS Communications, Inc. (LDDS) requesting authority to introduce PhonePass, TalkAround Calling Card and Home Advantage Organizational Program, to add promotional incentives for certain services and to revise the WorldOne Extended Service Plan.

PhonePass is a prepaid calling card. Customers access the service by dialing a Company provided toll-free number. The Company's original proposal indicated the card expired 12 months after the customer activated the card and that the Company would not issue credit on unused units of the PhonePass Card. After discussions with Commission Staff, the Company agreed to allow customers to call its customer assistance number printed on the card to extend the expiration date for an additional two months.

TalkAround Calling Card is available to customers who subscribe to one of the Company's residential long distance services. The calling card rate is 30 cents per minute with no additional

surcharge for direct-dialed calls.

The Home Advantage Organizational Program is a benefit package offered in conjunction with Home Advantage Service, which allows individual users who are members or employees of participating organizations to receive additional product discounts if program parameters are met.

Promotional incentives are being added for new and existing customers of the WorldCom Advantage Plus promotion and the Bottom Line Business promotion.

The WorldOne Extended Service Plan allows customers to cancel a term agreement within 90 days if LDDS is unable to correct quality of service trouble reported by the customer and caused by the company.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize LDDS to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of LDDS' tariff, NHPUC No. 2 are approved for effect as of the date of this order:

Page 740

10th Revised Page 1 11th Revised Page 1.1 in lieu of 9th Revision 3rd Revised Page 1.2 4th Revised Page 4 3rd Revised Page 54 in lieu of 2nd Revision 3rd Revised Page 55 2nd Revised Page 74.2 Original Page 74.2.1 Original Page 78.1 3rd Revised Page 84 in lieu of 2nd Revision Original Page 84.1.1 Original Page 84.1.2 Original Page 84.1.3 Original Page 84.3 Original Page 84.4 Original Page 84.5 Original Page 84.6 Original Page 109.3 Original Page 109.4 Original Page 109.5 Original Page 109.6;

and it is

FURTHER ORDERED, that LDDS file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this eighth day of October, 1996.

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NH.PUC*10/08/96*[89363]*81 NH PUC 741*World Telecom Group, Inc.

[Go to End of 89363]

81 NH PUC 741

Re World Telecom Group, Inc.

DS 96-282
Order No. 22,350

New Hampshire Public Utilities Commission

October 8, 1996

ORDER approving an interexchange telephone carrier's proposal for making minor revisions to more than 50% of its tariffs, so as to maintain consistency with tariffs applicable in other states where it operates.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Tariff revisions — Consistency with tariffs applicable in other states — Interexchange carrier. p. 741.

BY THE COMMISSION:

ORDER

[1] On August 30, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from World Telecom Group, Inc., (WTG) requesting authority to revise more than 50 percent of the existing tariff pages and thus, pursuant to NH Admin. Rules, Puc 1601.05(b) (2), introduce NHPUC Tariff No. 2 for effect September 30, 1996.

The proposed tariff makes revisions to WTG's product lines and incorporates textual and formatting revisions to maintain consistency among WTG's tariffs nationally, where possible.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize WTG to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of WTG's tariff, NHPUC No. 2 are approved for effect as filed, as of the date of this order:

Original Title Page Original Pages 1-14 1st Revised Page 15 in lieu of Original Original Pages 16-17 1st Revised Pages 18-20 in lieu of Originals Original Pages 21-23;

and it is

FURTHER ORDERED, that WTG file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this eighth day of October,

1996.

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NH.PUC*10/14/96*[89364]*81 NH PUC 742*Merrimack County Telephone Company

[Go to End of 89364]

81 NH PUC 742

Re Merrimack County Telephone Company

DS 96-197
Order No. 22,351

New Hampshire Public Utilities Commission

October 14, 1996

ORDER further suspending a local exchange telephone carrier's proposed introduction of enhanced business services, a form of Centrex service.

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1. SERVICE, § 463

[N.H.] Telephone — Proposal for Centrex-like "enhanced business services" — Suspension — Extension of suspension period — To allow for adequate investigatory period — Local exchange carrier. p. 742.

2. RATES, § 248

[N.H.] Schedules and procedure — Suspension — Of proposed service offering — Extension of suspension period — To allow for adequate investigatory period — As to Centrex-like "enhanced business services" — Local exchange telephone carrier. p. 742.

BY THE COMMISSION:

ORDER

[1, 2] On June 14, 1996, Merrimack County Telephone Company (Merrimack) filed proposed tariff pages to introduce Enhanced Business Service (EBS), for effect July 15, 1996. Merrimack has stated that EBS is also referred to as Centrex service. In support of its filing, Merrimack filed incremental cost study support materials and market research data.

Staff requires additional time to investigate the filing and material filed in support of the proposed tariff and therefore has requested that the proposed tariff pages be suspended.

We have reviewed Staff's request and will suspend the proposed filing to allow a thorough review of the tariff filing and the accompanying supporting materials.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of Merrimack County Telephone Company are suspended:

NHPUC No. 7

Part III - General, Section 2,

Original Pages 1 through 26.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of October, 1996.

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NH.PUC*10/14/96*[89365]*81 NH PUC 743*IXC Long Distance, Inc.

[Go to End of 89365]

81 NH PUC 743

Re IXC Long Distance, Inc.

DS 96-303
Order No. 22,352

New Hampshire Public Utilities Commission

October 14, 1996

ORDER authorizing an interexchange telephone carrier to introduce new operator, calling card, and prepaid debit card services.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Introduction of operator services — Introduction of calling card and prepaid card services — Associated tariff revisions — Interexchange telephone carrier. p. 743.

BY THE COMMISSION:

ORDER

[1] On September 18, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from IXC Long Distance, Inc. (IXC), requesting authority to make various revisions to its tariff, for effect October 18, 1996. Revisions include the introduction of Operator Services, a Prepaid Card and Calling Card.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition.

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

The proposed revisions, however, require a change to more than 50 percent of the existing tariff. NH Admin. Rules, Puc 1601.05(b) (2), require "when more than 50% of the pages of a complete tariff are affected in a single filing a complete new tariff shall be filed." Therefore, IXC must file a completely new tariff.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of IXC's tariff, NHPUC No. 1 are approved for effect as filed:

2nd Revised Page 2 in lieu of Original 1st Revised Page 3 Original Page 3.1 1st Revised Page 7 Original Page 7.1 1st Revised Page 8 1st Revised Page 18 1st Revised Page 19 1st Revised Page 20 Original Page 20.1 Original Page 20.2 1st Revised Page 21 1st Revised Page 22 1st Revised Page 23 2nd Revised Page 24 in lieu of 1st Revision 1st Revised Page 25 Original Page 26 Original Page 27;

and it is

FURTHER ORDERED, that IXC file a new tariff, IXC NHPUC No. 2, incorporating the changes approved above with the existing approved pages in IXC's NHPUC No. 1, in compliance with Puc 1601.05(b) (2), and properly annotated as required by N.H. Admin. Rules, Puc 1601.05 (k), no later than 30 days from the issuance date of this order.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of October, 1996.

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NH.PUC*10/14/96*[89366]*81 NH PUC 744*ACC Long Distance of New Hampshire Corporation

[Go to End of 89366]

81 NH PUC 744

Re ACC Long Distance of New Hampshire Corporation

DS 96-302
Order No. 22,353

New Hampshire Public Utilities Commission

October 14, 1996

ORDER authorizing an interexchange telephone carrier to introduce a new calling card product and special rate discounts for "Answer `96" service, depending on a customer's monthly volume of use and type of access. The carrier also is allowed to grandfather certain savings programs for residential customers.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Special discount plans — "Answer '96" service — Discounts as dependent on monthly usage volumes and switched versus dedicated access — Grandfathering of other residential discount plans — Interexchange telephone carrier. p. 744.

2. RATES, § 582

[N.H.] Telephone rate design — Toll service — New calling card plans — "Travel Service Elite II" service — Interexchange telephone carrier. p. 744.

BY THE COMMISSION:

ORDER

[1, 2] On September 18, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from ACC Long Distance of New Hampshire Corp. (ACC), requesting authority to introduce Answer '96 and Travel Service Elite II, revise rates and grandfather the Save Plus Residential Rate Program and Back to Basics, for effect October 18, 1996.

Answer '96 offers customers various rates for outbound toll service depending on the type of access used (i.e., switched or dedicated), the monthly volume of use and term commitment. Answer '96 also offers customers various rates for inbound toll-free service using dedicated access, depending on the monthly volume of use and term commitment.

Travel Service Elite II is a calling card that offers a per minute of use rate with no additional surcharge. Rates vary depending on the time of day.

The Save Plus Residential Rate Program, Back to Basics, Direct Dial Service and 800 Service are being grandfathered for customers taking the respective service on or before October 18, 1996.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize ACC to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of ACC's tariff, NHPUC No. 1 are approved for effect as filed:

1st Revised Page 1

1st Revised Page 2

1st Revised Page 3

1st Revised Page 38

1st Revised Page 39

1st Revised Page 42

1st Revised Page 43
1st Revised Page 44
1st Revised Page 45
1st Revised Page 46
1st Revised Page 47
Original Page 57.1
Original Page 57.2
Original Page 57.3
Original Page 57.4
1st Revised Page 66;

and it is

Page 744

FURTHER ORDERED, that ACC file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this fourteenth day of October, 1996.

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NH.PUC*10/14/96*[89367]*81 NH PUC 745*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 89367]

81 NH PUC 745

Re New England Telephone and Telegraph Company dba NYNEX

DS 96-299
Order No. 22,354

New Hampshire Public Utilities Commission

October 14, 1996

ORDER suspending a local exchange telephone carrier's proposed offering of 800 data base access service.

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1. SERVICE, § 449

[N.H.] Telephone — Special service — 800 data base access service — As adjunct to

switched access service — Suspension of proposed tariffs. p. 745.

2. RATES, § 248

[N.H.] Schedules and procedure — Suspension — Of proposed new service offering — To allow for adequate investigatory period — 800 data base access service — Local exchange telephone carrier. p. 745.

BY THE COMMISSION:

ORDER

[1, 2] On September 16, 1996, New England Telephone and Telegraph Company (NYNEX) filed proposed tariff pages to introduce 800 Data Base Access Service, including the offering of two optional features: (1) 800 to POTS Number Translation and (2) Call Handling and Destination Feature, for effect October 16, 1996. As part of its filing, NYNEX included a Tariff Filing Support Package containing marketing and cost support materials.

The 800 Data Base Access Service would be offered to switched access customers served out of Tariff NHPUC-No. 79. As used in the filing, the term 800 Data Base includes the 888 Numbering Plan Administrator (NPA) and any other 800 type inward toll NPAs as they become available to the industry. NYNEX proposes the introduction of 800 Data Base Access Service in New Hampshire in preparation for compliance with Local Competition and Interconnection requirements of the Federal Telecommunications Act of 1996.

Staff has notified the Commission that Staff requires time to investigate the filing and supporting materials, and, therefore, has requested that the proposed tariff pages be suspended.

We have reviewed Staff's request and will suspend the proposed filing to allow a thorough review of the filing and supporting materials.

Based upon the foregoing, it is hereby

ORDERED, that the following tariff pages of NYNEX are suspended:

> NHPUC No. 79 Section 1 - Original of Page 7.1 - First Revision of Pages 4, 7, and 10.1 Canceling Original Section 2 - First Revision of Page 15 Canceling Original - Third Revision of Page 16 Canceling Second Revision Section 5 - First Revision of Page 8 Canceling Original - Third Revision of Page 1 Canceling Second Revision Section 6 - Original of Pages 14.2 and 14.3 - First Revision of Pages 16, 18 and 19 Canceling Original - Second Revision of Page 1 Canceling First Revision - Third Revision of Pages 14.1, 17 and 21

> Canceling Second Revision - Fourth Revision of Page 2 Canceling Third Revision Section 30 - Third Revision of Pages 7 and 7.1 Canceling Second Revision - Fourth Revision of Page 6 Canceling Third Revision

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

October, 1996.

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NH.PUC*10/15/96*[89368]*81 NH PUC 746*Public Service Company of New Hampshire

[Go to End of 89368]

81 NH PUC 746

Re Public Service Company of New Hampshire

DR 95-114
Order No. 22,355

New Hampshire Public Utilities Commission

October 15, 1996

ORDER approving an electric utility's proposed special rate contract with an industrial mill customer, Crown Vantage, Inc., as modified according to the mandates of Order No. 22,225 (81 NH PUC 518, *supra*). Commission acknowledges that the contract should be considered as one designed to retain load as opposed to retaining business.

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1. MONOPOLY AND COMPETITION, § 21

[N.H.] Restraint of trade and anticompetitive practices — Special contracts — Terms encumbering customer's property — Anti-self-generation provisions — Early termination provisions — Modification — Reduction in early termination terms from 84 months to 60 months — Distinction between load retention and business retention contracts — Electric utility. p. 750.

2. RATES, § 166

[N.H.] Factors affecting reasonableness — Solicitation or retention of business — Special rate contracts — Distinction between load retention and business retention contracts — Business retention contracts as preventing customer relocations out-of-state — Load retention contracts as forestalling cogeneration — Electric utility. p. 750.

3. RATES, § 211

[N.H.] Special rate contracts — For business or load retention purposes — Distinction — Business retention contracts as preventing customer relocations out-of-state — Load retention contracts as forestalling cogeneration — But anticompetitive terms to be eliminated in either case — Electric utility. p. 750.

4. RATES, § 322

[N.H.] Electric rate design — Load factors — Special rate contracts — For load retention versus business retention purposes — Modification to eliminate anticompetitive terms — Early termination provisions — Anti-self-generation provisions — Impending competition and

industry restructuring as factors. p. 750.

APPEARANCES: Gerald M. Eaton, Esq. for Public Service Company of New Hampshire; Ron Baillargeon for Crown Vantage, Inc.; James T. Rodier, Esq. for Freedom Energy Company; Carlos A. Gavilondo, Esq. for Granite State Electric Company; Gallagher, Callahan and Gartrell by John B. Pendleton, Esq. for Wausau Papers of New Hampshire, Inc.; Ransmeier and Spellman by Dom S. D'Ambruoso, Esq. for Portland Pipe Line Corporation; Henry Veilleux on behalf of the New Hampshire Business and Industry Association; Douglas and Douglas by Charles G. Douglas, III, Esq. for Cabletron Systems, Inc.; Backus, Meyer and Solomon by Robert A. Backus, Esq. for Campaign for Ratepayers Rights; James Donchess, Esq. for Public Utilities Policy Institute; Hugh T. Lee, Esq. for Heidelberg Harris Inc.; Senator Frederick King representing

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Senate District 1; LeBoeuf, Lamb, Green & MacRae by Susan Geiser, Esq. on behalf of Concord Electric Company and Exeter & Hampton Electric Company; Office of Consumer Advocate by Michael W. Holmes, Esq. for residential ratepayers; Eugene F. Sullivan, III, Esq. for the Public Utilities Commission Staff.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

Public Service Company of New Hampshire (PSNH), on April 25, 1995, filed with the New Hampshire Public Utilities Commission (Commission), pursuant to RSA 378:18, a request for approval of Special Contract No. NHPUC-112 (NHPUC-112), between PSNH and James River Paper Company, Inc., a Virginia based corporation with paper and related manufacturing facilities located in Berlin and Gorham, New Hampshire. In August 1995, the Berlin/Gorham facilities were sold to a new company, Crown Vantage, Inc. (Crown Vantage), which assumed the proposed special contract NHPUC-112.

The Commission, in Order No. 22,225 (July 8, 1996), found that there were special circumstances present to justify portions of the Crown Vantage special contract, as it served to maintain the Crown Vantage operations in New Hampshire as well as staving off Crown Vantage's legitimate cogeneration option. The special contract, the Commission found, would enable PSNH to maintain its sales to Crown Vantage, which would inure to the benefit of PSNH's shareholders as well as its ratepayers.

The Commission also found, however, that certain terms of the proposed special contract were not in the public interest. It rejected the provisions within *Article 12 - Additional Generation*, which required Crown Vantage to utilize PSNH as its sole supplier of electricity and not displace PSNH electricity sales through purchases of power from third parties or by installing its own generation for the duration of the contract. The contract also prohibited Crown Vantage from installing or allowing a third party to install additional generation for sale or use

by a third party. The Commission found that "provisions that limit the development of generation and prevent customer choice for periods beyond the time when retail competition is likely to be implemented are inconsistent with the provisions of RSA 374-F and therefore are neither just nor in the public interest." Order No. 22,225 at 8. Consistent with other special contract orders, the Commission required PSNH to refile the contract removing the prohibition against Crown Vantage from installing or allowing a third party to install additional generation.

The Commission also rejected the termination provisions of *Article 14 - Early Termination*, which specified that either party could terminate NHPUC-112 with six months written notice, but no sooner than 84 months (seven years) from the effective date. It found the termination provision to "undermine both the advent and level of competition in the state." Order No. 22,225 at 9. The Commission required PSNH to amend the contract to allow termination upon either 84 months from the effective date or upon the date that retail competition is approved by the Commission, whichever event occurs first.

Finally, consistent with the terms of RSA 378:18-a, II, the Commission ordered PSNH to state whether any tariffed rates, including the business retention rates filed on June 26, 1996, are sufficient to retain the Crown Vantage load.[1(95)]

Commissioner Ellsworth concurred in the order, but stated that he would have approved the special contract as filed, believing it was not appropriate for the Commission to become involved in a contract negotiated between two willing parties.

Upon issuance of Order No. 22,225, PSNH filed a statement that none of its tariffed rates or its proposed Business Retention Rate BR was sufficient, over the term of the Crown Vantage contract, to defer Crown Vantage's installation of cogeneration equipment. PSNH submitted financial data comparing its standard tariffed rates, the special contract rate under which Crown Vantage is now operating, the proposed business retention rate and Crown Vantage's costs of cogeneration.

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Consistent with the terms of the Commission's order, which was issued on a *nisi* basis on July 29, 1996, PSNH requested a hearing on some of the modifications ordered by the Commission. The Commission granted the hearing request, ordering PSNH to serve the order on all customers with special contracts pending before the Commission and all customers with which it was actively negotiating special contracts for economic development, business retention and/or load retention.

The following parties sought and were granted intervention: Wausau Papers of New Hampshire, Inc. (Wausau), Heidelberg Harris Inc., Portland Pipe Line Corporation (Portland), Freedom Energy Company (Freedom), Cabletron Systems, Inc. (Cabletron), Unitrode Corporation (Unitrode), Campaign for Ratepayers Rights (CRR), Public Utilities Policy Institute (PUPI) and Senator Frederick King. In addition, the New Hampshire Business and Industry Association (BIA), Crown Vantage, Executive Councilor Earl A. Rinker, Representative Jeb E. Bradley, Representative Clifton C. Below, Senator Beverly T. Rodeschin, Senator Richard L.

Russman and William Bartlett, Commissioner of the Department of Resources and Economic Development, filed comments on the Commission's order.

On July 31, 1996, Freedom filed a Motion for Authorization to Serve Crown Vantage, to which PSNH objected on August 9, 1996. Freedom in turn responded to PSNH's objection, on August 15, 1996.

On August 2, 1996, CRR filed Response Comments and Motion to Include Early Termination Provisions. The Office of Consumer Advocate (OCA), Freedom, Cabletron, CRR, PUPI and Enron (which had not sought intervention) filed on August 23, 1996, a Joint Motion to Consolidate Market Structure Issues and Establish Bridging Mechanism for Customers, to which PSNH and GSEC objected on September 3, 1996.

PSNH submitted Supplemental Testimony of Gary A. Long on August 30, 1996 and on September 3, 1996 Crown Vantage submitted comments of its Power Generation Distribution Systems Manager, Ron A. Baillargeon.

PUPI, on September 3, 1996, filed a Request for Clarification regarding what it believed were provisions in the contracts to "silence" contracting parties from exploring other energy options. PSNH objected to the Request for Clarification on September 6, 1996.

On September 5, 1996, Cabletron filed testimony of Dr. William G. Shepard.

The Commission heard evidence regarding Order No. 22,225 on September 6, 1996. CRR, Concord Electric Company and Exeter & Hampton Electric Company (collectively, the Unitil Companies), PSNH, Cabletron, Wausau, ENRON, OCA and Staff filed post hearing briefs or statements.

During the course of the hearing, the Commission took administrative notice of the pending docket on PSNH's Economic Development and Business Retention rates, DR 96-216.

This order will address the issues raised at the September 6, 1996 hearing and outstanding motions.

II. POSITIONS OF THE PARTIES AND STAFF

A. *PSNH's Revised Special Contract*

At the September 6, 1996 hearing, PSNH and Crown Vantage jointly proposed to reduce the termination period from 84 months (seven years) to 60 months (five years) from the effective date but did not amend the provision to allow either party to terminate the contract at the date of competition. In addition, PSNH and Crown Vantage agreed to review the contract for possible modification prior to the end of the fourth year. Finally, they recommended that the Commission accept the contract with these modifications and the revision to Article 12 contained in Order No. 22,225. *See* Exhibit 10.

PSNH argues that there is nothing in either Laws of 1996, Chapter 129 (HB 1392) or in Laws of 1996, Chapter 186 (SB 533) that requires a limit on the term of special contracts. Ex. 9 at 7. PSNH believes that both laws must be read to be consistent as passage of SB 533 followed passage of HB 1392. PSNH Brief at 3. Article 14 of NHPUC-112 is not anti-competitive in PSNH's opinion. PSNH believes the public interest is not served if Crown Vantage were to pursue its cogeneration alternative thereby causing the loss of Crown Vantage's

load permanently from the competitive market.

B. *Arguments in Support of PSNH's Revised Contract and in Opposition to Order No. 22,225*

Wausau agrees with PSNH's position concerning the applicability of special contracts filed prior to passage of SB 533. Wausau, consistent with its comments filed on July 30, 1996 concerning Order No. 22,225, continues to believe it is inappropriate for the Commission to consider the newly enacted legislation in its decision and, even if it were appropriate, the intent of the legislation clearly did not provide for pending special contracts to be conditioned with minimum term limitations. Wausau Brief at 1 and 2. Wausau believes that should the Commission reaffirm its position that Article 14 is anti-competitive and continue to require the changes to NHPUC-112 set forth in Order No. 22,225, PSNH will withdraw all pending special contracts, including the Wausau and Crown Vantage special contracts. Wausau and Crown Vantage will, therefore, be forced to proceed with their cogeneration alternatives resulting in less load available for the advent of competition. Transcripts September 6, 1996, morning session, at 32. Wausau Brief at 3.

Portland described the importance of receiving approval for its special contract with PSNH as soon as possible. Portland stated that if the Commission keeps the conditional term language in place for other special contracts, then Portland will be forced either to move some of its load out-of-state or replace its electric load with small gas turbines.

Unsworn testimony in support of the expeditious approval of the Crown Vantage special contract as well as the pending PSNH special contracts with Wausau, Isaacson Structural Steel and Portland was provided at the hearing by Senator King. DRED Commissioner Bartlett also supported approval of the contracts at the hearing. Ex. 1. Similar support was provided by a letter from Executive Councilor Rinker and Senator Rodeschin. Ex. 3. Representatives Bradley and Below also provided a letter generally in support of the pending special contracts, but would condition approval on term lengths not to exceed 5 years and perhaps only 4 years. Ex. 4.

C. *Arguments in Support of Order No. 22,225*

Freedom offers a bridging mechanism for customers with pending special contracts. Freedom would offer Crown Vantage and other customers the same pricing as contained in the pending PSNH special contracts, but with the conditions applied by the Commission in Order No. 22,225.

Cabletron believes the Commission was correct in conditioning the approval of NHPUC-112. Cabletron denies, as a matter of law, that RSA 378:18-a,I provides for expeditious approval of all special contracts. Cabletron states that there is no language in the law that prohibits or even suggests that the Commission could not limit the terms of the pending special contracts. Cabletron Brief at 2. Cabletron also asserts that the law is clear on the inapplicability of legislative intent. Despite Cabletron's position on legislative intent, Cabletron proffers that the legislative intent as described by Wausau and others does not support Wausau's view that the Commission must look at the legislative intent in this proceeding or that these special contracts were to be immune from Commission conditions. Brief at 3 and 4.

CRR states that NHPUC-112 as filed is not in the public interest. Final Brief at 1. CRR

believes that the record clearly indicates that absent the proposed special contracts of Crown Vantage and Wausau, both would go to cogeneration which CRR states is not contrary to the public interest. CRR refers to PSNH's response that these special contracts are in the public interest because they help mitigate stranded costs. CRR does not concede that there will be stranded cost recovery in a restructured electric industry and therefore opposes approval of these special contracts. CRR Brief at 3. CRR also believes the special contracts are an anti-competitive effort by PSNH to retain its dominant position as it faces competition. CRR believes this will negatively affect restructuring of the industry. CRR Brief at 5. CRR filed arguments concerning legislative intent similar to those of Cabletron.

Enron and the Unitil Companies both state

that customers should have the option to have competitive supply at the start of competition.

OCA believes that orders *nisi* are impermissible for special contracts and, therefore, Order No. 22,225 was illegal. OCA believes the entire matter should be renoticed and heard in public.

Staff opposes the legislative intent arguments of PSNH, Wausau and the legislators on grounds that the language is not ambiguous and that legislative intent is inappropriate. Staff states that based on passage of HB 1392, the Commission should reaffirm its conditional approval of Order No. 22,225. In Staff's view, long-term contractual terms are anti-competitive and inappropriate as the State moves forward with restructuring. Staff also points out that the Commission's conditional language states that the contract may be terminated by either party when competition is approved, as opposed to a mandate that it terminate, and therefore is not as restrictive as PSNH, Wausau and others tried to make it appear. Staff Brief at 2.

III. COMMISSION ANALYSIS

[1-4] In light of the evidence presented at the September 6, 1996 hearing, we can no longer affirm our initial decision in Order No. 22,225 to allow either party to terminate this contract upon the advent of competition, or "competition day," as it has come to be known. When we issued our decision conditionally approving the contract, we were evaluating the contract as a business retention contract as opposed to a load retention contract, based on the evidence presented by PSNH in its initial filing. *See, e.g.*, Order No. 22,225 at 2. The evidence now demonstrates that it is truly a load retention contract; Crown Vantage appears ready to cogenerate, but not leave the state, if the contract is not approved.

The distinction is important. Because we now understand that the contract is designed to forestall cogeneration, there is a great likelihood that if we adhere to our decision in Order No. 22,225, PSNH will withdraw the contract and Crown Vantage will opt for cogeneration.[2(96)] As a result, Crown Vantage's load will be lost to the electric system, at least for the foreseeable future. This result would effectively undermine the objective of our July decision, that is, maintaining a sizeable market for which suppliers can compete when competition commences. In approving a business retention contract with our modifications, we were seeking to ensure that Crown Vantage would remain in the state and on competition day, its load would be available for competitive suppliers to solicit. We were concerned that the incumbent monopoly provider of

electricity would tie up so many of its large customers as to discourage suppliers from entering the New Hampshire market. We are now convinced that by maintaining our original position, Crown Vantage's load will be lost to all suppliers. As one of the commenters suggested, such a result would be a Pyrrhic victory for the Commission.

Maintaining customers on the grid may help to defray a utility's stranded costs, while also maintaining shareholder profits. If a customer cogenerates, there would be fewer customers from which to recover whatever stranded costs the Commission may ultimately approve, thereby increasing those charges for remaining customers.[3(97)]

A number of public officials, including legislators who vigorously supported restructuring, commented that they favor the approval of the contract as resubmitted by PSNH. Although it is inappropriate to rely on the views of individual legislators to substantiate legislative intent, as a matter of public policy, we respect their views and have carefully considered their recommendations.

The Legislature clearly had the opportunity in HB 1392 or in SB 533, which was later enacted and is more directly on point, to require contractual limits in regard to the advent of competition. It did not do so. Moreover, since the Legislature essentially left the special contract statute in place, with some amendment, after passing HB 1392, we can only presume that it meant to reaffirm its desire that the special contract process continue to be available and that we continue to approve special contracts if we believe they are in the public interest, even as we prepare for competition. Laws of 1996, Chapter 186.

The Crown Vantage contract was filed before the Legislature approved restructuring legislation. In approving the contract, therefore,

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we must make clear to PSNH and its customers that special contracts entered into after the passage of HB 1392 and SB 533 that are filed between now and competition day will not necessarily receive the same treatment as the Crown Vantage contract. We will scrutinize carefully any contract that has a term which extends beyond the introduction of competition to determine whether such a contract is in the public interest. PSNH will have a much "harder sell" if the contract was negotiated after passage of HB 1392 and SB 533.

We should also note that there are still many issues related to the restructuring of the electric industry that could impact on the continuing viability of those special contracts that predate the advent of competition, including the impact of functional separation or divestiture, as well as the unbundling of contract rates. These issues must be addressed as we move toward competition, but their resolution will be left to another day.

For the foregoing reasons, we will approve the special contract between PSNH and Crown Vantage, as resubmitted by PSNH. Freedom's request to serve Crown Vantage is rendered moot by our decision herein.

Based upon the foregoing, it is hereby

ORDERED, that special contract No. NHPUC-112 between PSNH and Crown Vantage, as jointly modified by Exhibit 10, is APPROVED.

By order of the Public Utilities Commission of New Hampshire this fifteenth day of October, 1996.

Concurring Opinion by Commissioner Ellsworth

For the reasons stated in my opinion in the original Crown Vantage order, Order No. 22,225, I would have approved this contract as originally filed. Although this contract differs from the original, it reflects the concurrence of the willing buyer and willing seller. I am pleased to join my colleagues in approving this order.

Bruce B. Ellsworth
Commissioner

October 15, 1996

FOOTNOTES

[1]The Commission stated that because the Crown Vantage special contract was filed before June 3, 1996, the effective date of the new legislation, SB 533, Laws of 1996, Chapter 186, it was, arguably, not subject to the newly enacted terms. It concluded, however, that the directives contained in the new legislation "were tantamount to criteria for determining whether the contract is just and consistent with the public interest" under RSA 378:18. The Commission would, therefore, include the new standards in its public good analysis.

[2]The question arose as to whether the Commission had the authority to order PSNH to enter into a particular contract. Without conceding the issue entirely, we are inclined to believe that the special contract law was designed to allow the Commission to approve a special contract between a willing utility and a willing customer if special circumstances exist and the Commission believes that such a contract is in the public interest. There is nothing in the law to suggest that we could order a utility to enter into a contract, which we must keep in mind when reviewing this contract. Though some of us might prefer different provisions and though we might condition our approval on certain conditions being met, it is ultimately the utility and the customer's decision as to whether to proceed under the contract, if conditioned or modified by the Commission. This is much like the economic development and business retention rates, which the utilities have an option, but not an obligation, to offer.

[3]One could reduce the impact on remaining ratepayers and the risk to shareholders for stranded costs by use of an exit fee imposed on the customer leaving the grid. The Legislature has expressed its reluctance to use exit fees to reduce potential stranded costs, a view which we share. RSA 374-F:3, XII (d).

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co.of New Hampshire, DR 95-114, Order No. 22,225, 81 NH PUC 518, July 8, 1996.

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[Go to End of 89369]

81 NH PUC 752

Re Public Service Company of New Hampshire

DR 96-138
Order No. 22,356

New Hampshire Public Utilities Commission

October 15, 1996

ORDER approving a proposed special rate contract negotiated by an electric utility and an industrial customer, Wausau Papers, conditioned on the elimination of certain sole source supplier and anti-self-generation provisions. Commission rejects arguments that recent state legislation allowing tariffed business retention rates forecloses continued use of special rate contracts.

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1. RATES, § 166

[N.H.] Factors affecting reasonableness — Solicitation or retention of business — Legislative preference for tariffed business retention rates — But no absolute prohibition on the use of special rate contracts — Electric utilities. p. 754.

2. RATES, § 211

[N.H.] Special rate contracts — Negotiations with individual customers — Continued viability — Provisions for tariffed economic development/business retention rates notwithstanding — Electric utilities. p. 754.

3. RATES, § 166

[N.H.] Factors affecting reasonableness — Solicitation or retention of business — Special rate contract — Conditions for approval — Elimination of anticompetitive terms — Removal of anti-self-generation terms — Electric utility. p. 754.

4. MONOPOLY AND COMPETITION, § 21

[N.H.] Restraint of trade — Anticompetitive terms contained in special rate contracts — Necessity of removal of anti-self- generation terms — Electric utility. p. 754.

5. RATES, § 333

[N.H.] Electric rate design — Demand and energy charges — As components of special rate contract with industrial customer — Short-term reductions in demand charges — Declining block rate structure — Contract as part of business retention initiative. p. 754.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

The Petitioner, Public Service Company of New Hampshire (PSNH), filed on April 25, 1996, pursuant to RSA 378:18, a request for approval of a special contract, Special Contract No. NHPUC-133 (NHPUC-133), between PSNH and Wausau Papers of New Hampshire, Inc. (Wausau), a Delaware corporation with paper and paper-related manufacturing facilities located in Groveton, New Hampshire. PSNH describes the intent of NHPUC-133 as a necessary action to defer Wausau's cogeneration option thereby maintaining PSNH sales. NHPUC-133 contains contract conditions and a combination of fixed and formula rates for a period of ten years. It cannot be terminated by either party before sixty months from the Effective Date or sixty-four months from the Execution Date.

NHPUC-133 supersedes the existing special contract between PSNH and Wausau, Special Contract No. NHPUC-72 (NHPUC-72). NHPUC-72 was filed originally between PSNH and James River Corp. It was approved by Order No. 20,540 on July 14, 1992 in Docket No. DR 92-125. In 1993 it was assigned from James River Corp. to Wausau. NHPUC-72 is a special contract for discounted electric rates that phases out over its five-year term. The discount will be completely phased-out at the end of 1996. NHPUC-72 may be terminated by either

party after December 31, 1997.

In the instant docket, PSNH's filing included, in both redacted and unredacted form, the special contract, testimony, a technical statement by PSNH and Wausau and a technical analysis of Wausau's cogeneration option. PSNH also requested protective treatment for certain information considered confidential in the filing. On May 13, 1996, the Commission granted PSNH's Motion for Confidentiality. *See* Order No. 22,144.

PSNH asserts in its filing that NHPUC-133 is designed for load retention. NHPUC-72 does not allow Wausau to install additional generation during the effective term of special contract NHPUC-133. PSNH believes Wausau, absent approval of NHPUC-133, will install a large cogeneration unit at its Groveton facilities. PSNH asserts Wausau, which has in place cogeneration to serve some of its own electricity needs, could displace PSNH's current sales when it installs a new boiler in the near future. The new boiler has created a cost-effective opportunity for the installation of a new steam turbine generator. An independent cogeneration analysis was undertaken by an experienced cogeneration developer. Wausau claims in the technical statement of Thomas W. Craven, Director of Operations, that cogeneration is financially viable at Wausau's Groveton plant. PSNH undertook its own cogeneration study which indicated cogeneration as a viable energy alternative with a payback period less than the payback estimated by the independent cogeneration study. PSNH has, therefore, priced NHPUC-133 to provide Wausau with a discount sufficient to make cogeneration unattractive to Wausau and to ensure that over the long term Wausau remains a customer of PSNH.

PSNH attests that Wausau's purchased electric costs from PSNH represent a significant portion of Wausau's total operating costs. PSNH argues that retaining the load and the resulting contribution to fixed costs, among other things, will help to mitigate upward pressure on rates thereby protecting PSNH's customers from the effects of lost revenue and sales while maintaining PSNH's shareholder value.[1(98)]

The pricing in NHPUC-133 consists of rates for electric service for each account that are lower than otherwise available under applicable tariff rates or the rates in effect currently under NHPUC-72. Wausau and PSNH agree that PSNH will provide all of Wausau's requirements at its four delivery points on a firm basis above Contract Demand, as defined in the special contract. A Monthly Metering and Administrative Charge of $5,000 is billed each month for the term of NHPUC-133. The Monthly Distribution/Transmission Demand Charge ($/kVA of Billing Demand) is $5.22 per kVA for the first specified portion per kVA of Contract Demand and $2.61 per kVA for all Contract Demand over the specified level, effective June 1, 1996 until June 1, 1999. The prices increase annually, thereafter, at approximately 4 - 4.5 percent until June 1, 2004 when they become fixed at $6.74 per kVA for the first specified portion per kVA of Contract Demand and $3.37 per kVA for all additional Contract Demand levels for the remainder of the contract. The Monthly Generation Capacity Charge ($ per kVA of Maximum Demand) remains constant from June 1, 1996 through May 31, 1999 at $1.73 per kVA. On June 1, 1999 it increases to $2.08 per kVA of Maximum Demand, a 20 percent change, and escalates thereafter by 20 percent annually until it is at $5.18 per kVA of Maximum Demand on June 1, 2004. It remains at $5.18 per kVA for the remainder of the contract.

The Monthly Energy Charges are priced on a declining three block rate design. All energy used up to the specified level of the first block shall be billed by multiplying the usage by the total of PSNH's Fuel and Purchased Power Adjustment Clause (FPPAC) Base Amount (BA), the FPPAC rate, the full level of Nuclear Decommissioning Charges (NDC) and a 1.75 cents per kWh adder. All energy consumed in the second block are priced at FPPAC BA plus the FPPAC rate plus NDC plus 0.5 cents per kWh. All monthly energy usage which exceeds the second block is priced at FPPAC BA plus FPPAC rate plus NDC plus 0.1 cents per kWh. As a condition of service under NHPUC-133, Wausau and PSNH agree to a number of provisions. *Article 8 - PSNH as Sole Supplier* states Wausau agrees to utilize PSNH

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as its sole supplier of electricity during the term of NHPUC-133 and will not displace PSNH electricity sales through purchases of power from third parties or by installing its own additional generation except for the power Wausau generates from its own existing generation and the increases and modifications Wausau makes to its generation as allowed in Article 8. Wausau also agrees that if it takes steam or heat from an electric generation facility, not existing currently or authorized under Article 8, and the output of the facility is used to displace current or future sales of PSNH, Wausau shall return to tariff pricing under Rate LG of PSNH's tariff for the remainder of the contract term.

Article 11 - Early Termination specifies that either party may terminate NHPUC-133 without penalty, with six months or more written notice, after sixty months from the Effective Date of

the contract or after sixty-four months from the Execution Date. At the September 6, 1996 rehearing in DR 95-114, Special Contract No. NHPUC-112 between PSNH and Crown Vantage, PSNH filed Ex. 10, a Joint Statement of Crown Vantage and Public Service Company of New Hampshire, which revised the early termination clause in NHPUC-112 from eighty-four months to sixty months. It also allowed either party prior to the end of the fourth year of NHPUC-112 a fresh look at the benefits of the contract and whether the benefits could be improved or if NHPUC-112 should be modified or terminated early. At the hearing, Wausau requested that a similar provision be included in its pending special contract. PSNH agreed to amend NHPUC-133 to include such a provision.

II. COMMISSION ANALYSIS

The Commission has reviewed NHPUC-133 and the supporting materials. We have conducted our review pursuant to the language of RSA 378:18, which gives the Commission the authority to approve special contracts when "special circumstances exist which render such departure from the general schedules just and consistent with the public interest ... ." In addition, we note that since NHPUC-133 was filed with the Commission, new legislation, SB 533, has been passed regarding special contracts and economic development and business and load retention tariffs. *See* Laws of 1996, Chapter 186 (effective June 3, 1996).

[1, 2] In the above-referenced statute, the Legislature clearly indicated its preference for tariffed retention rates over special contracts. *See* Laws of 1996, Chapter 186, section 1, subsection III. However, the Legislature has also recognized that "special contracts may be necessary in some circumstances." *Id.* Under RSA 378:18-a, II, effective June 3, 1996, load retention contracts are available to customers only if the utility represents that the load would have otherwise left the utility, the contracts are approved pursuant to RSA 378:18 and the Commission determines that no tariffed rate is sufficient to retain the load.

Arguably the provisions of RSA 378:18-a, II are inapplicable to special contracts executed prior to June 3, 1996. Because the legislative directives contained therein are tantamount to criteria for determining whether the contract is "just and consistent with the public interest" under RSA 378:18, we directed PSNH to indicate whether any of its tariffed rates, including the business retention rates filed on June 26, 1996, would be sufficient to retain this load.

We made a similar request in our conditional approval of Special Contract No. NHPUC-112 between PSNH and Crown Vantage. *See* Order No. 22,225. On July 22, 1996, PSNH responded to our request. PSNH responded that "none of its tariffed rates, or its filed Business Retention Rate BR, is sufficient, over the term ... of the contract ... to defer the installation of cogeneration equipment at Crown Vantage." PSNH also stated in its July 22, 1996 letter that it would seek rehearing on Order No. 22,225. On September 6, 1996, a hearing was held that considered, *inter alia*, the effect of conditioning approval of NHPUC- 112 on an early termination provision based on the advent of competition. At the hearing, PSNH and Wausau testified that the level of discount contained in PSNH's proposed Rate LR tariff would not be sufficient to prevent Wausau from installing cogeneration.

[3-5] The contractual provision preventing third party generation, *Article 8 - PSNH as Sole*

Supplier, which we have found objectionable in prior orders, is anti-competitive in that it prevents Wausau from allowing any third party from installing additional generation for sale or use by the third party. This may be particularly true in this situation given the nature of the facilities and its current and prior usage. As a condition of our approval, therefore, we will require that the sentence that prohibits Wausau from installing or allowing a third party to install additional generation for the purposes of displacing current or future PSNH sales be removed. Our understanding from the supplemental testimony of Mr. Long in DR 95-114 and from the hearing on September 6, 1996, is that PSNH agrees to amend its pending special contracts to comply with this condition.

Based upon the analysis articulated in Order No. 22,355, Crown Vantage, PSNH's offer to change Article 8 and Article 11, and our review of this filing and the testimony of Mr. Craven of Wausau, we will approve Special Contract No. NHPUC-133. In approving this contract we note that Wausau has a viable cogeneration option and that it has high purchased power electric costs which are a significant portion of its total production costs. Thus there are special circumstances that qualify it for departure from standard tariff rates pursuant to RSA 378:18.

We believe our approval of NHPUC-133 will provide benefits to Wausau, PSNH and its customers while ensuring that a large customer will remain available for future competition during this transitional period.

The Crown Vantage hearing was noticed to all customers with special contracts pending before the Commission and all customers with which PSNH was then negotiating, in order to address the conditions set forth in Order No. 22,225. At the close of that hearing, OCA and CRR requested evidentiary hearings on other pending special contracts. We do not find a basis to deviate from our use of orders *nisi* in these matters. Should any aggrieved party seek a hearing upon review of this order, it should file a motion stating with specificity why it believes a hearing is necessary.

Based upon the foregoing, it is hereby

ORDERED *Nisi*, that Special Contract No. NHPUC-133 between PSNH and Wausau is APPROVED, subject to the condition that PSNH files an amendment to Special Contract No. NHPUC-133 in accordance with the changes to *Article 8 - PSNH as Sole Supplier* and *Article 11 - Early Termination* as indicated herein and makes no other changes; 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 22, 1996 and to be documented by affidavit filed with this office on or before October 29, 1996; and it is

FURTHER ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or file a written request for a hearing on this matter before the Commission no later than November 5, 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 November 12, 1996; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective November 14, 1996, 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 October, 1996.

FOOTNOTES

[1]At the rehearing on Order No. 22,225 in DR 95-114, Special Contract No. NHPUC-112 between PSNH and Crown Vantage, PSNH testified that it considered retention of loads such as Crown Vantage and Wausau to be a mitigation of stranded costs as well.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 92-125, Order No. 20,540, 77 NH PUC 346,

July 14, 1992. [N.H.] Re Public Service Co. of New Hampshire, DR 96-138, Order No. 22,144, 81 NH PUC 369, May 13, 1996. [N.H.] Re Public Service Co. of New Hampshire, DR 95-114, Order No. 22,225, 81 NH PUC 518, July 8, 1996. [N.H.] Re Public Service Co. of New Hampshire, DR 95-114, Order No. 22,355, 81 NH PUC 746, Oct. 15, 1996.

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[Go to End of 89370]

81 NH PUC 756

Re Public Service Company of New Hampshire

DR 96-133
Order No. 22,357

New Hampshire Public Utilities Commission

October 15, 1996

ORDER approving an electric utility's proposed special rate contract with Portland Pipe Line Corporation, conditioned on removal of the contract's sole source supplier terms as well as its prohibitions on third-party installations of generating capability on the customer's premises. With those modifications, the commission is satisfied that the agreement will assure load retention by dissuading the customer from either relocating out-of-state or converting to natural gas.

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1. RATES, § 211

[N.H.] Special rate contracts — Load retention agreement — Factors affecting acceptance — Elimination of anticompetitive terms — Removal of sole source supplier terms — Removal of specific anticogeneration terms — Electric utility. p. 757.

2. RATES, § 166

[N.H.] Factors affecting reasonableness — Solicitation of business — Load retention measures — Special rate contracts — To prevent relocation out-of-state or conversion to natural gas — Factors affecting acceptance — Elimination of anticompetitive terms — Removal of sole source supplier terms — Removal of specific anticogeneration terms — Electric utility. p. 757.

3. MONOPOLY AND COMPETITION, § 21

[N.H.] Restraint of trade and anticompetitive practices — Special contracts — Terms encumbering customer's property or rights — Prohibitions on third-party power supplier bids — Elimination of sole source supplier terms — To prevent anticompetitive effects — Electric utility. p. 757.

BY THE COMMISSION:

ORDER

On April 19, 1996, Public Service Company of New Hampshire (PSNH) filed with the New Hampshire Public Utilities Commission (Commission) Special Contract No. NHPUC-132 (NHPUC-132) for a ten-year sales agreement with Portland Pipe Line Corporation (Portland). However, the agreement contains a provision for early termination no sooner than 60 months after the effective date. PSNH's filing included the special contract, testimony and a technical statement in both redacted and unredacted form.

The agreement is primarily a load retention contract intended to offer electric prices that compete with Portland's other alternatives. PSNH states in its filing that, although the proposed Special Contract is not a rate application covered under the Commission's Generic Discounted Rate Proceeding in Docket No. DR 91-172, the filing has been prepared with the proposed "Checklist for Economic Development and Business Retention Discounted Rates" in mind to help facilitate the Commission's review of NHPUC-132.

Page 756

Portland is engaged in the transportation of crude oil between South Portland, Maine and Montreal East, Quebec with terminals, pipelines and electrically powered pump stations in New Hampshire, Vermont, Maine and Canada. In its filing, PSNH asserts that Portland is concerned with its energy costs and has considered three alternatives to reduce its electricity costs. PSNH performed analyses of Portland's electric options and concluded that Portland can realize an acceptable payback and substantial savings by implementing one of Portland's alternatives. PSNH further concludes that in the absence of Special Contract No. NHPUC-132, Portland will 1) relocate the majority of its New Hampshire pumping operations to Maine and Vermont by installing new pump motors at the out-of-state locations, 2) convert its electrically-operated

pumping equipment to natural gas, or 3) increase the utilization of existing pumping facilities in Maine and/or Vermont in order to decrease the need for the New Hampshire facilities.

To avert losing Portland's electricity load, PSNH has offered service to Portland in Special Contract No. NHPUC-132 which is in accordance with the terms and conditions of its Rate LG tariff, but provides discounted special contract prices to Portland during the ten year term of the Special Contract. The discount includes customer and demand charges which are fixed and escalate in each year of the ten year term. The Special Contract's energy charges are based on fixed energy levels and are set at one-half of one cent, $0.005, per kilowatt-hour above the sum of PSNH's total FPPAC costs and Nuclear Decommissioning Charges during the term of the contract for base energy levels with incremental purchases above the base energy levels to be set at one-quarter of one cent, $0.0025, per kilowatt-hour above the sum of total FPPAC costs and Nuclear Decommissioning Charges over the term of the agreement.

Included in the Company's filing, Mr. Stephen R. Hall of PSNH provided pre-filed Testimony that the benefits of the Special Contract include retaining "existing load during the ten-year term of the Special Contract, but also will recapture some of the current electric load which is being shifted to existing pump stations in Maine and/or Vermont where electric costs are lower."

In its Technical Statement, PSNH further states that the expected revenues under the Special Contract exceed PSNH's marginal cost of service in all years of the agreement and will serve to reduce the amount of fixed costs which are recovered from all PSNH customers.[1(99)]

At the September 6, 1996 hearing on the contract between PSNH and Crown Vantage in Docket 95-114, Portland offered the statement of its senior Electrical Engineer, Joe Thrift. Mr. Thrift testified that, absent a special contract, it would either move 60% of its load off the PSNH system and out of New Hampshire or would move all of its load off the PSNH system by self-generating. Mr. Thrift also indicated that Portland does not qualify for either a business or load retention rate.

[1-3] The Commission has reviewed the language in Special Contract No. NHPUC-132 and finds that the terms and conditions of the Portland Pipe Line Special Contract include a clause which is similar to clauses which were previously found objectionable by the Commission in previous Commission orders.

Article 5 - PSNH as Sole Supplier in Special Contract No. NHPUC-132 places sanctions on Portland if it allows any electric generating equipment to be installed on property it owns, acquires or controls, and the output of such equipment is used to displace current or future sales by PSNH to other customers. Under the sanctions of Article 5, if such electric generation displaces PSNH sales to other customers, Portland would be required to be an exclusive customer of PSNH at full LG tariff rates for the remaining full term of the contact.

We find that the restraints and sanctions placed on Portland by PSNH in *Article 5 - PSNH as Sole Supplier* are comparable to terms which we found objectionable as anti-competitive in Commission Orders No. 22,132, University of New Hampshire (UNH) Special Contract No. NHPUC-116, DR 95-171, and Order No. 22,133, Keene State College (KSC) Special Contract No. NHPUC-117, DR 95- 173. In those proceedings, we objected to language which placed special contract sanctions on customers who entered into agreements with

generators whose electricity sales subsequently displaced PSNH sales to other customers.

Consistent with the corrective steps required for conditional approval in Orders No. 22,132 and No. 22,133, we find that the following language should be removed from Article 5 of Special Contract No. NHPUC-132 as a prerequisite for approval in this proceeding:

> "If Portland allows any electric generation facility to be installed on property it owns, acquires or controls, and the output of such equipment is used to displace current or future sales by PSNH to other customers, the prices under this Agreement will thereafter be the prices under Rate LG and all other provisions of this Agreement will continue to apply for the remaining term of this Agreement. Exercise of this option does not constitute a breach subject to Liquidated Damages under Article 10 provided that Portland remains a full requirements customer under PSNH's tariff."

It is our understanding from the supplemental testimony of Mr. Long of PSNH in DR 95-114 and from the hearing on September 6, 1996, that PSNH agrees to amend its pending special contracts to comply with this Commission condition.

Based on our review in this docket of the testimony, transcripts and exhibits, as well as the testimony of Portland in the Crown Vantage hearing, we believe Portland would, absent approval of NHPUC-132, undertake one of its other options thereby resulting in lost fixed cost recovery for PSNH and higher rates for PSNH's other customers. It is also likely that a substantial amount of Portland's load would be lost as we move toward competition in the electric industry.

Based on the above considerations, we will approve Special Contract No. NHPUC-132 contingent on PSNH taking corrective steps detailed above. We specifically require PSNH to strike the second and third sentences in *Article 5 - PSNH as Sole Supplier* of the Portland Pipe Line Special Contract No. NHPUC-132.

The Crown Vantage hearing was noticed to all customers with special contracts pending before the Commission and all customers with which PSNH was then negotiating, in order to address the conditions set forth in Order No. 22,225. At the close of that hearing, OCA and CRR requested evidentiary hearings on other pending special contracts. We do not find a basis to deviate from our use of orders *nisi* in these matters. Should any aggrieved party seek a hearing upon review of any particular special contract orders, 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-132 between PSNH and Portland Pipe Line Corporation is APPROVED, subject to the condition that PSNH file NHPUC-132 in accordance with the changes to *Article 5 - PSNH as Sole Supplier* indicated herein and makes no other changes; 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 22, 1996 and to be documented by affidavit filed with this office on or before October 29, 1996; and it is

FURTHER ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or file a written request for a hearing on this matter before the Commission no later than November 5, 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 November 12, 1996; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective November 14, 1996, 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 October, 1996.

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FOOTNOTES

[1]At the hearing on Order No. 22,225 in Docket No. DR 95-114, Special Contract No. NHPUC-112 between PSNH and Crown Vantage, PSNH testified that the use of special contracts to retain loads from customers with viable cogeneration options such as Crown Vantage also is a mitigation of stranded costs.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 95-171, Order No. 22,132, 81 NH PUC 347, May 6, 1996. [N.H.] Re Public Service Co. of New Hampshire, DR 95-173, Order No. 22,133, 81 NH PUC 349, May 6, 1996. [N.H.] Re Public Service Co. of New Hampshire, DR 95-114, Order No. 22,225, 81 NH PUC 518, July 8, 1996.

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NH.PUC*10/15/96*[89371]*81 NH PUC 759*WorldCom Network Service, Inc., dba WilTel Network Services

[Go to End of 89371]

81 NH PUC 759

Re WorldCom Network Service, Inc., dba WilTel Network Services

DS 96-298
Order No. 22,358

New Hampshire Public Utilities Commission

October 15, 1996

ORDER approving an interexchange telephone carrier's proposed revisions of its billing tariffs, so as to provide for a single bill for customers with multiple locations and to implement a returned check charge.

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1. PAYMENT, § 21

[N.H.] Billings and collections — Format — Rendering of single bills for customers with multiple locations — Interexchange telephone carrier. p. 759.

2. PAYMENT, § 53

[N.H.] Penalties — Returned check charge — Institution of — Interexchange telephone carrier. p. 759.

BY THE COMMISSION:

ORDER

[1, 2] On September 12, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from WorldCom Network Services, Inc., d/b/a WilTel Network Services (Wiltel) requesting authority to introduce WilMax Universal, a Summary Report Charge and a Returned Check Charge for effect October 14, 1996.

WilMax Universal is a service designed for calling from multiple customer locations to stations throughout the state and arranged so the customer receives a single bill for all locations. It is an add-on to the Company's interstate service. The service is offered to resellers authorized by the Commission.

A Summary Report Charge offers customers the opportunity to receive summary reports with their bill for $1.00 per month.

A Returned Check Charge is being introduced pursuant to NH Admin. Rules, Puc 1200.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize Wiltel to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of Wiltel's tariff, NHPUC No. 1 are approved for effect as filed:

4th Revised Page 1 in lieu of 3rd Revision 2nd Revised Page 37 in lieu of 1st Revision 1st Revised Page 85.1 Original Page 85.2;

and it is

FURTHER ORDERED, that Wiltel file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this fifteenth day of October, 1996.

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NH.PUC*10/15/96*[89372]*81 NH PUC 760*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 89372]

81 NH PUC 760

Re New England Telephone and Telegraph Company dba NYNEX

Additional applicant: Freedom Ring Communications, L.L.C.

DE 96-290
Order No. 22,359

New Hampshire Public Utilities Commission

October 15, 1996

ORDER rejecting without prejudice a proposed interconnection agreement between an interexchange telephone carrier and a local exchange telephone carrier, where the carriers had failed to publish notice of the agreement and also had failed to submit supporting testimony and documentation thereto.

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1. TELEPHONES, § 11

[N.H.] Connecting carriers — Proposed intereconnection agreement — Rejection — Factors — Failure to publish notice — Failure to submit supporting testimony and documentation — Leave to refile — Local exchange and interexchange carriers. p. 760.

BY THE COMMISSION:

ORDER

[1] On September 9, 1996, New England Telephone and Telegraph Company (NYNEX) submitted to the New Hampshire Public Utilities Commission (Commission) for approval pursuant to 47 U.S.C. Section 252(e) of the Telecommunications Act of 1996 and Order No. 22,236 a negotiated Interconnection Agreement between NYNEX and Freedom Ring Communications, L.L.C. (Freedom Ring).

By Order of Notice dated September 13, 1996, the Commission scheduled a prehearing conference for September 30, 1996. NYNEX was required to publish the Order of Notice, which

it inadvertently failed to do. In addition, neither NYNEX nor Freedom Ring submitted with the petition supporting testimony and other documentation, as required by Commission Order No. 22,236.

In light of these infirmities, we will reject the instant petition without prejudice and allow NYNEX or Freedom Ring to refile the petition, with supporting testimony and other documentation as necessary.

Based on the foregoing, it is hereby

ORDERED, that the September 9, 1996 petition is rejected without prejudice and that NYNEX or Freedom Ring may refile the petition and testimony and other supporting documentation as necessary.

By order of the Public Utilities Commission of New Hampshire this fifteenth day of October, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Implementation of Telecommunications Act of 1996, DE 96-177, Order No. 22,236, 81 NH PUC 549, July 12, 1996.

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NH.PUC*10/15/96*[89373]*81 NH PUC 761*Touch 1 Communications, Inc.

[Go to End of 89373]

81 NH PUC 761

Re Touch 1 Communications, Inc.

DS 96-287
Order No. 22,360

New Hampshire Public Utilities Commission

October 15, 1996

ORDER authorizing an interexchange telephone carrier to make various tariff revisions, including providing for the introduction of its "Personal Touch 800" inbound toll service plan.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Inbound toll- free service — "Personal Touch 800" service — Interexchange carrier. p. 761.

BY THE COMMISSION:

ORDER

[1] On September 4, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from Touch 1 Communications, Inc. (Touch 1), requesting authority to make various revisions to its tariff including the name of the corporate officer on every page which required a completely new tariff pursuant to NH Admin. Rules, Puc 1601.05(b) (2). As a result, Touch 1 is requesting authority to introduce its tariff, NHPUC No. 2.

Personal Touch 800 service is being introduced. The service offers inbound toll-free calling to customers for $0.25 per minute from 7 am to 7 pm Monday through Friday and $0.18 per minute during all other times.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize Touch 1 to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of Touch 1's tariff, NHPUC No. 2 are approved for effect as filed:

Original Title Page

1st Revised Page 1 in lieu of Original

Original Pages 2-10

1st Revised Page 11 in lieu of Original

Original Pages 12-14

1st Revised Page 15 in lieu of Original

Original Pages 16-17

1st Revised Page 18

Original Pages 19-23;

and it is

FURTHER ORDERED, that Touch 1 file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this fifteenth day of October, 1996.

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NH.PUC*10/15/96*[89374]*81 NH PUC 761*Concord Electric Company

[Go to End of 89374]

81 NH PUC 761

Re Concord Electric Company

Additional applicant: Exeter and Hampton Electric Company

DR 96-034
Order No. 22,361

New Hampshire Public Utilities Commission

October 15, 1996

ORDER adopting settlement to modify an electric utility group's proposed 1996/1997 demand-side management (DSM) program budget, so as to make it more cost-effective. While the new budget retains all previously approved DSM measures for residential customers as well

Page 761

as small commercial and industrial customers, the rebates associated with certain of those programs are now reduced from 100% to 75%.

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1. ELECTRICITY, § 4

[N.H.] Operating practices — Demand-side management (DSM) programs — Annual DSM budget filing — Modification — To assure cost-effectiveness — Reductions in certain rebate measures. p. 762.

2. CONSERVATION, § 1

[N.H.] Demand-side management (DSM) programs — Annual DSM budget filing — Modification — To assure cost-effectiveness — Retention of all residential and small commercial and industrial program components — But reduction in certain program rebate levels — Affiliated electric utilities. p. 762.

BY THE COMMISSION:

ORDER

On October 2, 1996, Staff of the New Hampshire Public Utilities Commission (Commission) submitted a memorandum stating that the Concord Electric Company and Exeter & Hampton Electric Company (collectively, Unitil), the Office of the Consumer Advocate (OCA) and the Staff had met and discussed Unitil's Demand Side Management (DSM) proposal as directed by the Commission in Order No. 22,302 (September 3, 1996). The memo also stated that the Parties had reached agreement regarding the continuation of Unitil's DSM programs.

[1, 2] The agreement provides that Unitil shall continue the following five programs which were previously approved by the Commission in Docket DR 95-020, Order No. 21,714 (June 28, 1995) and Order No. 21,914 (November 21, 1995): the Residential Wrap-Up Plus, the

Residential Electric Space Heat, the Residential Social Services, the Small Commercial & Industrial and the Comprehensive Efficiency Alternative Financing Pilot (CEAFPP) Programs. Three of the programs, specifically, the Residential Wrap-Up Plus, the Residential Electric Space Heat and the Small Commercial & Industrial Programs, have been modified only to the extent that these programs shall now be offered at a 75% rebate incentive level rather than at a 100% rebate incentive level as approved in Order No. 21,714. The Residential Social Services program shall retain a 100% rebate incentive level.

The Parties and Staff also agree to modify the DSM program period so that it shall run from November 1, 1996 through December 31, 1997. The program budget for this fourteen month period shall be $1,014,919 with $402,969 allocated to the residential classes and $611,950 allocated to the commercial and industrial classes. This results in the following conservation charges:

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

                       ConcordExeter & Hampton
                       Electric Electric

Residential Service   $0.00057  $0.00072
General Service       $0.00084  $0.00070
Large General Service $0.00061  $0.00048
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Further, Unitil shall file its calendar year 1998 DSM program proposal no later than October 15, 1997. In addition to program modifications and budgets, the filing shall also include Unitil's shared savings incentive request and a reconciliation of the fourteen month program costs and recoveries.

After careful review of the agreement recommended by the Parties and Staff, we find that the DSM programs as modified are just and reasonable and in the public interest. We commend the Parties and Staff in their efforts to resolve the issues in this docket.

Based upon the foregoing, it is hereby

ORDERED, that Unitil shall implement the DSM programs listed above for the program period November 1, 1996 through December 31, 1997; and it is

Page 762

FURTHER ORDERED, that the programs shall be approved with a budget of $1,014,919 for the fourteen month period; and it is

FURTHER ORDERED, that Unitil, on behalf of Concord Electric Company and Exeter & Hampton Electric Company, shall file tariff pages in compliance with this order within ten days of the date of issuance of this order.

By order of the Public Utilities Commission of New Hampshire this fifteenth day of October, 1996.

EDITOR'S APPENDIX

Citations in Text
[N.H.] Re Concord Electric Co., DR 95-020, Order No. 21,714, 80 NH PUC 399, June 28, 1995.
[N.H.] Re Concord Electric Co., DR 95-020, Order No. 21,914, 80 NH PUC 752, Nov. 21, 1995.
[N.H.] Re Concord Electric Co., DR 96-034, Order No. 22,302, 81 NH PUC 671, Sept. 3, 1996.
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NH.PUC*10/15/96*[89375]*81 NH PUC 763*Lake Tarleton Land Management Corporation

[Go to End of 89375]

81 NH PUC 763

Re Lake Tarleton Land Management Corporation

Additional parties: New Hampshire Electric Cooperative, Inc.; Connecticut Valley Electric Company, Inc.

DE 96-243
Order No. 22,362

New Hampshire Public Utilities Commission

October 15, 1996

PETITION by real estate development company for modification of service area boundary lines so as to allow New Hampshire Electric Cooperative, Inc. (NHEC), to assume rights to certain territory presently franchised to Connecticut Valley Electric Company, Inc. (CVEC); granted. Commission notes that NHEC has existing facilities closer to the territory in question than does CVEC. It also notes the limits in future growth in the area, given the transfer of many surrounding parcels to a public trust for eventual delivery to the United States Forestry Service, a change in circumstance that justifies departure from Order No. 17,371 (69 NH PUC 698) in which the commission had denied a similar proposed boundary line move.

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1. MONOPOLY AND COMPETITION, § 28

[N.H.] Division of territory — Changes in existing boundary lines — Factors — Location of existing facilities — Potential for customer growth — Transfer of land to public trust — Electric service. p. 765.

2. FRANCHISES, § 53

[N.H.] Amendment — Changes in existing service area boundary lines — Factors — Location of existing facilities — Potential for customer growth — Transfer of land to public trust — Electric service. p. 765.

3. SERVICE, § 180

[N.H.] Extensions — Factors — Distance — Franchised utility as having facilities farther away — Closest facilities as owned by nonterritorial utility — Necessity of changing existing

service area boundary lines — Other factors — Lack of potential for customer growth — Transfer of land to public trust — Electric service. p. 765.

APPEARANCES: Fred Glidden for Lake Tarleton Land Management Corporation; Kenneth C. Picton, Esq. for Connecticut Valley Electric Company, Inc.; Dean, Rice and Howard by Mark W. Dean, Esq. for New Hampshire Electric Cooperative, Inc.; and Amy L. Ignatius, Esq. for the Staff of the New Hampshire Public Utilities Commission.

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BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On July 30, 1996, Lake Tarleton Land Management Corporation (Lake Tarleton), filed with the New Hampshire Public Utilities Commission (Commission), a petition requesting that the electric service franchise boundary line be moved by 1980 feet in order to allow the New Hampshire Electric Cooperative, Inc. (NHEC) to serve certain lots in Piermont, New Hampshire. The lots are within the Connecticut Valley Electric Company, Inc. (CVEC) service territory.

Approximately 5000 acres surrounding the Lake Tarleton property is under option by the Trust for Public Land (Trust), eventually to be conveyed to the U.S. Forestry Service. A small number of lots will remain in private hands, among them lots 9-16 now owned or recently conveyed by Lake Tarleton. *See*, Exhibit 1, page 3.

Lake Tarleton requested the same change in boundary lines in 1984. The Commission denied the request at that time, finding that CVEC was able to provide adequate and reliable service and that there was "no reasonable basis on which to alter the existing service territories." 69 NH PUC 698, 700 (1984)

The Commission, by Order of Notice dated August 13, 1996, made both CVEC and NHEC mandatory parties to the new proceeding, set deadlines for filing of testimony and scheduled a hearing on the merits for September 24, 1996.

On August 22, 1996, Fred Glidden of Lake Tarleton filed testimony supporting the boundary change and on September 3, 1996, Charles A. and Jill B. Muntz, who recently purchased a building lot that would be served by NHEC if the adjustment were made, filed a letter in support of Lake Tarleton's proposal. The Board of Selectmen of the Town of Piermont submitted a letter of support on September 4, 1996, as did the Trust, on September 11, 1996.

CVEC, on September 13, 1996, filed a Motion to Dismiss the Lake Tarleton proposal and on September 19, 1996, filed direct testimony of Richard Wood. The Commission heard evidence on the petition on September 24, 1996.

Subsequent to the hearing, Commission Staff (Staff) notified the Commission by memorandum dated October 11, 1996, that according to the Trust, the U.S. Congress had appropriated $1.6 million in funds to secure over 1200 acres, the initial phase of the project,

which includes the Lake Tarleton properties in question. In addition, the U.S. Senate Appropriations Committee has stated that another $2.5 million will be appropriated for fiscal year 1998, which would complete all phases of the project.

II. POSITIONS OF THE PARTIES AND STAFF

A. *Lake Tarleton*

Lake Tarleton represents that service from NHEC could be provided through an extension of poles and wire of 1550 feet from existing lines, while service from CVEC would require an extension of about a mile, costing Lake Tarleton approximately $16,400. Lake Tarleton stated it would want the service to be buried underground in keeping with the preservation efforts of the Trust, thereby further increasing the cost.

Lake Tarleton argues that the mile-long extension by CVEC will not provide service to any other customer in the future because the area will eventually be conveyed to the U.S. Forestry Service.

Service to the Lake Tarleton lots is currently provided by NHEC. This arrangement was not done with concurrence of CVEC, though it became aware of NHEC's service in 1993. If the service boundary is changed and NHEC is officially authorized to provide service, it will be newly configured. The current service connections will not be continued.

B. *CVEC*

CVEC filed a Motion to Dismiss, arguing that the question of the appropriate provider of service was resolved by the Commission in

1984 and under the principle of *res judicata*, should not be relitigated.

CVEC opposes the request on the merits, arguing that it is ready and able to provide service to the Lake Tarleton lots and should have the right to do so. Though it acknowledges that further development of the area is unlikely in light of the proposed transfer to the U.S. Forestry Service, CVEC argues the transfer is not a certainty and that it should not be foreclosed from providing service to the area, particularly if the bulk of it were to remain in private hands.

C. *NHEC*

NHEC took no position on the matter, other than to state that it was ready and able to provide service to these lots should the Commission so order.

D. *Staff*

Staff took no position on the matter.

III. COMMISSION ANALYSIS

[1-3] We have reviewed the record in this case, as well as our 1984 order, and find it appropriate under these circumstances to grant Lake Tarleton's petition to change the service territory boundary lines. We are faced with a situation in which a minor alteration of boundary lines will result in a substantial benefit to the customers. Common sense dictates that we alter the service lines.

We reach a different result from that in 1984 due to changed circumstances. The Trust is now completing its acquisition of thousands of acres around the lots in question, which means that the area will no longer be available for development, thereby reducing the potential for additional CVEC customers. In 1984 it was reasonable to assume that CVEC could extend its service over a mile to serve these lots because other development was expected to follow and other new customers would benefit from the line extension. In this case, however, with no further development possible, it is not reasonable to burden these few CVEC customers with the costs of over a mile of line extension when NHEC can serve the area by means of a 1500 foot extension.

In addition, since 1984, the assumptions regarding exclusive provision of service have changed radically as we stand on the brink of competitive electric supply statewide. Within this climate of increasing customer options in supply of electricity, we do not find it appropriate to require the Lake Tarleton lots to be served by CVEC at large expense when NHEC is a mere 1500 feet away.

Though we are granting Lake Tarleton's request, we are not persuaded that the service territory boundary lines proposed by Lake Tarleton are precisely correct. We will direct our Staff to meet with Mr. Glidden, CVEC and NHEC to determine where the new service territory lines should be drawn, taking into account the location of existing utility property, rights of way, structures and natural topography. NHEC should submit within 30 days of this order a proposed service territory boundary line change for Commission review and approval.

We reject CVEC's argument that *res judicata* bars relitigation of this request. Though *res judicata* can at times apply to agency determinations, it does not bar our reconsideration of a matter when circumstances change. See RSA 365:28. That being the case, we will deny CVEC's Motion to Dismiss.

Based upon the foregoing, it is hereby

ORDERED, that CVEC's Motion to Dismiss is DENIED; and it is

FURTHER ORDERED, that the service territory boundary lines between CVEC and NHEC shall be adjusted to accommodate NHEC service to Lake Tarleton lots 9 through 16; and it is

FURTHER ORDERED, that Mr. Gildden, CVEC, NHEC and Staff shall meet to discuss the appropriate alteration of the service territory lines; and it is

FURTHER ORDERED, that within 30 days of this order, NHEC shall submit a proposed service territory boundary line proposal for Commission review and approval.

By order of the Public Utilities Commission of New Hampshire this fifteenth day of October, 1996.

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NH.PUC*10/16/96*[89376]*81 NH PUC 766*Public Service Company of New Hampshire

[Go to End of 89376]

Re Public Service Company of New Hampshire

DR 95-068
Order No. 22,363

New Hampshire Public Utilities Commission

October 16, 1996

PETITION for rehearing of Order No. 22,192 (81 NH PUC 451, *supra*) which related to an electric utility's recovery of certain costs of complying with the emission control requirements of the Clean Air Act Amendments (CAAA); denied. Commission affirms that because the selective catalytic reduction technology employed by the utility was not the least-cost alternative available for CAAA compliance, it was appropriate to limit such recovery to the assumed cost of selective noncatalytic reduction technology, which would have been the least-cost technology available.

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1. EXPENSES, § 120

[N.H.] Electric utility — Costs of compliance with Clean Air Act Amendments — Installation of new emission control equipment — Limits on cost recovery — Factors — Type of technology employed — Selective catalytic reduction technology as being least-cost alternative — Selective noncatalytic reduction technology as being more costly — Necessity of independent prudence review. p. 767.

2. ELECTRICITY, § 3

[N.H.] Generating plant — Emission controls — Clean Air Act Amendment requirements — Recovery of associated costs — Limits — Type of technology as a factor — Selective noncatalytic reduction versus selective catalytic reduction technology — Least-cost principles as determinative. p. 767.

3. ELECTRICITY, § 4

[N.H.] Generating plant — Operating practices — Least-cost integrated planning — Commission review of — As to planning process not specific technologies employed. p. 768.

4. ELECTRICITY, § 3

[N.H.] Generating plant — Emission controls — Clean Air Act Amendment requirements — Average daily limits versus absolute daily limits for nitrous oxide emissions — Determination of most appropriate technology — Factors — Least-cost principles — Consideration of both operating expenses and capital costs — Selective noncatalytic reduction technology as better choice than selective catalytic reduction technology. p. 769.

5. STATUTES, § 18

[N.H.] Interpretation — Effect of ambiguous provisions — Construction to uphold validity — Overall intent of statute — Reading of statute as a whole rather than each part separately. p. 770.

6. DEPRECIATION, § 50

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On March 9, 1995, Public Service Company of New Hampshire (PSNH) filed a request with the New Hampshire Public Utilities Commission (Commission) to recover the costs associated with its compliance with the Clean Air Act Amendments of 1990 (CAAA) through the Fuel and Purchased Power Adjustment Clause (FPPAC) pursuant to the Rate Agreement. After three days of duly noticed hearings the Commission issued Order No. 22,192 (June 17, 1996) (Order) resolving all of the contested issues in the case.

In the Order we found that PSNH's installation of Selective Catalytic Reduction (SCR) technology at Unit II of Merrimack Station may not be the least cost alternative to comply with the 1995 and 1999 nitrogen oxides (NO_x) ground level ozone reductions necessary in order for the State of New Hampshire to meet the ground level ozone requirements of the CAAA as implemented by the State's Department of Environmental Services, Air Resources Bureau (DES). N.H. Admin. R., Env-A 1200.

On July 17, 1996, PSNH filed a Motion for Rehearing of the Order pursuant to RSA 541:3 (Supp. 1995). On July 22, 1996, EnerDev, Inc. (EnerDev) filed an objection to the motion.

II. POSITIONS OF THE PARTIES AND COMMISSION ANALYSIS

In its motion for rehearing PSNH averred that the Commission had committed eleven distinct errors in the Order. EnerDev responded to the allegations of error providing support for the Commission's decision. We will address each contention separately.

1. *Legal Standard*

A. PSNH

PSNH alleged that the Commission applied the wrong legal standard in disallowing the current recovery of the capital expenditures and annual operating expenses of SCR technology installed on Merrimack Unit II. PSNH alleged that the Commission must allow PSNH to recover all prudently incurred costs, used and useful in the public service even if the solution was not the least cost alternative, and that the Commission acted unlawfully in failing to apply this standard.

B. EnerDev

EnerDev contended that, contrary to the assertions of PSNH, the Commission had applied the appropriate standard in finding that the SCR technology was not necessary to comply with the 1995 CAAA standards and, therefore, the technology was not currently used and useful in the public service.

C. Analysis

[1, 2] As we stated in the Order, PSNH could have complied with the 1995 NO_x standards established by DES through the installation of Selective Non-Catalytic Reduction (SNCR) technology at Merrimack II at a substantially lower capital cost than was incurred installing SCR technology. Mr. Cannata's testimony, which was based on information supplied by PSNH in docket DE 94-080, established that the economic benefits to be derived from the installation of SCR technology at Merrimack Unit II will only be realized if SCR technology is capable of meeting the reduced NO_x standards to be established by DES in 1999 and, therefore, will be allowed to continue to operate.

The current rules provide that DES must set a new NO_x standard between .1 lbs per million Btu and .4 lbs per million Btu (3.8 to 15.4 tons per day) in 1999. N.H. Admin. R., Env-A 1203. PSNH testified that SCR technology could not meet the 1999 standards if DES set

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the standard closer to .1 lbs per million Btu than .4 lbs per million Btu. Thus, PSNH has not, and cannot, establish that SCR is the prudent treatment alternative until the standards are set by DES in 1999, and it is established that SCR technology can meet the new standard or is a necessary component to meet the standard.

If Merrimack II is unable to comply with the 1999 standards employing SCR, the unit must be shut down or alternative methods of compliance must be found such as refiring the unit with an alternative fuel source at substantial cost. Under this scenario, ratepayers would have needlessly incurred the capital costs of SCR technology from 1995 through 1999, even though SNCR technology would have been sufficient to meet these DES standards at substantially lower capital cost. Given this uncertainty and PSNH's ultimate control over the decision to install this technology and assume the risk, we believe it is only reasonable that PSNH bear the risk that SCR technology meets the 1999 standards.

As EnerDev has correctly noted, we are not disallowing recovery of these costs, but are merely postponing the ultimate decision on cost recovery until a determination of prudence and usefulness can be made in 1999. Moreover, we believe that such a postponement of recovery is

required by RSA 378:28 which mandates a Commission finding of prudence and usefulness before a utility may recover costs from ratepayers. RSA 378:28.

2. *Commission Pre-approval of SCR Technology*

A. PSNH

PSNH contended that the Order is unlawful because the Commission had pre-approved the installation of SCR technology at Merrimack II as the least cost alternative for NO_x compliance in DE 94-080, PSNH's 1994 least cost integrated resource planning filing (LCIP). RSA 378:37-41. Based on this rationale, PSNH asserted that the Commission had determined the selection of SCR technology was prudent, and that PSNH reasonably relied on that determination in installing SCR technology at Merrimack II.

B. EnerDev

EnerDev made no specific arguments relative to this issue.

C. Analysis

[3] Since the inception of LCIP reviews of electric utilities under our jurisdiction, this Commission has articulated that such reviews do not constitute pre-approval of specific projects. *Re Public Service Company of New Hampshire & a.*, 73 NH PUC 117, 126-130 (1988). Rather, this Commission has steadfastly maintained that LCIP involves an analysis of utility planning processes to ensure that the planning methodologies employed by the utility in resource decisions are sound and include both supply and demand side options. *Re Granite State Electric Company*, 74 NH PUC 325, 331 (1989).

These principles were reiterated in Order No. 21,589 in docket DR 94-080 wherein we stated that:

> [o]ur decision in this case should not be interpreted as pre-approval of the SCR project which results in automatic cost recovery. We agree with the OCA that the scope of this proceeding is limited to PSNH's planning processes and procedures, an area that does not extend to cost recovery issues.

Re Public Service Company of New Hampshire, Order No. 21,589 at 22 (March 27, 1995).

Subsequent to this admonition, we further noted with regard to the particular decision to install SCR technology at Merrimack II that:

> PSNH's decision rests on certain critical technical and regulatory assumptions regarding the performance of SCR technology and the Phase II emissions standards. We also note that PSNH's review and selection of the SCR technology was completed in a somewhat abbreviated time frame for a project of this magnitude. In approving this aspect of PSNH's least cost filing we conclude only

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> that PSNH employed a reasonable planning methodology to reach its conclusion. Cost recovery issues will be addressed in a separate proceeding.

Id.

Thus, the decision to employ SCR technology was not pre-approved by this Commission, and PSNH had no reasonable basis to believe it had been.

3. *Necessity of SCR Technology in 1995*

A. PSNH

PSNH asserted that the Order is unreasonable because the record evidence in the proceeding clearly indicated that "(i) installation of SCR technology is the least cost means of complying with *both* the 1995 and 1999 CAAA requirements, (ii) that (sic) installation of SNCR at Merrimack Unit II would not achieve compliance with applicable regulatory requirements without a significant unit derate, and (iii) whether or not it is capable of meeting 1999 CAAA requirements on its own, SCR technology is a necessary component of *any* 1999 CAAA compliance plan involving continued operation of Merrimack II." Motion at 2.

PSNH asserted that these errors were apparently the result of the Commission's misinterpretation of N. H. Admin. R., Env-A Part 1211.

B. EnerDev

EnerDev pointed out that Mr. Cannata's testimony using PSNH's own studies demonstrated that SNCR is less costly in achieving compliance with the 1995 through 1999 standards.

EnerDev also responded to PSNH's assertion that the Commission had misinterpreted Env-A 1211. EnerDev asserted that the 35.4 ton NO_x limit contained in Env-A 1211.03 (d) was an average daily limit for the entire year, not an absolute limit for any given day.

C. Analysis

[4] Contrary to PSNH's assertions, the record in this case does support the conclusion that SNCR is the least cost NO_x treatment alternative for the years 1995 through 1999. While we agree with PSNH that the record supports a conclusion that SNCR has greater annual operating expenses than SCR, PSNH has inappropriately focused solely on operating costs and excluded capital costs. The capital costs to install SCR at Merrimack II exceeded $18 million while the estimated capital costs for SNCR were approximately $3 million. Thus, for the five years at issue SNCR is clearly the least cost alternative because the ratepayers avoid approximately $15 million in capital costs. This analysis includes the estimated costs and revenues due to a 70 megawatt "derate" of Unit II made by PSNH.

PSNH's assertion that SCR technology is a necessary component of any 1999 compliance plan is similarly without merit. This assertion assumes that Merrimack II continues to operate after DES sets the new NO_x standard in 1999, an assumption that neither PSNH nor the Commission can make. Moreover, even if Merrimack II continues to operate, it may have to be refired with a new fuel or boiler, raising the question of the need for SCR technology.

With regard to PSNH's assertion that the Commission has ignored the economic consequences of N.H. Admin. R., Env-A 1211.03(d)(1), which requires a 70 megawatt derate of Merrimack II, we disagree. Our analysis was based on Mr. Cannata's testimony which included the 70 megawatt derate.

EnerDev, however, has argued that PSNH has misinterpreted Env-A 1211.03(d)(1). EnerDev contends that a proper interpretation of 1211.03(d)(1) negates the need for the 70 megawatt derate and decreases the cost of SNCR technology for Unit II. As is set forth above, EnerDev argues that 1211.03(d)(2) creates an ambiguity that can only be resolved by interpreting 1211.03(d)(1) as an average daily limit, as compared to an absolute daily limit.

We agree with EnerDev that 1211.03 is ambiguous. We further note that this ambiguity must be resolved because of the potential economic impact. If EnerDev is correct in its interpretation of 1211.03(d) Merrimack II is only

subject to average daily NO_x limits and PSNH avoids or greatly reduces the impact of any "derate." Given the purely legislative nature of administrative rules we will apply the rules of statutory construction to resolve this ambiguity.

N. H. Admin. R., Env-A 1211.03(d) places the following restrictions on Merrimack II from June 1, 1995 through May 31, 1999:

> (1) During the calendar period June 1 through May 31, NO_x emissions shall not exceed 35.4 tons per 24-hour calendar day; *and*
>
> (2) During the calendar period June 1 through May 31, NO_x emissions shall not exceed 12,921 tons. (emphasis added).

Moreover, the very next provision, 1211.03(e), states that:

> (e) [i]n the event that the NO_x RACT emission limit provided in Env-A 1211.03(d)(2), above, is exceeded prior to the expiration of the specified calendar period, the affected utility boiler shall shut down for all days remaining in the specified calendar period ... .

The product of 35.4 tons times 365 days is 12,921 tons per year. Thus, it would appear that 1211.03(d)(1) and 1211.03(d)(2) are redundant and duplicative as they mandate exactly the same NO_x emissions although one speaks of daily limits and the other of annual limits. This renders one or the other of the provisions meaningless because the limit of 12,921 tons per year could never be exceeded if a utility only produced 35.4 tons of NO_x per calendar day. Similarly, 1211.03(e) becomes meaningless as there would never be a need to shut down a boiler for all remaining days in a calendar year if the boiler had complied with the 35.4 tons per day maximum limit. We also note that PSNH's interpretation of 1211.03(d) renders 1211.03(b) meaningless.

[5] It is a fundamental tenet of statutory construction that legislative bodies do not enact "unnecessary and duplicative provisions," *State v. Willard*, 139 N.H. 568, 570 (1995); nor do they enact meaningless provisions. *Appeal of Soucy*, 139 N.H. 110, 116 (1994). Moreover, if a statute is capable of more than one interpretation, courts will look to the statute as a whole to find the legislative intent. *Lorette v. Peter-Sam Inv. Properties*, 140 N.H. 208, 211 (1995). In determining statutory intent, courts will ascertain the "evil" or "mischief" the statute was intended to remedy. *Appeal of the Town of Newmarket*, 140 N.H. 279 (1995).

We must, therefore, assume that 1211.03(b), 1211.03(d) and 1211.03(e) are not meaningless or duplicative provisions. Given this assumption, we will attempt to construe these provisions in a consistent and meaningful manner that will give effect to the intent of Env-A Part 1211.

The record establishes that Env-A Part 1211 was adopted by the DES' Air Resources Division in response to the mandates contained in Title I of the CAAA. Title I specifically addresses reducing levels of ground level ozone. Title IV specifically addresses nitrogen oxides or NO_x emissions. NO_x emissions are a precursor of ground level ozone.

Dennis Brown of PSNH testified that Env-A Part 1211 was the result of a collaborative process among PSNH and numerous environmental groups with input from the federal Environmental Protection Agency (EPA). Mr. Brown testified that the goal of Env-A part 1211 was to reduce overall ozone levels in the State and not to target any specific seasons of the year, such as the summer months, or any specific sections of the State identified as ground level ozone "non-attainment" areas. In fact, Mr. Brown testified that the EPA had specifically rejected a proposal to reduce NO_x emissions in the summer months when ground level ozone is at its worst in the State.

Thus, we must conclude that the focus of Env-A Part 1211, or the harm it attempts to address, is overall ground level ozone amounts, and that the rule is not designed to target specific times or areas for ground level ozone reduction. That is, the rule does not target particular problem areas or periods when ozone levels are particularly high, but instead seeks overall reductions from one of the State's largest NO_x emitters.

Given this intent, we conclude that

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1211.03(d)(1) and (2) and 1211(e) were designed to limit average daily emissions of NO_x at Unit II, thereby reducing the overall production of NO_x. Thus, the environmental harm sought to be prevented can be achieved just as well with average daily limits as with absolute daily limits. Furthermore, any other reading of the rule would render the above referenced provisions meaningless, unnecessary or duplicative.

Thus, we agree with EnerDev that Env-A 1211.03(d)(1) sets an average and not an absolute daily limit on NO_x production at Merrimack II. But, even if our interpretation were proved wrong, the result here would not change because we relied for our decision on testimony which shows SNCR is the least cost NO_x treatment alternative for the years 1995-1999.

4. *Failure to Establish Recoverable SNCR Costs*

A. PSNH

PSNH asserts that the Order is unlawful and unreasonable because it fails to provide any findings regarding the recoverable hypothetical SNCR costs for Unit II and does not allow PSNH to present evidence on these costs.

B. EnerDev

EnerDev asserts any lack of evidence in the record was caused by PSNH's failure to present such evidence.

C. Analysis

In response to the same assertion made by PSNH in its post hearing memorandum regarding the need for evidence on the actual costs of SNCR at Merrimack II we stated that we would "allow PSNH to file a request for recovery of such expenses and allow the Staff and the other parties an opportunity to respond to that request." Order No. 22,192 at 18.

Accordingly, PSNH may present its position on this issue in the upcoming FPPAC proceeding.

5. *Depreciation Study*

A. PSNH

PSNH claims the Order's requirement that PSNH conduct a depreciation study of Merrimack II is unlawful and unreasonable because it is "fundamentally absurd to require PSNH to conduct and *pay for* a formal engineering depreciation study of `hypothetical equipment' ... . " Motion at 4. PSNH further sought clarification as to the sufficiency of an accounting study as opposed to an engineering study.

B. EnerDev

EnerDev took no position on this issue.

Analysis.

[6] As we stated in the Order, we believe the 1986 Stone and Webster study is outdated and does not reflect the expected life of Merrimack Station. We believe a full engineering depreciation study of Merrimack Station is required to reflect the proper depreciation lives of both Units I and II. Furthermore, as we have stated repeatedly, we are not denying recovery of the costs of SCR technology. We are instead deferring recovery unless and until PSNH can establish its prudence and usefulness. Thus, a depreciation study is required using PSNH's assumptions relative to the capabilities of SCR technology at Unit II and SNCR at Unit I.

6. *Testimony of Director of Air Resources*

A. PSNH

PSNH asserted the Order is unlawful and unreasonable because the Commission did not allow the "limited appearance" of Kenneth Colburn, Director of the Air Resources Division of DES.

B. EnerDev

EnerDev asserted the Commission acted within its sound discretion in not allowing the testimony of Mr. Colburn. EnerDev noted that

Mr. Colburn's appearance occurred at the last minute in an already hotly contested proceeding in which the hearings on the merits had already been continued due to PSNH's

attempts to introduce an affidavit at the last minute.

Substantively, EnerDev noted that Mr. Colburn's testimony concerned factual matters that related to the period of time after PSNH actually made the decision and installed SCR technology at Merrimack II.

C. Analysis

Hearings on the merits of this proceeding were scheduled to begin September 21, 1995 but were delayed because PSNH sought to have an affidavit, which had been mailed to the Commission from the New Hampshire Department of Justice, introduced into evidence over the objections of the parties and Staff. The following two months were spent in what EnerDev aptly labelled a "procedural quagmire" over the introduction of this affidavit into evidence. Having finally resolved this issue, hearings were rescheduled to begin on the morning of December 5, 1995.

On the morning of the December 5, 1995 hearing, Mr. Colburn appeared at the request of PSNH and provided unsworn testimony in the form of a public statement on the better than expected operation of SCR technology at Merrimack II. At the request of a number of parties and Staff, we struck the testimony from the record.

[7] As we stated for the record at the December 5, 1995 hearing, Mr. Colburn's statement was factual in nature, and, therefore, due process would have required providing the parties with an opportunity to conduct discovery and to cross-examine Mr. Colburn. All of this would have added considerable delay to a proceeding that had already encountered numerous delays. PSNH had every opportunity to present Mr. Colburn's testimony in accordance with our procedural rules and orders but for its own reasons chose to disregard both by presenting testimony at the last minute.

Although PSNH contended it was a "sad commentary" on administrative procedure that the Commission would not allow a sister agency to testify, we find it troubling that the State's largest utility would disregard the Commission's procedural rules and orders in a manner which would negatively impact upon the due process rights of other parties.

Moreover, we agree with EnerDev that Mr. Colburn's testimony was irrelevant to the issue of prudence because it related solely to the performance of SCR at Merrimack II. As has been noted on numerous occasions, a prudence determination must be made based upon the information available at the time a particular decision was made; prudence should not be determined on the basis of the outcome of the decision.

7. *Vermont Electric Cooperative*

A. PSNH

PSNH claimed that the Order was unreasonable because it imputed PSNH's current cost of capital, rather than the cost of capital established by the Federal Energy Regulatory Commission (FERC), to its wholesale contract for the sale of power from Merrimack to the Vermont Electric Cooperative (VELCO) in computing the share of the costs of certain environmental or safety backfits or fuel switching which require capital expenditures at prescribed levels (EA costs) to be borne by PSNH ratepayers. PSNH further alleged there was no record evidence establishing PSNH's current cost of capital and the record established that Section 12 of the Rate Agreement

only intended PSNH/NU to renegotiate its wholesale power contract with VELCO if there was a need for capacity.

B. EnerDev

EnerDev asserted no specific position on this issue.

C. Analysis

As we stated in the Order, we have not set aside the FERC's order in this matter, we have merely imputed PSNH's current cost of capital to the contract because of PSNH's failure to live up to the terms of Section 12 of the Rate

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Agreement. In other words, the imputation is a penalty for not using best efforts to renegotiate the contract with VELCO. We find PSNH's assertions relative to the alleged intent of this provision unpersuasive because they are unsupported by the record in DR 89-244.

With regard to PSNH's assertion that its current cost of capital is not in the record, the assertion is without merit; Mr. Sullivan's testimony contains this information.

8. *Deferred Asset Account*

A. PSNH

PSNH asserted that the Order is unlawful and unreasonable because it denies it the opportunity to establish a deferred asset account thereby denying it a reasonable assurance of recovery, requiring PSNH to write off the asset under Generally Accepted Accounting Principles (GAAP).

B. EnerDev

EnerDev asserted no specific position on this issue.

C. Analysis

[8] We have reconsidered our prior order on this issue and we will allow PSNH to create a deferred asset for the difference in capital costs between SNCR and SCR technology. Once the 1999 standard has been established and the effectiveness of the SCR technology has been tested, we will consider whether to allow recovery of the difference in capital costs. The equivalent of the capital costs of SNCR are now included in rates although SCR is actually in operation; the deferred asset must be offset by these amounts.

We direct PSNH to work with our Accounting Staff to finalize the accounting treatment of these issues.

9. *Rate Agreement*

A. PSNH

PSNH claimed that the Order's denial of immediate recovery violated either section EA of FPPAC or Paragraph 5(a)(v)(A) of the Rate Agreement which provide for the recovery of the costs of certain environmental or safety backfits or fuel switching which require capital expenditures at prescribed levels.

B. EnerDev

EnerDev asserted no specific position on this issue.

C. Analysis

Neither EA of FPPAC nor paragraph 5(a)(v)(A) of the Rate Agreement guarantees the recovery of costs that have not been demonstrated to be prudent. Thus, there has been no violation of the Rate Agreement.

10. *Clarification of VELCO Share*

A. PSNH

PSNH claimed that the Order required clarification because it was unclear how the VELCO share of costs should be treated.

B. EnerDev

EnerDev asserted no specific position on this issue.

C. Analysis

For the purposes of FPPAC only and New Hampshire ratepayers, PSNH should assess VELCO its 31.3% contractual share of the hypothetical costs of operating SNCR technology at Merrimack II.

11. *Clarification of Minutes*

A. PSNH

PSNH asserted that the Order, as it affected certain refunds, did not reflect the Commission's oral deliberations of the case, as set forth in the minutes of the Commission's June 17, 1996 meeting, and that the minutes

control the Commission's decision.

B. EnerDev

EnerDev took no position on this issue.

C. Analysis

To the extent there is any deviation between our oral deliberations and the written order, the order controls.

III. CONCLUSION

Inasmuch as PSNH failed to make any argument that was not adequately treated in our previous order, and further failed to show any mistake of law or abuse of discretion in that order, PSNH's motion for rehearing is denied in accordance with RSA 541 except to the extent it concerns deferred asset accounting.

Based upon the foregoing, it is hereby

ORDERED, Public Service Company of New Hampshire's motion for rehearing is denied

except to the extent it concerns deferred asset accounting as explained above.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of October, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DE 94-080, Order No. 21,589, 80 NH PUC 160, Mar. 27, 1995. [N.H.] Re Public Service Co. of New Hampshire, DR 95-068, Order No. 22,192, 81 NH PUC 451, June 17, 1996.

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NH.PUC*10/16/96*[89377]*81 NH PUC 774*Statewide Electric Utility Restructuring Plan

[Go to End of 89377]

81 NH PUC 774

Re Statewide Electric Utility Restructuring Plan

DR 96-150
Order No. 22,364

New Hampshire Public Utilities Commission

October 16, 1996

ORDER addressing various procedural matters within a proceeding examining a restructuring of the state's electric utility industry. Commission again describes the proceeding as being more akin to a rulemaking than adjudication since it is designed to set policy rather than resolve factual disputes. However, the commission does agree to hold evidentiary hearings to adjudicate stranded cost issues on a utility-by-utility basis. It rejects adjudicatory hearings for such other issues as market dominance, vertical integration, transmission jurisdiction, transmission pricing, and performance-based rate making, finding those issues to be policy rather than factual matters.

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1. PROCEDURE, § 2

[N.H.] Commission authority to determine procedural direction — Adjudicative versus rulemaking proceedings — Factual disputes as necessitating adjudicatory hearings — Issues of policy as only requiring nonadjudicatory procedures. p. 776.

2. PROCEDURE, § 2

[N.H.] Commission authority to govern procedural direction — In proceeding addressing restructuring of electric utility industry — Reliance on rulemaking versus adjudicatory procedures for most phases — Petition for adjudicative hearings for alleged factual disputes — Factors affecting denial — Issues as relating to policy rather than fact — Issues as not ripe for

consideration. p. 776.

3. ELECTRICITY, § 1

[N.H.] Industry restructuring proceeding — Adjudicatory versus rulemaking phases — Issues of fact versus policy — Petition for adjudicative hearings for alleged factual disputes — As to market dominance, vertical integration, transmission jurisdiction, transmission pricing, metering, special contract, and performance- based rate making issues — Factors affecting denial of adjudicatory hearings — Issues as relating to policy rather than fact — Issues as not ripe for consideration. p. 776.

4. EXPENSES, § 120

[N.H.] Electric utilities — Industry restructuring proceeding — Cost issues — Stranded costs associated with the sale or divestiture of generating assets — Consideration on a utility-by-utility basis — Appropriate issue for adjudicative procedures — Holding of evidentiary hearings. p. 778.

5. PROCEDURE, § 26

[N.H.] Conduct of hearings — Adjudicative versus rulemaking proceedings — Appropriate issues for adjudicatory hearings — Issues of fact — Electric industry restructuring proceeding — Addressing of stranded cost issues in adjudicatory hearings — Consideration on a utility-by-utility basis. p. 778.

6. COMMISSIONS, § 58

[N.H.] Fees and assessments — Court reporter, consultant, and other commission-incurred costs — In electric industry restructuring proceeding — Allocation of costs among participants — Direct versus proportional allocations. p. 780.

7. APPORTIONMENT, § 9

[N.H.] Expenses — Commission fees and assessments — Court reporter, consultant, and other commission-incurred costs — In electric industry restructuring proceeding — Allocation of costs among participants — Direct versus proportional allocations. p. 780.

8. PROCEDURE, § 26

[N.H.] Conduct of hearings — In electric industry restructuring proceeding — Adjudicative hearings to address utility-specific stranded cost issues — As being issues of a factual nature — But informal legislative-style hearings for policy matters. p. 781.

BY THE COMMISSION:

ORDER

I. INTRODUCTION

This order addresses various procedural issues raised prior to or during the prehearing

conference held by the New Hampshire Public Utilities Commission (Commission) on October 2, 1996. The Commission scheduled the prehearing conference in conjunction with the September 11, 1996 release of its Preliminary Plan to restructure New Hampshire's electric utility industry.

On September 25, 1996, the Commission issued a letter to the parties and invited comments at the October 2, 1996 prehearing conference on the following issues:

- Outstanding intervention requests;
- Timely requests for formal adjudication;[1(100)]
- Schedule of issues for the December/January hearings;
- Allocation and assessment of Commission costs in this proceeding; and
- "Other procedural matters"

Due to the number and nature of the procedural issues raised by various parties at the prehearing conference, the positions presented relative to such issues are summarized within the context of the Commission analysis.

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II. POSITIONS OF THE PARTIES AND COMMISSION ANALYSIS

A. *Intervention Requests*

During the October 2nd prehearing conference, we granted all outstanding requests for intervention. An updated service list of all full and limited intervenors is attached as Appendix A.

B. *Requests for Formal Adjudication*

[1-3] In response to Order 22,316, Public Service Company of New Hampshire (PSNH), Connecticut Valley Electric Company (CVEC), the City of Manchester (Manchester) and Granite State Electric Company (GSEC) filed requests for formal adjudication.[2(101)] Before addressing those requests, it is important to recall that RSA 374-F requires the Commission to undertake a two-step process. First, we must develop a statewide restructuring plan and set interim stranded costs by February 28, 1996. After we issue the final plan, utilities will be required to submit compliance filings which we will review on a utility-specific basis. Thus, during this phase of the proceeding, our primary task is to develop policies and standards of general applicability. The only utility-specific issues we must consider relate to the establishment of interim stranded costs. To the extent that there are any utility-specific issues resulting from the policies and standards established by the Final Plan, we may consider those issues during the compliance hearings.

1. PSNH

In response to Order No. 22,316, PSNH filed a timely request for adjudicative procedures that sets forth thirteen broad subject areas relative to which it seeks evidentiary hearings. We address each of those requests individually below.

a. Market Power

PSNH seeks to introduce testimony relative to whether it "has market power and whether its activities must be constrained to prevent the exercise of such power." *See*, PSNH letter dated September 27, 1996 to Thomas B. Getz (PSNH Letter).

In the Preliminary Plan, we discussed the issue of vertical market power and requested comments on the degree to which generation must be legally or functionally separated from transmission and distribution to reduce or eliminate concerns arising from the exercise of such power. We noted, however, that the Legislature has directed us to develop a statewide restructuring plan in which generation services of electric utilities are "at least functionally separated from transmission and distribution services ..." RSA 374-F:3, III.[3(102)] *See*, Preliminary Plan, p.13-14. Thus, our Preliminary Plan envisions no greater "constraints" on PSNH than those required of all jurisdictional electric utilities pursuant to RSA 374-F:3, III, and accordingly, PSNH's request for an evidentiary hearing on this issue is inappropriate and premature. If during the compliance phase of this proceeding, we decide to undertake an inquiry into whether PSNH possesses sufficient vertical market power to warrant the application of policies beyond the minimum requirements called for in RSA 374-F, we will afford PSNH the opportunity to present testimony and evidence on such issues.[4(103)] We note that PSNH is free to file written comments on issues related to market power and the application of the standards already established by the Legislature.

b. Preferred Market Structure

Next, PSNH requests the right to file testimony on the "factual issues concerning the vertically-integrated structure of PSNH that was mandated by the State of New Hampshire throughout the bankruptcy process." We deny this request for two reasons.

First, PSNH has not identified any particular "factual issue" relative to this assertion. Thus, we view PSNH's allegation as raising an issue of law. Second, the Legislature clearly indicated that, at a minimum, our restructuring plan should require utilities to functionally separate generation from transmission and distribution services. RSA 374-F:3, III. Accordingly,

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we deny PSNH's request for an evidentiary hearing on this issue.

c. Transmission

PSNH seeks to introduce testimony on "issues of fact concerning federal preemption over transmission aspects of a restructured industry." We deny this request because PSNH has failed to identify any factual issue concerning this subject, which according to PSNH's own request is a legal question.

d. ISO/Power Exchange/Transmission Pricing

PSNH also requests the opportunity to present testimony on "[I]ssues of fact concerning restructuring of NEPOOL ... " Again, PSNH has identified no issue of fact relative to this subject area, which primarily raises policy questions. At a minimum, however, PSNH and other interested parties will be afforded an opportunity to present written comments on this

subject.[5(104)]

e. Definition of Distribution

PSNH requests an evidentiary hearing in order to determine which of its facilities are state-jurisdictional distribution facilities and which are transmission facilities regulated by the Federal Energy Regulatory Commission (FERC).[6(105)] Again, PSNH's request is premature. We intend to conduct utility-specific inquiries into the categorization of transmission and distribution assets and the associated cost allocations during separate proceedings.

f. Distribution Company Structure

According to PSNH, it should be afforded the opportunity to present testimony on whether it should be required to functionally disaggregate or divest its distribution from retail marketing and generation functions "despite the State of New Hampshire's contrary mandate throughout the bankruptcy proceeding."

As noted above, the Legislature requires the Commission to develop a restructuring plan which requires all of the State's electric utilities to at least functionally separate generation from transmission and distribution functions. It provides no exception for PSNH. Further, while we have expressed a preference for divestiture, the Preliminary Plan does not establish such a requirement. Accordingly, we conclude that PSNH's request misconstrues the Preliminary Plan and the Legislature's mandate.

g. Metering & Billing

Next, PSNH asks that it be permitted to present testimony on the "factual issues surrounding whether customers should be required to install hourly recording meters, and whether PSNH should be compelled to use a specific third party vendor to transmit customer specific data to competitive suppliers." We deny this request because PSNH has failed to identify any contested issue of fact associated with the development of *policy* in these areas. Again, PSNH has the opportunity to present its views through written or oral comments.

h. Unbundled Rates

PSNH seeks an evidentiary hearing on "[F]actual issues concerning the impacts of unbundling rates ... " Again, PSNH has presented no particular factual issue to adjudicate. The restructuring legislation requires PSNH and the other jurisdictional electric utilities to unbundle rates. *See*, RSA 374-F:3, III. As we indicated in the Preliminary Plan, an analysis of utility-specific costs for the purpose of establishing unbundled rates will be undertaken during hearings on each utility's compliance filing.

i. Performance Based Ratemaking (PBR)

PSNH asks for an evidentiary hearing on "[F]actual issues surrounding whether and what PSNH-specific PBR scheme ... should be implemented." This subject area relates solely to issues of policy and PSNH has identified no factual issue which must be resolved to develop policies related to PBR. Any issues specific to PSNH relative to the application of PBR to

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PSNH will be addressed in its compliance filings.

j. Special Contracts

PSNH seeks an evidentiary hearing on whether "as a factual matter existing special contracts between PSNH and its retail customers can be reopened and repriced and...whether such contracts are anti-competitive as a matter of fact, and what compensation should be paid by the State of New Hampshire for interference with PSNH's private contract rights." Once again, we deny PSNH's request for an evidentiary hearing on any of the foregoing issues because it has identified no issue of adjudicative fact for which it seeks such procedures. PSNH is free to submit written comments setting forth its views relative to special contracts and restructuring. In the event that legal issues arise relative to the policies which we develop in this area, PSNH and other parties will be afforded an opportunity to present legal memoranda on such issues.

k. Interim Stranded Cost Recovery

[4, 5] We grant the requests of PSNH, CVEC, GSEC and Manchester to utilize formal adjudicative procedures in order to set interim stranded costs. Because the setting of interim stranded cost charges involves utility-specific inquiries, we have scheduled evidentiary hearings, with full rights of cross-examination, for each utility. *See*, Appendix B. We wish to emphasize, however, that we do not expect to receive testimony on legal or policy questions, such as interpretations of RSA 374-F:4, VI or the underlying policy rationales for alternative approaches to this issue. The procedural schedule allows for written and oral comments on policy questions, and as discussed below, we have established a briefing schedule for issues of law. The full procedural schedule is attached to this order as Appendix B.

l. Rate Agreement

PSNH also requests formal adjudication on

> the State's obligations under the Rate Agreement ... and whether the Bankruptcy Court's order approving the PSNH's reorganization precludes NHPUC consideration of the management decisions or other events occurring prior to the reorganization.

PSNH Letter, p. 3. We intend to issue a list of legal issues for briefing on or before October 25, 1996. At this stage of the proceeding, PSNH has failed to identify any issue of adjudicative contested fact relative to the Rate Agreement. PSNH acknowledges that the Preliminary Plan does not address the Rate Agreement, and we also note that our mandate from the Legislature does not require us to undertake such an inquiry. Nonetheless, we are considering whether to allow PSNH and other parties to submit legal briefs on the Rate Agreement and bankruptcy reorganization proceedings.

m. Financial Impact on PSNH

Finally, PSNH seeks an evidentiary hearing on the "financial impacts" that the Preliminary Plan would have on PSNH. We deny this request because it is outside the scope of this proceeding. The restructuring legislation calls for us to establish interim stranded cost charges based upon our "preliminary determination of an equitable, appropriate, and balanced measure of stranded cost recovery ..." RSA 374-F:4, VI(a). In light of this standard established by the Legislature, we agree that it is appropriate to allow testimony on the potential financial impact that various levels of interim stranded cost recovery may have on PSNH. This testimony should be pre-filed in conjunction with any other testimony submitted relative to the establishment of

interim stranded cost charges.

2. CVEC

CVEC filed a request for the Commission to designate six "issues" for which formal adjudicative procedures would be utilized. After reviewing its request, it is clear that CVEC simply disregarded our analysis in Order No. 22,316 wherein we directed interested parties to identify issues of "adjudicative fact" when

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requesting an evidentiary hearing. We address each of CVEC's requests below.

a. "Stranded Costs"

As we indicated above, we intend to conduct evidentiary hearings in order to address factual issues related to the establishment of interim stranded costs. CVEC requests the opportunity to present testimony on all matters related to "stranded costs" set forth in the preliminary Plan at pages 34-39.[7(106)] CVEC also seeks to introduce testimony on the tax and liquidity implications of stranded cost recovery mechanisms as well as related jurisdictional issue.

We disagree with CVEC that "all matters" discussed in our Preliminary Plan related to stranded costs require an evidentiary hearing. Our task in this proceeding is to set interim stranded costs which will be subject to further review and modification pursuant to RSA 374-F:4, VI and VII. Nonetheless, we intend to allow utilities and other interested parties to present their views and positions through testimony relative to the establishment of interim stranded cost charges as long as such testimony does not unduly delay this proceeding. As noted above, if parties elect to present positions on issues of law or policy through testimony, we will treat such portions of their testimony as written comments or legal argument, as appropriate, for the purpose of establishing a record which will guide our deliberations in developing the final restructuring plan.

b. Vertical Market Power

CVEC, like PSNH, also seeks to introduce testimony on the issue of vertical market power. As we discussed above, the Preliminary Plan simply reflects the Legislature's mandate to require all utilities to functionally unbundle their services. The Plan has made no utility-specific factual findings relative to the market power of CVEC or any other utility. Accordingly, this issue remains primarily one of policy for which written comments are appropriate.

c. PBR

CVEC requests that we conduct an evidentiary hearing to explore various issues related to whether PBR is "appropriate." We incorporate by reference the analysis and decision set forth above relative to PSNH's similar request.

d. Guaranteed Customer Offer

Next, CVEC requests an evidentiary hearing for "disputed factual matters" which it claims the Commission must resolve in order to determine whether to require a "Guaranteed Customer Offer." We assume that CVEC is referring to our discussion regarding "default power service" discussed in § VII,A of the Preliminary Plan. All of the "issues" identified by CVEC relate to

policy decisions; CVEC has identified no issue of adjudicative fact. Accordingly, it should present its position and views on this issue in its written comments.

e. Special Contracts

CVEC also seeks an evidentiary hearing on "disputed factual matters" related to whether special contracts should be unbundled. Again, CVEC has failed to identify any issue of adjudicative fact; accordingly, CVEC should present its views on this subject through its written comments or legal memoranda.

f. Non-Bypassable and Competitively Neutral Systems Benefit Charge

Finally, CVEC alleges that the Commission will be required to decide "disputed factual matters" before making a decision on whether to establish a non-bypassable and competitively neutral systems benefit charge. On the contrary, our decision in this area will be based solely on public policy grounds. Accordingly, CVEC should present its views on this subject through its written comments.

3. Manchester

The City of Manchester requests the opportunity to present testimony and evidence on the methodology for developing interim stranded cost charges as well as the calculation

of such charges by PSNH. This request is consistent with our decision explained above, and accordingly, Manchester's request is granted.

4. GSEC

GSEC submitted a letter dated September 27, 1996 in which it expresses agreement with the view that interim stranded cost charges should be set through formal adjudicative procedures. GSEC acknowledges that it cannot "conclusively identify additional issues which should be determined through formal adjudicative procedures" based on the Preliminary Plan alone. GSEC's letter "reserves the right" to request adjudicative procedures on additional issues later in this proceeding. Without deciding the issue, we wish to inform parties that we will not look favorably upon any further requests to expand the scope of the scheduled evidentiary hearings.

C. *Designation of Staff*

In Order No. 22,316, we noted that RSA 363:33 allows us to separate or segment this proceeding into adjudicative and non-adjudicative phases. We have decided to conduct formal adjudications in order to establish utility-specific interim stranded cost charges. Accordingly, we will entertain motions to designate Staff with respect to this aspect of DR 96-150. Such requests must be filed with the Commission by October 24, 1996. Objections and responses to any such motions shall be due by November 4, 1996. Our preliminary view of this issue leads us to believe that if such requests are received and granted, we will name all of Staff and any consultants retained by the Commission as decisional employees. We reserve final judgment on this issue until we are presented with any motions.

D. *Allocation of Costs*

[6, 7] After considering the arguments of various parties at the prehearing conference, we have reconsidered our previous decision on the appropriate allocation of costs associated with this proceeding. Because the Legislature directed the Commission to undertake a generic proceeding to develop a statewide restructuring plan, we believe that the electric utilities which are the primary focus of this docket should be assessed costs incurred by the Commission for its experts and consultants. This assessment shall be made in the same manner as we have computed the most recent assessment pursuant to RSA 363-A. With respect to court reporter costs, we believe that such costs should be shared equally among the parties to this proceeding who are not exempt from assessment under RSA 365:37, II. We believe that it is equitable and appropriate to require all non-exempt entities to contribute to the court reporter costs because their participation in this docket contributes to those costs. Accordingly, the utilities as well as those non-exempt entities identified by an asterisk in Appendix A will be assessed an equal share of the court reporter fees in this proceeding. All other costs associated with this proceeding, including the costs of Commission consultants, shall be divided among the electric utilities in the same manner as we have divided the most recent assessment pursuant to RSA 363-A.

E. *Miscellaneous Procedural Issues*

1. Briefing Schedule for Legal Issues

A number of parties have suggested that we establish a separate schedule to address the major legal issues which are likely to be raised in this proceeding. In particular, there were several requests at the prehearing conference to establish a briefing schedule in order to address whether the Rate Agreement constrains the Commission's ability to develop a final restructuring plan which is generic and applicable to all of the state's jurisdictional utilities, including PSNH. We anticipate that PSNH will articulate its position relative to this issue in its initial written comments. After reviewing the initial written comments, we intend to develop and release a list of legal issues for briefing. Due to the number of legal issues that could be raised by parties, it is possible that we will establish a phased approach to address such issues;

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however, that determination will not be made until we have the opportunity to review the written comments which must be filed by October 18, 1996. We intend to release the legal issues for briefing by October 25, 1996. The briefing schedule for the issues is included in Appendix B.

2. Hearing Schedule and Format

[8] Before undertaking formal adjudications to set utility-specific interim stranded costs, we intend to conduct informal legislative style hearings in order to take oral comments on policy issues raised by the Preliminary Plan. These hearings will commence on December 3, 1996. Any party that believes its written comments are insufficient and that it needs to offer oral comments during this phase of the proceeding should file a request by November 8, 1996 which indicates:

(a) the policy question(s) or issue(s) for which oral comments are sought;

(b) the name(s) and representative capacity of those individual(s) of the proposed commentor(s) for each policy question or issue; and

(c) the requested hearing time for oral comments with respect to each policy question

We also encourage parties with like interests to voluntarily propose panels to address specific policy questions; any such proposals shall also be filed by November 8, 1996. In the event that parties are unable to agree on panels, we may exercise our right to limit or consolidate presentations in order to ensure that the hearings proceed according to schedule.

3. Technical Sessions

During the prehearing conference, several parties requested information on the subjects which would be explored during the upcoming technical sessions. After reviewing the written comments, we will direct Staff to develop a proposed agenda of issues which will be discussed at those technical sessions to be circulated among the full intervenors. We encourage all parties to seek consensus in developing a workable agenda in order to maximize the ability of parties to meaningfully participate in the scheduled technical sessions.

4. OCA's Request for Extension

During the prehearing conference, the OCA made an oral request for additional time to file its written comments because its expert consultant will be out of the country at the time the comments are due. We direct the OCA to file its request in writing so that we may further consider whether it is appropriate to grant an extension to the filing deadline for the OCA's initial comments.

Based upon the foregoing, it is hereby

ORDERED, that the requests for evidentiary hearings filed by PSNH and CVEC are PARTIALLY GRANTED as set forth in this order; and its

FURTHER ORDERED, that the requests for evidentiary hearings filed by GSEC and Manchester are GRANTED; and it is

FURTHER ORDERED, that the remaining procedural issues discussed in this order are resolved as set forth herein.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of October, 1996.

APPENDIX A

Parties Granted Full Intervention:
American Association of Retired Persons
*American National Power
Air Resource Division, New Hampshire

Department of Environmental Services
Appalachian Mountain Club
Audubon Society of New Hampshire
Business and Industry Association
Business for Social Responsibility
*Cabletron Systems, Inc.
Campaign for Ratepayers Rights

Center for Energy & Economic Dev.
City of Claremont
City of Manchester
Community Action Programs
Competitive Power Coalition of New England, Inc.
Conservation Law Foundation
Coos County Commissioners
*EnerDev, Inc.
*EnergyNorth Natural Gas, Inc.
*Enron Capital & Trade Resources
*Federated Department Stores
*Freedom Energy Company
*Granite State Energy, Inc.
Granite State Hydropower Association
Granite State Taxpayers, Inc.
*Green Mountain Energy Partners
*KCS Power Marketing, Inc.
Massachusetts Energy Efficiency Council, Inc.
Merrimack River Watershed Council
NH Citizen Action
NH Municipal Association
PJA Energy Systems Design (Penti Alto)
Public Utility Policy Institute
Retail Merchants Association of New Hampshire
Save Our Homes Organization
Senator C. Jeanne Shaheen
Senator Frederick King
Senator James Rubens
The Solutions Collaborative
Society for the Protection of New Hampshire Forests
Tri-Chamber Governmental Affairs Council
*Wheeled Electric Power Company
*Wood-Fired SPPs
Parties Granted Limited Intervention:
City of Berlin
Control Molding Inc.
Easter Seals

Edison Electric Institute
Great Bay Power Corporation
Greater Concord Chamber of Commerce
Greater Dover Chamber of Commerce
Greater Manchester Chamber of Commerce
Greater Keene Chamber of Commerce
Greater Portsmouth Chamber of Commerce
Greater Rochester Chamber of Commerce
Greater Somersworth Chamber of Commerce
Home Builders Association of NH
Manchester Manufacturing Management Center
Moore Center
NH Grocers Association
NH Lodging & Restaurant Association
NH Rural Development Council
NH Small Business Development Center
Representative Clifton Below
Representative Jeb Bradley
Representative Perley E. Davis

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

APPENDIX B

REVISED PROCEDURAL SCHEDULE

Initial Written Comments on Policy Issues and Utility Stranded Cost Data	October 18, 1996
Motions to Designate Staff	October 24
Commission Releases Legal Issues for Briefing	October 25
Responses to Motion(s) to Designate Staff	November 4
Technical Sessions	November 4-8 and 12-13
Proposed Witness Panels	November 8
Utility Testimony on Interim Stranded Costs	November 8
Intervenor Testimony on Interim Stranded Costs	November 26
Public Hearings on Preliminary Plan (Policy Issues)	December 3-7 and 10-11
Initial Legal Memoranda	December 18
Adjudicative Hearings on Interim	

Stranded Cost Charges:	
Unitil Companies	December 12-13
CVEC	December 17-18
GSEC	December 19-20
PSNH	January 7-9, 1997
NHEC	January 10
Reply Legal Memoranda	January 18
Public Meetings on Preliminary Plan	To Be Scheduled
Final Written Comments	January 24

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FOOTNOTES

[1]In Order No. 22,316 (September 17, 1996), 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. Order at 15. Also, the Commission noted that other procedures, such as written comments and briefs, would be reserved for issues of law or policy. In response to the Commission's Order, several parties submitted requests for formal adjudication; these requests are summarized below.

[2]We reiterate that by "formal adjudication," we mean evidentiary hearings with trial-like procedures provided for by RSA 541-A:31-36, including the right to present evidence and testimony, and to cross-examine witnesses. Policy matters will be addressed during the non-adjudicative phase of this docket.

[3]We also requested comments on whether functional unbundling, which is required by RSA 374-F:3, III, is sufficient to address these concerns. Thus, the Preliminary Plan is consistent with the policy decisions made by the Legislature on this issue and we are bound.

[4]As we indicated on several previous occasions, we intend to conduct utility-specific proceedings after compliance filings are made pursuant to RSA 374-F:4, III.

[5]To the extent that time permits during the upcoming hearings, we intend to permit parties to present oral comments which summarize and expand upon their written comments relative to policy questions.

[6]In its recently issued Open Access Rule, the FERC asserted its belief that it had exclusive jurisdiction over transmission facilities and that states had jurisdiction over distribution facilities. It also established 7 indicators to guide the demarcation between transmission and distribution. We listed the 7 indicators in the Preliminary Plan and sought comments relative to the FERC's proposed approach. *See*, Preliminary Plan, p.24-25.

[7]These issues include (a) the "Origin of Stranded Costs," (b) "Definition and Measurement."

(c) "Stranded Cost Recovery," (d) "Mitigation of Stranded Costs," (e) Recovery Mechanisms," and (f) "Interim Stranded Cost Charges." *See*, Preliminary Plan, § VI.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Statewide Electric Utility Restructuring Plan, DR 96-150, Order No. 22,316, 81 NH PUC 693, Sept. 17, 1996.

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NH.PUC*10/18/96*[89378]*81 NH PUC 784*Statewide Electric Utility Restructuring Plan

[Go to End of 89378]

81 NH PUC 784

Re Statewide Electric Utility Restructuring Plan

Petitioner: Granite State Electric Company

DR 96-150
Order No. 22,369

New Hampshire Public Utilities Commission

October 18, 1996

PETITION by electric utility for a waiver from or an extension of time for the projected operating cost, stranded cost, and revenue data filings required to be submitted by all electric utilities as part of a commission-initiated proceeding examining a restructuring of the state's electric utility industry; denied. Commission finds that the utility has had ample time to assemble such data, and it rejects arguments that such data is so commercially sensitive as to warrant blanket protective treatment.

[EDITOR'S NOTE: Order No. 22,369 replaces and supersedes the decision originally issued as Order No. 22,365.]

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1. EXPENSES, § 8

[N.H.] Commission jurisdiction — As to production, supply, and operating costs — Mandates for submission of projected cost data — As part of industry restructuring proceeding — No waiver from filing requirements — No extensions of time for filing — Factors — Ample notice — Disclosure as not affecting

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valuations — Electric utility. p. 786.

2. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective treatment — As to certain operating cost and market revenue data — Required data submissions — In electric industry restructuring proceeding — As to stranded cost recovery — Provisions for individual rather than blanket nondisclosure agreements. p. 786.

3. EXPENSES, § 120

[N.H.] Electric utility — Stranded costs — Associated with the sale or divestiture of generating plant — Under industry restructuring plan — Cost and revenue data pertinent to stranded costs — Partial protective treatment — Provisions for individual rather than blanket nondisclosure agreements. p. 786.

BY THE COMMISSION:

ORDER

I. INTRODUCTION

This order addresses a motion on October 3, 1996 by Granite State Electric Company (GSEC) with the New Hampshire Public Utilities Commission (Commission) requesting a partial waiver of the filing requirements set forth in Appendix C of the Preliminary Plan. Alternatively, GSEC requests an extension of time to make such data filings pursuant to N.H. Admin. Rules, Puc 202.04.

Timely objections were filed to GSEC's request by the New Hampshire Municipal Association (NHMA) and EnerDev Inc. (EnerDev). On October 10, 1996, Public Service Company of New Hampshire (PSNH) and Enron Capital & Trade Resources (Enron) filed responses to GSEC's motion. We deliberated this matter at our October 14, 1996 public meeting.

II. POSITION OF THE PARTIES

A. GSEC'S Motion

In its motion, GSEC requests that the Commission grant it a waiver of the filing requirements set forth in Appendix C to the Preliminary Plan which relate to estimated future costs, revenues and margins associated with New England Power's (NEP) generating assets. In the alternative, GSEC requests an extension of time pursuant to N.H. Admin. Rules, Puc 202.04 to file the requested data.

GSEC states that because its parent company, New England Electric System (NEES), has agreed to divest NEP's generating assets, there is no need for the Commission to perform an administrative valuation of those assets and, hence, no need to submit the estimated data. The valuation, according to GSEC, will be accomplished by the market.

GSEC also argues that the public disclosure of the estimated data could negatively impact NEES's ability to maximize the sale value of its generation business. If the Commission is not inclined to grant the waiver, GSEC requests that the submission of data be delayed until NEES's financial advisor, Merrill Lynch, completes its valuation of the assets, a process which GSEC estimates could take several months.

B. Objections/Responses

EnerDev asserts that the information which GSEC seeks to protect is necessary for it to evaluate any claims for stranded cost recovery which GSEC may make in this proceeding. According to EnerDev, GSEC's request for an extension of time would prevent it and other parties from receiving the data prior to the Commission's December 1996 hearings.

NHMA argues that the utilities must make a choice between protecting what they allege to be valuable information about their operations and recovering stranded costs.

Enron filed a general response to requests for confidential treatment filed by other utilities in this proceeding; however, because GSEC has not requested confidential treatment of the

required filings, Enron's response is inapplicable.

PSNH filed a response supporting GSEC contention that public disclosure of the projected costs and revenues associated with the generation assets owned by NEP would likely have a significant impact on the market value of those assets.

III. COMMISSION ANALYSIS

[1] Although we agree that NEES's plan to divest its generation assets, if approved, will eventually result in those assets being valued by the market, we are required by RSA 374-F:4 to establish interim stranded cost charges by February 28, 1997 for all jurisdictional electric utilities. In order to develop interim stranded cost charges for GSEC consistent with our legislative mandate, estimates must be made of future costs and revenues related to each of NEP's generating assets. In the absence of GSEC estimates, the Commission would either have to wait until Merrill Lynch has completed its work, at which point it may be too late to conduct discovery and receive alternate valuations, or rely on independent estimates developed by other parties without the benefit of GSEC's own cost and revenue projections. These alternatives would yield an inadequate record to establish GSEC's interim stranded cost charges.

Although we believe that our decision is justified on the foregoing grounds alone, we also reject the implication that public disclosure of the estimates will necessarily reduce the price received for the divested assets and therefore cannot be in the public interest. Provided the estimates submitted to us are reasonably consistent with the expected value of the assets, public disclosure should not have a significant impact on the market.

With regard to GSEC's alternative motion for an extension of time to submit the data, the Preliminary Plan was issued September 10, giving GSEC at least five weeks to assemble the requested information. The only basis for GSEC's request is that any public disclosure of the required information "could jeopardize the work being performed in the sale process and could taint the numbers ultimately established by that process." Motion, p. 5.

We deny GSEC's alternative motion for a number of reasons. First, as stated above, we are required by law to set interim stranded cost charges for GSEC by February 28, 1997. Also, GSEC has provided no assurance that Merrill Lynch's work will have been completed in time for us and the parties in this proceeding to analyze the data and establish interim stranded cost

charges in time to meet our statutory mandate.

[2, 3] Although GSEC has not requested protective treatment, any party that expresses an interest in participating in the interim stranded cost portion of this proceeding and who executes a non-disclosure with GSEC shall be given access to information described below. This is the same approach that we have determined to be the most appropriate for the other utilities that sought protective treatment of this information in this docket. *See e.g.* Order No. 22,368 (October 18, 1996).

The following information shall be released to any party in this proceeding only if such party enters into a reasonable non- disclosure agreement with GSEC or NEES:

OPERATING COSTS

Estimated annual operating costs (i.e., (a) through (h)) over the projected life of each generating plant owned or partially owned by the utility or an affiliate from which the utility receives power.

MARKET REVENUES

Estimated average revenues from sales of generation to retail customers (including non-contract customers).

STRANDED COSTS

NPV of annual operating margins from market sales by generating plant.

Stranded cost of utility owned generation after deducting NPV of operating margins by generating plant and utility as a whole.

Data requests (a) through (c) relating to purchased power contracts for the period

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1996 through the remaining life of each contract.

Estimated annual retail sales.

As we stated in similar orders issued relative to other utilities' request for protective treatment in this docket, we believe that this approach fairly balances the need to allow parties to participate meaningfully in this proceeding with GSEC's legitimate concerns about the commercially sensitive nature of this information.

Based on the foregoing, it is hereby

ORDERED, that the GSEC'S Motion is DENIED; and it is

FURTHER ORDERED, that the Commission, *sua sponte*, grants the further relief set forth herein; and it is

FURTHER ORDERED, that GSEC's responses to the data requests described in this order shall be afforded protective treatment until such time as any party seeking such information executes a non-disclosure agreement with GSEC.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of

October, 1996.

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NH.PUC*10/18/96*[89379]*81 NH PUC 787*Statewide Electric Utility Restructuring Plan

[Go to End of 89379]

81 NH PUC 787

Re Statewide Electric Utility Restructuring Plan

Petitioner: Connecticut Valley Electric Company

DR 96-150
Order No. 22,370

New Hampshire Public Utilities Commission

October 18, 1996

PETITION by electric utility for protective treatment of certain projected operating cost, stranded cost, and revenue data required to be submitted by all electric utilities as part of a commission-initiated proceeding examining a restructuring of the state's electric utility industry; granted, subject to limits. Rather than issue a blanket protective order, the commission requires any party participating in the stranded cost recovery stage of the proceeding to execute a nondisclosure agreement with the utility relative to operating costs, market revenues, and stranded costs associated with the sale or divestiture of generating plant.

[EDITOR'S NOTE: Order No. 22,370 replaces and supersedes the decision originally issued as Order No. 22,366.]

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1. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective treatment — As to certain operating cost and market revenue data — Required data submissions — In electric industry restructuring proceeding — As to stranded cost recovery — Provisions for individual rather than blanket nondisclosure agreements. p. 788.

2. EXPENSES, § 120

[N.H.] Electric utility — Stranded costs — Associated with the sale or divestiture of generating plant — Under industry restructuring plan — Cost and revenue data pertinent to stranded costs — Partial protective treatment — Provisions for individual rather than blanket nondisclosure agreements. p. 788.

BY THE COMMISSION:

ORDER

I. INTRODUCTION

This order addresses the motion for protective order filed on October 3, 1996 by Connecticut Valley Electric Company (CVEC) with the New Hampshire Public Utilities Commission (Commission) relative to cost and revenue data which all jurisdictional electric utilities must file

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by October 18, 1996. The filings requirements are specified in Appendix C to the Preliminary Plan. CVEC filed its motion pursuant to RSA 91-A:5 and N.H. Admin. Rules, Puc 204.08.

Timely objections were filed by the New Hampshire Municipal Association (NHMA), the Office of Consumer Advocate (OCA) and EnerDev Inc. (EnerDev). Enron Capital & Trade Resources (Enron) and Public Service Company of New Hampshire (PSNH) filed responses to CVEC's motion.

II. POSITION OF THE PARTIES

A. CVEC's Motion

CVEC requests that the Commission grant confidential treatment for all of the information requested in Appendix C of the Preliminary Plan. Although CVEC acknowledges that some of the requested information is already in the public domain, it nonetheless requests blanket protection for all of the data required by the Preliminary Plan "for administrative ease and convenience." Motion, p.1. CVEC alleges that most of the requested data is commercially sensitive and that disclosure "would serve no public benefit whatsoever." CVEC also alleges that disclosure would adversely impact its ability to realize the maximum value for divested assets.

CVEC requests that access to the protected information be limited to members of the Commission, Commission decisional Staff, and its consultants. CVEC furthers requests that no unauthorized person be allowed to hear or review testimony given with respect to the protected information.

B. Objections/Responses

EnerDev argues that it needs the requested data in order to evaluate any claims by CVEC for stranded cost recovery. According to EnerDEv, the public benefits of disclosure far outweigh CVEC's potential for competitive disadvantage, "particularly when the utility companies alone stand to gain from the recovery of stranded costs." EnerDev Objection, p.3.

According to the OCA, it needs the information which CVEC is attempting to protect in order to effectively participate in this docket.

NHMA argues that the utilities must make a choice between protecting what they allege to be valuable information about their operations and recovering stranded costs.

Enron does not oppose a request for a reasonable protective order, but argues that the protective order sought by CVEC (and other utilities) is far too broad and would prevent Enron and other parties from having a fair opportunity to litigate the critical issue of stranded costs. Enron proposes that the requested data be made available to those parties who are willing to sign

a non-disclosure agreement which limits access to the attorneys and consultants who are actually participating in the proceeding. The use of non-disclosure agreements, according to Enron, balances the utilities' interest in protecting commercially sensitive information with the rights of parties to participate in Commission proceedings.

PSNH agrees with CVEC's request for protective treatment, although the scope of CVEC's request exceeds that filed by PSNH.

III. COMMISSION ANALYSIS

RSA 91-A:5 and N.H. Admin. Rules, Puc 204.08 exempts from public disclosure "confidential, commercial or financial information"; however, the New Hampshire Supreme Court has indicated that the exemptions in that statute should be "interpreted restrictively." *Mans v. Lebanon School Board*, 112 N.H. 160, 163 (1972); *See also, Union Leader Corp. v. Fenniman*, 136 N.H. 624 (1993). Further, we have traditionally applied a balancing test in prior cases involving requests for protective treatment. *See e.g., Re NET*, 74 NH PUC 307 (1989), *Re Eastern Utilities Associates*, 76 NH PUC 236, 263 (1991) and *NET*, Order No. 21,731 (July 10, 1995). Our task here is to weigh the benefits to the public of disclosure against the benefits to CVEC of non-disclosure.

[1, 2] At the outset, we reject any implication that public disclosure of projected costs and revenues in a competitive market will necessarily reduce the price received for divested generation assets. If the projected value of these assets is reasonably accurate, public disclosure

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at this time will not diminish their value. However, if a utility intentionally or unintentionally understates the value of its assets, then there is the potential that the assets would be sold below their true market value. This in turn would deny ratepayers the maximum benefit of a utility's mitigation efforts. The solution to this problem is not to deny the public reasonable access to this data; rather, it is to implement reasonable protections to ensure that the data is not misused. In order to balance the legitimate need of utilities to protect commercially sensitive data with the equally legitimate need for an open and fair process, we will limit access to the information to those parties who express a desire to participate in the interim stranded cost portion of this proceeding, and who therefore have a legitimate need for the data, and who are willing to sign a reasonable non-disclosure agreement with CVEC. We expect that CVEC and any interested party should be able to execute such an agreement within one week of this the issuance of this order. In the event that non-disclosure agreements are not reached by that time, we reserve the right to revisit this issue and fashion appropriate relief.

Based on the foregoing considerations, we will require any party who seeks access to CVEC's responses to the following data requests contained in Appendix C of the Preliminary Plan to execute a reasonable non-disclosure agreement with CVEC:

OPERATING COSTS

Estimated annual operating costs (i.e., (a) through (h)) over the projected life of each generating plant owned or partially owned by the utility or an affiliate from which the utility receives power.

MARKET REVENUES

Estimated average revenues from sales of generation to retail customers (including non-contract customers).

STRANDED COSTS

NPV of annual operating margins from market sales by generating plant.

Stranded cost of utility owned generation after deducting NPV of operating margins by generating plant and utility as a whole.

Data requests (a) through (c) relating to purchased power contracts for the period 1996 through the remaining life of each contract.

Estimated annual retail sales.

As we stated in similar orders issued relative to other utilities' requests for protective treatment in this docket, we believe that this approach fairly balances the need to allow parties to participate meaningfully in this proceeding with CVEC's legitimate concerns about the commercially sensitive nature of this information.

Based upon the foregoing, it is hereby

ORDERED, that CVEC's Motion is GRANTED IN PART AND DENIED IN PART as noted above; and it is

FURTHER ORDERED, that CVEC's responses to the data requests described in this order shall be afforded protective treatment until such time as any party seeking such information executes a non-disclosure agreement with CVEC.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of October, 1996.

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*10/18/96*[89380]*81 NH PUC 790*Statewide Electric Utility Restructuring Plan

[Go to End of 89380]

81 NH PUC 790

Re Statewide Electric Utility Restructuring Plan

Petitioner: UNITIL Companies

DR 96-150

Order No. 22,371

New Hampshire Public Utilities Commission

October 18, 1996

PETITION by electric utility for protective treatment of certain projected operating cost, stranded cost, power purchase contract, and revenue data required to be submitted by all electric utilities as part of a commission-initiated proceeding examining a restructuring of the state's electric utility industry; granted, subject to limits. Rather than issue a blanket protective order, the commission requires any party participating in the stranded cost recovery stage of the proceeding to execute a nondisclosure agreement with the utility relative to operating costs, market revenues, and stranded costs associated with the sale or divestiture of generating plant.

[EDITOR'S NOTE: Order No. 22,371 replaces and supersedes the decision originally issued as Order No. 22,367.]

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1. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective treatment — As to certain operating cost, power purchase contract, and market revenue data — Required data submissions — In electric industry restructuring proceeding — As to stranded cost recovery — Provisions for individual rather than blanket nondisclosure agreements. p. 791.

2. EXPENSES, § 120

[N.H.] Electric utility — Stranded costs — Associated with the sale or divestiture of generating plant — Under industry restructuring plan — Cost, power purchase contract, and revenue data pertinent to stranded costs — Partial protective treatment — Provisions for individual rather than blanket nondisclosure agreements. p. 791.

BY THE COMMISSION:

ORDER

I. INTRODUCTION

This order addresses the untimely motion for protective order filed by the Unitil Companies with the New Hampshire Public Utilities Commission (Commission) relative to all cost and revenue data which the Commission directed each jurisdictional electric utility to file by October 18, 1996.[1(107)] These filing requirements are specified in Appendix C to the Preliminary Plan. Unitil filed its motion pursuant to RSA 91-A:5 and N.H. Admin. Rules, Puc 204.08.

Timely objections to Unitil's Motion were filed by the New Hampshire Municipal Association (NHMA), the Office of Consumer Advocate (OCA) and EnerDev Inc. (EnerDev). Enron Capital & Trade Resources (Enron) and Public Service Company of New Hampshire (PSNH) filed responses to Unitil's motion.

II. POSITION OF THE PARTIES

A. Unitil's Motion

Unitil requests that the Commission grant confidential treatment for all of the information requested pursuant to Appendix C of the Preliminary Plan. According to Unitil, the information requested by the Commission is confidential commercial information relating to its purchase power contracts and market-sensitive forecasts and negotiations. Unitil alleges that public disclosure of this information would harm its business interests and market

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position and "would provide [its] competitors with a competitive advantage." Unitil Motion, p.2.

B. Objections/Responses

EnerDev argues that it needs the requested data in order to evaluate any claims by Unitil for stranded cost recovery. According to EnerDev, the public benefits of disclosure far outweigh Unitil's potential for competitive disadvantage, "particularly when the utility companies alone stand to gain from the recovery of stranded costs." EnerDev Objection, p.3.

According to the OCA, it needs the information which Unitil is attempting to protect in order to effectively participate in this docket.

NHMA argues that Unitil must make a choice between protecting what they allege to be valuable information about their operations and recovering stranded costs.

Enron does not oppose a request for a reasonable protective order, but argues that the protective order sought by Unitil (and other utilities) is far too broad and would prevent Enron and other parties from having a fair opportunity to litigate the critical issue of stranded costs. Enron proposes that the requested data be made available to those parties who are willing to sign a non-disclosure agreement which limits access to the attorneys and consultants who are actually participating in the proceeding. The use of non-disclosure agreements, according to Enron, balances the utilities' interest in protecting commercially sensitive information with the rights of parties to participate in Commission proceedings.

PSNH agrees with Unitil's request for protective treatment, although the scope of Unitil's request exceeds that filed by PSNH.

III. COMMISSION ANALYSIS

RSA 91-A:5 and N.H. Admin. Rules, Puc 204.08 exempts from public disclosure "confidential, commercial or financial information"; however, the New Hampshire Supreme Court has indicated that the exemptions in that statute should be "interpreted restrictively." *Mans v. Lebanon School Board*, 112 N.H. 160, 163 (1972); *See also, Union Leader Corp. v. Fenniman*, 136 N.H. 624 (1993). Further, we have traditionally applied a balancing test in prior cases involving requests for protective treatment. *See e.g., Re NET*, 74 NH PUC 307 (1989), *Re Eastern Utilities Associates*, 76 NH PUC 236, 263 (1991) and *NET*, Order No. 21,731 (July 10, 1995). Our task here is to weigh the benefits to the public of disclosure against the benefits to Unitil of non-disclosure.

[1, 2] We recognize that some of the information called for in the Preliminary Plan could be

used by competitors to disadvantage Unitil and should be afforded some degree of protection. However, we disagree with Unitil's contention that "prices, contract terms and escalators ... and data on buyouts" should be exempt from public disclosure. This is because such data is already in the public domain by virtue of the fact that all of Unitil's purchase power contracts must be filed with and approved by the Federal Energy Regulatory Commission (FERC).

We agree, however, that Unitil's projected cost and revenues associated with purchase power contracts constitute commercially sensitive information. On the other hand, this information is critical for parties to participate meaningfully during the hearings on Unitil's interim stranded cost charges. Therefore, the solution to this problem is not to deny the parties reasonable access to this data; rather, it is to implement reasonable protection to ensure that the data is not misused. In order to balance the legitimate need of utilities to protect commercially sensitive data with the equally legitimate need for an open and fair process, we will limit access to the information to those parties who express a desire to participate in the interim stranded cost portion of this proceeding, and who therefore have a legitimate need for the data, and who are willing a reasonable non-disclosure agreement with Unitil. We expect that Unitil and any interested party should be able to execute such an agreement within one week of the issuance of this order. In the event that non-disclosure agreements are not reached by that time, we reserve the right to revisit this issue and fashion appropriate relief.

Based on the foregoing considerations, we

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will require any party who seeks access to Unitil's responses to the following data requests contained in Appendix C of the Preliminary Plan to execute a reasonable non-disclosure agreement with Unitil:

OPERATING COSTS

Estimated annual operating costs (i.e., (a) through (h)) over the projected life of each generating plant owned or partially owned by the utility or an affiliate from which the utility receives power.

MARKET REVENUES

Estimated average revenues from sales of generation to retail customers (including non-contract customers).

STRANDED COSTS

NPV of annual operating margins from market sales by generating plant.

Stranded cost of utility owned generation after deducting NPV of operating margins by generating plant and utility as a whole.

Data requests (a) through (c) relating to purchased power contracts for the period 1996 through the remaining life of each contract.

Estimated annual retail sales.

As we stated in similar orders issued relative to other utilities' requests for protective

treatment in this docket, we believe that this approach fairly balances the need to allow parties to participate meaningfully in this proceeding with Unitil's legitimate concerns about the commercially sensitive nature of this information.

Based upon the foregoing, it is hereby

ORDERED, that Unitil's Motion is GRANTED IN PART AND DENIED IN PART as noted above; and it is

FURTHER ORDERED, that Unitil's responses to the data requests described in this order shall be afforded protective treatment until such time as any party seeking such information executes a non-disclosure agreement with Unitil.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of October, 1996.

FOOTNOTES

[1]We note that Unitil sent a copy of its motion by facsimile on October 4, 1996. This did not meet the Commission's filing deadline; nonetheless, due to the importance of the issues raised by Unitil's motion, we will accept the filing, albeit late.

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*10/18/96*[89381]*81 NH PUC 792*Statewide Electric Utility Restructuring Plan

[Go to End of 89381]

81 NH PUC 792

Re Statewide Electric Utility Restructuring Plan

Petitioner: Public Service Company of New Hampshire

DR 96-150
Order No. 22,372

New Hampshire Public Utilities Commission

October 18, 1996

PETITION by electric utility for protective treatment of certain projected operating cost, stranded cost, power purchase obligation, and revenue data required to be submitted by all electric utilities as part of a commission-initiated proceeding examining a restructuring of the state's electric utility industry; granted, subject to limits. Rather than issue a blanket protective

order, the commission requires any party participating in the stranded cost recovery stage of the proceeding to execute a

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nondisclosure agreement with the utility relative to operating costs, market revenues, and stranded costs associated with the sale or divestiture of generating plant.

[EDITOR'S NOTE: Order No. 22,372 replaces and supersedes the decision originally issued as Order No. 22,368.]

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1. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective treatment — As to certain operating cost, power purchase obligation, and market revenue data — Required data submissions — In electric industry restructuring proceeding — As to stranded cost recovery — Provisions for individual rather than blanket nondisclosure agreements. p. 794.

2. EXPENSES, § 120

[N.H.] Electric utility — Stranded costs — Associated with the sale or divestiture of generating plant — Under industry restructuring plan — Cost, power purchase obligation, and revenue data pertinent to stranded costs — Partial protective treatment — Provisions for individual rather than blanket nondisclosure agreements. p. 794.

BY THE COMMISSION:

ORDER

I. INTRODUCTION

This order addresses a motion for protective order filed by Public Service Company of New Hampshire (PSNH) with the New Hampshire Public Utilities Commission on October 3, 1996 relative to certain cost and revenue data which utilities are required to file pursuant to Appendix C of the Commission's Preliminary Plan. PSNH filed its motion pursuant to RSA 91-A:5 and N.H. Admin. Rules, Puc 204.07.

Timely objections to PSNH's request were filed by the City of Manchester (Manchester), Enron Capital & Trade Resources (Enron), the New Hampshire Municipal Association (NHMA) and EnerDev Inc. (EnerDev). We deliberated this matter at our October 14, 1996 public meeting.

II. POSITION OF THE PARTIES

A. PSNH'S Motion

PSNH requests confidential treatment with regard to (a) its estimated future costs, revenues and margins, (b) projected purchased power obligations and (c) estimated annual revenues from future market sales of wholesale power and (d) estimated future annual retail sales. According to PSNH, disclosure of the information would place it at a competitive disadvantage relative to

competitors in retail and wholesale power markets or in fuel substitution situations. PSNH also contends that public disclosure of such information would adversely affect its ability to maximize the sale value of its generation assets in the event that it divests its generation assets.

PSNH proposes to make the protected data available to the Commission staff and the Office of Consumer Advocate (OCA) pursuant to the execution of confidentiality agreements, but seeks to protect such information from competitors, other parties and intervenors, and the general public.

B. Objections/Responses

Manchester objects to PSNH's Motion and asserts that the information which PSNH seeks to protect is vital to set interim stranded cost charges and to estimate a reasonable level of mitigation of the underlying costs. Without this information, Manchester contends that its ability to participate effectively in this proceeding will be dramatically impaired and the Commission's ability to meet its statutory obligation to set a verifiable stranded cost charge

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will be seriously compromised. Manchester also argues that the public interest in disclosure far "overshadows" any advantages PSNH's future competitors might derive. According to Manchester, obtaining PSNH's perspectives on future costs and revenues and having those perspectives tested by other parties through discovery, the presentation of testimony, cross-examination, briefing, and argument is critical.

EnerDev argues that it needs the requested data in order to evaluate any claims by PSNH for stranded cost recovery.

While Enron does not oppose a request for a reasonable protective order, it argues that the protective order sought by PSNH is too broad and would prevent Enron and other parties from having a fair opportunity to litigate the critical issue of stranded costs. Enron proposes that the requested data be made available to those parties that are willing to sign a non-disclosure agreement which limits access to the attorneys and consultants who are actually participating in the proceeding. Use of non-disclosure agreements, according to Enron, balances the utilities' interest in protecting commercially sensitive information with the rights of parties to participate in Commission proceedings.

NHMA argues that PSNH and the other utilities must make a choice between protecting what they allege to be valuable information about their operations and recovering stranded costs.

III. COMMISSION ANALYSIS

RSA 91-A:5 and N.H. Admin. Rules, Puc 204.08 exempts from public disclosure "confidential, commercial or financial information"; however, the New Hampshire Supreme Court has indicated that the exemptions in that statute should be "interpreted restrictively." *Mans v. Lebanon School Board*, 112 N.H. 160, 163 (1972); *See also, Union Leader Corp. v. Fenniman*, 136 N.H. 624 (1993). Further, we have traditionally applied a balancing test in prior cases involving requests for protective treatment. *See e.g., Re NET*, 74 NH PUC 307 (1989), *Re Eastern Utilities Associates*, 76 NH PUC 236, 263 (1991) and *NET*, Order No. 21,731 (July 10, 1995). Our task here is to weigh the benefits to the public of disclosure against the benefits to

PSNH of non-disclosure.

[1, 2] At the outset, we reject any implication that public disclosure of projected costs and revenues in a competitive market will necessarily reduce the price received for divested generation assets. If the projected value of these assets is reasonably accurate, public disclosure at this time will not diminish their value. However, if a utility intentionally or unintentionally understates the value of its assets, then there is the potential that the assets would be sold below their true market value. This in turn would deny ratepayers the maximum benefit of a utility's mitigation efforts. The solution to this problem is not to deny the public reasonable access to this data; rather, it is to implement reasonable protections to ensure that the data is not misused. In order to balance the legitimate need of utilities to protect commercially sensitive data with the equally legitimate need for an open and fair process, we will limit access to the information to those parties who express a desire to participate in the interim stranded cost portion of this proceeding, and therefore who have a legitimate need for the data, and who are willing to execute a reasonable non-disclosure agreement with PSNH. We expect that PSNH and any interested parties should be able to execute such an agreement within one week of the issuance of this order. In the event that non-disclosure agreements are not reached by that time, we reserve the right to revisit this issue and fashion appropriate relief.

Based on the foregoing considerations, we will require any party who seeks access to the following information requests contained in Appendix C of the Preliminary Plan to execute a reasonable non-disclosure agreement with PSNH:

OPERATING COSTS

Estimated annual operating costs (i.e., (a) through (h)) over the projected life of each generating plant owned or partially owned by the utility or an affiliate from which the utility receives power.

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MARKET REVENUES

Estimated average revenues from sales of generation to retail customers (including non-contract customers).

STRANDED COSTS

NPV of annual operating margins from market sales by generating plant.

Stranded cost of utility owned generation after deducting NPV of operating margins by generating plant and utility as a whole.

Data requests (a) through (c) relating to purchased power contracts for the period 1996 through the remaining life of each contract.

Estimated annual retail sales.

As we stated in similar orders issued today relative to other utilities' request for protective treatment, we believe that this approach fairly balances the need to allow parties to participate meaningfully in this proceeding with PSNH's legitimate concerns about the commercially sensitive nature of this information.

Based on the foregoing, it is hereby

ORDERED, that the PSNH's Motion for Protective Order is GRANTED IN PART AND DENIED IN PART as noted above; and it is

FURTHER ORDERED, that PSNH's responses to the data requests described in this order shall be afforded protective treatment until such time as any party seeking such information executes a non-disclosure agreement with PSNH.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of October, 1996.

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*10/18/96*[89382]*81 NH PUC 795*Public Service Company of New Hampshire

[Go to End of 89382]

81 NH PUC 795

Re Public Service Company of New Hampshire

DR 96-068
Order No. 22,373

New Hampshire Public Utilities Commission

October 18, 1996

ORDER rejecting as filed a proposed special rate contract negotiated by an electric utility and an industrial customer, Isaacson Structural Steel, Inc. Commission cites as anticompetitive the sole source supplier and 10-year contract term provisions contained therein, but finds that the element actually fatal to the contract is the lack of a showing of the viability of the customer's cogeneration alternative. Without such, no need for the special contract as the only means to prevent bypass and retain load has been proven.

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1. RATES, § 166

[N.H.] Factors affecting reasonableness — Solicitation or retention of business — Special rate contract — Conditions affecting disapproval — Anticompetitive terms — Sole source supplier and 10-year contract term provisions — Lack of early termination clause — No

showing of customer's alternative power capability — No actual threat of bypass or loss of load — Electric utility. p. 797.

2. MONOPOLY AND COMPETITION, § 21

[N.H.] Restraint of trade — Anticompetitive terms contained in special rate contract — As to sole source supplier and 10-year contract term provisions — As partial basis for rejection of contract — Electric utility. p. 797.

3. RATES, § 213

[N.H.] Special rate contracts — Factors affecting commission disapproval — Long-term nature of contract — Sole source supplier terms

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— Failure to show imminent threat of bypass or loss of load absent special contract — Electric service. p. 797.

4. RATES, § 213

[N.H.] Special rate contracts — Factors affecting commission approval — Meeting of the minds and willingness of the parties — Mere possibility of bypass or loss of load — Anticompetitive terms agreed to therein notwithstanding — Electric service — Dissenting opinion. p. 797.

BY THE COMMISSION:

ORDER

On March 12, 1996, Public Service Company of New Hampshire (PSNH) filed with the New Hampshire Public Utilities Commission (Commission) Special Contract No. NHPUC-129 (NHPUC-129), a ten-year special contract with Isaacson Structural Steel, Inc. of New Hampshire, Inc. (Isaacson). PSNH's filing included the special contract, testimony and a technical statement in support of the discounted rates for Isaacson in both redacted and unredacted form.

Isaacson fabricates structural steel at its Berlin, New Hampshire facility and sells its product to contractors and industrial concerns in New England and New York. In the filing, PSNH asserts that Isaacson is concerned with its energy costs and has determined that it is economically beneficial to install a cogeneration facility as a means to lower the cost of electricity which it purchases from PSNH. In the absence of Special Contract No. NHPUC-129, PSNH believes Isaacson has both the experience and the ability to install and run a cogeneration facility. PSNH claims a cogeneration study performed for Isaacson and PSNH's own independent analysis support the viability of cogeneration at Isaacson's facility. Installation of cogeneration by Isaacson would substantially reduce its PSNH electricity purchases.

PSNH states in its filing that although the proposed Special Contract is not the kind of special contract covered under the Commission's Generic Discounted Rate Proceeding in Docket No. DR 91-172, the filing has been prepared with the proposed "Checklist for Economic

Development and Business Retention Discounted Rates" in mind to help facilitate the Commission's review of NHPUC-129.

In response to Isaacson's cogeneration option and in order to retain Isaacson's retail load, PSNH has offered Isaacson pricing in NHPUC-129 which is similar to Isaacson's current Rate GV charges, with the exception that PSNH proposes to discount Isaacson's tariffed Rate GV demand charges. The discounts begin with 75% reductions to demand charges and decline to 25% reductions of demand charges over the term of the ten year special contract.

Included in PSNH's filing, Stephen R. Hall provided pre-filed Testimony which concluded that retention of Isaacson's load "will prevent PSNH and its customers from suffering from the effects of lost revenue and sales and the resulting impact on rate levels." In its Technical Statement, PSNH states that the expected revenues under NHPUC-129 exceed PSNH's marginal cost of service in all years of the agreement and will serve to reduce the amount of fixed costs to be recovered from all PSNH individual customers.[1(108)] PSNH states that NHPUC-129 terminates one year before additional capacity is needed for the Northeast Utilities System.

The filing reflects a ten year agreement during which Isaacson and PSNH agree to a number of provisions. In *Article 6 - PSNH as Sole Supplier*, Isaacson agrees to use PSNH as its sole source supplier of electricity during the ten-year term of NHPUC-129 and will not displace PSNH electricity sales through purchases of power from third parties or by installing its own generation. Under Article 6, Isaacson also agrees that if it elects to take steam or heat from an electric generation facility whose output is used to displace current or future sales by PSNH, Isaacson will return to full tariffed rates for the remainder of the term of NHPUC-129. NHPUC-129 does not contain an early

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termination clause; Article 7 of the agreement states that the contract "shall continue in full force and effect for a period of ten years from the Effective Date, at which time the term shall end."

[1-3] The Commission has reviewed NHPUC-129 and the supporting materials. We have conducted our review pursuant to the language of RSA 378:18, which gives the Commission the authority to approve special contracts when "special circumstances exist which render such departure from the general schedules just and consistent with the public interest ... ." In addition, we note that since NHPUC-129 was filed with the Commission, new legislation, SB 533, has been passed regarding special contracts and economic development and business and load retention tariffs. *See* Laws of 1996, Chapter 186 (effective June 3, 1996).

The contractual provision preventing third party generation, *Article 6 - PSNH as Sole Supplier*, contained in this contract, essentially the same provision which we have found objectionable in prior orders, is anti-competitive in that it prevents Isaacson from allowing any third party from installing additional generation for sale or use by the third party. Were we to approve NHPUC-129, which we are not at this time for reasons specified below, we would require, as a condition of our approval, that the sentence that prohibits Isaacson from installing or allowing a third party to install additional generation for the purposes of displacing current or future PSNH sales be removed. Our understanding from the supplemental testimony of Mr. Long

in DR 95-114 and from the hearing on September 6, 1996, is that PSNH agrees to amend its pending special contracts to comply with this condition.

We also find the irrevocable ten-year term of NHPUC-129 unacceptable. In determining whether the contract is just and consistent with the public interest, we are mindful of newly-enacted legislation regarding electric industry restructuring which requires that we "aggressively pursue restructuring and increased customer choice in order to provide electric service at lower and more competitive rates." Laws of 1996, Chapter 129, section 1, subsection III. We also note that the Legislature has directed the Commission to seek to implement "full customer choice among electricity suppliers in the most expeditious manner possible." RSA 374-F:3, XV. We find that a ten year contract is incompatible with these Legislative directives.

Our review of this filing leads us to question the viability of Isaacson's cogeneration alternative. Unlike Crown Vantage and Wausau, which had extensive experience with generation and cogeneration and very short payback periods, the payback period at Isaacson[2(109)] is much longer and the assumptions used in the cogeneration analysis, such as oil prices and the opportunity cost of capital, appear insupportable. We are also concerned that approval of a special contract for Isaacson, with the apparent number of potential competitors Isaacson faces, based on a reference to the four-digit *Standard Industrial Classification* Code, would lead to more special contracts. Clearly a better alternative would be service, if Isaacson is eligible, under a tariffed rate such as the load retention rate filed by PSNH pursuant to Laws of 1996, Chapter 186, which were recently approved.

Based upon the foregoing, it is hereby

ORDERED, that Special Contract No. NHPUC-129 between PSNH and Isaacson Structural Steel is DENIED.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of October, 1996.

Dissenting Opinion of
Commissioner Bruce B. Ellsworth

[4] I would approve NHPUC-129 as filed.

While I agree with my colleagues that there are issues here which some might find anti-competitive, I cannot find that the contract is not in the public interest. Should Isaacson opt to cogenerate, then that electric load will be lost to the electric grid for an indeterminate period of time, and neither PSNH nor any future competitor will have an opportunity to provide them service. Further, if the load is lost to PSNH, then there is a risk of a commensurate increase in stranded costs which may deserve consideration in another forum.

Accordingly, I was, and am, prepared to sign an approving order for the contract as

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submitted.

Bruce B. Ellsworth
Commissioner

October 18, 1996

FOOTNOTES

[1]At the hearing on Order No. 22,225 in DR 95-114, Special Contract No. NHPUC-112 between PSNH and Crown Vantage, PSNH testified that the use of special contracts to retain loads such as Crown Vantage and Isaacson also is a mitigation of stranded costs.

[2]The actual payback period was filed pursuant to a protective order.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 95-114, Order No. 22,225, 81 NH PUC 518, July 8, 1996.

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NH.PUC*10/21/96*[89383]*81 NH PUC 798*Public Service Company of New Hampshire

[Go to End of 89383]

81 NH PUC 798

Re Public Service Company of New Hampshire

DR 96-113
Order No. 22,374

New Hampshire Public Utilities Commission

October 21, 1996

ORDER approving an electric utility's proposed special rate contract with Unitrode Corporation on an interim basis, for assuring both retention of existing load and attraction of new load. Once the utility's economic development (ED) tariffs are approved and implemented, the customer will be transferred to those tariffed ED schedules.

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1. RATES, § 333

[N.H.] Electric rate design — Demand charges — Discounting of — For economic development (ED) purposes — Limits for existing versus new load — Pursuant to special rate contract — Interim use of special contract pending implementation of ED rate tariffs. p. 799.

2. RATES, § 166

[N.H.] Factors affecting reasonableness — Solicitation of business — Retention of existing load — Attraction of new or incremental load — Tariffed rates versus special rate contracts —

Use of special contracts pending implementation of economic development rate tariffs — Electric utility. p. 799.

3. RATES, § 211

[N.H.] Special rate contracts — For economic development (ED) purposes — For retaining existing load or attracting new or incremental load — Interim use of special contracts pending implementation of ED rate tariffs — Electric utility. p. 799.

BY THE COMMISSION:

ORDER

On April 12, 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-130 (NHPUC-130) between PSNH and Unitrode Corporation (Unitrode). Unitrode is engaged primarily in the manufacture of integrated circuits at its facility in Merrimack, New Hampshire and anticipates development of a new manufacturing facility in Merrimack if this special contract is approved. PSNH's filing included the special contract, testimony, and a technical statement in support of the discounted rates for Unitrode in both redacted and

unredacted form. On May 14, 1996, the Commission granted PSNH's Motion for Protective Order (Order No. 22,147) allowing protective treatment for certain information in the filing considered confidential.

PSNH characterizes the proposed special contract as both an economic development and business retention filing. PSNH states NHPUC-130 is a rate application made pursuant to the Commission's Generic Discounted Rate Proceeding in Docket No. DR 91-172 and that its filing has been made with the Commission's "Checklist for Economic Development and Business Retention Discounted Rates" (Checklist) in mind.

PSNH's primary objective in filing NHPUC-130 is to provide Unitrode with prices that will encourage Unitrode to locate its new fabrication plant in Merrimack, New Hampshire and to retain the existing manufacturing facilities in Merrimack. PSNH asserts that electricity costs represent a substantial portion of Unitrode's overall cost of production and that, absent approval of NHPUC-130, Unitrode would not construct a new fabricating plant and hire approximately 250 new employees at its Merrimack facility. A one-page letter from Donald L. St. Andre, Jr., Vice President Expansion Management for Unitrode, supports PSNH's claim that, absent approval of NHPUC-130, Unitrode may not locate its facilities in New Hampshire. NHPUC-130 provides for discounted pricing for both the incremental load at Merrimack and the existing load at Merrimack. In support of its claim, PSNH filed a confidential analysis showing that the expected annual revenues under the Proposed Special Contract are greater than PSNH's long run marginal costs. PSNH states that Unitrode would qualify for Rate BR, PSNH's approved Business Retention rate, for its existing load and for Rate ED, PSNH's pending Economic

Development rate for new load. PSNH cannot provide service under Rate BR, however, until it has an approved Rate ED.[1(110)] PSNH asserts that when the Commission approves Rate ED, NHPUC-130 will terminate and Unitrode will receive service under tariffed rates.

[1-3] Under the terms of Special Contract No. NHPUC-130, PSNH will provide Unitrode with percentage discounts off the demand charge for the incremental load under Rate LG and the existing Rate LG load. The percentage discount for the incremental load is 25% for each through the year 2000 and drops to 15% for the year 2001. The percentage discount for the existing load is 75% for each year through 2000 and then it drops to 50% for the last year of the 5-year term of NHPUC-130.

The Department of Resources and Economic Development (DRED) has been notified of Unitrode's contract. Unitrode is working with DRED on a Vendor Matching Program. Unitrode has also agreed to work with PSNH and participate in appropriate conservation and load management programs offered by PSNH and approved by the Commission.

Based on our review in this docket, we believe Unitrode would, absent approval of NHPUC-130, not locate its expanded manufacturing facilities at its Merrimack facility. We believe our approval of NHPUC-130 will provide benefits to Unitrode, PSNH and its customers and is in the public interest. We have announced our approval of PSNH's Rate ED and anticipate an order to be issued soon. Once compliance tariffs are filed, PSNH shall transfer Unitrode to tariffed rates.

The Crown Vantage hearing was noticed to all customers with special contracts pending before the Commission and all customers with which PSNH was then negotiating, in order to address the conditions set forth in Order No. 22,225. At the close of that hearing, OCA and CRR requested evidentiary hearings on other pending special contracts. We do not find a basis to deviate from our use of orders *nisi* in these matters. Should any aggrieved party seek a hearing upon review of any particular special contract orders, 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-130 between PSNH and Unitrode is APPROVED; and it is

FURTHER ORDERED, that when PSNH's tariffed rates for economic development and business retention and load retention are effective, Unitrode be switched to tariff rates

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and that Special Contract No. NHPUC-130 be terminated at that time; 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, 1996 and to be documented by affidavit filed with this office on or before November 4, 1996; and it is

FURTHER ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or file a written request for a hearing on this matter before

the Commission no later than November 11, 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 November 18, 1996; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective November 20, 1996, unless the Commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this twenty-first day of October, 1996.

FOOTNOTES

[1]Since PSNH filed Special Contract No. NHPUC-130, the Commission has conducted hearings in DR 96-216, PSNH's petition for approval of newly filed economic development and business and load retention tariffs filed pursuant to new legislation, SB 533. *See* Laws of 1996, Chapter 186 (effective June 3, 1996). Unitrode filed for intervention in DR 96-216 and in DR 95-114, PSNH's filing for approval of Special Contract No. NHPUC-112, a special contract between PSNH and Crown Vantage, Inc. In its filings, Unitrode stated, *inter alia*, it had requested approval of NHPUC-130 based on the economic development and business retention rates of PSNH. An order in DR 96-216 is forthcoming.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 96-113, Order No. 22,147, 81 NH PUC 376, May 14, 1996. [N.H.] Re Public Service Co. of New Hampshire, DR 95-114, Order No. 22,225, 81 NH PUC 518, July 8, 1996.

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NH.PUC*10/21/96*[89384]*81 NH PUC 800*Public Service Company of New Hampshire

[Go to End of 89384]

81 NH PUC 800

Re Public Service Company of New Hampshire

DR 96-035
Order No. 22,375

New Hampshire Public Utilities Commission

October 21, 1996

ORDER approving a proposed special rate contract negotiated by an electric utility and an industrial customer, Praxair, Inc., conditioned on the elimination of certain sole source supplier and 10-year contract term provisions. Commission finds such terms incompatible with the state's move toward more competition within the electric service industry.

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1. RATES, § 166

[N.H.] Factors affecting reasonableness — Solicitation or retention of business — Special rate contract — Conditions for approval — Elimination of anticompetitive terms — Removal of sole source supplier provisions — Removal of long-term contract term — Incorporation of early termination clause — Electric utility. p. 802.

2. MONOPOLY AND COMPETITION, § 21

[N.H.] Restraint of trade — Anticompetitive terms contained in special rate contracts — Necessity of removal of sole source supplier

Page 800

and long-term contract term provisions — As being inconsistent with emerging competition among electric services. p. 802.

3. RATES, § 213

[N.H.] Special rate contracts — Factors affecting commission approval — Term of contract — Elimination of long-term commitment — As anticompetitive in era of emerging competition — Electric service. p. 802.

4. RATES, § 213

[N.H.] Special rate contracts — Factors affecting commission approval — Meeting of the minds and willingness of the parties — Notwithstanding anticompetitive terms agreed to therein — Electric service — Dissenting opinion. p. 803.

BY THE COMMISSION:

ORDER

On February 2, 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-127 (NHPUC-127) between PSNH and Praxair, Incorporated (Praxair). Praxair is engaged primarily in the manufacture of liquid and gaseous nitrogen. It has a long-term commitment to provide these products for a customer located in New Hampshire. PSNH's filing included the special contract, testimony, and a technical statement in support of the discounted rates for Praxair in both redacted and unredacted form. On April 2, 1996, the Commission granted PSNH's Motion for Protective Order (Order No. 22,084) allowing protective treatment for certain information considered confidential in the filing.

The proposed special contract, though not an economic development filing, was made with the Commission's "Checklist for Economic Development and Business Retention Discounted Rates" (Checklist) in mind in order to facilitate Commission review. In this regard, while the Checklist requires that applicants for rate discounts have at least 400 KW or 200,000 KWH per month, only on a combined basis will Praxair's proposed Hillsboro and Manchester facilities

meet the Checklist's load thresholds.

PSNH's primary objective in filing NHPUC-127 is to gain Praxair as a new full-requirements customer. Praxair currently transports liquid nitrogen to its New Hampshire customer, OSRAM SYLVANIA but if this contract is approved, plans to build fully automated on-site production facilities at OSRAM's Hillsboro and Manchester facilities. In support of its filing PSNH asserts that electricity costs represent a substantial portion of Praxair's overall cost of nitrogen production.

PSNH believes that the benefit from the new revenue and sales outweigh the fact that Praxair's separate energy requirements at its two proposed facilities do not meet the Checklist's energy requirements. In support of its claim, PSNH filed a confidential analysis showing that the expected annual revenues under the Proposed Special Contract are greater than PSNH's long run marginal costs. PSNH asserts that the pricing under NHPUC-127 will contribute a significant contribution to PSNH's fixed costs and that, absent approval of NHPUC-127, Praxair would locate its production facilities elsewhere.

PSNH further asserts that Rate ED, PSNH's economic development tariffed rate, would not provide the level of savings necessary for Praxair to locate its manufacturing facilities in New Hampshire. A one-page letter from S.M. Young, Director of Energy for Praxair, supports PSNH's claim that, absent approval of NHPUC-127, Praxair would not locate facilities in New Hampshire.

Under the terms of Special Contract No. NHPUC-127, PSNH will provide Praxair with fixed customer and demand charges that escalate over time and an energy charge that is 1.5 cents per kWh above the sum of total FPPAC costs and the Nuclear Decommissioning Charge for the term of the contract.

The Department of Resources and Economic Development (DRED) has been notified of Praxair's contract. Praxair has agreed to seek assistance from DRED during the term of NHPUC-127 to determine if Praxair qualifies for any state economic development programs. Praxair has also agreed to work with PSNH and participate in appropriate conservation and load management programs offered by PSNH and approved by the Commission.

[1-3] The Commission has reviewed the language in Special Contract No. NHPUC-127 and finds that the terms and conditions of the Praxair Special Contract include clauses which are similar to clauses which were previously found objectionable by the Commission.

Article 7 - PSNH as Sole Supplier in Special Contract No. NHPUC-127 places sanctions on Praxair if it allows any electric generating equipment to be installed on property it owns, acquires or controls, and the output of such equipment is used to displace current or future sales by PSNH to other customers. Under the sanctions of Article 7, if such electric generation displaces PSNH sales to other customers, Praxair would be required to be an exclusive customer of PSNH at full GV tariff rates for the remaining full term of the contract.

We find that the restraints and sanctions placed on Praxair by PSNH in *Article 7 - PSNH as Sole Supplier* are comparable to terms which we previously have found objectionable as

anti-competitive. *See* Order Nos. 22,132, 22,133, 22,356. In those orders, we objected to language which placed sanctions on customers who allowed generators to use the customer's land for generation that displaced PSNH sales to other customers.

Consistent with the corrective steps required for conditional approval, we find that the following language should be removed from Article 7 of Special Contract No. NHPUC-127 as a prerequisite for approval in this proceeding:

> Praxair shall not operate a generating facility nor shall it allow a third party to own or operate a generating facility on property it owns, acquires or controls, for the purpose of selling the power produced by such a facility to retail customers of PSNH or retail customers of PSNH's wholesale customers during the term of this Agreement.

It is our understanding from PSNH's supplemental testimony of Mr. Long in DR 95-114, Special Contract No. NHPUC-112 between PSNH and Crown Vantage, and from the hearing on September 6, 1996 in that case, that PSNH agrees to amend its pending special contracts to comply with this Commission condition.

We also find troubling *Article 9 - Effective Date and Contract Term* which requires Praxair to buy power from PSNH under the terms of the special contract for ten years without any early termination provision for Praxair. In a more traditional regulatory period, these provisions may have been appropriate and perhaps necessary. However, at the present time we cannot make such evaluations without regard to the changes that are occurring in the electric utility industry and the effects these contract provisions may have on those changes. In determining whether the special contract is just and consistent with the public interest, we are mindful of newly enacted legislation regarding electric industry restructuring which requires that we "aggressively pursue restructuring and increased customer choice in order to provide electric service at lower and more competitive rates." Laws of 1996, Chapter 129, section 1, subsection III. We also note that the Legislature has directed the Commission to seek to implement "full customer choice among electricity suppliers in the most expeditious manner possible." RSA 374-F:3, XV. We find that a ten-year special contract is incompatible with these Legislative directives. Therefore, as we have directed PSNH to do in our conditional approval of other special contracts, we will approve this contract provided that this clause is amended to allow either party to terminate the contract after five years.

Based on our review in this docket, we believe Praxair would, absent approval of NHPUC-127, not locate its manufacturing facilities at its customer's sites. We believe our approval of NHPUC-127 will provide benefits to Praxair, OSRAM, PSNH and its customers and is in the public interest. Our approval of NHPUC-127, however, is contingent on PSNH

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taking the necessary corrective steps concerning *Article 7 - PSNH as Sole Supplier* and *Article 9 - Effective Date and Contract Term*.

The Crown Vantage hearing was noticed to all customers with special contracts pending before the Commission and all customers with which PSNH was then negotiating, in order to address the conditions set forth in Order No. 22,225. At the close of that hearing, OCA and CRR requested evidentiary hearings on other pending special contracts. We do not find a basis to

deviate from our use of orders *nisi* in these matters. Should any aggrieved party seek a hearing upon review of any particular special contract orders, 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-127 between PSNH and Praxair, Incorporated is APPROVED, subject to the condition that PSNH file NHPUC-127 in accordance with the changes to *Article 7 - PSNH as Sole Supplier* and *Article 9 - Effective Date and Contract Term* indicated herein and makes no other changes; 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 28, 1996 and to be documented by affidavit filed with this office on or before November 4, 1996; and it is

FURTHER ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or file a written request for a hearing on this matter before the Commission no later than November 11, 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 November 18, 1996; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective November 20, 1996, unless the Commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this twenty-first day of October, 1996.

Concurring Opinion of
Commissioner Bruce B. Ellsworth

[4] I would approve NHPUC-127 as filed.

While I agree with my colleagues that Article 7 and Article 9 pose issues which some might consider anti-competitive, I cannot find that it is not in the public interest. There is, here, a contract of two willing parties. If each is satisfied as to the terms and conditions of NHPUC-127, I cannot find it in the public interest to deny them the right to execute it.

Accordingly, I was, and am, prepared to sign an approving order for the contract as submitted. However, the majority returns the contract for reconsideration of Articles 7 and 9. If the parties agree to the majority's remedy, and if the majority approves the remedied contract, I will join them in approving it.

Bruce B. Ellsworth
Commissioner

October 21, 1996

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 96-035, Order No. 22,084, 81 NH PUC

248, Apr. 2, 1996. [N.H.] Re Public Service Co. of New Hampshire, DR 95-171, Order No. 22,132, 81 NH PUC 347, May 6, 1996. [N.H.] Re Public Service Co. of New Hampshire, DR 95-173, Order No. 22,133, 81 NH PUC 349, May 6, 1996. [N.H.] Re Public Service Co. of New Hampshire, DR 95-114, Order No. 22,225, 81 NH PUC 518, July 8, 1996. [N.H.] Re Public Service Co. of New Hampshire, DR 96-138, Order No. 22,356, 81 NH PUC 752, Oct. 15, 1996.

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NH.PUC*10/21/96*[89385]*81 NH PUC 804*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 89385]

81 NH PUC 804

Re New England Telephone and Telegraph Company dba NYNEX

DE 96-314
Order No. 22,376

New Hampshire Public Utilities Commission

October 21, 1996

ORDER authorizing a local exchange telephone carrier, on a short-term basis, to reclassify 14 exchanges to different rate groups, where it was shown that such exchanges had consistently exceeded their respective rate group limiters over a two-year period.

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1. RATES, § 538

[N.H.] Telephone rate design — Rate groups — Classification of exchanges — Factors affecting reclassification — Consistent exceeding of rate group limiters — Local exchange carrier. p. 804.

2. SERVICE, § 445

[N.H.] Telephone — Classification of exchanges — Factors affecting reclassification — Consistent exceeding of rate group limiters — Local exchange carrier. p. 804.

BY THE COMMISSION:

ORDER

On September 27, 1996, New England Telephone and Telegraph Company (NYNEX) filed a petition seeking to reclassify the North Stratford, Northwood, Center Sandwich, Harrisville, Dublin, Durham, West Chesterfield, Westmoreland, Center Harbor, Exeter, Pittsfield, Plaistow, South Hampton and Rye Beach exchanges and localities. NYNEX contends that these exchanges and localities have exceeded their rate group limits for two consecutive years, as of June 1996, and that portions of the exchanges and localities serving these municipalities should be reclassified.

In compliance with the Company's tariff, NHPUC - No. 77, Part A, Paragraph 5.2.1, NYNEX submitted testimony indicating that the total weighted main telephone exchange lines in the local service area of the respective exchange, locality and/or municipality have exceeded the upper limit of the respective rate group for two consecutive annual study periods and are eligible for reclassification. As a direct result of this proposed revision, NYNEX estimates revenues to increase by $201,000 in the first year this filing is in effect.

Staff has noted that in Order No. 21,879 (October 24, 1995) approving NYNEX's petition for rate group reclassifications in Docket No. DR 95-269, the Commission adopted Staff's position that it is appropriate to reexamine the structure of rate groups and the process of automatic reclassification as a whole. This examination was due to begin by the end of 1995.

Staff has explained that the structure of rate groups and the issue of systematic reclassification have been discussed in conjunction with other issues, such as DR 94-001 (Preliminary Investigation of EAS), DR 90-002 (IntraLATA Toll Competition) and an investigation of NYNEX revenues. A resolution of the issue has not yet been reached. Thus, Staff has recommended that this petition be approved consistent with NYNEX's current tariff.

[1, 2] The Commission finds that, for the short term, the reclassifications contained in this petition are in the public good. As evidenced by NYNEX's testimony, these exchanges and localities and portions thereof meet the criteria set out in NYNEX's tariff for systematic reclassification. We continue to find that it is appropriate to address the structure of rate groups and the issue of systematic reclassification, particularly in light of an emergingly competitive telecommunications market. Thus, we expect Staff to address these issues and make appropriate recommendations as soon as possible.

Based upon the foregoing, it is hereby

ORDERED, that NYNEX is authorized to implement the rate group reclassifications submitted in its filing of September 27, 1996; and it is

FURTHER ORDERED, that the following tariff pages of NYNEX are approved:

NHPUC No. 77, Part A Section 5 Page 10 First Revision Canceling Original Page 11 First Revision Canceling Original Page 12 First Revision Canceling Original Page 13 First Revision Canceling Original Page 14 First Revision Canceling Original Page 15 First Revision Canceling Original Page 16 First Revision Canceling Original Page 21 First Revision Canceling Original Page 22 First Revision Canceling Original Page 23 First Revision Canceling Original Page 24 First Revision Canceling Original Page 25 First Revision Canceling Original Page 26 First Revision Canceling Original Page 27 First Revision Canceling Original Page 28 First Revision Canceling Original Page 29 First Revision Canceling Original Page 30 First Revision Canceling Original Page 31 First Revision Canceling Original Page 32 First Revision Canceling Original Page 33 First Revision Canceling Original;

and it is

FURTHER ORDERED, that NYNEX send an individualized notice by first-class mail to each customer directly affected by the rate group reclassification, on or before November 13, 1996, indicating the amount of the rate change for that customer; and it is

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

FURTHER ORDERED, that the above revisions to NHPUC No. 77 be resubmitted as required by N.H. Admin. Rules, Puc 1601.05(k).

By order of the Public Utilities Commission of New Hampshire this twenty-first day of October, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New England Teleph. & Teleg. Co. dba NYNEX, DR 95-269, Order No. 21,879, 80 NH PUC 679, Oct. 24, 1995.

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NH.PUC*10/21/96*[89386]*81 NH PUC 805*Union Telephone Company

[Go to End of 89386]

81 NH PUC 805

Re Union Telephone Company

DS 96-207
Order No. 22,377

New Hampshire Public Utilities Commission

October 21, 1996

ORDER further suspending a local exchange telephone carrier's proposed introduction of "Switch DataPath" service.

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1. SERVICE, § 433

[N.H.] Telephone — Proposal for "Switch DataPath" service — Suspension — Extension of suspension period — To allow for adequate investigatory period — Local exchange carrier. p. 805.

2. RATES, § 248

[N.H.] Schedules and procedure — Suspension — Of proposed service offering — Extension of suspension period — To allow for adequate investigatory period — As to "Switch DataPath" service — Local exchange telephone carrier. p. 805.

BY THE COMMISSION:

ORDER

[1, 2] On June 24, 1996, Union Telephone Company (Union) filed a petition to introduce Switch DataPath Service, for effect July 22,

Page 805

1996. The filing did not contain any cost support material.

On July 12, 1996, after a request from Staff, Union provided cost support materials. Subsequently, on July 23, 1996, the Commission issued Order No. 22,245 suspending the proposed tariff pages after noting that the earliest effective date of the tariff was July 24, 1996.

Staff requires additional time to complete its review of the filing, including the cost support material, and, therefore, has requested that the proposed tariff pages be suspended. We have reviewed Staff's request and will suspend the proposed tariff pages to allow Staff to complete its review of the filing and supporting materials.

Based upon the foregoing, it is hereby

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

NHPUC No. 7 - Telephone

Index Page 9 Seventh Revision Canceling Sixth Tariff Check Sheet Page 3 Part III - General, Section 21, Page 22 Original Part III - General, Section 21, Page 23 Original.

By order of the Public Utilities Commission of New Hampshire this twenty-first day of October, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Union Teleph. Co., DS 96-207, Order No. 22,245, 81 NH PUC 573, July 22, 1996.

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NH.PUC*10/21/96*[89387]*81 NH PUC 806*MFS Intelenet of New Hampshire, Inc.

[Go to End of 89387]

81 NH PUC 806

Re MFS Intelenet of New Hampshire, Inc.

DS 96-306
Order No. 22,378

New Hampshire Public Utilities Commission

October 21, 1996

ORDER authorizing an interexchange telephone carrier to eliminate its "Total Solution Service" but grandfather existing customers, and to replace such with "Total Solution Gold Service" for new customers.

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1. SERVICE, § 276

[N.H.] Discontinuance of service offering — Substitution or replacement — Telephone — Special outbound toll and inbound toll-free service plans — Replacement of "Total Solution Service" with "Total Solution Gold Service" — Grandfathering of existing customers — Interexchange telephone carrier. p. 806.

BY THE COMMISSION:

ORDER

[1] On September 19, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from MFS Intelenet of New Hampshire, Inc., (MFS) requesting authority to grandfather Total Solution Service and introduce Total Solution Gold Service, for effect October 21, 1996.

MFS is proposing that customers who subscribe to Total Solution Service prior to October 20, 1996 be allowed to continue to take that service but that no additional subscribers to that service be allowed.

Total Solution Gold Service allows customers to select switched or dedicated outbound toll and inbound toll-free services and obtain

Term Plan discounts.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize MFS to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of MFS' tariff, NHPUC No. 1 are approved for effect as filed:

11th Revised Page 1

4th Revised Page 2

3rd Revised Page 24.1

2nd Revised Page 24.2

2nd Revised Page 24.3
3rd Revised Page 24.4
2nd Revised Page 24.5
2nd Revised Page 24.6
Original Page 24.15
Original Page 24.16
Original Page 24.17
Original Page 24.18
2nd Revised Page 27.1
3rd Revised Page 27.2
1st Revised Page 27.3
Original Page 27.5
Original Page 27.6
Original Page 31
Original Page 31.1
Original Page 31.2
Original Page 31.3
Original Page 31.4
Original Page 31.5;

and it is

FURTHER ORDERED, that MFS file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this twenty-first day of October, 1996.

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NH.PUC*10/21/96*[89388]*81 NH PUC 807*Atlantic Cellular Company, L.P., dba Atlantic Long Distance

[Go to End of 89388]

81 NH PUC 807

Re Atlantic Cellular Company, L.P., dba Atlantic Long Distance

DS 96-307
Order No. 22,379

New Hampshire Public Utilities Commission

October 21, 1996

ORDER authorizing an interexchange telephone carrier to introduce "DimeTime 800" service and "DimeTime 700" service, the first being a switched access inbound toll-free service and the second being a one-way multipoint switched access service.

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1. RATES, § 592

[N.H.] Telephone rate design — Toll services — Switched access options — "DimeTime 800" and "DimeTime 700" products — Inbound toll-free service — One-way multipoint switched access service — Interexchange carrier. p. 807.

BY THE COMMISSION:

ORDER

[1] On September 23, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from Atlantic Cellular Company, L.P. d/b/a Atlantic Long Distance (ALD) requesting authority to introduce DimeTime 800 service and DimeTime 700 service, withdraw Personal 800 service and introduce New Account Code options, for effect October 23, 1996.

DimeTime 800 service is a switched access inbound toll-free service offered in conjunction with ALD's interstate service.

DimeTime 700 service is a one way, multipoint switched service offered in conjunction

with ALD's companion interstate service.

ALD states in its petition they are withdrawing Personal 800 service pending further product development.

An option for Custom Table account codes is being introduced for $25.00 per order.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize ALD to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of ALD's tariff, NHPUC No. 1 are approved for effect as filed:

1st Revised Page 1

1st Revised Page 2

1st Revised Page 5

1st Revised Page 6

1st Revised Page 7

1st Revised Page 40

1st Revised Page 41

Original Page 43.1

Original Page 43.2

Original Page 46.1

1st Revised Page 47

Original Page 49.1

Original Page 49.2

Original Page 49.3

1st Revised Page 52;

and it is

FURTHER ORDERED, that ALD file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this twenty-first day of October, 1996.

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NH.PUC*10/28/96*[89389]*81 NH PUC 808*Retail Competition Pilot Program

[Go to End of 89389]

81 NH PUC 808

Re Retail Competition Pilot Program

Petitioner: Victory Super Markets
Respondent: Granite State Electric Company

DR 95-250
Order No. 22,380

New Hampshire Public Utilities Commission

October 28, 1996

ORDER declaring that existing electric load (a grocery store) does not qualify for participation in an electric utility's pilot program for competitive electric services, even though the store had a new owner relocating from out-of-state. Commission explains that there will be no new load or

any additional demand on the part of the customer's existing facilities.

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1. RATES, § 166

[N.H.] Factors affecting reasonableness — Solicitation of business — New commercial or industrial load — Eligibility to participate in pilot program for retail electric competition — Definitions of new load — Relocation of customer as a factor — New owner of existing load as ineligible — Mere change in ownership as not constituting new load. p. 809.

2. RATES, § 322

[N.H.] Electric rate design — Load factors — Pilot program for retail competition — Participation eligibility — Large commercial or industrial load — New load relocating from out-of-state — New owner relocating from out-of-state as ineligible if merely taking over existing load. p. 809.

Page 808

BY THE COMMISSION:

ORDER

I. INTRODUCTION

On August 22, 1996, Victory Super Markets (Victory) filed a letter with the New Hampshire Public Utilities Commission (Commission) requesting that the Commission order Granite State Electric Company (GSEC) to allow Victory to enter immediately the New Hampshire Retail Electric Competition Pilot Program. In its letter, Victory identified itself as a Massachusetts-based company that opened a supermarket at 150 Bridge Street, Pelham, New Hampshire on August 3, 1996.

Victory states that as a new large commercial business locating in New Hampshire after March 1, 1996, it should be eligible to participate in the Pilot. Victory also states that it was informed by GSEC that Victory was not eligible and could not participate.

[1, 2] On September 11, 1996, GSEC filed a letter with the Commission responding to Victory's request of October 16, 1996. In this letter, GSEC provided the basis for its conclusion that Victory was ineligible for participation in the Pilot. GSEC asserted that although Victory is the new owner of the store for which participation is sought, the store and the store's electric load is not new. GSEC explained that Victory has assumed ownership of a store previously owned by Purity Supreme. GSEC asserts that the load associated with the Victory facility will remain consistent with that of the previous owner; therefore, Victory's load cannot be considered new. GSEC cites NHPUC Order No. 22,272, issued August 12, 1996, involving the expansion of a Filene's Department store as support for its interpretation and application of the Commission's guidelines.

We find GSEC's interpretation of Commission guidelines with respect to Victory Super

Markets to be consistent with Commission policy and recent Commission orders. We agree with GSEC that Victory's electric load cannot properly be characterized as new because it is essentially the same electric load at the same existing location where the new customer has taken over the old customer's business.

Based upon the foregoing, it is hereby

ORDERED, that Victory's request to participate in the Retail Electric Competition Pilot Program is denied.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of October, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Retail Competition Pilot Program, DR 95-250, Order No. 22,272, 81 NH PUC 612, Aug. 12, 1996.

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NH.PUC*10/28/96*[89390]*81 NH PUC 809*New England Telephone and Telegraph Company

[Go to End of 89390]

81 NH PUC 809

Re New England Telephone and Telegraph Company

DE 96-220
Order No. 22,381

New Hampshire Public Utilities Commission

October 28, 1996

ORDER adopting a procedural schedule for considering a proposed merger of a local exchange telephone carrier into Bell Atlantic Corporation.

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1. CONSOLIDATION, MERGER, AND SALE, § 62

[N.H.] Procedure — Scope of proceedings and adoption of schedule — Pursuant to multistate merger proposal — Issues to be addressed — Financial structures — Impact on rates and services — Impact of emerging competition — Potential for employee downsizings — Local exchange telephone carriers. p. 810.

2. PARTIES, § 18

[N.H.] Intervenors — Full versus limited

participation — Competitors versus employee unions — In proceeding addressing multistate merger proposal — Local exchange telephone carriers. p. 811.

3. WITNESSES, § 1

[N.H.] Compelled appearances — In proceeding addressing multistate merger proposal — Representative from out-of-state entity becoming the parent company — Local exchange telephone carriers. p. 811.

BY THE COMMISSION:

ORDER

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 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).

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 NET in New Hampshire, including any effect on rates, services and service quality; the effect, if any, on the affiliate agreements presently in effect for NET; the impact on the financial structure of NET; 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.

The Commission scheduled a prehearing conference for October 18, 1996 and set a deadline for intervention requests, proposed a procedural schedule and called for initial positions of the Parties and Commission Staff (Staff).

MCI Telecommunications Corporation (MCI) and AT&T Communications of New England (AT&T) sought intervention, without objection, and were present at the prehearing conference. Attorney Mark Rufo, the Communications Workers of America and Citizens for a Sound Economy (CSE) either sought intervention or stated their interest in limited participation in the case, but were not present at the prehearing conference. Staff represented that CSE had indicated by telephone that it did not intend to participate in full discovery or to cross examine witnesses at the hearings, but wanted to make its position known on the record. NET stated it had no opposition to these participants in the docket, but suggested that they be granted limited intervention.

[1] At the prehearing conference, NET, MCI, AT&T, the Office of Consumer Advocate (OCA), which is a statutorily authorized intervenor, and Staff agreed to the following procedural schedule:

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

Responses to Oral Data Requests Propounded at the September 27th Technical Session	October 7, 1996
NET Testimony on Merger	October 10, 1996
Prehearing Conference and Second Technical Session	October 18, 1996
NET Responses to Second Technical Session	October 25, 1996
Data Requests to NET	October 28, 1996
Data Responses from NET	November 8, 1996
Testimony by Staff and Intervenors	November 19, 1996
Settlement Meeting	November 21, 1996
File Settlement, if any, or Rebuttal Testimony	November 27, 1996
First Day of Hearing	December 2, 1996 at 1 p.m.
Second Day of Hearing	December 9, 1996 at 1 p.m.

Also at the prehearing conference, in accordance with the Order of Notice, NET outlined the status of the proposed merger and noted that the legal standard for mergers under prior New Hampshire decisions is that the merger result in "no net harm." NET added, however, that the merger would, in fact, produce positive benefits.

MCI and AT&T stated they were primarily concerned about the impacts of the merger on competition.

OCA stated that it had not fully absorbed the details of the proposal and was engaged in discovery, but that in addition to the issues delineated in the Order of Notice, it would explore whether the legal standard is different in this case, in light of the Telecommunications Act of 1996.

Staff stated that the list of issues identified in the Order of Notice continued to be of concern. In addition, Staff was troubled that NET would assert that as a result of the merger there would be no change in services or operations, but at the same time, there would be great benefits. Staff asserted that NET should produce more specific information in order for the Commission to evaluate the Petition.

[2] We will grant MCI and AT&T's requests for full intervention and will grant Mr. Rufo, the Communications Workers of America and CSE limited intervention. We find the proposed procedural schedule to be reasonable and will approve it for the duration of the case.

[3] During the course of the prehearing conference, MCI inquired if a Bell Atlantic witness would be available at the hearings. NET offered to make a Bell Atlantic representative available at a technical session, which the Commissioners could attend if so inclined but, because Bell Atlantic is not a joint petitioner, NET did not intend to produce a Bell Atlantic witness at the hearings.

We share the concerns of MCI regarding the need to hear from Bell Atlantic. Though Bell Atlantic is not a joint petitioner, Bell Atlantic plays a critical role in these proceedings. The Board of Directors of the merged entity, if approved, will be equally filled by Bell Atlantic and NET management. The Commission and parties need assurance from Bell Atlantic as much as

from NET on certain issues. We see no better way than to have a Bell Atlantic witness present at our hearings December 2 and 9, 1996. We direct NET, therefore, to arrange for a Bell Atlantic representative, who is familiar with the proposed merger and proposed post-merger operations, to be present to respond to questions, though we will not require prefiled testimony to be submitted.

Based upon the foregoing, it is hereby

ORDERED, that MCI and AT&T are granted full intervention and Mr. Rufo, the Communications Workers of America and CSE are granted limited intervention; and it is

FURTHER ORDERED, that the proposed procedural schedule delineated above is approved; and it is

FURTHER ORDERED, that NET shall arrange for an officer of Bell Atlantic to be present to testify at the hearings on the merits of this Petition.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of October, 1996.

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NH.PUC*10/28/96*[89391]*81 NH PUC 811*Contoocook Valley Telephone Company

[Go to End of 89391]

81 NH PUC 811

Re Contoocook Valley Telephone Company

DS 96-318
Order No. 22,382

New Hampshire Public Utilities Commission

October 28, 1996

ORDER suspending a local exchange telephone carrier's proposed tariff revisions which would create separate listings for basic, enhanced, and advanced custom calling services.

Page 811

1. SERVICE, § 449

[N.H.] Telephone — Special services — Custom calling service (CCS) — Proposal for separate tariffs for basic, enhanced, and advanced CCS — Suspension — To allow for adequate investigatory period — Local exchange carrier. p. 812.

2. RATES, § 248

[N.H.] Schedules and procedure — Suspension — Of proposed service revisions — To

allow for adequate investigatory period — Local exchange telephone carrier. p. 812.

BY THE COMMISSION:

ORDER

[1, 2] On September 30, 1996, Contoocook Valley Telephone Company (Contoocook) filed proposed 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, for effect October 31, 1996. As part of its filing Contoocook included supporting materials.

Staff has notified the Commission that Staff requires time to investigate the filing and supporting materials, and, therefore, has requested that the proposed tariff pages be suspended.

We have reviewed Staff's request and will suspend the proposed filing to allow a thorough review of the filing and supporting materials.

Based upon the foregoing, it is hereby

ORDERED, that the following tariff pages of Contoocook Valley Telephone Company are suspended:

NHPUC No. 1 - Telephone

Part III - General, Section 1,

First Revised Pages 1 through 8

Original Pages 9 through 12

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of October, 1996.

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NH.PUC*10/28/96*[89392]*81 NH PUC 812*Union Telephone Company

[Go to End of 89392]

81 NH PUC 812

Re Union Telephone Company

DR 95-177
Order No. 22,383

New Hampshire Public Utilities Commission

October 28, 1996

ORDER adopting the "billing balance report" method of calculating refunds owed customers by a local exchange telephone carrier for the period during which the carrier had unilaterally and unlawfully ceased applying credits to intraLATA toll customers that had been required as part of

an approved settlement agreement. The refunds are to be provided by means of a one-time, lump sum check for each customer.

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1. REPARATION, § 39

[N.H.] Method of calculation — Underlying usage and revenue data — "Billing balance report" method — Refund as being pursuant to settlement — Local exchange telephone carrier. p. 813.

2. REPARATION, § 39

[N.H.] Method of payment — One-time, lump sum check for each customer — As calculated under the alternative "billing balance report" method — Local exchange telephone carrier. p. 813.

BY THE COMMISSION:

ORDER

Page 812

The lengthy procedural history of this proceeding is recounted in Order No. 21,913 (Order), issued November 20, 1995. In that Order we found that Union Telephone Company (Union) violated New Hampshire Public Utilities Commission (Commission) Order No. 20,328 (December 9, 1991) when it discontinued an IntraLATA toll credit in October, 1993. Union was ordered to reinstate the toll credit and to refund to its customers, with interest, the excess revenues collected since October, 1993. Union was also fined $500 pursuant to RSA 365:41.

Union filed a motion for clarification on November 24, 1995, in which Staff concurred. On December 12, 1995, Order No. 21,944 was issued clarifying the basis for calculating the toll credit refund.

On December 19, 1995, Union filed a Motion for Rehearing of Order No. 21,913 in which it requested a reversal of the aforementioned relief. After examining Union's Motion and the arguments raised therein, Union's request for rehearing was denied by Order No. 22,002 (January 30, 1996).

On February 29, 1996, Union appealed Order No. 21,913 to the New Hampshire Supreme Court. The Supreme Court, in Case No. 96-128, Appeal of Union Telephone Company, declined to take Union's appeal on August 1, 1996.

On August 26, 1996, the Commission determined that the appropriate method of refunding the monies due to customers would be a one-time lump sum check to each customer. Union was directed to calculate the amount owed each affected customer based on his/her toll usage during the period when the credit was suspended, plus interest. Union was also directed to provide the Commission Finance Department with a schedule of the total refund including a computation of the interest, and upon completion of the refunds, to report whether the Company was unable to

contact any affected customer.

By letter dated August 27, 1996, Union requested that the Commission not issue an order requiring any particular refund methodology until Union had an opportunity to provide information on implementation problems and potential delays associated with the methodology deliberated by the Commission on August 26, 1996.

In response, on September 3, 1996, the Commission directed Staff to meet with Union to discuss implementation issues as detailed in Union's August 27, 1996 letter. Staff was further directed to provide the Commission with a recommended methodology.

On October 1, 1996, Staff and Union met to discuss Union's problems and potential time delays associated with the customer refund methodology as outlined by the Commission at its August 26, 1996 public meeting. The Commission's proposed methodology, according to Union, requires laborious, time consuming examination of microfiche records.

[1, 2] As detailed in Union's October 3, 1996 letter following the meeting to discuss the methodology, Staff suggested an alternative methodology. This method utilizes the monthly Billing Balance Reports (BBR) instead of individual microfiche. Each customer's toll amount, as reported on the BBR is converted to a percent of the total month toll revenues. That percent is used to compute the refund amount due each customer for that particular month.

We have reviewed Union and Staff's recommendation and will approve the BBR methodology for refund. The BBR method would be efficient and effective and result in disbursement of the refund within three months of a Commission Order. Because it will provide prompt refunds while still bearing a relationship to actual toll usage of individual customers, it meets the objectives of our prior order and will be approved.

Based upon the foregoing, it is hereby

ORDERED, that Union shall immediately implement the Billing Balances Report Method to provide refunds to customers affected by Union's elimination of the toll credit from October, 1993 to November, 1995; and it is

FURTHER ORDERED, that Union shall file with the Commission by November 25, 1996 a schedule in the manner described in Order 21,913 which sets forth the amount of revenues, with the accrued interest, which shall be refunded to customers based upon the 12.69% IntraLATA toll credit which it

Page 813

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improperly terminated on October 1, 1993 and did not reinstate until November 18, 1995; and it is

FURTHER ORDERED, that the foregoing schedule shall be afforded protective treatment consistent with Order No. 22,290 (August 27, 1996); and it is

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of October, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Union Telephone Co., DR 90-220, Order No. 20,328, 76 NH PUC 759, Dec. 9, 1991.
[N.H.] Re Union Telephone Co., DR 95-177, Order No. 21,913, 80 NH PUC 744, Nov. 20, 1995.
[N.H.] Re Union Telephone Co., DR 95-177, Order No. 21,944, 80 NH PUC 786, Dec. 12, 1995.
[N.H.] Re Union Telephone Co., DR 95-177, Order No. 22,002, 81 NH PUC 71, Jan. 30, 1996.

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NH.PUC*10/29/96*[89393]*81 NH PUC 814*Contoocook Valley Telephone Company

[Go to End of 89393]

81 NH PUC 814

Re Contoocook Valley Telephone Company

DS 96-317
Order No. 22,384

New Hampshire Public Utilities Commission

October 29, 1996

ORDER suspending 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 — Proposal for enhanced business services — Suspension — To allow for adequate investigatory period — Local exchange carrier. p. 814.

2. RATES, § 248

[N.H.] Schedules and procedure — Suspension — Of proposed new service offering — To allow for adequate investigatory period — Local exchange telephone carrier. p. 814.

BY THE COMMISSION:

ORDER

[1, 2] On September 30, 1996, Contoocook Valley Telephone Company (Contoocook) filed proposed tariff pages introducing Enhanced Business Services (EBS), for effect October 31, 1996. As part of its filing, Contoocook included cost support and market research materials.

Staff has notified the Commission that Staff requires time to investigate the filing and supporting materials, and, therefore, has requested that the proposed tariff pages be suspended.

We have reviewed Staff's request and will suspend the proposed filing to allow a thorough review of the filing and supporting materials.

Based upon the foregoing, it is hereby

ORDERED, that the following tariff pages of Contoocook Valley Telephone Company are suspended:

NHPUC No. 1 - Telephone Part III - General, Section 12, Original Pages 1 through 19

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of October, 1996.

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NH.PUC*10/29/96*[89394]*81 NH PUC 815*Beebe River Water System

[Go to End of 89394]

81 NH PUC 815

Re Beebe River Water System

DE 95-271
Order No. 22,385

New Hampshire Public Utilities Commission

October 29, 1996

ORDER extending the temporary appointment of commission staff as receiver for a small community water system, pending hearings to resolve ongoing disputes as to ownership of the system. The appointment of Lakes Region Water Company as an agent of the commission to manage actual operations of the utility is continued as well.

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1. RECEIVERS, § 3

[N.H.] Commission jurisdiction — As to appointment of a receiver — Temporary appointment — Commission staff as receiver — Continuation of appointment — Factors — Additional delays in resolution of ownership disputes over affected utility — Appointment of separate party as interim operator — Water utility. p. 817.

2. SERVICE, § 480

[N.H.] Water — Quality and purity — Effect of significant bacterial contamination — For water utility in receivership — No capital improvements during time of receivership — But necessity for some type of system rehabilitation — Additional chlorine treatments. p. 817.

APPEARANCES: Geoffrey J. Ransom, Esq. on behalf of the Staff of the State of New

Hampshire, Department of Justice; James R. Baum, Esq. on behalf of the Staff of the New Hampshire Department of Environmental Services; Deacham & Cowie by Thomas W. Cowie, Esq. on behalf of the Welshes; Daniel D. Crean, Esq. on behalf of the Town of Campton; Vernon Chase on behalf of the 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 Department of Justice (DOJ) filed 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, but placed the matter into 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 November 16, 1995, the Commission issued an Order of Notice setting a hearing for December 7, 1995 to examine the threshold issue of Commission jurisdiction to make an appointment in the case. At the hearing, the DOJ and the alleged owners of the system,

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Robert Welsh, Sr. and Robert Welsh, Jr., presented a Settlement Agreement designed to resolve the State's claims against them for violations of the Safe Drinking Water Act. Pursuant to their agreement, the parties asked the Commission to defer the appointment of a receiver in order to facilitate a plan to consolidate and transfer the disputed ownership of the water system to Lakes Region Water Co., Inc. (Lakes Region).

By Order No. 21,942, issued December 12, 1995, the Commission accepted the agreement and deferred a decision on receivership as requested. The Commission noted at that time, however, that the DOJ must notify the Commission, on or before February 6, 1996, that the agreement resulted in the successful transfer of the system to a responsible water system operator or else renew its request to appoint a receiver. Neither action materialized and on February 8, 1996, the Commission granted an assented-to Motion to Continue Deadline by DOJ for the

transfer of the BRWS to Lakes Region.

After further continuances, the DOJ filed a renewed request to appoint a receiver on May 28, 1996 because of the inability to effectuate a transfer of 100 percent of the ownership of BRWS to Lakes Region. Most of the Beebe River Village property owners that had received an interest in the system from the Welshes were willing to transfer their interests in the water system to Lakes Region without monetary consideration. However, Vernon Chase and his company, North Atlantic Distribution, Inc., were unwilling to do so. The resulting inability to obtain the consent of all the property owners to transfer their interests in the system left DOJ with no alternative but to file a request for receivership.

On August 2, 1996, the Commission issued an Order of Notice setting a hearing for August 28, 1996 to appoint a receiver to operate the water system on an interim basis and scheduling a prehearing conference immediately thereafter to address other issues including system ownership. The hearing and prehearing conference were subsequently rescheduled to September 25, 1996. On August 26, 1996, Beebe River Utilities Corporation (BRUC), a newly created corporation consisting of all of the property owners in the Village with ownership claims to the system, except the Welshes, filed a petition to intervene and a request that the Commission name it receiver of the water system.

On September 4, 1996, the Commission issued Order No. 22,304, appointing Staff temporary receiver of the water system for 30 days pursuant to RSA 374:47-a. Lakes Region operated the system as the Commission's agent because the lack of a system operator and the condition of the system created an imminent threat to the health and welfare of the system's users.

On September 25, 1996, the Commission held a hearing pursuant to RSA 374:47-a to determine whether the water system should remain in receivership.

II. POSITIONS OF THE PARTIES AND STAFF

A. *Department of Justice*

DOJ indicated that its concerns, and those of DES, would be met by the appointment of a receiver operating the system on a professional basis. DOJ also stated that it had hoped a receiver could be appointed on a more permanent basis and that such a receiver would alleviate the concerns of DOJ and DES.

With regard to BRUC's request to be appointed receiver, DOJ noted that BRUC was not a New Hampshire corporation, was not registered to do business in the State, and, therefore, could not be appointed receiver of the system. DOJ also indicated that until such time as BRUC could demonstrate that it was a responsible organization with the necessary capital and expertise to operate a water utility DOJ would object to its appointment as receiver.

B. *Beebe River Utilities Corporation*

BRUC initially indicated that the corporation wished to be appointed receiver. It noted that the corporation consisted of, and therefore represented, the interests of all property owners served by the system, excluding the Welshes.

The December 7, 1995 agreement between the Welshes and the DOJ prohibits the Welshes from owning or operating any water system in the State.[1(111)] BRUC indicated it would hire Lakes Region to operate the system and that an investigation into the water supply would be conducted which would result in water system remediation including the possibility of working with the Town of Campton to accomplish the same.

C. *Robert Welsh, Sr. and Robert Welsh, Jr.*

The Welshes noted that they had stipulated to the appointment of a receiver, leaving the appointment to the discretion of the Commission.

D. *Town of Campton*

The Town of Campton although not a party to the proceeding stated that the Selectmen had not made a final decision as to whether they would attempt to financially support rehabilitation of the system. A problem identified by the Town was the lack of an entity to whom the grant of funds could be channeled. The Town also stated that it wanted some assurance that the environmental concerns associated with the Beebe River Village were addressed to protect the Town before it became involved in whatever actions were necessary.

E. *Staff*

Staff supported the continuation of the Commission as receiver on a temporary basis with Lakes Region acting as the Commission's agent. Staff also supported instituting a fee for the system users in order to compensate Lakes Region for its services.

III. COMMISSION ANALYSIS

[1, 2] At our request, Staff and the parties met after setting forth their initial position. The result of that meeting was an agreement which provides that the Commission will continue as the receiver of the system for an initial period of six months, ending March 25, 1997. Lakes Region Water Company will act as the Commission's agent responsible for the daily operation and maintenance of the system, and will receive the following compensation for its services.

1. $600 per month for normal operation and maintenance;

2. Reimbursement of each month's electric bill;

3. Compensation for emergency services, including the January 10, 1996 emergency, and extraordinary services, including extraordinary water testing requirements, but only after Commission verification and approval of such expenses.

The stipulation also provided that no capital improvements will be made to the water system, i.e., the status quo will be maintained while attempting to use chlorine to keep bacteria in check, and the property owners, as represented by BRUC, will work with the Town and the Campton Water Precinct in an effort to develop a long term solution to the water system's problems including, but not limited to, locating sources of funding, forming an entity to receive funds, possibly developing an alternative source of water, or constructing a line extension to the precinct's system. Monthly reporting of the progress of the property owners will be provided by Vernon Chase, President of BRUC, who offered to do so on behalf of the owners. A written report will be forwarded to Staff for follow-up and transmittal to the Commission and DOJ.

We have reviewed the testimony and considered the recommendations of the parties and Staff. We will continue the receivership of the Beebe River water system on a temporary basis and will adopt the provisions of the aforementioned Agreement of the parties and Staff.

We believe it is necessary, however, to note our concern with the continued operation of what the record reveals is a sub- standard community water system. The record reveals numerous bacteriological problems with the system including an occurrence where e. coli bacteria was found to be present, which required notice to all customers that water must

Page 817

be boiled before its consumption. The record further revealed that the source of the water was indeterminate, but was most likely under the influence of surface water at both the purported spring site and the storage facility.

Thus, it is apparent that this situation cannot continue indefinitely and the system must be rehabilitated, replaced or shut down in the near future to avoid any further risk to the health of those individuals living in the Village. Given this concern, we expect the efforts on the part of the property owners and all concerned to be vigorous and concerted.

We will defer, for the time being, the requirement that a conference be conducted to establish a procedural schedule for the discussion of other issues, including system ownership and the merits of the petition received from the property owners as requested by the parties and Staff. By such deferral, we hope to facilitate an aggressive effort on the part of the property owners and the Town to put into place a plan to reach a long term solution to the problems besetting the water system.

Based upon the foregoing, it is hereby

ORDERED, that Beebe River Water System will remain under our receivership in accordance with RSA 374:47-a and that Lakes Region Water Company, Inc. will act as our agent over-seeing the daily operation and maintenance of the system; and it is

FURTHER ORDERED, that the stipulation of the parties and Staff is accepted.

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of October, 1996.

FOOTNOTES

[1]The Welshes have indicated no interest in participating in the ownership or operation of the system. The Welshes were unaware, however, of the formation of BRUC.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Beebe River Water System, DE 95-271, Order No. 21,942, 80 NH PUC 784, Dec. 12, 1995. [N.H.] Re Beebe River Water System, DE 95-271, Order No. 22,304, 81 NH PUC 674, Sept. 4, 1996.

81 NH PUC 818

Re Northern Utilities, Inc.

DR 96-294
Order No. 22,386

New Hampshire Public Utilities Commission

October 29, 1996

ORDER adopting stipulation as to a $193,311 step rate increase for a natural gas local distribution company, so as to cover additional costs of a bare steel piping replacement project.

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1. RATES, § 380

[N.H.] Gas rate design — Special factors — Necessity of replacing corroded bare steel piping — Additional step increase — Stipulation. p. 820.

2. EXPENSES, § 125

[N.H.] Gas utility — Replacement of deteriorated bare steel piping — Funding via step rate increase — Stipulation. p. 820.

APPEARANCES: Richard P. Cencini for Northern Utilities, Inc.; Eugene F. Sullivan, Jr. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

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On July 21, 1992 in Docket DR 91-081, the New Hampshire Public Utilities Commission (Commission) approved by Order No. 20,546 the Settlement Agreement proposed by the Commission Staff (Staff) and Northern Utilities, Inc. (Northern) for Northern's permanent rate case which had been filed on July 18, 1991. The Settlement Agreement included a provision for periodic step adjustments for certain defined investments and depreciations in a program for replacement of bare steel. Northern is replacing its unprotected bare steel mains with either cathodically protected mains or plastic mains (depending on the required pipeline pressure). This

replacement program was implemented throughout the natural gas industry in order to minimize active corrosion and gas leaks.

On September 13, 1996, pursuant to the Settlement Agreement and Order No. 20,546, Northern filed a petition for a step adjustment to base rates (Petition), to be effective with the November 1, 1996 billing cycle. The Petition seeks an adjustment to rates to recover the depreciation and return on certain investments related to its bare steel main replacement program.

This is Northern's fifth annual step adjustment filing pursuant to Order No. 20,546. The requested increase in base rate revenues was $204,405.

Northern, on September 23, 1996, prefiled testimony of its Regulatory Affairs Director, Richard P. Cencini.

By Order of Notice (September 23, 1996) the Commission set a deadline for intervention by October 18, 1996. There were no intervention requests. The Office of Consumer Advocate is a statutorily authorized intervenor, though it did not participate in the docket.

The Commission also scheduled a technical session to address the contents of the Petition and an audit performed by Staff and to explore the possibilities of settlement. Northern and Staff filed on October 18, 1996 a Stipulation on Proposed Step Adjustment (Stipulation). The Commission heard evidence in support of the Stipulation on October 22, 1996.

II. POSITIONS OF NORTHERN AND STAFF

Mr. Cencini testified in support of the Stipulation, which proposes a slightly lower revenue increase of $193,311. The primary reasons for the change from the originally proposed step adjustment amount related to the updating of originally forecasted activity for September 1996 with actual sales as well as certain adjustments agreed to during the Staff audit and the subsequent technical session and settlement discussions. The Staff and Northern agreed to two fundamental changes in the way the Step Adjustment is calculated.

First, for future step adjustment proposals, adjustments relating to Domtar Gypsum, Inc. (Domtar) net revenues will no longer be reflected. Mr. Cencini testified that when the step adjustment was established as part of Docket DR 91-081, Domtar was a major new customer and it was anticipated that there would be substantial increases in the associated revenues. The Domtar net revenue did increase through the first four step adjustments, but Domtar net revenues were down for the latest twelve months and resulted in a $63,379 increase in the revenue requirement as calculated for this step adjustment. Also, the margins used to determine the annual increase in Domtar net revenues are based on the non-gas portion of rates to serve Domtar as determined in DR 91-081. Mr. Sullivan stated that the Domtar net revenues are a complicating factor in the step adjustment and, while adjustments relating to Domtar revenues have served their purpose, they are no longer needed and could distort step increases in the future, in that they reflect only one aspect of changes in the utility's revenues and costs.

The second fundamental change is use of the current cost of debt and capital structure in determining the pre-tax rate of return to be applied to the plant additions for the period. Mr. Sullivan testified that Northern had retired some of the original debt used to determine the rate of return in DR 91-081 and issued new debt at a lower cost. Using the cost of equity as determined

in DR 91-081 and updating the cost of debt and capital structure provides a more timely match between the pre-tax rate of return and plant additions included in the step adjustment.

Northern provided updated maps and exhibits describing the status of the bare steel program. The exhibits detail the footage and cost of the bare steel already replaced and remaining to be replaced and a leak history. Mr. Edward Wencis, Engineering Manager, stated that the rate and cost of replacement was greatly influenced by municipal projects, but that Northern expected to meet its replacement targets for the remainder of the program. Northern also noted that the program has been extremely successful in reducing corrosion leaks on the system.

III. COMPONENTS OF THE SETTLEMENT AGREEMENT

A. *Main Replacement Investments and Rate of Return*

Northern's total step adjustment revenue requirement related to replacements is calculated on capital investments of $911,653 for the period October 1, 1995 through September 30, 1996. Incremental deferred income taxes related to these plant additions reduce the rate base amount subject to recovery in this step adjustment by $79,662, leaving a balance of $831,991. Using Northern's current capital structure and cost of debt results in a weighted cost of capital of 9.39% and a tax effected cost rate of 12.56%. Applying the tax effected cost rate (12.56%) to the balance available for recovery ($831,991) results in a revenue requirement of $104,498.

B. *Annualized Depreciation Expense*

The related annualized depreciation expense is calculated using the capital investment mentioned above ($911,653) and the applicable depreciation rates approved as part of the Settlement Agreement on permanent rates. The calculation results in an increase in annual depreciation of $25,434.

C. *Adjustment for Domtar Net Revenues*

The step adjustment has been increased by an amount equal to the reduction in net revenues from Domtar as calculated per the Settlement Agreement on permanent rates. The calculation results in an increase of $63,379. It is agreed that adjustments relating to Domtar net revenues will not be reflected in future step adjustments.

IV. COMMISSION ANALYSIS

[1, 2] We have reviewed the Stipulation and testimony in support thereof and find the stipulated revenue increase of $193,311 to be reasonable. The investments required to replace Northern's bare steel mains have been prudently incurred and are used and useful in the provision of utility service. We agree that using the current capital structure and cost of debt is more reflective of what Northern could expect as a rate of return on plant being added to rate base at this time. We also agree that adjusting the revenue requirement for changes in Domtar net revenues is no longer appropriate and therefore should not be included in future step adjustments. We will approve the Stipulation as filed.

Based upon the foregoing, it is hereby

ORDERED, that the Stipulation between Northern and the Staff for an increase to base rate

revenues of $193,311 per year, to recover depreciation, reduction in Domtar net revenues, and return on investments related to Northern's bare steel replacement program is APPROVED for bills rendered on or after November 1, 1996; and it is

FURTHER ORDERED, that the pre-tax rate of return be calculated using the Northern's current debt structure and cost; and it is

FURTHER ORDERED, that adjustments relating to Domtar net revenues will not be reflected in future step adjustments; 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 twenty-ninth day of October, 1996.

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EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Northern Utilities, Inc., DR 91-081, Order No. 20,546, 77 NH PUC 366, July 21, 1992.

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NH.PUC*10/30/96*[89396]*81 NH PUC 821*EnergyNorth Natural Gas, Inc.

[Go to End of 89396]

81 NH PUC 821

Re EnergyNorth Natural Gas, Inc.

DR 96-301
Order No. 22,387

New Hampshire Public Utilities Commission

October 30, 1996

ORDER approving a natural gas local distribution company's winter cost-of-gas adjustment (CGA) filing, resulting in a rate of 2.16 cents per therm which represents an increase over 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 — Increase in rate

— Factors — Prior period undercollection — Higher than expected commodity costs — Despite efforts to minimize gas costs — Local distribution company. p. 821.

2. EXPENSES, § 126

[N.H.] Natural gas local distribution company — Supply costs — Cost-of-gas adjustment — Winter season — Increase in rate — Factors — Prior period undercollection — Higher than expected commodity costs — Despite efforts to minimize gas costs — Reasonableness of procurement practices. p. 821.

APPEARANCES: McLane, Graf, Raulerson, and Middleton by Steven V. Camerino, Esquire, on behalf of EnergyNorth Natural Gas, Inc.; and Stephen P. Frink, for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On September 17, 1996, EnergyNorth Natural Gas, Inc. (ENGI) filed with the New Hampshire Public Utilities Commission (Commission), its Cost of Gas Adjustment (CGA) for the 1996/1997 Winter period. Accompanying its CGA filing was a Motion for Protective Order and Confidential Treatment, which was granted September 24, 1996 (Order No. 22,336). 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.

[1, 2] On October 11, 1996, ENGI filed a revised CGA. ENGI's revised 1996/1997 Winter CGA is a charge of $0.0216 per therm for Firm Sales, representing an increase of $0.1034 over the 1995/1996 Winter period per therm CGA of ($0.0818). ENGI filed a 1996/1997 CGA Firm Transportation charge of $0.0110 per therm, $0.0034 less than the 1995/1996 Winter CGA period per therm charge of $0.0144.

There were no requests for intervention filed in this matter and a duly noticed hearing was held on October 17, 1996.

II. POSITIONS OF THE PARTIES AND STAFF

A. *ENGI*

Mark Savoie testified that the proposed Firm Sales CGA of $0.0216 results in a 14.5 percent increase in the average residential heating bill compared to last winter's CGA. The increase is largely the result of a prior period under-collection of approximately $2.9 million. The under-collection was primarily due to

higher commodity costs than those forecasted in the 1995/1996 Winter CGA. ENGI used the NYMEX futures prices that were the market prices in early September 1995 and the actual commodity costs incurred during the period were substantially higher. Mr. Savoie stated that

ENGI did not exceed the 10 percent trigger level as calculated by the Company during the 1995/1996 Winter period, in part because the calculation was made using only actual costs and not anticipated costs for the remainder of the period based on updated future prices. ENGI now calculates the anticipated over-/under-collection using actual costs and forecasted costs based on gas futures prices.

Michelle L. Chicoine, ENGI Vice President, CFO and Treasurer, testified that the current cost of gas adjustment mechanism does not allow enough flexibility in addressing the Company's over-/under-collection position during the five month winter period. Ms. Chicoine pointed out that firm sales customers that contribute to the over-/under-collection and either leave the system or switch to transportation service, exacerbate the problem of prior period adjustments. In its original filing, ENGI had requested that the trigger mechanism be reduced from 10 to 5 percent but withdrew its request based on an understanding that Staff and the Company would be meeting before the next CGA filing to discuss the cost of gas adjustment mechanism and the appropriateness of the current method.

Donald Carroll testified that ENGI used the Tennessee Gas Pipeline (Tennessee) RP95-112 settlement rates that were filed at the Federal Energy Regulatory Commission (FERC) on April 5, 1996 because the settlement has almost unanimous customer support and the Company expects FERC approval in the very near future. ENGI also included a related Tennessee refund of $863,606 in anticipation of FERC approval of the settlement rates. Tennessee is required to refund the difference between the current and FERC approved rates, with interest, starting from the date the current Tennessee rates were put into effect (July 1, 1995). Therefore, provided the settlement rates are approved prior to next winter's CGA filing, the timing will have only a minimal impact on the 1996/1997 winter over-/under-collection.

Mr. Savoie testified that the CGA calculation included five months of demand charges and forecast a number of revenue streams that are relatively new and based on limited experience. The original filing sought recovery of only half of the 1995/1996 winter period under- collection and deferred the balance. The revised filing includes the entire under-collection but offsets the impact by forecasting revenues from standby commodity, daily demand service, monthly cash out, daily imbalance, unauthorized gas service charge, and capacity release margins.

Staff questioned the Company regarding accounting for emergency sales margins. Mr. Savoie stated that the PUC Audit Staff had determined that the emergency sales margins were not being passed back through the CGA and that the Company and Staff had reached agreement that those margins would be included in future CGAs. The Company and Staff also agreed that the emergency sales margins related to this period were immaterial, between $2,000 to $3,000, and therefore the current CGA was not adjusted to include those margins.

Ms. Chicoine testified that the surcharge to recover the costs of the closure of the Gas Street Relief Holder would decrease from $.0047 to $.0045 per therm due primarily to an increase in projected therm sales. ENGI has filed a complaint in United States District Court against the previous operator, UGI Corporation, seeking to recover the related clean up costs. The Company has retained the services of three consultants with experience in this area and a trial date is scheduled for September of 1997. ENGI is also pursuing recovery from eleven insurance carriers and has hired two consultants to assist in those cases. The Company expects to propose a settlement to the insurance carriers in the Fall of 1997.

B. *Staff*

Staff presented no testimony but indicated that it had reviewed the filing and supported ENGI's revised 1996/1997 Winter CGA filing.

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III. COMMISSION ANALYSIS

After having reviewed the record, we conclude that ENGI's 1996/1997 Winter CGA is reasonable and consistent with its previous performance relative to minimizing gas costs. Accordingly, we accept and approve ENGI's proposed Winter 1996/1997 CGA rate of $0.0216 per therm.

Based upon the foregoing, it is hereby

ORDERED, that ENGI's Third Revised Page 32 issued in lieu of Second Revised Page 32, providing for a Winter 1996/1997 Firm Sales Cost of Gas Adjustment charge of $0.0216 per therm for the period November 1, 1996 through March 31, 1997 is hereby approved, effective for bills rendered on or after November 1, 1996; and it is

FURTHER ORDERED, that ENGI's Second Revised Page 33 issued in lieu of First Revised Page 33, providing for a Winter 1996/1997 Firm Transportation Cost of Gas Adjustment charge of $0.0110 per therm for the period November 1, 1996 through March 31, 1997 is hereby approved, effective for bills rendered on or after November 1, 1996; 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 the surcharge to recover the costs of closure of the Relief Holder at Gas Street, Concord, N.H. and pond investigation be reduced from $0.0047 to $0.0045 per therm for the period November 1, 1996 through October 31, 1997, effective on bills rendered on or after November 1, 1996.

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 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this thirtieth day of October, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re EnergyNorth Natural Gas, Inc., DR 96-301, Order No. 22,336, 81 NH PUC 720, Sept. 24, 1996.

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NH.PUC*10/30/96*[89397]*81 NH PUC 823*Statewide Electric Utility Restructuring Plan

[Go to End of 89397]

81 NH PUC 823

Re Statewide Electric Utility Restructuring Plan

DR 96-150
Order No. 22,388

New Hampshire Public Utilities Commission

October 30, 1996

ORDER delineating the legal issues to be addressed in a proceeding examining a restructuring of the state's electric utility industry. The primary issue is that of stranded costs associated with the sale or divestiture of generating assets, but other issues, such as franchise exclusivity, holding company structures, bankruptcy proceedings, and previous rate agreements, also must be faced.

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1. PROCEDURE, § 13

[N.H.] Scope of proceeding — Proposed restructuring of electric industry — Legal issues to be addressed — Stranded costs — Underlying rate agreements — Pre-existing franchise and bankruptcy rulings. p. 824.

2. ELECTRICITY, § 1

[N.H.] Proposed industry restructuring — Scope of proceeding — Legal issues to be addressed — Stranded costs — Previously executed rate agreements — Franchise exclusivity — Corporate structure and holding company formations — Bankruptcy court filings and rul-

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ings — Matters specific to Public Service Company of New Hampshire. p. 824.

BY THE COMMISSION:

ORDER

I. INTRODUCTION AND PROCEDURAL HISTORY

On September 10, 1996, the New Hampshire Public Utilities Commission issued a Preliminary Plan to restructure New Hampshire's electric utility industry. The Commission invited electric utilities and other parties to submit initial written comments on the Plan by October 18, 1996. To date, the Commission has received written comments from over fifty parties.

In Order No. 22,364 (October 16, 1996), the Commission indicated that it would identify a preliminary list of legal issues and invite legal memoranda and briefs according to a revised procedural schedule.

II. DISCUSSION

The Commission has been charged by the Legislature to develop a statewide electric utility restructuring plan. In the initial comments to the Preliminary Plan, a number of jurisdictional electric utilities as well as other parties raised legal issues or outright challenges to various aspects of the Preliminary Plan. The purpose of this Order and the Commission's briefing schedule is to provide parties with an opportunity to present reasoned analysis and legal argument with respect to such issues and positions.

[1, 2] The Commission has identified a preliminary list of legal issues which is attached to this Order as Appendix A. The list is not an exhaustive inventory of every legal issue associated with the Commission's undertaking in this docket; rather, it is an attempt to identify the more important threshold legal questions raised by various stakeholders so that the merits of each position can be evaluated.

Not surprisingly, most of the legal issues raised in the initial comments relate to those sections of the Preliminary Plan that address the issue of utility stranded costs. The issues raised or arguments advanced by parties in this area fall generally into two categories: first, whether Public Service Company of New Hampshire (PSNH) has any special legal right to full stranded cost recovery due to its Rate Agreement and related statutes and/or orders; and second, whether utilities are generally entitled to full stranded cost recovery as a matter of law.

The first category of issues relates solely to the PSNH Rate Agreement. PSNH submitted extensive "testimony" in conjunction with its comments regarding the legal implications of the Rate Agreement as it relates to the Preliminary Plan. PSNH contends that the Preliminary Plan is inconsistent with the State's legal obligations under the Rate Agreement and offers its own restructuring plan as an alternative to having the Commission develop a statewide restructuring plan pursuant to RSA 374-F. The second category of issues primarily relates to claims by utilities that full stranded cost recovery is mandated by various sources of state and federal law.

The Legislature has established a strict time frame within which we must complete the necessary stages to restructure New Hampshire's electric utility industry. In our view, the Legislative findings underlying RSA 374-F form a compelling public policy basis for this rigorous schedule. We remain committed, however, to fulfilling our statutory mandate in a manner that is procedurally fair and one in which parties and the public have the opportunity to fully express their views. On the other hand, we expect that parties will not wait until the later stages of this proceeding to raise legal issues which could cause delays in the implementation of RSA 374-F. Accordingly, we wish to emphasize our expectation that parties who have raised legal issues will submit fully developed legal analyses and supporting legal authority for their positions. Other interested parties may also submit memoranda on legal issues if they so choose. We expect that all submissions will follow the framework of the issues identified in Appendix A, though we recognize that some parties may not address all

issues.

All briefs and legal memoranda should be filed according to the procedural schedule established in Order No. 22,364 (October 16, 1996). That schedule requires initial legal memoranda to be filed by December 18, 1996 and reply memoranda must be filed by January 18,

1997. Memoranda and briefs should clearly identify the particular legal issue or question for which analysis is offered. Also, all such filings should be filed according to the same requirements set forth in the Preliminary Plan; specifically, briefs and memoranda must be filed in paper and electronic form.[1(112)] Finally, we reserve the right to issue a supplemental order concerning additional legal issues and the briefing schedule in the event that circumstances so warrant.

Based upon the foregoing, it is hereby

ORDERED, that any party who wishes to be heard relative to any of the legal issues set forth in Appendix A shall file initial briefs or memoranda by December 18, 1996; and it is

FURTHER ORDERED, that reply briefs and memoranda shall be filed no later than January 18, 1997.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of October, 1996.

APPENDIX A

I. RATE AGREEMENT ISSUES
APPLICABLE TO ONLY PSNH:

A. *State Statute*

• What legal boundaries, if any, does RSA 362-C:1 through 362-C:10, and especially RSA 362-C:6, impose on the Commission's ability to limit the recovery of all PSNH costs?

• Does RSA 362-C:6 require the Commission to *guarantee* the recovery of PSNH's costs as distinct from *authorizing* their recovery? If not, what are the permissible circumstances where underrecovery by PSNH would not violate this statute?

• Did House Bill 1392 (RSA 374-F) directing the Commission to implement retail competition in any manner modify the Commission's obligation under RSA 362-C:6?

B. *Rate Agreement*

• Does the Rate Agreement create an enforceable contract which is an independent bound (i.e., independent of any state statute) on the Commission's ability to limit the recovery of all PSNH costs?

• What are the State's existing contractual obligations under the Rate Agreement, if any?

• What are the specific principles in *United States v. Winstar Corp.*, 64 U.S.L.W. 4739 (1996), if any, that assist in (a) an analysis of the Rate Agreement generally and (b) an evaluation of any defenses the state may have in a lawsuit for an alleged breach of the Rate Agreement?

C. *Bankruptcy Court*

• In what ways, if any, does the Bankruptcy Court decision approving the restructuring of PSNH affect the Commission's ability to limit or condition the recovery of PSNH's costs?

• Does the decision of the Bankruptcy Court confirming the final PSNH reorganization plan preempt the State from setting rates in whatever manner it deems appropriate under state law?

D. *Federal Power Act*

• Does any decision of the Federal Energy Regulatory Commission (FERC) relating to the Rate Agreement or NU/PSNH merger preempt the Commission from limiting or conditioning the recovery of PSNH's costs?

E. *Takings Clause*

• Have any previous government actions created a legitimate, investment-backed expectation in PSNH shareholders of full recovery of its costs, such that a Commission decision limiting that recovery would violate the Takings Clause of the state or federal constitution? (Examples of government actions would be passage of state statutes, and past decisions of

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the Commission, Bankruptcy Court and FERC.)

F. *Corporate Structure Issues*

• Do any of the sources of law mentioned in the previous set of questions (State statute, Rate Agreement, Bankruptcy Court, Takings Clause, Federal Power Act) limit the Commission's ability to condition full recovery of PSNH's costs (as opposed to disallowing recovery), on changes in PSNH's corporate structure? (Possible changes in corporate structure include divestiture of transmission, generation or distribution assets, and transfer of the franchise to provide distribution or other service)

G. *Other Limits*

• Other than the possible legal limits listed above, are there other legal bases for the contention that the Preliminary Plan or RSA 374-F violate the Rate Agreement or conflict with any legal right or obligation created by the Rate Agreement?

II. GENERALLY APPLICABLE LEGAL ISSUES

A. *Franchise Exclusivity*

• Taking into account the New Hampshire Supreme Court's decision in *Appeal of Public Service Company of New Hampshire*, — N.H. —, 676 A.2d 101 (1996) would legislative or regulatory decisions modifying the franchise of any utility interfere with "property rights" in a manner requiring compensation under the Takings Clause of the state or federal constitution.

B. *Rate-Setting*

• The Preliminary Plan discusses possible limits on the recovery of utilities' past costs. In addition to the Rate Agreement issues described above, what elements of federal law, including the Federal Power Act, the Public Utilities Holding Company Act, and the Takings Clause and the Commerce Clause of the United States Constitution, might limit or enhance the Commission's authority to set such limits?

• Please discuss the previous question with respect to state law.

• If the Commission wished to continue some form of retail price regulation under retail competition (if, for example, competition was not sufficiently vigorous to protect consumers),

are there any limits imposed by federal law on the Commission's ability to do so?

C. *Corporate Structure*

• What aspects of federal law, including the Federal Power Act, the Public Utility Holding Company Act and the United States Constitution, either limit or enhance the state's ability to (a) order such structural changes directly, or (b) condition other actions, such as the utility's right to sell at retail in the state, on such structural changes? Where the answer varies depending on the type of structural change, please explain in detail.

• What aspects of state law (separate from legislation relating to the Rate Agreement) either limit or enhance the Commission's ability to take the actions described in the preceding questions?

D. *Other Limits*

• Other than the possible legal limits listed above, identify and discuss all other legal bases for the contention that the Preliminary Plan or RSA 374-F is inconsistent with any legal right or obligation.

FOOTNOTES

[1]Electronic text files must be compatible with WordPerfect Version 5.1 + or 6.0.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Statewide Electric Utility Restructuring Plan, DR 96-150, Order No. 22,364, 81 NH PUC 774, Oct. 16, 1996.

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NH.PUC*10/31/96*[89398]*81 NH PUC 827*EnergyNorth Natural Gas, Inc.

[Go to End of 89398]

81 NH PUC 827

Re EnergyNorth Natural Gas, Inc.

DR 96-214
Order No. 22,389

New Hampshire Public Utilities Commission

October 31, 1996

ORDER adopting settlement agreement as to a natural gas local distribution company's 1996-97 demand-side management programs, collectively termed "ENERGYWI$E."

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1. CONSERVATION, § 1

[N.H.] Demand-side management (DSM) plans — 1996-97 program year — As to residential and small commercial customers — "ENERGYWI$E" program — Performance incentives for attaining participation goals — Consolidation of domestic hot water, attic insulation, and heating equipment pilot components — Addition of clock thermostat and blower door components — Monthly surcharge for funding programs — Methods for preventing free ridership by nonparticipants — Regulatory-driven versus market-driven DSM measures — Local gas distribution company — Settlement. p. 828.

2. GAS, § 7

[N.H.] Operation — Demand-side management — 1996-97 program measures and budget — "ENERGYWI$E" program — Performance incentives — Both consolidation and addition of program components — Funding of program via surcharge — Local distribution company — Settlement. p. 828.

APPEARANCES: McLane, Graf, Raulerson and Middleton by Steven V. Camerino, Esq. for EnergyNorth Natural Gas, Inc.; the Office of the Consumer Advocate by Kenneth E. Traum on behalf of residential ratepayers; and Michelle A. Caraway on behalf of the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On June 28, 1996, EnergyNorth Natural Gas, Inc. (ENGI or the Company) filed with the Commission its Full Scale Demand Side Management (DSM) Program for Residential and Small Commercial and Industrial Customers in accordance with the terms of the Settlement Agreement approved by the Commission in Order No. 22,067 (March 18, 1996) in Docket DR 95-343. Included with the filing was the supporting testimony of Donald E. Carroll, Vice President of Gas Supply.

ENGI's DSM program proposal, called ENERGYWI$E, has a program year of July 1, 1996 to June 30, 1997 and proposed annual budget of $515,220. For ease of marketing and administration, ENERGYWI$E combines the two programs offered in ENGI's 1995/96 pilot program, namely the Domestic Hot Water/Attic Insulation Pilot and the Efficient Heating Equipment Pilot. The ENERGYWI$E program also includes two additional measures, an automatic clock setback thermostat and the introduction of blower door technology which were not included in the pilot programs. ENERGYWI$E also offers a free energy audit and payment of 100% of the Domestic Hot Water measures.

ENGI proposes to collect a Performance Incentive of 15% of the net program benefits if it meets or exceeds 50% of the estimated program savings of 149,525 therms. The estimated performance incentive related to this program would be $16,616.

By Order of Notice issued July 24, 1996, the Commission scheduled a prehearing conference

for August 12, 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. At the prehearing conference, intervention by the Northeast Energy Efficiency Council (NEEC) was approved. The Office of the Consumer Advocate (OCA) is a statutorily recognized intervenor. A procedural schedule was agreed upon by ENGI, NEEC and the OCA (hereinafter the Parties) and Staff. The procedural schedule was approved by the Commission in Order No. 22,284 (August 19, 1996).

Pursuant to the approved procedural schedule, the Parties and Staff engaged in formal discovery and technical sessions. On September 20, 1996, the Parties and Staff participated in a settlement conference.

Subsequent to the settlement conference, the Parties and Staff entered into a Settlement Agreement which resolved all of the issues in this proceeding. The Settlement Agreement was signed and submitted to the Commission on September 30, 1996. A hearing was held on October 3, 1996 at which time testimony supporting the Settlement Agreement was presented.

II. SETTLEMENT AGREEMENT

The Parties and Staff agreed that ENGI's 1996/97 Full Scale Demand Side Management Program for Residential and Small Commercial and Industrial Customers, as set forth in ENGI's June 28, 1996 filing, should be approved subject to the following modifications:

1. The program year shall run from October 1, 1996 through September 30, 1997. ENGI shall file its residential and small C&I DSM program proposal for the period October 1, 1997 through September 30, 1998 no later than June 30, 1997;

2. ENGI shall file its large C&I DSM program proposal no later than April 15, 1997 effective July 1, 1997;

3. ENGI shall review in February 1997 the participation and budgetary goals achieved by the program and any anticipated over/underrecoveries. If necessary to correct for any significant projected over/underrecovery, a surcharge adjustment shall be considered for effect with ENGI's cost of gas adjustment on April 1, 1997;

4. The residential DSM surcharge shall be $0.0114 per therm and the C&I DSM surcharge shall be $0.0014 per therm. The DSM surcharges have been recalculated to reflect actual DSM recoveries through August 1996 and forecasted DSM recoveries for September and October 1996;

5. An adjustment to ENGI's bonus calculation shall be made to remove any bonus due to "free riders." The basis of said adjustment shall be ENGI's survey results. Staff and the OCA shall assist ENGI in the development of the survey language. ENGI shall complete the survey and report its findings to the Commission no later than October 31, 1997;

6. ENGI's reporting requirements shall be consistent with the monthly and quarterly reporting requirements of Northern Utilities approved in Order No. 21,881 (October 30,

1995) in Docket DR 95-101; and

7. The Parties and Staff recommend that the Commission open a docket to discuss the obligation of ENGI to offer DSM programs at the time that it is practical for residential and small C&I customers to participate in retail gas competition.

III. COMMISSION ANALYSIS

[1, 2] After careful review of the Settlement Agreement, supporting testimony at the October 3, 1996 hearing and the exhibits, we find that ENGI's proposed DSM programs, as modified by the Settlement Agreement, are reasonable and in the public good.

ENGI identified the need to make program delivery improvements to attract participants and has made several modifications to its DSM programs since the pilot programs were originally approved. These modifications should enable the Company to meet its participation goals. The Settlement Agreement addresses the reporting requirements to be fulfilled by ENGI and we fully expect that the Company will monitor its spending and participation levels and

notify the Commission if substantial deviations develop.

Recognizing that DSM programs may attract free riders, i.e., participants that would have installed conservation measures without utility subsidies, the signatories to the Settlement Agreement have provided a method, which entails a survey, to estimate free ridership. We direct the Parties and Staff to develop the survey language within the next thirty days so that the surveys of ENERGYWI$E participants may be performed in a timely manner after the conservation measures have been installed.

Additionally, we recognize that retail gas competition, although not available to ENGI's residential and small commercial and industrial customers at this time, will necessitate a reevaluation of ENGI's role in providing DSM programs. Therefore, we find that the Settlement Agreement properly addresses the Parties' and Staff's initiative to open a docket to address regulatory-driven DSM versus market-driven DSM and direct that Northern Utilities (Northern) be contacted at that time to suggest participation in the docket relative to DSM standards which might affect Northern.

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 ENGI 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 the proposed DSM programs, as amended by the Settlement Agreement, are hereby approved; and it is

FURTHER ORDERED, that ENGI's DSM surcharges be effective November 1, 1996 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 thirty-first day of October, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Northern Utilities, Inc., DR 95-101, Order No. 21,881, 80 NH PUC 682, Oct. 30, 1995. [N.H.] Re EnergyNorth Natural Gas, Inc., DR 95-343, Order No. 22,067, 81 NH PUC 211, Mar. 18, 1996. [N.H.] Re EnergyNorth Natural Gas, Inc., DR 96-214, Order No. 22,284, 81 NH PUC 640, Aug. 19, 1996.

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NH.PUC*10/31/96*[89399]*81 NH PUC 829*Northern Utilities, Inc. - New Hampshire Division

[Go to End of 89399]

81 NH PUC 829

Re Northern Utilities, Inc. - New Hampshire Division

DR 96-295
Order No. 22,390

New Hampshire Public Utilities Commission

October 31, 1996

ORDER approving a natural gas local distribution company's winter cost-of-gas adjustment (CGA) filing, resulting in a rate of 6.63 cents per therm, which represents a significant increase over 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 — Increase in rate — Factors — Colder-than-normal winter — Necessity of securing additional supplies — Increases in storage withdrawals — Decreases in interstate pipeline refunds — Local distribution company. p. 833.

Page 829

2. APPORTIONMENT, § 10

[N.H.] Expenses — Capacity-related demand charges — Gas utility — Multistate operations

as a factor — "Proportional responsibility" allocation method — Impact on winter cost-of-gas adjustment filing — Local distribution company. p. 833.

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. 833.

APPEARANCES: LeBoeuf, Lamb, Greene, and MacRae by Meabh Purcell, Esquire, on behalf of Northern Utilities, Inc.; Office of Consumer Advocate by Kenneth E. Traum, on behalf of residential ratepayers of New Hampshire; and Kenneth E. Yasuda, Sr., on behalf of the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On September 15, 1996, Northern Utilities, Inc., (Northern or the Company), a public utility engaged in the business of distributing and transporting natural gas to select cities and towns of New Hampshire, filed with the New Hampshire Public Utilities Commission (Commission), Nineteenth Revised Page 32, Sheet No. 1 and Fourteenth Revised Page 32, Sheet No. 2, superseding Eighteenth Revised Page 32, Sheet No. 1 and Thirteenth Revised Page 32, Sheet No. 2, respectively, N.H.P.U.C., which provides for a Winter 1996/1997 Cost of Gas Adjustment (CGA) for the period November 1, 1996 through April 30, 1997, effective November 1, 1996. The filing was accompanied by the pre-filed direct testimony and supporting attachments of Elizabeth S. McDonough, Manager of Gas Costing and Rate Analysis, and Thomas A. Sacco, Former Vice President of Gas Supply and current consultant to the Company.

On September 16, 1995, Northern filed a Motion for Protective Order and Confidential Treatment, which was granted by the Commission on September 24, 1996 in Order No. 22,335.

On October 10, 1996, Northern filed with the Commission, Twentieth Revised Page 32, Sheet No. 1 and Fifteenth Revised Page 32, Sheet No. 2, superseding Nineteenth Revised Page 32, Sheet No. 1 and Fourteenth Revised Page 32, Sheet No. 2, respectively. The Company's updated 1996/1997 Winter CGA is a charge of $0.0663 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 October 15, 1996.

II. POSITIONS OF NORTHERN, THE OCA, AND STAFF

A. *Northern*

In addition to Ms. McDonough and Mr. Sacco, Dwight G. Curley, a Vice President at Northern and President of Granite State Gas Transmission (Granite State), testified at the October 15, 1996 hearing.

Ms. McDonough detailed the proposed cost of gas adjustment calculations, addressing in particular the diverse causes of the rather large positive Winter CGA. As noted in her testimony, the four major factors which contributed to the CGA increase were: (i) an increase in supplemental gas purchases (stemming from an unusually cold 1995/1996 Winter season); (ii) an increase in storage withdrawals; (iii) a sizable decrease in interstate pipeline refunds to firm sales customers; and (iv) a large difference in the deferred gas cost balance. Partially offsetting the effects of these four factors were the decrease in interstate pipeline and product

demand costs and commodity costs. The net impact of these various influences is the proposed large CGA charge of $0.0663 per therm, which is an increase of $0.0834 per therm from last winter's weighted average credit of $0.0171 per therm.

Ms. McDonough also noted that Northern has implemented its Proportional Responsibility (PR) fixed cost allocation methodology in its current CGA filing; the PR methodology was approved in last winter's CGA proceeding. Because the PR methodology assigns Northern's total annual fixed demand costs to the individual months on the basis of the peak demand for each month, and then allocates the resulting assigned monthly fixed demand costs to each Division, New Hampshire and Maine, on the basis of firm sendout factors, it was Northern's assessment that the PR methodology would more closely mirror the true cost causation of each Division. Commission Staff (Staff) echoed this conclusion.

Mr. Sacco's written and oral testimony described how Northern met the gas requirements of its customers during the 1995/1996 Winter season and explained how Northern will meet these requirements for the upcoming heating season. In describing last year's activities, Mr. Sacco underscored that the 1995/1996 Winter season was one of the colder winters in recent memory, approximately five percent colder than normal, when measured in effective degree days; this is in stark contrast with the previous warm 1994/1995 Winter. This cold weather, coupled with record snow fall, accounted for the increased utilization of supplemental gas supplies from Gaz Metropolitain, Inc. (GMI), liquid propane (LP), and Bay State supplemental, after having utilized all available natural gas pipeline and underground storage capacity.

Northern's ProGas supply used during the 1995/1996 Winter season was briefly examined. This is a gas supply which was first examined in the context of an Affiliate Contract between Northern and Bay State Gas Company during the 1992/1993 Winter season CGA hearing. In response to cross-examination from Staff, Mr. Sacco noted that ProGas proved to be cost effective this past year, displacing more expensive supplemental gas supplies on the order of $30,000, thus enhancing the cumulative performance of the ProGas supply to the benefit of Northern's firm customers. In particular, the savings from the displacement of more expensive gas supplies was in the neighborhood of $1,427,000 and $60,000 during the 1992/1993 and 1993/1994 Winter seasons, respectively; the 1994/1995 Winter season saw a decline in savings to firm ratepayers of approximately $25,000 from the ProGas supply. Mr. Sacco agreed to keep the Commission apprised of the cost performance of the ProGas supply on both an annual and cumulative basis.

With respect to how Northern will meet the gas requirements of its customers during the

upcoming winter period, Mr. Sacco described briefly the steps taken by Northern to secure a diverse and reliable yet economically efficient gas supply portfolio. In particular, Mr. Sacco noted that the selection criteria utilized by Northern over the past three years have not changed for this upcoming Winter season, where four new short-term and one new long-term pipeline natural gas supply contracts are set to come into effect. In addition to fully utilizing its daily allocation of pipeline natural gas (from existing and new supply contracts), other sources of gas supply include underground storage, LP, Bay State LNG, and an extended contract for supplemental supply from GMI. Like the Bay State supplemental supply, Mr. Sacco anticipates that GMI, through its unique operational terms, will provide a very high degree of flexibility.

Mr. Sacco stated that the estimated level of utilization of the underground storage capacity for this Winter season will be less than in prior years, weather-related issues aside. He continues to anticipate that the interruptible transportation (IT) or "best-efforts" transportation service from Northern's Penn-York storage facilities on the Tennessee Gas Pipeline (TGP) will be somewhat restricted; this was the case during the 1994/1995 Winter season. For the 1995/1996 Winter season, Northern was able to circumvent the TGP curtailing problem and more fully utilize its storage resources through a series of swaps and segmentations of capacity on the Tennessee system. Mr. Sacco further

indicated that Northern will continue to monitor the level of IT (best efforts) service from TGP and will reflect such analyses in future estimates of underground storage availability.

In his oral testimony, Mr. Curley updated the Commission with regards to new developments in the proposed LNG tank facility at Wells, Maine (Wells) and the proposed interstate pipeline, the Portland Natural Gas Transmission System (PNGTS). Mr. Curley indicated that the September 11, 1996 notice from the Federal Energy Regulatory Commission (FERC) concerning its intent to issue a supplement to the Draft Environmental Impact Statement (DEIS) regarding the Wells LNG tank facility will, in all likelihood, delay the in-service date of the facility by at least a year, moving it from November 1, 1998 to November 1, 1999. There is even a distinct possibility that the project may become uneconomical, should the FERC decide that the location of the tank needs to be moved to an alternative site. Mr. Curley noted that Granite State has filed a motion for reconsideration at the FERC, but is not optimistic about obtaining a reversal.

The import for Northern of this new FERC-induced Wells development is that it muddies considerably the gas supply picture for the Winter of 1998/1999. Mr. Curley explained that given this murky supply outlook, Granite State has aggressively sought to bring the PNGTS project into center stage. To this end, Mr. Curley stated that: (i) new PNGTS precedent agreements have been signed between Granite State and Northern, which eliminate the excess-capacity problem found in the earlier agreements[1(113)] ; (ii) PNGTS is reaching full subscription, with 174 million a day out of 178 million a day being committed for; (iii) more than adequate daily capacity on the TransCanada Pipe Line (TCPL) has been subscribed for delivery to PNGTS during TCPL's recent open season; and (iv) significant progress is being made to satisfy environmental concerns at both the state and federal level.

Mr. Curley stated that, at this juncture, it appears very promising that PNGTS' in-service date

will meet the critical November 1, 1998 target date. Having made this assessment, Mr. Curley also made it known that should there be any delays in obtaining final FERC-approved certification for the entire PNGTS project, the interstate pipeline project could conceivably be implemented using a phased-in approach. Lastly, should the need arise, Mr. Curley stated that Northern has developed a set of options called the "contingency plan," which will meet the supply short fall on a temporary basis. To put this plan into operation, Mr. Curley estimated that the trigger will need to be pulled at least eighteen months prior to November 1, 1998; essentially, the latest date for Northern to implement the plan is May 1, 1997. This gives sufficient time to determine the status of the PNGTS project at the FERC.

Both Ms. McDonough and Mr. Curley assured the Commission that none of these new developments, in either the Wells LNG or PNGTS projects, have an effect on the current CGA proceeding.

B. *OCA*

The OCA indicated that it would be happy to sign any Commission letter sent to the FERC in support of the Company's position on the Wells and PNGTS projects.

C. *Staff*

Upon review of Northern's filing and after conducting a thorough Company audit, Staff indicated its support for Northern's 1996/1997 Winter CGA filing. In particular, Staff generally concluded that (i) Northern's gas purchasing policies are sound and reasonable, (ii) Northern is utilizing its available resources in a manner which minimizes gas costs, and (iii) Northern's proposed 1996/1997 Winter CGA charge of $0.0663 per therm is reasonable and should be approved.

There are two additional points which Staff raised at the hearing. First, Staff indicated that it will be meeting with representatives from Northern and EnergyNorth Natural Gas, Inc. (ENGI) to discuss possible ways to improve and refine the CGA 10 percent trigger mechanism. Staff hopes to present the results of these meetings to the Commission at the 1997 Summer CGA hearing. Second, Staff updated the

Commission as to the status of the use of various financial instruments to manage price risk. Staff indicated that several meetings were held with representatives from Northern, ENGI, and the OCA, and that a comprehensive work plan is being developed. The parties in this collaborative process hope to present to the Commission next summer a position paper outlining the parties' policy recommendations; if approved by the Commission, a policy on the use and treatment of financial instruments will be in place for next winter's CGA.

III. COMMISSION ANALYSIS

[1-3] Based upon the record in this case, we find that Northern has utilized its available resources in a manner which minimizes its natural gas costs. In particular, we find the gas supply procurement process outlined by Northern to be reasonable and cost effective. We would expect Northern, however, to make a mid-course correction should changes in the spot market gas prices result in gas costs markedly different from those projected.

We also find the proposed Winter CGA rate of $0.0663 per therm, calculated under the PR methodology, to be just and reasonable and in the public interest.

We appreciate Mr. Curley's update on the status of the Wells and PNGTS projects and eagerly anticipate hearing about new developments as they occur. We also look forward to reviewing any proposals to modify the existing CGA trigger mechanism and await submission of the position policy paper on the role of financial instruments.

Based upon the foregoing, it is hereby

ORDERED, that Twentieth Revised Page 32, Sheet No. 1 and Fifteenth Revised Page 32, Sheet No. 2, superseding Nineteenth Revised Page 32, Sheet No. 1 and Fourteenth Revised Page 32, Sheet No. 2, respectively, N.H.P.U.C tariff of Northern Utilities, Inc. (Northern) — New Hampshire Division, providing for a Cost of Gas Adjustment (CGA) of $0.0663 per therm for the period of November 1, 1996 through April 30, 1997, is approved by this Order, effective for bills rendered on or after November 1, 1996; and it is

FURTHER ORDERED, that the over-/under-collection shall accrue interest at the Prime Rate reported in the *Wall Street Journal*. The rate is to be adjusted each quarter using the rate reported on the first date of the month preceding the first month of the quarter; and it is

FURTHER ORDERED, that should the monthly reconciliation of known and projected gas costs deviate from the 10 percent trigger mechanism, Northern shall file a revised CGA; and it is

FURTHER ORDERED, that Northern 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 thirty-first day of October, 1996.

FOOTNOTES

[1]These new precedent agreements have been filed with the Maine and New Hampshire Public Utilities Commissions.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Northern Utilities, Inc., DR 96-295, Order No. 22,335, 81 NH PUC 719, Sept. 24, 1996.

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NH.PUC*10/31/96*[89400]*81 NH PUC 834*Northern Utilities, Inc. - Salem Division

[Go to End of 89400]

Re Northern Utilities, Inc. - Salem Division

DR 96-296
Order No. 22,391

New Hampshire Public Utilities Commission

October 31, 1996

ORDER approving a natural gas local distribution company's winter cost-of-gas adjustment filing, resulting in a charge of 26.46 cents per therm.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 10

[N.H.] Direct energy costs — Cost-of-gas adjustment — Winter season — Factors — Reasonableness of procurement practices — Release of propane customers — Local distribution company. p. 834.

2. 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 costs — Release of more costly propane customers. p. 834.

APPEARANCES: LeBoeuf, Lamb, Greene, and MacRae by Meabh Purcell, Esquire, on behalf of Northern Utilities, Inc.; and Kenneth E. Yasuda, Sr., on behalf of the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

[1, 2] On September 15, 1996, Northern Utilities, Inc. (Northern or the Company), a public utility engaged in the business of distributing and transporting gas in select cities and towns of New Hampshire, filed with this Commission Tenth Revised Page 33, superseding Ninth Revised Page 33, N.H.P.U.C., providing for the Winter 1996/1997 Cost of Gas Adjustment (CGA), effective November 1, 1996. The filing was accompanied by a cover letter and supporting schedules from Michael J. Harn, Rate Analyst, which explained the filing. The proposed 1996/1997 Winter CGA is a charge of $0.4020 per therm.

On October 10, 1996, Northern filed with the Commission Eleventh Revised Page 33, superseding Tenth Revised Page 33, N.H.P.U.C. The Company's updated 1996/1997 Winter CGA is a charge of $0.2646 per therm.

An Order of Notice was issued on September 19, 1996, setting the date of the hearing for October 15, 1996 at 10:00 a.m. at the Commission's office in Concord, New Hampshire.

II. POSITIONS OF NORTHERN AND STAFF

A. *Northern*

The topics covered in the Company's filing and the oral testimony of Mr. Harn included a description of the gas supplies and costs for the Salem Division, which is made up of customers living in the towns of Salem and Pelham.

Mr. Joseph A. Ferro, Manager of Rate Services, also testified at the October 15th hearing. Mr. Ferro described the need for making a revised filing, how the Company was transferring certain gas costs from eleven utility propane customers in the Copper Beach Road development in the town of Salem, part of the Salem Division, to Northern's New Hampshire Division. Mr. Ferro explained that it had always been Northern's intent to connect the customers on Copper Beach Road to pipeline natural gas; to this end, Northern was pursuing a large anchor customer, which would economically

justify running a main to Copper Beach Road. Unfortunately, Northern was not able to secure the anchor customer and it now appears that it will not be cost justified (for the foreseeable future) to connect to the Copper Beach development.

Because of this unfolding of events, Northern has determined that beyond this current Winter CGA period, it is the intent of the Company to release the eleven customers in the Copper Beach development from utility propane service. These customers will be given the opportunity to select a supplier in the competitive retail propane market (including Northern's unregulated retail division).

And consistent with this planned release, Northern, in its revised CGA filing, plans to shift $9,835 of gas costs to the New Hampshire Division by assigning the New Hampshire Division's average cost of gas rate to the eleven direct delivery customers in the Copper Beach Road development in the town of Salem. Mr. Ferro also argued that this reallocation of costs will have the effect of decreasing the Salem Division CGA rate substantially (from $0.4020 to $0.2646 per therm, a reduction of $0.1374 per therm) and also reducing the extent of the intra-division subsidization between the town of Salem customers (that historically have been assessed at the direct delivery retail rate) and those that live in Pelham (and which have been assessed at the wholesale inventory rate).

B. *Staff*

Upon review of Northern's filing and after conducting a Company audit, Staff indicated its support for the Company's revised 1996/1997 Winter CGA filing. In particular, Staff agreed with the Company that it does not make sense for Northern to continue to indefinitely service the eleven customers in the Copper Beach Road development with utility propane. These customers should enter the competitive propane retail market. Staff also supported the Company's reallocation of certain gas costs and agreed that the lower revised CGA rate was not only reasonable, but did indeed help to reduce the subsidization problem within the Salem Division. Ia)

III. COMMISSION ANALYSIS

Based upon the Staff review of the filing and the books and records of the Company and also the record developed in this proceeding, the Commission finds that the proposed CGA rate is just and reasonable and in the public interest. We will therefore approve the rate effective November 1, 1996.

Based upon the foregoing, it is hereby

ORDERED, that Seventh Revised Page 33, superseding Sixth Revised Page 33, N.H.P.U.C. tariff of Northern Utilities, Inc. (Northern) — Salem Division, providing for the Winter 1996/1997 Cost of Gas Adjustment (CGA) charge of $0.2646 per therm for the period November 1, 1996 through April 30, 1997 is hereby approved, said rate to become effective for bills rendered on or after November 1, 1996; and it is

FURTHER ORDERED, that the over-/under-collection will accrue interest at the Prime Rate reported in the *Wall Street Journal*. The rate is to be adjusted each quarter using the rate reported on the first day of the month preceding the first month of the quarter; and it is

FURTHER ORDERED, that should the monthly reconciliation of known and projected gas costs deviate from the 10 percent trigger mechanism, Northern shall file a revised Cost of Gas Adjustment; and it is

FURTHER ORDERED, that the Company file N.H.P.U.C. No. 2 Tariff in compliance with this Commission Order no later than 15 days from the issuance date of this Order, as required by N.H. Admin. Rules, PUC 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this thirty-first day of October, 1996.

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NH.PUC*10/31/96*[89401]*81 NH PUC 836*Keene Gas Corporation

[Go to End of 89401]

81 NH PUC 836

Re Keene Gas Corporation

DR 96-319
Order No. 22,392

New Hampshire Public Utilities Commission

October 31, 1996

ORDER approving a natural gas local distribution company's winter cost-of-gas adjustment filing, resulting in a charge of 39.22 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

increase — Lower than expected inventories — Higher than expected propane costs — Reasonableness of supply contracts — Local distribution company. p. 837.

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 inventories. p. 837.

APPEARANCES: John F. DiBernardo, Assistant General Manager, for Keene Gas Corporation, and Mr. Harry B. Sheldon, Company President. For the Staff of the New Hampshire Public Utilities Commission: Richard B. Deres, PUC Examiner for the Finance Department; and Robert F. Egan, Utility Analyst for the Engineering Department.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On October 7, 1996, 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 1996/1997 Winter Cost of Gas Adjustment (CGA), of $0.3932 effective November 1, 1996. In support of the filing, Keene submitted the pre-filed testimony of John F. DiBernardo, Assistant General Manager. The proposed adjustment would represent a $0.2820 per therm increase from the $0.1112 CGA rate approved by the Commission for the 1995/1996 Winter period.

A duly noticed public hearing was held at the Commission on October 17, 1996.

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 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 $678,813 for the six month period November 1, 1996 through April 30, 1997, include projected delivered propane costs of $602,702 and a prior period under-collection (deficiency) of $76,111. Sales for the period are projected to total 833,321 therms. When total costs are divided by sales, the result is a projected unit cost of gas sold of $0.8146 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 $0.3932 per therm.

The unaccounted for gas during this period was 6.4 percent, which is very close to the average for the previous five years of 6.24 percent.

B. *Trigger Mechanism*

As current inventories of winter fuels appear lower than normal there exists the possibility that costs may well escalate if the winter becomes colder than expected. The issue of the trigger mechanism for revising a CGA was brought up and addressed.

When a company's total costs for the CGA period exceed 10 percent of the original estimates, the "trigger mechanism" has been reached and the company will usually file a revised CGA. The total costs may be affected by cost of product and would also be dependent on the usage and weather. This could occur at any time during the 6 month CGA period. Only once in recent years, the 1989 - 1990 winter, has the trigger mechanism caused a refiling of a CGA.

Mr. DiBernardo explained that if the 10 percent trigger is reached early in the period there might be the opportunity for the company to correct for actual costs and avoid a high over or under collection. If the trigger is reached later in the period it would be much more difficult to correct the over/under collections. Those adjusted costs would be collected over a much shorter time frame.

C. *Supply Contracts*

In prior winter periods Keene usually had one or more supply contracts. Harry Sheldon, President of Keene, found that he was unable to secure any favorable contracts for propane supplies for this winter period. However, he arranged a "supply agreement" for Keene with CNG Transmission Corporation through April 30, 1997. This agreement does not specifically identify the number of gallons nor lock onto a given price. The line addressing quantity reads: "As needed as available." The line addressing price reads: "CNG Transmission's posted price at Selkirk, NY, on the day of lifting."

With the possibility of the TEPPCO pipeline going onto allocation in mid November, Keene will be faced with possible difficulties in obtaining sufficient supplies from this source. The only other possible sources of supply are the terminals in Newington, NH, and Providence, RI. Without contracts with the suppliers at these facilities the cost of product at these locations, if available, will be at the usually higher spot market price. Mr. Sheldon feels that propane will be available, at a price.

In response to a question from Commission Staff regarding its ability to obtain sufficient propane supplies, Mr. Sheldon stated that Keene Gas has never failed to get enough product to satisfy its customers' needs.

III. POSITION OF STAFF

[1, 2] Staff agreed that a high prior period under collection coupled with high propane costs brought about by lower than normal supplier inventories and questions about product availability have resulted in this significant CGA increase. And, although concerned with potentially high supply costs, Staff recommended that the proposed 1996-1997 Winter CGA rate of $0.3922 be

accepted as filed.

IV. COMMISSION ANALYSIS

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 $.3932 per therm, which is an increase from the 1996/1997 Winter CGA, is just and reasonable and in the public good and therefore accepts such as filed.

Based upon the foregoing, it is hereby

ORDERED, that the 19th Revised Page 26, superseding the 18th Revised Page 26 of Keene Gas Corporation Tariff, N.H.P.U.C. No. 1 - Gas, providing for a Cost of Gas Adjustment of $0.3932 per therm for the period November 1, 1996 through April 30, 1997 is APPROVED, said rate to be effective for bills rendered on or after November 1, 1996; 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 thirty-first day of October, 1996.

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NH.PUC*11/04/96*[89402]*81 NH PUC 838*Statewide Electric Utility Restructuring Plan

[Go to End of 89402]

81 NH PUC 838

Re Statewide Electric Utility Restructuring Plan

DR 96-150
Order No. 22,393

New Hampshire Public Utilities Commission

November 4, 1996

ORDER finding that, in general, the benefits of public disclosure outweigh those of nondisclosure insofar as certain projected operating cost, stranded cost, and revenue data are concerned within the context of a commission-initiated proceeding examining a restructuring of the state's electric utility industry. However, the commission again determines that limited protective treatment with respect to stranded cost issues may be appropriate under certain circumstances, but pursuant to individual nondisclosure agreements rather than blanket protective treatment. Accordingly, the commission adopts a nondisclosure agreement format proposed by Granite State Electric Company, to be applicable to all electric utilities.

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1. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective treatment — As to certain operating cost and market revenue data — Required data submissions — In electric industry restructuring proceeding — As to stranded cost recovery — Benefits of disclosure as outweighing those of nondisclosure in general — But provisions for individual rather than blanket nondisclosure agreements — Adoption of model nondisclosure agreement — No need for commission certification of individual agreements. p. 839.

2. EXPENSES, § 120

[N.H.] Electric utilities — Stranded costs — Associated with the sale or divestiture of generating plant — Under industry restructuring plan — Cost and revenue data pertinent to stranded costs — Benefits of disclosure as outweighing those of nondisclosure in general — But provisions for individual rather than blanket nondisclosure agreements — Adoption of model nondisclosure agreement. p. 839.

BY THE COMMISSION:

ORDER

I. Introduction and Procedural History

This order addresses the terms under which parties in this proceeding will be granted access to certain data filed by electric utilities pursuant to the Commission's Preliminary Restructuring Plan issued on September 10, 1996. The Commission initially addressed requests for protective treatment in utility-specific orders issued on October 18, 1996. *See*, Order Nos. 22,369, 22,370, 22,371 and 22,372. In each of those orders, the Commission recognized that certain cost and revenue data is commercially sensitive information, but that the data is essential for parties to meaningfully participate in the upcoming interim stranded cost proceedings.[1(114)] The Commission indicated that intervenors who desire access to this information would be required to execute a reasonable non-disclosure agreement with the subject utility. The Commission reserved the right to take other action if non-disclosure agreements were not executed by October 25, 1996.

On October 24, 1996, Granite State Electric Company (GSEC) filed a motion for entry of protective order (Motion). GSEC's Motion includes a proposed protective order and non-disclosure certification.[2(115)] No objections were filed to GSEC's Motion. The City of Manchester (Manchester) filed on October 29, 1996 a letter stating its belief that GSEC's request "reflects a reasonable approach to gain access to information which is critical to adjudicating interim stranded cost issues."

On October 30, 1996, the Unitil Companies (Unitil) filed a letter indicating that it took no position on GSEC's request, but that the

protective order should not apply to Unitil's filing. Unitil proposed that it should be given a further opportunity to negotiate individual non-disclosure agreements with interested parties.

On November 1, 1996, Connecticut Valley Electric Company (CVEC) filed a motion and proposed protective order that is substantially similar to the one proposed by GSEC. The only substantive difference with CVEC's approach is contained in paragraph 2 of its proposed protective order. CVEC seeks to impose additional limitations on intervenors who now provide or intend to provide energy services in the New England region. In the case of such parties, CVEC proposes to limit disclosure to those outside experts and consultants who execute a non-disclosure certificate.

Public Service Company of New Hampshire (PSNH) filed no response to GSEC's Motion, nor did it propose a non-disclosure agreement relative to its forecasted cost and revenue data.

II. Commission Analysis

[1, 2] After reviewing GSEC's Motion and proposed protective order, we agree with Manchester that it reflects a thoughtful and reasonable approach that fairly balances GSEC's interests with those of parties who wish to participate meaningfully in GSEC's interim stranded cost proceeding. Accordingly, we grant GSEC's Motion, with one clarification: we will not require our Staff to execute non-disclosure certifications, as our Staff is already subject to the constraints of our Ethics Policy adopted June 7, 1996, which requires Staff to honor all proper confidences. To be clear, we direct all Staff members to abide by the terms of the proposed protective order which is attached hereto.

Likewise, we grant CVEC's Motion and the terms of its proposed protective order, with the exception of ¶2. We believe that the non-disclosure certification provides adequate safeguards against the possible misuse of this information. We also believe that the risks of competitive harm to CVEC are outweighed by the need to encourage maximum participation in these proceedings from all interest groups.

With regard to Unitil and PSNH, we reiterate our belief that there is a strong public interest favoring disclosure of the information at issue. The data at issue is essential for the Commission to calculate each utility's stranded costs. That calculation would be unnecessary if a particular utility did not claim to have a right to fully recover those costs during a transition to retail competition. Ratepayers, who will shoulder the financial burden of any stranded cost charges, have a right to have these proceedings conducted in public and with the maximum participation of all stakeholders. Thus, after applying the balancing test adopted by the New Hampshire Supreme Court, we find that the benefits to the public of conditional disclosure in this case outweigh the benefits to the utilities of non-disclosure.[3(116)] *See, Perras v. Clements*, 127 N.H. 603 (1986); *See also, Society for the Protection of N.H. Forests v. Water Supply & Pollution Control Commission*, 115 N.H. 192, 194 (1975) (finding that the intervenors in that proceeding were entitled "to examine all of the evidence relied upon by the Commission in making its final determination").

We find that GSEC's proposal appropriately balances the interests of the participants in this proceeding. Accordingly, we will adopt GSEC's proposed protective order and apply it to each of the jurisdictional utilities in this proceeding unless alternative non-disclosure agreements are executed and filed with the Commission by the close of business on November 6, 1996.[4(117)] If such agreements are not filed by that date, the Commission will allow the participants in this proceeding to access utility data under the terms and conditions stated herein.

Based upon the foregoing, it is hereby

ORDERED, that GSEC's Motion is GRANTED as set forth above; and it is

FURTHER ORDERED, that CVEC's Motion for Issuance of a Protective Order is GRANTED IN PART and DENIED IN PART; and it is

FURTHER ORDERED, that the data filed by Unitil and PSNH shall be provided to participants in this proceeding under the same terms and conditions as set forth in GSEC's Motion unless alternative non-disclosure agreements are executed and filed with the Commission by the close of business on November 6, 1996.

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By order of the Public Utilities Commission of New Hampshire this fourth day of November, 1996.

ATTACHMENT TO ORDER NO. 22,393

STATEWIDE ELECTRIC UTILITY
RESTRUCTURING PLAN

Protective Order
Governing Confidential Data Submissions of
Granite State Electric Company

(November 4, 1996)

This Protective Order is a device to facilitate and expedite the review and handling of data submissions in this docket by Granite State Electric Company ("Granite State Electric" or "Company") which the Commission has ruled are to be afforded protective treatment. Order No. 22,369 (Oct. 18, 1996) (replacing Order No. 22,365 (Oct. 17, 1996)). This Protective Order is not intended to constitute any resolution of the merits concerning the confidentiality of protected materials.

1. This Protective Order shall govern the use of and access to all protected materials produced by or on behalf of Granite State Electric in this proceeding. For the purpose of this proceeding, the term "protected materials" means any documents, data or information produced by the Company in response to any forecast information requested in Appendix C of the Commission's Preliminary Plan on Industry Restructuring; more specifically, "protected materials" means any documents, data or information produced by the Company in response to the requests identified in Order No. 22,369, at 5. Protected materials will be made available only to authorized representatives of participants in the Company's interim stranded cost charge proceeding. These participants hereinafter are referred to collectively as "reviewing parties," or individually as "reviewing party."

2. A reviewing party may disclose protected materials only to its authorized representatives. The term "authorized representatives" means the reviewing party's principals, counsel of record, and associated attorneys, paralegal, economists, statisticians, accountants, consultants or other persons employed or retained by such reviewing party and directly engaged in this proceeding who, in each case, have individually signed and delivered to counsel for the Company a

non-disclosure certificate in the form set forth in Attachment 1 to this Order.

3. All protected materials, as well as the reviewing parties' notes or other information regarding or derived therefrom, shall be treated confidentially by the reviewing party except as otherwise permitted and provided in this Protective Order and are made available to the reviewing parties solely for the purposes of this proceeding, including all appeals from this proceeding. Protected material and information describing or derived therefrom shall not be placed in the public or general files of the reviewing parties except in accordance with the provisions of this Protective Order. A reviewing party's authorized representatives must take all reasonable precautions to ensure that protected materials, including handwritten notes and analyses made therefrom, are not viewed, used, reproduced or taken by any person other than an authorized representative of the reviewing party.

4. No person shall be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to the protected materials pursuant to this Order unless that person is an authorized representative and has first executed, and there has been delivered to counsel for the Company, a non-disclosure certificate in the form set forth in Attachment 1 to this Order. In the event that any person to whom such protected materials are disclosed ceases to be engaged in this proceeding, access to such materials by such person shall be terminated. Every person who has agreed to the certification set forth in Attachment 1 shall continue to be bound by the provisions of this Protective Order and the certification incident thereto, even if no longer so engaged, and even after termination of this proceeding or any portion thereof.

5. Each page of all protected materials produced under this Order shall be physically marked as such by the Company. Such marking may consist of a legend such as the following

designation: PRODUCED PURSUANT TO PROTECTIVE ORDER ISSUED IN NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION DOCKET NO. DR 96-150. THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION, or other similar designation.

6. Subject to the restrictions of this Protective Order, a single copy of the protected materials will be provided under appropriate seal or in an appropriate sealed container to the reviewing party. No more than two additional copies of the protected materials shall be made by the reviewing party, except in accordance with paragraph 7 of this Protective Order.

7. If a reviewing party or the Commission tenders for filing any written testimony, exhibit, or other submission that includes, incorporates, or describes the contents of protected materials, all portions thereof referring to such materials shall be filed and served in sealed envelopes or other appropriate containers endorsed to the effect that they are sealed pursuant to this Protective Order. Such documents shall be marked as protected materials in accordance with paragraph 5, and shall be filed under seal and served only upon counsel or such authorized representatives for such reviewing parties as are authorized to examine and inspect such material. Simultaneously, identical documents and materials — but with all protected materials redacted — shall be served on all other parties to the Company's interim stranded cost charge proceeding. Upon request, counsel for the Company shall provide to counsel for each participant a list of those authorized representatives who are entitled to receive such material. For the purposes of filing written

testimony, exhibits, or other submissions containing protected materials, more than two additional copies of such protected materials may be made.

8. Consistent with N.H. Admin. Rules Puc 204.08(d), if any reviewing party desires to include, utilize, or refer to any protected material in such manner that might require disclosure of such material, such party shall first notify both counsel for the Company and the Commission of such desire, identifying with particularity each of the protected materials, and shall provide to counsel for the Company and the Commission in separate sealed envelopes, bearing the caption "PROTECTED MATERIALS," copies of the protected materials in the form they are intended to be used. If the Company objects to disclosure of such materials, the Company shall provide to the Commission not later than five days after the receipt of the reviewing party's notification, affidavits with respect to each of the identified protected materials demonstrating the reasons for maintaining the confidentiality of the protected materials. All objections and arguments relating to the protected materials shall be conducted *in camera*, closed to all parties except the reviewing parties and their authorized representatives, as described in paragraphs 1 and 2, hereof. That portion of the hearing transcript which refers to the contents of such material shall be sealed and subject to this Protective Order. All protected materials which ultimately may be admitted into evidence shall be filed in sealed, confidential envelopes or other appropriate containers endorsed to the effect that they are sealed pursuant to this Protective Order.

9. Consistent with N.H. Admin. Rules Puc 204.08(d), any examination of witnesses, including without limitation, at depositions and at hearing, concerning the protected materials, shall be conducted *in camera*, closed to all participants except the Company and all authorized representatives of the reviewing parties. Transcripts of the closed depositions and hearings shall be stored in sealed envelopes or other appropriate containers endorsed to the effect that they are sealed pursuant to this Protective Order.

10. If at any time during the course of this proceeding, the Commission finds, on a matter submitted to it by the parties or *sua sponte*, that all or part of the protected materials at issue are not entitled to the protection of this Protective Order, such materials shall be nevertheless subject to the protections afforded by this Protective Order for five (5) business days from the date of the decision of the Commission if oral or in writing. In producing protected materials pursuant to this Protective Order, the Company does not waive any right to seek additional administrative or judicial remedies, nor does any other party. In the event the Commission finds that the protected materials are

confidential, disclosure to persons other than those described in paragraph 2 shall only be under such terms and conditions as the Commission finds sufficient to protect the confidentiality of such material. Consistent with N.H. Admin. Rules Puc 204.08(f), unauthorized disclosure or release of protected materials in contravention of this Protective Order shall not impair this Protective Order which shall remain in full force and effect with respect to such protected materials so disclosed or released.

11. No later than ninety (90) days following conclusion of this proceeding, all protected materials and all notes, summaries, extracts, tabulations and compilations containing portions of

such materials, and all computerizations thereof and indices thereto, in any form whatever, except those in the control of the Commission, shall be returned by each reviewing party to the Company or shall be destroyed. As used in this paragraph, "conclusion of this proceeding" refers to the exhaustion of available appeals, or the running of the time for taking such appeals, as provided by applicable laws. Within such time period, reviewing parties shall also submit to the Company an affidavit stating that all protected materials and copies thereof, as described above, are being returned or have been destroyed. Protected materials in the control of the Commission may either be returned or destroyed in accordance with this paragraph, or may be kept on file with the Commission pursuant to N.H. Admin. Rules Puc 204.08(c)(3) and this Protective Order.

12. All protected materials filed with the Commission, any United States court or state court, or any other judicial or administrative body in support or as part of a motion, other pleading, brief, or other document, shall be filed and served in sealed envelopes or other appropriate containers bearing prominent markings indicating that the contents include Protected Materials subject to this Protective Order.

13. Each party governed by this Protective Order has the right to seek changes in it from the Commission. The Commission may change this Protective Order upon determination that the change is appropriate in the interests of justice or necessary for the orderly conduct of the proceeding.

14. Nothing in this Protective Order shall be construed as precluding any participant from objecting to the use of protected materials on any legal grounds.

The foregoing is hereby ORDERED as of the _____ Day of _____.

ATTACHMENT 1

NON-DISCLOSURE CERTIFICATION

I hereby certify my understanding that the protected materials and the information contained therein are provided to me pursuant to the terms and restrictions of the Protective Order in the New Hampshire Public Utilities Commission Docket No. DR 96-150, and that I have been given a copy of and have read that Protective Order and agree to be bound by it. I understand that such protected materials, any notes or other memoranda, or any other form of information regarding or derived from those materials, including the contents of those documents, shall not be disclosed to anyone other than in accordance with that Protective Order, and shall be used only for the purpose of said proceedings. I acknowledge that a violation of this certification constitutes a violation of an Order of the New Hampshire Public Utilities Commission.

By: _____

Title: _____

Representing: _____

Date: _____

FOOTNOTES

[1]New Hampshire's Right to Know Law, RSA 91-A:5 exempts from public disclosure "confidential, commercial or financial information." *See also*, N.H. Admin. Rules, Puc 204.08.

[2]GSEC's Motion relates only to its interim

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stranded cost proceeding.

[3]The condition in this case is that parties must execute non-disclosure certifications.

[4]Obviously, this directive only applies if a utility has received a request for the data at issue.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Statewide Electric Utility Restructuring Plan, DR 96-150, Order No. 22,369, 81 NH PUC 784, Oct. 18, 1996. [N.H.] Re Statewide Electric Utility Restructuring Plan, DR 96-150, Order No. 22,370, 81 NH PUC 787, Oct. 18, 1996. [N.H.] Re Statewide Electric Utility Restructuring Plan, DR 96-150, Order No. 22,371, 81 NH PUC 790, Oct. 18, 1996. [N.H.] Re Statewide Electric Utility Restructuring Plan, DR 96-150, Order No. 22,372, 81 NH PUC 792, Oct. 18, 1996.

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NH.PUC*11/04/96*[89403]*81 NH PUC 843*EnergyNorth Natural Gas, Inc.

[Go to End of 89403]

81 NH PUC 843

Re EnergyNorth Natural Gas, Inc.

DF 96-342
Order No. 22,394

New Hampshire Public Utilities Commission

November 4, 1996

ORDER authorizing a natural gas local distribution company to increase the limit on its short-term debt from $12.5 million to $15 million, so as to cover unexpectedly large increases in its cost of gas and concomitant undercollections in both its winter and summer cost-of-gas adjustment accounts.

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1. SECURITY ISSUES, § 74

[N.H.] Purposes of capitalization — As to increase in short-term debt limit — To cover operating expenses — Increases in supply costs — Undercollection in cost-of-gas adjustment accounts — Local gas distribution company. p. 843.

2. SECURITY ISSUES, § 98

[N.H.] Kinds and proportions — Short-term debt — Increase in cap — Purpose — To cover operating expenses and increases in supply costs — Undercollection in cost-of-gas adjustment accounts — Local gas distribution company. p. 843.

BY THE COMMISSION:

ORDER

[1, 2] EnergyNorth Natural Gas, Inc. (EnergyNorth), is requesting an increase in its authorized short term debt limitation from $12,500,000 to a maximum of $15,000,000. This would increase EnergyNorth's short term debt limitation from 13.9% to 16.7% of net assets. EnergyNorth estimates that a maximum amount of borrowing outstanding at any one time would be no more than $13,900,000. As of August 31, 1996, EnergyNorth's outstanding short term debt was $6,000,000.

The primary reason for the requested increase is the significant increase in the cost of gas beginning in January 1996. This increase resulted in a large undercollection for both the winter and summer periods of 1996, resulting in a combined undercollection of approximately $4 million. The purpose of the requested increase in the short term debt is to support the undercollection of gas costs and to support the higher short-term debt level required due to the typical working capital needs during the winter heating season.

EnergyNorth has held discussions with its current lenders regarding the additional borrowing and is confident that it could obtain additional lines of credit at a rate similar to its current agreements.

After reviewing the merits of the petition as set forth above, and in accordance with RSA 369, we find the approval of the petition is in

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the public good.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that the petition of EnergyNorth Natural Gas, Inc. for authorization to increase its short term debt limitation from its current level of $12,500,000 to $15,000,000 is hereby approved pursuant to RSA 369:7; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules, Puc 1601.05, EnergyNorth 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 8, 1996, and to be documented by affidavit filed with this office on or before November 15, 1996; and it is

FURTHER ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or file a written request for a hearing on this matter before the Commission no later than November 18, 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 November 20, 1996; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective November 22, 1996, 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 November, 1996.

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NH.PUC*11/04/96*[89404]*81 NH PUC 844*CCI Telecommunications of New Hampshire, Inc.

[Go to End of 89404]

81 NH PUC 844

Re CCI Telecommunications of New Hampshire, Inc.

DE 96-272
Order No. 22,395

New Hampshire Public Utilities Commission

November 4, 1996

ORDER approving, to the extent necessary, a planned merger and reorganization of the parent company of a regulated jurisdictional telecommunications carrier.

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1. CONSOLIDATION, MERGER, AND SALE, § 13

[N.H.] Necessity of commission authorization — For the transfer of 10% or more of a utility's assets or stock — For a change in control. p. 845.

2. CONSOLIDATION, MERGER, AND SALE, § 16

[N.H.] Necessity of commission authorization — For the transfer of a utility to a holding company — Layers of affiliates as a factor — Merger of the owner of a utility's parent company with another entity — Creation of a whole new holding company — Factors affecting approval — No net harm to customers — Telecommunications carriers. p. 845.

BY THE COMMISSION:

ORDER

On August 16, 1996, CCI Telecommunications of New Hampshire, Inc. (CCI-NH) filed a petition with the New Hampshire Public Utilities Commission (Commission) for "any approval required" for the merger of its parent corporation.

CCI-NH is a New Hampshire corporation providing intraLATA non-switched services. CCI-NH is a wholly-owned subsidiary of Continental Telecommunications Corporation

(Continental-TC). Continental-TC, in turn, is a wholly-owned subsidiary of Continental Cablevision, Inc. (Continental Cablevision). Continental Cablevision is seeking to merge into U S WEST Media Group, a subsidiary of U S West, Inc. Subsequent to the merger, U S West, Inc. will own all of the stock of Continental Cablevision, which owns all of the stock of

Page 844

Continental-TC. CCI-NH will continue to be a wholly-owned subsidiary of Continental-TC.

CCI-NH is now authorized, pursuant to Order No. 22,146 (May 14, 1996) to provide non-switched service to the area which New England Telephone-New Hampshire (NET-NH) now serves as the incumbent local exchange carrier. CCI-NH asserts that no adverse impact would befall New Hampshire ratepayers as a result of the merger: the scope of CCI-NH's operations will not change, the current management of CCI-NH will remain in place, the quality of service will not be affected and will continue to be provided at just and reasonable rates. CCI-NH further claims that its position in the increasingly competitive telecommunications market will be enhanced by the merger because greater financial resources will be made available for aggressive marketing and business plans. A stronger competitive position for CCI-NH, it asserts, will benefit New Hampshire telecommunications customers by invigorating competition.

[1, 2] RSA 374:3 grants to the Commission general supervision of all public utilities and the plants owned, operated, or controlled by them so far as necessary to carry into effect the provisions of Title XXXIV. RSA 374:33 forbids any public utility from acquiring more than 10% of the stock of any other public utility without a finding by the Commission that the acquisition is lawful, proper and in the public interest.

Here, a merger is contemplated by which the owner of CCI-NH's parent company will merge with a subsidiary of U S West, Inc. The merged company will become a holding company owning Continental-TC which in turn owns CCI-NH. While this action may not require a specific statutory review pursuant to Title XXXIV, it will result in a holding company acquiring more than 10% of the stock of CCI-NH. Therefore, it is arguable that our approval of the transaction, as being in the public good, is necessary.

We note that, in addition to being a transaction which is somewhat removed from the company that we regulate, the U S WEST Media Group - Continental Cablevision merger differs greatly from the proposed NYNEX-Bell Atlantic merger currently before us in Docket DR 96-220. The proposed NYNEX-Bell Atlantic transaction is a direct merger involving the incumbent local exchange and intrastate toll carrier in New Hampshire. The issues before us in that case are not similar to the instant action. For example, unlike CCI-NH, rates of return for NET-NH, a subsidiary of NYNEX, are set by this Commission. Therefore, while we will review whether the CCI-NH acquisition by U S WEST Media Group is lawful, proper, and in the public interest pursuant to applicable legal standards, our review need not be as in-depth as that which we shall apply to the NYNEX-Bell Atlantic merger.

In *Re Eastern Utilities Associates*, 76 NH PUC 236, 252 (1991)(hereinafter *Re EUA*), we confirmed that the "no net harm" test, articulated as the public good standard in *Grafton County Electric Light and Power Co. v. State*, 77 N.H. 539 (1915), is the standard to be applied to a

proposed merger or acquisition. (*Re EUA* at p. 253.) In essence, the "no net harm" test requires approval of a proposed transaction if the public interest is not adversely affected. (*Id.* at 241.)

Recently in *Re Hampton Water Works Company, Inc.*, 80 PUC 468, (1995), a water company sought approval for a proposed merger with four out-of-state affiliates. We applied the "no net harm" test in that case, as here, with the added concerns raised by the prospect of conflicting rulings among different regulatory bodies. There, we decided that the "no net harm" test became indistinguishable from the more generally applied "public good" standard articulated in *Grafton County*. *Re Hampton* at 473. We found that the water company demonstrated no net harm and, further, we required strict compliance with all Commission rules post-merger. *Id.* We incorporated into our order the obligations set forth in a Joint Recommendation made by Hampton and the Commission Staff. For instance, Hampton agreed to certain requirements, such as maintaining a local office and sufficient staff so that customers would receive over-the-counter service. *Id.* at 471.

In the current docket, CCI-NH will remain a New Hampshire utility post-merger and operations will continue unchanged. Given that

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current operations include strict compliance with Commission rules and New Hampshire service quality will not be adversely affected, we find that the proposed merger will not result in harm to CCI-NH's customers and that the proposed merger is in the public good.

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 U S WEST Media Group and Continental Cablevision, Inc. 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 to be published once in a statewide newspaper of general circulation, such publication to be no later than November 8, 1996 and to be documented by affidavit filed with this office on or before November 15, 1996; and it is

FURTHER ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or file a written request for a hearing on this matter before the Commission no later than November 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 November 15, 1996; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective November 18, 1996, 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 November, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re CCI Telecommunications of New Hampshire, Inc., DE 96-010, Order No. 22,146, 81 NH PUC 374, May 14, 1996.

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NH.PUC*11/05/96*[89405]*81 NH PUC 846*Public Service Company of New Hampshire

[Go to End of 89405]

81 NH PUC 846

Re Public Service Company of New Hampshire

DR 96-121
Order No. 22,396

New Hampshire Public Utilities Commission

November 5, 1996

ORDER approving a proposed special rate contract negotiated by an electric utility and an industrial customer, OSRAM Sylvania Inc., conditioned on the elimination of the six-year contract term contained therein. Commission finds any contract term in excess of five years to be anticompetitive in light of the state's move toward more competition within the electric service industry.

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1. RATES, § 166

[N.H.] Factors affecting reasonableness — Solicitation or retention of business — Special rate contract — Conditions for approval — Elimination of anticompetitive terms — Removal of long-term contract term — Incorporation of maximum term of five years — Electric utility. p. 848.

2. MONOPOLY AND COMPETITION, § 21

[N.H.] Restraint of trade — Anticompetitive terms contained in special rate contracts — Necessity of removal of long-term contract term provisions — As being inconsistent with emerging competition among electric services. p. 848.

3. RATES, § 213

[N.H.] Special rate contracts — Factors affecting commission approval — Term of contract — Elimination of long-term commitment — As anticompetitive in era of emerging competition — Five years as maximum reasonable term — Electric service. p. 848.

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4. RATES, § 213

[N.H.] Special rate contracts — Factors affecting commission approval — Meeting of the minds and willingness of the parties — Notwithstanding anticompetitive terms agreed to therein

— Electric service — Dissenting opinion. p. 849.

BY THE COMMISSION:

ORDER

On April 17, 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-131 (NHPUC-131) between PSNH and OSRAM Sylvania Inc. (OSRAM), which is intended to supersede currently effective special contract NHPUC-92. OSRAM Sylvania, owned by OSRAM Gmbh, a subsidiary of the German multi-national corporation Siemens AG, is a Delaware corporation engaged in the manufacture of high-intensity discharge (HID) lighting at its Manchester, New Hampshire facility. PSNH's filing included the special contract, testimony, and attachments in support of the discounted rates for OSRAM in both redacted and unredacted form. On May 17, 1996, the Commission granted PSNH's Motion for Protective Order (Order No. 22,155) allowing protective treatment for certain information considered confidential in the filing.

OSRAM, the nation's second largest manufacturer of incandescent, fluorescent and HID lighting products, employs approximately 850 people in the manufacturing of HID lighting at its Manchester, New Hampshire facility. OSRAM is currently receiving electric service from PSNH for a portion of its load used for life testing HID lighting under a five-year special contract, NHPUC-92, approved by the Commission on May 2, 1994. *See* Order No. 21,213 in Docket No. DR 94-033.

In the instant filing, PSNH asserts that OSRAM's increased lamp production at its Manchester facility, a result in part due to approval of NHPUC-92, has necessitated an increase in its life testing of HID lighting in order to meet industry standards. Electricity represents a substantial portion of the costs associated with HID life testing. OSRAM could move the incremental life testing to Drummondville, Quebec or keep it at its Manchester facilities. In the absence of Special Contract No. NHPUC-131, PSNH believes OSRAM's alternative would be to move the incremental load to Drummondville, Quebec which used to manufacture HID lighting and currently has vacant production facilities. PSNH states that the Drummondville facility submitted a bid to OSRAM's headquarters in Danvers, Massachusetts. The Manchester facility, after discussions with PSNH about electricity prices, responded with its own bid for the incremental life testing load.

PSNH conducted its own economic analysis of locating the HID testing at the two locations and concluded that the Drummondville site was cheaper overall. The analysis included the proposed discounted rates of NHPUC-131. Nonetheless, OSRAM would prefer to locate the additional load for HID life testing at its Manchester facility because the cost differential is narrow under NHPUC-131 and the savings in electricity costs are less than the value of keeping the life testing load at its manufacturing facility in Manchester. A letter from OSRAM's Manager of Manufacturing Services, Maggie Aghvami-Long, supports PSNH's assertion that absent approval of NHPUC-131, OSRAM would locate the life testing facility elsewhere.

PSNH states that the expected revenues under NHPUC-131 exceed PSNH's marginal cost of

service in all years of the agreement and will serve to reduce the amount of fixed costs to be recovered from all PSNH individual customers.[1(118)]

In response to OSRAM's location alternative for expansion of OSRAM's life testing at its Manchester facility, PSNH has offered OSRAM interruptible pricing in NHPUC-131 which exempts OSRAM from paying a demand charge during the term of the contract, which will end on December 31, 2002. Under

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NHPUC-131, the pricing for the load currently discounted in NHPUC-92 remains the same. OSRAM's current life testing load is priced on a flat energy charge equal to $0.02 per kWh above PSNH's FPPAC costs. All incremental load above the level used in NHPUC-92 will be priced at a lower energy charge equal to the total amount of FPPAC costs included in PSNH's tariff plus an adder of $0.007 per kWh.

The filing reflects a six-year agreement during which OSRAM and PSNH agree to a number of provisions. *Article 2 - Basic Understanding* states, among other things, that OSRAM agrees to take all of its electric services at its Manchester facility from PSNH during the term of NHPUC-131 and that the life testing load will be subject to interruption by PSNH. In *Article 4 - Interruption of Electricity to Life Testing Segment*, OSRAM agrees to interrupt service upon one-hour's notice by PSNH in accordance with NEPEX Operating Procedures No. 4 and No. 7 and the need for PSNH to maintain its system reliability. The pricing of NHPUC-131, including a penalty provision for periods when OSRAM does not interrupt in accordance with Article 4, is included in *Article 5 - Rates and Billing Determinants for Electric Service to Life Testing Segment*. OSRAM agrees in *Article 6 - Conditions To Be Met By OSRAM* not to relocate any of its existing HID life testing segment to any other location. Additionally, OSRAM agrees to expand its additional HID life testing load at its Manchester facility. Article 6 also states, as did Article 2, that, during the term of NHPUC-131, PSNH will be its sole source supplier of electricity. *Article 17 - Prior Agreements Superseded* states that NHPUC-131 represents the entire agreement between the parties and all other agreements, including but not limited to NHPUC-92, are superseded by NHPUC-131.

[1-3] The Commission has reviewed NHPUC-131 and the supporting materials. We have conducted our review pursuant to the language of RSA 378:18, which gives the Commission the authority to approve special contracts when "special circumstances exist which render such departure from the general schedules just and consistent with the public interest ... ." In addition, we note that since NHPUC-131 was filed with the Commission, new legislation, SB 533, has been passed regarding special contracts and economic development and business and load retention tariffs. *See* Laws of 1996, Chapter 186 (effective June 3, 1996).

In determining whether the contract is just and consistent with the public interest, we also are mindful of newly-enacted legislation regarding electric industry restructuring which requires that we "aggressively pursue restructuring and increased customer choice in order to provide electric service at lower and more competitive rates." Laws of 1996, Chapter 129, section 1, subsection III. We also note that the Legislature has directed the Commission to seek to implement "full customer choice among electricity suppliers in the most expeditious manner possible." RSA

374-F:3, XV. We find that the six-year contract, which ends on December 31, 2002, in view of SB 533 and SB 168 (1996 Laws 186:1,III; RSA 378:18-b,III), is incompatible with these Legislative directives. Similar to the term provisions of other special contracts we have approved, we will conditionally approve this contract *subject* to the term contained in Article 12 being reduced to five years. *See* Order No. 22,355, Crown Vantage, and Order No. 22,375, Praxair.

Based on our review in this docket, we believe OSRAM would, absent approval of NHPUC-131, locate its additional HID life testing segment to either Drummondville, Quebec or another site. We are pleased that our previous approval of NHPUC-92 brought benefits and employment to OSRAM's Manchester facility. We believe that our approval of NHPUC-131 will bring additional benefits to OSRAM, PSNH and its other customers.

We will reiterate, as we stated in our Crown Vantage decision, that special contracts entered into after the passage of HB 1392 and SB 533 that are filed between now and competition day will not necessarily receive the same treatment as the Crown Vantage contract or others entered into before enactment of those laws. *See* Order No. 22,355 at 13 in DR 95-114.

The Crown Vantage hearing was noticed to all customers with special contracts pending before the Commission, including OSRAM, and all customers with which PSNH was then

negotiating, in order to address the conditions set forth in Order No. 22,225. At the close of that hearing, OCA and CRR requested evidentiary hearings on other pending special contracts. We do not find a basis to deviate from our use of orders *nisi* in these matters. Should any aggrieved party seek a hearing upon review of any particular special contract orders, 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-131 between PSNH and OSRAM Sylvania Inc. is CONDITIONALLY APPROVED, subject to the condition that PSNH file NHPUC-131 in accordance with the change to Article 12 as indicated herein and makes no other changes; 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 November 12, 1996 and to be documented by affidavit filed with this office on or before November 19, 1996; and it is

FURTHER ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or file a written request for a hearing on this matter before the Commission no later than November 26, 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 December 3, 1996; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective December 5, 1996, 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 November, 1996.

Concurring Opinion of
Commissioner Bruce B. Ellsworth

[4] I would approve NHPUC-131 as filed.

While I agree with my colleagues that Article 12 poses issues which some might consider anti-competitive, I cannot find that it is not in the public interest. There is, here, a contract of two willing parties. If each is satisfied as to the terms and conditions of NHPUC-131, I cannot find it in the public interest to deny them the right to execute it.

Accordingly, I was, and am, prepared to sign an approving order for the contract as submitted. However, the majority returns the contract for reconsideration of Article 12. If the parties agree to the majority's remedy, and if the majority approves the remedied contract, I will join them in approving it.

Bruce B. Ellsworth
Commissioner

November 5, 1996

FOOTNOTES

[1]Although PSNH characterized this filing as "load development," at the hearing on Order No. 22,225 in DR 95-114, Special Contract No. NHPUC-112 between PSNH and Crown Vantage, PSNH testified that the use of special contracts to retain loads such as Crown Vantage is also, in its view, a mitigation of stranded costs.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 94-033, Order No. 21,213, 79 NH PUC 255, May 2, 1994. [N.H.] Re Public Service Co. of New Hampshire, DR 96-121, Order No. 22,155, 81 NH PUC 388, May 17, 1996. [N.H.] Re Public Service Co. of New Hampshire, DR 95-114, Order No. 22,225, 81 NH PUC 518, July 8, 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 96-035, Order No. 22,375, 81 NH PUC 800, Oct. 21, 1996.

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NH.PUC*11/05/96*[89406]*81 NH PUC 850*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 89406]

81 NH PUC 850

Re New England Telephone and Telegraph Company dba NYNEX

DR 96-321
Order No. 22,397

New Hampshire Public Utilities Commission

November 5, 1996

ORDER approving a proposed special rate contract, as revised and amended, between a local exchange telephone carrier and Sprint Communications for the provision of high-usage Centrex service. However, the commission again admonishes the carrier for the deficiencies in its original filings and encourages the carrier to tariff the service rather than rely on special contracts for it.

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1. RATES, § 566

[N.H.] Telephone rate design — Centrex service — Special high-usage service for Internet access providers — Service via special rate contract — Segregation of other Centrex service lines — Local exchange carrier — Commission preference for tariffing over special contracts. p. 851.

2. SERVICE, § 463

[N.H.] Telephone — Centrex service — Special high-usage service for Internet access providers — Service via special rate contract — Segregation of other Centrex service lines — Local exchange carrier. p. 851.

3. RATES, § 237

[N.H.] Schedules and procedure — Filing of proposed special contracts — Effect of administrative deficiencies — Rejection of petition — Subsequent efforts to cure defects — Commission preference for tariffing over special contracts — Telephone Centrex services. p. 851.

BY THE COMMISSION:

ORDER

On October 3, 1996, New England Telephone and Telegraph Company (NYNEX) filed with the New Hampshire Public Utilities Commission (Commission), under RSA 378:18, a special contract (No. 96-8) with Sprint Communications Company, L.P. (Sprint) providing extremely high-usage Centrex services for SprintNet.

NYNEX had previously filed a similar contract and amendment in DE 96-234. By Order No. 22,261, the Commission denied the earlier filing citing "twelve (12) specific issues which require clarification, correction, and/or support ... ." The instant filing is designed to consolidate the previous contract and contract amendment into one, and to remedy the twelve specific issues cited.

In support of its original petition, NYNEX filed a brief contract overview and a cost analysis

associated with the proposed contract. Staff's review revealed several substantive errors in the cost-support package; while several of the specific issues were corrected, several corrections were not reflected in the October 3rd filing. NYNEX filed the necessary revised cost support Attachments A,B,C,D and E on October 23, 1996.

This special contract filing was accompanied by a Motion for Confidentiality to exempt portions of the cost analysis (both the October 3 and 23 filings) and various data from public disclosure. The motion 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 special circumstances underlying this contract differ from the ordinary Centrex special contracts which typically reflect a price concession necessary to compete against a Private Branch Exchange (PBX) competitive alternative. In fact, the price for the high-usage Centrex is higher than the tariff.

SprintNet is a leading Internet Service Provider (ISP). Two national trends bear on this matter. First, usage of the Internet is growing

Page 850

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enormously. Second, Internet usage (which often originates over the Public Switched Telephone Network (PSTN), e.g., dialing an ISP over a modem using a residential access line) has an average holding time in the neighborhood of an hour in sharp contrast to the traditional voice usage of the PSTN which has an average holding time of a few minutes.

This second point causes considerable strain on the usage sensitive portions of the PSTN, primarily the switch. There are widely reported occurrences where heavy Internet usage has tied up PSTN switches such that callers are unable to receive dial tone to place a call to 911. Likewise, heavy usage can cause network blockage which makes it difficult and sometimes impossible for customers of the ISP to gain access to their Internet service. ISPs traditionally have subscribed to *de facto* flat-rated service. Despite their unusually high cost causation, ISPs have had little incentive to pay a more cost causative rate without an assurance that they would enjoy more robust access.

This contract segregates SprintNet's Centrex lines onto a partitioned line unit, configured for 34 Hundred Call Seconds (CCS). CCS is a measure of usage, the Roman "C" represents one hundred Call Seconds and there are 36 CCS, or 3600 seconds, in one hour. PSTN lines are typically engineered and thus costed on CCS levels of 3 to 10. Sprint's rate is reflective of the switch resources consumed by the high CCS usage. Staff believes the engineering configuration is superior to the traditional ISP configuration utilizing measured business lines and offers important public benefits such as improved probability of receiving dial tone. The rate is cost causative in design and an improvement over the utilization by ISPs of "measured" business lines which generate no usage revenues because they are used exclusively for inbound-only calling.

NYNEX indicates that this configuration is tariffed in New York. For administrative expediency, as well as the important public policy reasons outlined above, we encourage NYNEX to file this configuration as a generally available tariff offering.

This special contract is filed pursuant to provisions of the recently enacted special contract statute. *See* RSA 378:18-b (1996). Thereunder, *inter alia*, the Commission has 30 days to determine whether the prices of the services are above the incremental costs of the services provided all necessary information is filed by the company. Obviously, the individual services offered, their respective incremental costs, and their respective prices need to be clearly evidenced as the basis for a reasoned determination. Given the expeditious statutory timeline involved in these dockets, the Commission communicated to NYNEX its expectation that NYNEX's filings must be complete and accurate when filed.

In two recent NYNEX special contract filings, DR 96-187 and DR 96-234, Staff worked closely with NYNEX to identify and correct the shortcomings in the filings. However, the Commission explicitly put NYNEX on notice that:

> "We expect NYNEX to exert a higher level of effort to assure the accuracy and completeness which comports with a thirty-day review or risk rejection of similar, administratively deficient filings in the future." *See* Order No. 22,216 at 3.

[1-3] In the October 3, 1996 filing, NYNEX has not exercised the required diligence. Accordingly, we reject the October 3rd filing as defective under RSA 378:18 and Order 22,216. However, we accept the amended filing of October 23, 1996, based on Staff's recommendation that the filing adequately addresses the twelve specific issues addressed earlier. As in earlier contracts, the charges maintain the two-element price structure, including a commitment amount and a monthly service. Standard factors and schedules were employed. NYNEX provided cost study details that, subject to a number of location-specific, engineering and business assumptions, attempt to demonstrate that the proposed rates for the services exceed the case-specific incremental costs. These incremental costs are not necessarily equal to NYNEX's filed 1990 or 1993 Incremental Cost Study.

Staff recommends that the Commission approve NYNEX's special contract No. 96-8

with Sprint Communications Co, L.P., pursuant to, *inter alia*, RSA 378:18. Staff made this recommendation based on an analysis of the filing, lengthy and numerous discussions with NYNEX, and diligent efforts to work with NYNEX to cure the deficiencies cited.

We have reviewed the petition and accept Staff's recommendation. We recognize the company's efforts to improve the quality of their filing. Notwithstanding the foregoing, the record is clear that NYNEX's filing of October 3, 1996 was not sufficient to gain approval under 378:18. The company's petition was not perfected until October 23rd; accordingly we treat the October 3rd filing as being administratively deficient and reject the petition within 30 days of filing.

The thirty-day timeline for review of a special contract does not comport with late filed revisions. For example we cannot interpret that the legislature intended that the company would be filing amendments or revisions, in the extreme, on the 29th day of our thirty day review period. This would be unreasonable, as they expressly envisioned that we would have 30 days to review the materials before us. Accordingly, we will approve *Nisi* the special contract No. 96-8

filed by NYNEX as revised on October 23, and find approval to be in the public interest, pursuant to RSA 378:18 (1996).

Based upon the foregoing, it is hereby

ORDERED *NISI*, that NYNEX's Special Contract No. 96-8 with Sprint is approved; and it is

FURTHER ORDERED, that NYNEX shall publish a copy of this Order once in a statewide newspaper of general circulation. Said publication shall occur no later than November 12, 1996, and an affidavit proving publication shall be filed with the Commission on or before November 19, 1996; and it is

FURTHER ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or file a written request for a hearing on this matter before the Commission no later than November 26, 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 December 3, 1996; and it is

FURTHER ORDERED, this Order *Nisi* shall be effective December 5, 1996, 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 November, 1996.

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. [N.H.] Re New England Teleph. & Teleg. Co. dba NYNEX, DR 96-234, Order No. 22,261, 81 NH PUC 595, Aug. 5, 1996.

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NH.PUC*11/05/96*[89407]*81 NH PUC 852*Public Service Company of New Hampshire

[Go to End of 89407]

81 NH PUC 852

Re Public Service Company of New Hampshire

DR 96-171
Order No. 22,398

New Hampshire Public Utilities Commission

November 5, 1996

ORDER approving a proposed special rate contract negotiated by an electric utility and an industrial customer, Heidelberg Harris Inc., conditioned on the elimination of certain sole source supplier and anti-self-generation provisions. Commission finds such terms to be anticompetitive in an era of emerging competition and restructuring in the electric utility industry.

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1. RATES, § 166

[N.H.] Factors affecting reasonableness — Solicitation or retention of business — Special rate contract — Conditions for approval — Elimination of anticompetitive terms —

Page 852

Removal of sole source supplier and anti-self-generation terms — Electric utility. p. 854.

2. MONOPOLY AND COMPETITION, § 21

[N.H.] Restraint of trade — Anticompetitive terms contained in special rate contracts — Necessity of removal of sole source supplier and anti-self-generation terms — Electric utility. p. 854.

3. RATES, § 213

[N.H.] Special rate contracts — Factors affecting commission approval — Elimination of anticompetitive provisions — Removal of sole source supplier and anti-self-generation terms — As inconsistent with competition and restructuring goals — Electric utility. p. 854.

4. RATES, § 213

[N.H.] Special rate contracts — Factors affecting commission approval — Meeting of the minds and willingness of the parties — Anticompetitive provisions notwithstanding — Electric utility — Dissenting opinion. p. 855.

BY THE COMMISSION:

ORDER

On May 29, 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-134 (NHPUC-134), a five-year special contract between PSNH and Heidelberg Harris Inc. (Heidelberg). Heidelberg is a Delaware corporation engaged in the manufacturing of large industrial printing presses at its Dover, New Hampshire facility. PSNH's filing included the special contract, testimony, and technical statement including a statement by Heidelberg in support of the discounted rates for Heidelberg in both redacted and unredacted form. On June 17, 1996, the Commission granted PSNH's Motion for Protective Order (Order No. 22,194) allowing protective treatment for certain information considered confidential in the filing.

PSNH states in its filing that although the proposed Special Contract is not the kind of special contract covered under the Commission's Generic Discounted Rate Proceeding in Docket No. DR 91-172, the filing has been prepared with the proposed "Checklist for Economic Development and Business Retention Discounted Rates" in mind to help facilitate the Commission's review of NHPUC-134.

Heidelberg manufactures printing presses, including web offset presses, at its New Hampshire facility. In the filing, PSNH asserts that Heidelberg is concerned with its energy costs and has determined that it is economically beneficial to install a cogeneration facility as a means to lower the cost of electricity which it purchases from PSNH. In the absence of Special Contract No. NHPUC-134, PSNH believes Heidelberg's cogeneration alternative would have an acceptable payback and would be cheaper than purchasing electricity from PSNH at tariffed rates. An attached letter from Heidelberg's President, Robert A. Brown, supports PSNH's assertion that absent approval of NHPUC-134, Heidelberg would install a cogeneration facility, which would substantially reduce its electricity purchases from PSNH. Thus, PSNH has priced electricity to Heidelberg to compete with the cogeneration option which will keep Heidelberg a customer for the five-year term and help to mitigate the adverse effects of lost revenue and sales. In its Technical Statement, PSNH states that the expected revenues under NHPUC-134 exceed PSNH's marginal cost of service in all years of the agreement and will serve to reduce the amount of fixed costs to be recovered from all PSNH individual customers.[1(119)]

In response to Heidelberg's cogeneration option and in order to retain Heidelberg's retail load, PSNH has offered Heidelberg pricing in NHPUC-134 which exempts Heidelberg from paying a separate customer or demand charge during the five-year term of the contract. In

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exchange, Heidelberg pays PSNH five annual lump sum payments starting at $240,000 in the first month of year 1 and ending at $275,000. The energy rate for the first 11,000,000 kWh used per year by Heidelberg at its Dover facility is priced at a Base Energy Charge, equal to FPPAC BA plus FPPAC rate plus Nuclear Decommissioning Charge (NDC), plus a Base Energy Charge Adder of $0.0025 per kWh. An Energy Cost Credit up to $15,000 per year also is available to Heidelberg starting at the end of year 3.

PSNH states that Heidelberg has installed a number of energy efficiency measures and it will participate in PSNH's DSM programs to the extent it is eligible. PSNH also asserts that NHPUC-134 terminates well before additional capacity is needed for the Northeast Utilities System, estimated by PSNH to be 2011.

The filing reflects a five-year agreement during which Heidelberg and PSNH agree to a number of provisions. In *Article 8 - PSNH as Sole Supplier*, Heidelberg agrees to use PSNH as its sole source supplier of electricity during the five-year term of NHPUC-134 and will not displace PSNH electricity sales through purchases of power from third parties or by installing its own generation. Under Article 8B., Heidelberg also agrees that if it elects to take steam or heat from an electric generation facility whose output is used to displace current or future sales by PSNH, Heidelberg will revert back to a full requirements customer under tariffed rates for the remainder of the term of NHPUC-134. NHPUC-134 does not contain an early termination clause; however, either party may terminate NHPUC-134 upon notice to the other if either party fails to abide by any of the terms of NHPUC-134. Should Heidelberg fail to comply with any of the terms, *Article 9 - Damages* details what Heidelberg shall pay PSNH absent its opportunity to cure as specified in *Article 10 - Notification of Non-Performance: Opportunity to Cure*. If Article 8A is breached by Heidelberg, Heidelberg agrees to pay PSNH the net present value of

PSNH's lost contribution for each remaining year in the term of NHPUC-134. Heidelberg further agrees that the damages provided in Article 9 represent a reasonable estimate of the actual damages PSNH would incur as a result of a breach under Article 8A.

Article 12 - Effective Date and Contract Term states that the contract "shall continue in full force and effect for a period of five years from the Effective Date," unless terminated sooner pursuant to Article 9.

[1-3] The Commission has reviewed NHPUC-134 and the supporting materials. We have conducted our review pursuant to the language of RSA 378:18, which gives the Commission the authority to approve special contracts when "special circumstances exist which render such departure from the general schedules just and consistent with the public interest ... ." In addition, we note that since NHPUC- 134 was filed with the Commission, new legislation, SB 533, has been passed regarding special contracts and economic development and business and load retention tariffs. *See* Laws of 1996, Chapter 186 (effective June 3, 1996).

The contractual provision preventing third party generation, *Article 8 - PSNH as Sole Supplier*, contained in this contract, essentially the same provision which we have found objectionable in prior orders, is anti-competitive in that it prevents Heidelberg from allowing any third party from installing additional generation for sale or use by the third party. We will require, as a condition of our approval, that Article 8B prohibiting Heidelberg from installing or allowing a third party to install additional generation for the purposes of displacing current or future PSNH sales be removed. Our understanding from the supplemental testimony of Mr. Long in DR 95-114 and from the hearing on September 6, 1996, is that PSNH agrees to amend its pending special contracts to comply with this condition.

In determining whether the contract is just and consistent with the public interest, we also are mindful of newly-enacted legislation regarding electric industry restructuring which requires that we "aggressively pursue restructuring and increased customer choice in order to provide electric service at lower and more competitive rates." Laws of 1996, Chapter 129, section 1, subsection III. We also note that the Legislature has directed the Commission to seek to implement "full customer choice among

electricity suppliers in the most expeditious manner possible." RSA 374-F:3, XV. We find that a five year contract is compatible with these Legislative directives and consistent with the term provisions of other special contracts we have approved. *See* Order No. 22,356, Crown Vantage, and Order No. 22,375, Praxair.

Based on our review in this docket, we believe Heidelberg would, absent approval of NHPUC-134, displace PSNH's electricity sales with its viable cogeneration option. Therefore, consistent with our analysis in Order No. 22,355, we will approve NHPUC-134. We believe NHPUC-134 will provide benefits to Heidelberg, PSNH and its customers while ensuring that a large customer will remain available for future competition during this transitional period.

We will also reiterate, as we stated in our Crown Vantage decision, that special contracts entered into after the passage of HB 1392 and SB 533 that are filed between now and "competition day" will not necessarily receive the same treatment as the Crown Vantage contract

or others entered into before enactment of those laws. *See* Order No. 22,355 at 13 in DR 95-114.

The Crown Vantage hearing was noticed to all customers with special contracts pending before the Commission and all customers with which PSNH was then negotiating, in order to address the conditions set forth in Order No. 22,225. At the close of that hearing, OCA and CRR requested evidentiary hearings on other pending special contracts. We do not find a basis to deviate from our use of orders *nisi* in these matters. Should any aggrieved party seek a hearing upon review of any particular special contract orders, 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-134 between PSNH and Heidelberg Harris Inc. is APPROVED, subject to the condition that PSNH file NHPUC-134 in accordance with the change to *Article 8 - PSNH as Sole Supplier* as indicated herein and makes no other changes; 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 November 12, 1996 and to be documented by affidavit filed with this office on or before November 19, 1996; and it is

FURTHER ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or file a written request for a hearing on this matter before the Commission no later than November 26, 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 December 3, 1996; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective December 5, 1996, 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 November, 1996.

Concurring Opinion of
Commissioner Bruce B. Ellsworth

[4] I would approve NHPUC-134 as filed.

While I agree with my colleagues that Article 8 poses issues which some might consider anti-competitive, I cannot find that it is not in the public interest. There is, here, a contract of two willing parties. If each is satisfied as to the terms and conditions of NHPUC-134, I cannot find it in the public interest to deny them the right to execute it.

Accordingly, I was, and am, prepared to sign an approving order for the contract as submitted. However, the majority returns the contract for reconsideration of Article 8. If the parties agree to the majority's remedy, and if the majority approves the remedied contract, I will join them in approving it.

Bruce B. Ellsworth
Commissioner

FOOTNOTES

[1]At the hearing on Order No. 22,225 in DR 95-114, Special Contract No. NHPUC-112 between PSNH and Crown Vantage, PSNH testified that the use of special contracts to retain loads such as Crown Vantage and Heidelberg is also, in its view, a mitigation of stranded costs.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 96-171, Order No. 22,194, 81 NH PUC 463, June 17, 1996. [N.H.] Re Public Service Co. of New Hampshire, DR 95-114, Order No. 22,225, 81 NH PUC 518, July 8, 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 96-138, Order No. 22,356, 81 NH PUC 752, Oct. 15, 1996. [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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NH.PUC*11/05/96*[89408]*81 NH PUC 856*Public Service Company of New Hampshire

[Go to End of 89408]

81 NH PUC 856

Re Public Service Company of New Hampshire

DR 96-077
Order No. 22,399

New Hampshire Public Utilities Commission

November 5, 1996

ORDER denying rehearing of Order No. 22,234 (81 NH PUC 531, *supra*), in which the commission had addressed overcollections, cost deferrals, and the effect of three nuclear plant outages within the context of an electric utility's fuel and purchased power adjustment clause (FPPAC) proceeding.

The commission affirms that certain past FPPAC recoveries had been improperly deferred, such that ratepayers are entitled to a refund, but it agrees to review the calculation of such overcollections in the utility's next FPPAC proceeding. Commission rejects arguments that it overstepped its authority as to replacement power costs associated with the nuclear plant outages and it confirms the utility's liability for outage costs associated with mussel fouling at the Millstone 3 unit.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 57

[N.H.] Billing adjustments — For over- or undercollections — Deferrals to assure compliance with annual rate increase cap — Effect of improper deferrals — Overcollections to be refunded to ratepayers — Recalculation of deferrals and overcollections. p. 858.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 12

[N.H.] Direct energy costs — Fuel and purchased power adjustment clause — Nuclear generating costs as a component — Impact of extended, unplanned outages — Limits on recovery of associated replacement power costs — Joint dispatch savings to offset replacement power costs — Utility-initiated versus commission-mandated mechanism — Electric utility. p. 858.

3. EXPENSES, § 122

[N.H.] Electric utility — Fuel and purchased power costs — Replacement power costs — Incurred due to extended, unplanned outages at nuclear plants — Limits on recovery — Joint dispatch savings to offset replacement power costs — Utility-initiated versus commission-mandated mechanism. p. 858.

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4. ELECTRICITY, § 4

[N.H.] Generating plant — Operating practices — Necessity of "best efforts" — Nuclear plant outages — Millstone 3 and Seabrook units — Negligent design engineering and imprudent plant management as factors — Liability for — Merely as result of partial ownership interest — Lack of operational control notwithstanding — Affirmation. p. 858.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On March 11, 1996, Public Service Company of New Hampshire (PSNH) filed with the New Hampshire Public Utilities Commission (Commission) a petition for adjustment of rates pursuant to the Fuel and Purchased Power Adjustment Clause (FPPAC) of the Rate Agreement for the period June 1, 1996 through December 31, 1996, along with supporting testimony and exhibits.

The New Hampshire Electric Cooperative, Inc. (NHEC) sought late intervention, without opposition, which the Commission granted on April 18, 1996. The Office of Consumer Advocate

(OCA) is a statutorily authorized intervenor. There were no other requests for intervention.

Prior to the FPPAC filing, PSNH filed a Motion to Amend Scope. In the Motion to Amend, PSNH argued that five issues should be deferred until a later proceeding, including investigation of two outages at Millstone 3 that occurred in 1991. By Order No. 22,045 the Commission denied the request to defer consideration of the two 1991 Millstone 3 outages.

Duly noticed hearings addressing the relevant issues were held on May 15, 16 and 17, 1996. On July 10, 1996, the Commission issued Order No. 22,234 setting forth its findings and establishing the FPPAC rate. On August 9, 1996, PSNH filed a Motion for Rehearing or Clarification (Motion) pursuant to RSA 541:3 (Supp. 1995). No objections were filed to the Motion. On September 9, 1996, the Commission orally denied the Motion but indicated a need to clarify certain aspects of Order No. 22,234. This written order follows.

II. POSITIONS OF PUBLIC SERVICE
COMPANY OF NEW HAMPSHIRE

In the Motion, PSNH argued that the Commission improperly interpreted and implemented the provisions of Paragraph B.(K) of the "EA" component of the FPPAC formula. PSNH alleged that the Commission's requirement that PSNH refund monies collected over the past four years, which should have been deferred under Paragraph B.(K), constituted unconstitutional retroactive ratemaking and violated the Commission's statutory authority under, among other provisions, RSA 365:29 and RSA 362-C:3.

PSNH also argued that the Commission improperly implemented its interpretation of Paragraph B.(K) and required PSNH to defer an inappropriately high amount.

PSNH objected to the dismissal of its contention that replacement power costs incurred by PSNH due to imprudent outages at generating facilities in the Initial System should be offset by Joint Dispatch Savings. PSNH argued that it was unfair for the Commission to offset replacement power costs incurred for imprudent outages at Seabrook Station with Joint Dispatch Savings flowing to the Initial System, and then, when there is imprudence on the Initial System and Joint Dispatch Savings flow to PSNH, to not use those savings to offset replacement power costs.

PSNH alleged that the Commission erred by applying a "hindsight-based standard of perfection" in determining that an outage at Millstone 3 caused by mussel fouling in Train B of the service water cooling system was the result of imprudence. PSNH also contended that the Commission's application of the common law rules of agency in holding PSNH liable for the acts of its agents was error.

PSNH also argued that the Commission wrongly concluded that Northeast Nuclear

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Energy Company and North Atlantic Energy Service Company had not fully communicated concerning the problems with Turning Vane Cap Screws (TVCS) on the reactor coolant pumps, and that the Commission again applied an unwarranted standard of perfection to Seabrook personnel. PSNH also maintained that the Commission applied the wrong legal standard in requiring Northeast Utilities Service Company to use its "best efforts" to maximize operational

performance at Seabrook.

Finally, PSNH requested that the Commission clarify its position on the recovery of Paragraph B.(D) and B.(K) deferrals at the end of the Fixed Rate Period.

III. COMMISSION ANALYSIS

[1] With regard to the Commission's interpretation of Paragraph B.(K) requiring the deferral of Paragraph B.(D) amortizations that would increase the annual 5.5% rate increases, we disagree with PSNH's assertions of constitutional or statutory infirmity. In its Motion, PSNH has simply reiterated the positions it set forth in its post-hearing memorandum which we fully addressed in Order No. 22,234. Thus, there is no need to recount our analysis herein. We find no basis to reconsider our position.

Based on PSNH's assertions that we miscalculated the amount that should have been deferred pursuant to Paragraph B.(K), we will re-examine the appropriate deferral amounts in the upcoming FPPAC proceeding to ensure that Order No. 22,234 is appropriately implemented.

[2, 3] Regarding the use of Joint Dispatch Savings to offset replacement power costs incurred because of imprudence, PSNH has restated the position it set forth in its post-hearing memorandum and alleged that the Commission has not acted consistently in applying its analysis. As we stated in Order No. 22,234, there is nothing in the Sharing Agreement supporting PSNH's position. Further, such a mechanism as that proposed by PSNH would send distorted economic signals by negating any financial disallowance imposed upon a utility whose actions are found imprudent. Finally, contrary to PSNH's assertion, the Commission has never required PSNH to offset replacement power costs incurred due to imprudent outages at Seabrook Station with Joint Dispatch Savings flowing to the Initial System. Although PSNH itself may have made such offsets within the financial exhibits supporting the rates in its previous FPPAC filings, this Commission has never explicitly ruled on the propriety of such replacement power offsets.

[4] In concluding that the 1991 mussel fouling outage at Millstone 3 was the result of imprudence, we did not apply a "hindsight-based standard of perfection." As we set out in detail in Order No. 22,234, we found that the design engineering firm and plant management were negligent in the design and construction of the Train B service water tunnel based on what was or should have been known at the time of the plant's construction. We further found imprudence on the part of management for not providing for and ensuring positive confirmation that Train B had fully drained during periods when the plant was off-line. Order No. 22,234 at pp. 22-28. With regard to the contention that the common law rules of agency do not apply to PSNH's agents operating power plants throughout New England, PSNH has cited to no authority which would negate this general rule of law.

With regard to our factual finding of imprudence for the Seabrook outage involving the Turning Vane Cap Screws, again we did not apply a "hindsight-based standard of perfection," but rather relied on what was known or should have been known at the time of the outage. Based on that standard, we found management imprudence.

PSNH is correct that in determining what was or should have been known regarding the operation of Seabrook we applied the "best efforts" standard explicitly set forth by the

Commission in *Re Northeast Utilities/Public Service Company of New Hampshire*, 75 NH PUC 396 (1990). As we stated therein the Commission,

> will hold PSNH strictly accountable in subsequent rate proceedings to demonstrate that they have exercised their best efforts to achieve the projected level of synergistic savings before any rate proposals are approved.

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Re Northeast Utilities/Public Service Company of New Hampshire, 75 NH PUC 396, 447 (1990).

If Northeast Utilities or PSNH did not accept this condition to the acquisition of PSNH by Northeast Utilities it should have appealed the decision.

Because the next FPPAC period coincides with the end of the Fixed Rate Period, and because none of the parties or Staff has had an opportunity to fully set forth their positions on the proper treatment of Paragraph B.(K) or B.(D) deferrals after the Fixed Rate Period, we will defer consideration of the appropriate means of recovery of Paragraph B.(K) and B.(D) deferrals until the next FPPAC proceeding when the issue is ripe.

Based upon the foregoing, it is hereby

ORDERED, that Public Service Company of New Hampshire's Motion for Rehearing is denied and the Motion requesting Clarification is granted in part consistent with the findings set forth above.

By order of the Public Utilities Commission of New Hampshire this fifth day of November, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 96-077, Order No. 22,045, 81 NH PUC 174, Mar. 11, 1996. [N.H.] Re Public Service Co. of New Hampshire, DR 96-077, Order No. 22,234, 81 NH PUC 531, July 10, 1996.

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NH.PUC*11/05/96*[89409]*81 NH PUC 859*Public Service Company of New Hampshire

[Go to End of 89409]

81 NH PUC 859

Re Public Service Company of New Hampshire

DR 96-311
Order No. 22,400

New Hampshire Public Utilities Commission

November 5, 1996

ORDER approving an electric utility's proposed renegotiation of a long-term rate agreement for purchases of power from a qualifying hydropower small power producer, Fiske Mill Hydro, Inc. The proposed renegotiation will provide the utility with a 7% reduction in rates payable in exchange for the utility's assignment of lien rights to third-party mortgagees, so as to allow the hydro project to secure additional financing. The commission notes that the rate reduction is sufficient and in keeping with guidelines established when it had earlier rejected a proposed renegotiation providing for only a 5% reduction (Order No. 22,168 [81 NH PUC 408, *supra*]).

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1. COGENERATION, § 17

[N.H.] Contracts — Long-term rate agreement — Proposed modification — Factors affecting approval — Sufficient pricing concessions — 7% versus 5% rate reduction — Hydropower small power producer. p. 860.

2. COGENERATION, § 25

[N.H.] Rate design — Purchases from hydro small power producer — Proposed renegotiation of rates — Pricing concessions — As meeting minimum 7% rate reduction threshold — But no guarantee of long-term cost recovery. p. 860.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

In DR 96-076, Public Service Company of New Hampshire (PSNH) filed a petition with the Commission requesting approval to modify Order No. 17,871 with Fiske Mill Hydro, Inc. (Fiske Mill). The proposed rate order modification allowed the owners to secure an additional financing of $1.3 million and

Page 859

reflected a 5% rate order price reduction by Fiske Mill's owners in exchange for PSNH's lien subordination and assignment of its rights to third party mortgagees.

On May 28, 1996, the Commission issued Order No. 22,168 rejecting PSNH's petition. In its Order, the Commission stated that it viewed a 7% price reduction to be the "minimum for such small hydro rate order modifications." The Commission further stated that it retained the right to review future rate order modification filings within the context of current market conditions, competitively driven wholesale market opportunities and revised avoided cost information.

On August 15, 1996, PSNH filed an Amended Agreement to Modify the Fiske Mill Rate Order, a Revised Schedule of Rates, and a Renewed Petition to Modify Rate Order. In its Renewed Petition PSNH asserts that the filed documents "incorporate the Commission's concerns as expressed in its Order No. 22,168" in Docket No. DR 96-076.

II. POSITIONS OF THE PARTIES

In this proceeding, PSNH has filed similar materials as were filed in DR 96-076. In its petition, PSNH also requests the following: a) approve the Agreement to Modify Rate Order, b) under the Public Utilities Regulatory Policy Act and the Limited Electrical Energy Producers Act, modify Order No. 17,871 so that PSNH would purchase the output from Fiske Mill at the revised rates and make a finding that the revised Fiske Mill rates are "reasonable for recovery from customers over the remainder of the term of the original Order No. 17,871," c) grant the Renewed Petition to Modify Rate Order, and d) order such further relief as may be just and equitable.

III. COMMISSION ANALYSIS

[1, 2] In this proceeding, we are presented with an Amended Agreement to Modify Rate Order and a Revised Schedule of Rates. The primary difference between the original and the amended filings from the perspective of rates is that the Revised Schedule of Rates represents a 7% discount from the original rate order prices instead of a 5% discount. Insofar as the petition seeks approval of the 7% discount, we approve the request consistent with our earlier findings.

However, we are also presented with a petition by PSNH that requests four specific approvals by the Commission. In particular, PSNH requests that the Commission make "a finding that the revised Fiske Mill rates are reasonable for recovery from customers over the remainder of the term of the original Order No. 17,871."

Since there is no such language in the original Fiske Mill rate order, we believe that PSNH could be interpreted to be seeking additional cost recovery assurance from the Commission greater than they currently have under the original rate order or were granted in another similar proceeding. For instance, in the Otter Lane amended rate order Stipulation in DE 96-033, PSNH did not seek explicit, additional Commission language approving the new prices as reasonable for cost recovery over the remainder of the Otter Lane rate order term. Instead, PSNH sought:

> "confirmation by the PUC that its Order No. 18,430 will continue to be valid and effective upon the Petitioner's acquisition of the Forsters' Mill Hydro project and that the Petitioner will have all of the benefits of such order as if it had been the party for whose benefit such order had originally been issued; provided, however, that upon transfer of the rate order to the Petitioner, the rate payable by PSNH shall be subject to a five percent (5%) discount during the remainder of the twenty (20) year term."

We believe that DE 96-033 provides guidance for this proceeding with respect to PSNH's request for a Commission finding that the rates are reasonable for cost recovery from customers over the remainder of the rate order term. Moreover, in consideration of comparable issues raised and currently open in DR 95-022, we will not at this time approve language for an additional guarantee of long term cost recovery than is already provided to PSNH under its original rate order which was approved in Order No.

Page 860

17,871.

PSNH does not explain the need for this additional guarantee for cost recovery language in its petition and we do not see the need for such additional guarantees as long as we confirm that PSNH and the Fiske Mill owners retain equal and continuing rights under the amended rate order as they possessed under Fiske Mill's originally approved rate order.

Based on the foregoing, it is hereby

ORDERED *NISI*, that the proposed Fiske Mill 7% rate order discount modification is APPROVED; and it is

FURTHER ORDERED, that PSNH's requested relief for Sections A, D, and E of its Renewed Petition to Modify Rate Order is GRANTED; and it is

FURTHER ORDERED, that PSNH's requested relief for Section B of its Renewed Petition to Modify Rate Order is DENIED; 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 November 12, 1996 and to be documented by affidavit filed with this office on or before November 19, 1996; and it is

FURTHER ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or file a written request for a hearing on this matter before the Commission no later than November 26, 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 December 3, 1996; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective December 5, 1996, 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 November, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H] Re Public Service Co. of New Hampshire, DR 96-076, Order No. 22,168, 81 NH PUC 408, May 28, 1996. [N.H] Re River Bend Mill d/b/a Forsters' Mill Hydro, DR 86-246, Order No. 18,430, 71 NH PUC 576, Oct. 1, 1986.

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NH.PUC*11/06/96*[89410]*81 NH PUC 861*GTE Card Services, Inc., dba GTE Long Distance

[Go to End of 89410]

81 NH PUC 861

Re GTE Card Services, Inc., dba GTE Long Distance

DS 96-323

Order No. 22,401

New Hampshire Public Utilities Commission

November 6, 1996

ORDER authorizing an interexchange telephone carrier to introduce new toll and toll-free products for both residential and business customers, with variable rates depending on monthly usage volumes and term commitments.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — New service plans — Residential and business customers — Variable rates — Factors — Monthly usage volumes — Length of service commitment — Interexchange carrier. p. 861.

BY THE COMMISSION:

ORDER

[1] On October 4, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from GTE Card Services, Inc., d/b/a GTE Long Distance (GTE) requesting authority to introduce its tariff, NHPUC No. 2 for effect November 2, 1996.

The new tariff, NHPUC No. 2, contains two parts. Part I is identical to GTE's tariff NHPUC No. 1. Part II introduces GTE long distance services for both residential and business customers. Products include toll and toll-free services with various rates depending on volume of monthly usage and term commitments.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize GTE to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

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

FURTHER ORDERED, that GTE file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this sixth day of November, 1996.

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NH.PUC*11/06/96*[89411]*81 NH PUC 862*LDDS Communications, Inc.

[Go to End of 89411]

81 NH PUC 862

Re LDDS Communications, Inc.

DS 96-324
Order No. 22,402

New Hampshire Public Utilities Commission

November 6, 1996

ORDER authorizing an interexchange telephone carrier to charge residential customers 75 cents per call for directory assistance and to institute tariff language allowing termination for cause for quality-of-service reasons.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Directory assistance — Per-call charge — Residential customers — Interexchange carrier. p. 862.

2. SERVICE, § 275

[N.H.] Discontinuance — Telephone carrier — Toll service — Termination for cause — Due to quality of service — Interexchange carrier. p. 862.

BY THE COMMISSION:

ORDER

[1, 2] On October 9, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from LDDS Communications, Inc., (LDDS) requesting authority to introduce a Summary Report Charge, revise Termination Language and introduce a Directory Assistance rate for residential customers.

A Summary Report Charge is being introduced for business customers who wish to receive any type of monthly summary reports (e.g., area code summary and 800 summary by date).

Termination Language is being revised to allow termination for cause for quality of service reasons. In addition, language is being added to limit LDDS' liability for termination for cause.

A Directory Assistance (DA) charge is being introduced for residential customers. The proposed DA rate for residential customers is 75 cents per call.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize LDDS to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of

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LDDS' tariff, NHPUC No. 2 are approved as of the date of this order:

12th Revised Page 1

12th Revised Page 1.1

4th Revised Page 1.2

3rd Revised Page 74.2

1st Revised Page 74.2.1

2nd Revised Page 80

Original Page 107.1

1st Revised page 109.5;

and it is

FURTHER ORDERED, that LDDS file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this sixth day of November, 1996.

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NH.PUC*11/06/96*[89412]*81 NH PUC 863*Hanover Water Works Company

[Go to End of 89412]

81 NH PUC 863

Re Hanover Water Works Company

DF 96-346
Order No. 22,403

New Hampshire Public Utilities Commission

November 6, 1996

ORDER authorizing a water utility to issue up to $60,000 in long-term debt so as to finance construction of a new administrative office building.

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1. SECURITY ISSUES, § 58

[N.H.] Purposes of financing — Additions and betterments — Construction of new office facility — Long-term debt issuance — Water utility. p. 863.

BY THE COMMISSION:

ORDER

[1] On October 24, 1996, Hanover Water Works Company (Hanover Water) filed with the New Hampshire Public Utilities Commission (Commission) a petition for the approval of long term debt financing for the purpose of constructing an administrative office structure on company property adjacent to its facility on Grasse Road in Hanover. Hanover Water is a corporation organized under a Special Act of the New Hampshire Legislature on March 31, 1893, amended January 28, 1925, and engaged in the business of supplying water for domestic and commercial use and for fire protection in the Town of Hanover. Its principal place of business is Hanover, New Hampshire.

The proposed commercial mortgage loan will be with the Citizens Bank of Lebanon, New Hampshire, for $60,000 with a 10 year balloon payment based on a 15 year term schedule of payments. The interest rate will start at 8.75%, be reviewed annually and adjusted to 1/2 percent over the prime rate as reported in the Wall Street Journal. The note will be secured by the administrative office structure that will be built with the Citizens Bank funding.

The proposed loan will cause a reduction in annual operating expenses. Hanover Water currently pays $11,000 for the administrative space it leases in downtown Hanover. With the completion of the new administrative office structure, estimated annual operating expenses for the new facility will be approximately $9,300. Citizens Bank is not charging any fees or other expenses for this financing.

We find the purposes and terms of the proposed financing to be in the public good. We commend Hanover Water for its efforts to develop a financing arrangement which meets the needs of the utility while benefiting its ratepayers.

Based upon the foregoing, it is hereby

ORDERED, *NISI*, that Hanover Water be, and hereby is, granted authorization, pursuant to RSA 369:1 and 4 to enter into an agreement with the Citizens Bank of Lebanon, New Hampshire to borrow $60,000, such borrowing

Page 863

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to be in accordance with terms and conditions set forth in the petition; and it is

FURTHER ORDERED, that Hanover Water be, and hereby is, granted authorization, pursuant to RSA 369:2 to grant Citizens Bank a lien on the facility to be built for the company; and it is

FURTHER ORDERED, that public notice of this order be given by onetime publication in newspapers having general circulation in the area served, such publication to be on or before November 13, 1996 and said publication to be documented by affidavit filed with this office no

later than November 20, 1996; 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 hearing in this matter no later than November 27, 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 December 4, 1996; and it is

FURTHER ORDERED, that finalized copies of this financing arrangement be filed with the Commission as well as a detailed accounting of the final actual issuance costs; and it is

FURTHER ORDERED, that on January 1st and July 1st of each year Hanover Water 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 *Nisi* shall be effective December 6, 1996 unless a request for a hearing is granted by the Commission as provided above or unless the commission orders otherwise prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this sixth day of November, 1996.

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NH.PUC*11/06/96*[89413]*81 NH PUC 864*New Hampshire Electric Cooperative, Inc.

[Go to End of 89413]

81 NH PUC 864

Re New Hampshire Electric Cooperative, Inc.

DR 96-147
Order No. 22,404

New Hampshire Public Utilities Commission

November 6, 1996

ORDER clarifying 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 that is not at risk of being lost to self-generation by the customer. Commission explains that it would be illogical to think that the interruptible service provisions in the contract could be applicable to residential and streetlighting purposes. It states further that the discounts were intended to apply only to snowmaking, lift operations, and trail maintenance activities.

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1. RATES, § 360

[N.H.] Electric rate design — Seasonal customers — Ski resorts — Service via special rate

contracts — Discounts — As necessary for retaining load and preventing self-generation — — Applicability of discounts — Only to actual ski operations — Inapplicability to other, separately metered load — Other load as not being at risk of being lost to self-generation — Electric cooperative. p. 866.

2. RATES, § 211

[N.H.] Special contracts — Provisions for rate discounts — As necessary for retaining load and preventing self-generation — 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

Page 864

— Electric cooperative. p. 866.

3. CONTRACTS, § 14

[N.H.] Construction — Discounted rate agreement — Interpretation and effect — Applicability of discounts to all versus some load — Factors — Actual contract language versus underlying intent — Electric cooperative and ski resort customer. p. 866.

APPEARANCES: Dean, Rice and Howard by Mark W. Dean, Esq. for New Hampshire Electric Cooperative, Inc.; Bruce J. N. Hotz for Reduced Energy Specialists, Inc. on behalf of Loon Mountain Recreation Corporation; Eugene F. Sullivan, III, Esq. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

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) (Contract). *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 Contract (Motion to Enforce).[1(120)] Loon Mountain perfected its filing by serving NHEC with a copy of its petition on June 11, 1996. NHEC filed an Objection to the Motion to Enforce on June 21, 1996, to which Loon Mountain responded on July 3, 1996.

The essence of the dispute is whether the Contract between Loon Mountain and NHEC applies to all of Loon Mountain's electric load or only to load related to its ski operations. The load that NHEC argues is not subject to the discounted special contract consists of six separately metered accounts: 1) an information booth on the Kancamagus Highway; 2) an off-site sign located on Main Street in Lincoln, New Hampshire; 3) employee housing located in the area of Loon Brook Condominiums; and 4) three street lighting accounts.

The Commission heard evidence on this issue on August 8, 1996, at which time Loon

Mountain offered to remove the Main Street sign from the scope of its Motion to Enforce. There are, therefore, five remaining disputed accounts.

Briefs were submitted by Loon Mountain and NHEC on August 30, 1996.

II. POSITIONS OF THE PARTIES AND STAFF

A. *Loon Mountain Recreation Corporation*

Loon Mountain asserts that the Contract encompasses all of Loon Mountain's load and the five disputed accounts should be priced at the discounted rate. It argues that the Contract states that it is the entire understanding between the parties and supersedes all previous understandings, whether oral or written. The Contract states that it provides the discount to "all" of Loon Mountain's electric requirements and that billing under the Contract is for "all bills rendered." Loon Mountain concludes that NHEC's efforts to exclude the five disputed accounts, therefore, is an improper attempt to limit what it originally agreed to provide.

Loon Mountain states that metering capabilities should not be dispositive and that additional meters could have been discussed to effectuate the discount. Further, Loon Mountain states that the Monthly Base Demand is merely a "minor term" and should not affect the interpretation of "all" load.

B. *New Hampshire Electric Cooperative, Inc.*

NHEC argues that the purpose of the Contract is clearly identified avoiding Loon Mountain's exercise of an option to install electric generation. The Contract states that the

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discounted pricing is for the "ski area" which is "primarily engaged in recreational business which requires the production of snow, operation of lifts and maintenance of downhill and cross-country ski trails." The five accounts in dispute are not related to the production of snow, operation of lifts or maintenance of trails. Rather, they relate to other business needs of Loon Mountain and could not practically have been served by Loon Mountain's own generation because they are not connected to Loon Mountain's main electrical system.

NHEC argues that Loon Mountain never intended that these five accounts would be subject to the discounted Contract, given the calculations of the Monthly Base Demand in the Contract. Loon Mountain's consultant, RES, was provided the billing determinants, using actual ski area load, to develop the Contract's Monthly Based Demand when the Contract was being negotiated. According to NHEC, these billing determinants did not include the five accounts now in question, which NHEC argues is proof that the disputed accounts were never intended to be included in the discounted Contract.

Further, NHEC notes that the Contract requires that the ski area load be recorded with 30 minute interval kilovolt-ampere demand meters, due to wholesale metering requirements of NHEC's wholesale supplier, Public Service Company of New Hampshire (PSNH). The six disputed accounts do not have meters capable of 30 minute intervals, which NHEC asserts is additional proof that the parties never intended these accounts to fall within the Contract.

Finally, NHEC notes that the Contact was approved on an interim basis during the 1994/1995 ski season, *see*, Order No. 21,436 (November 23, 1994), and subsequently approved on a permanent basis after hearing on the merits on June 1, 1995. By the time of the June 1, 1995 hearing, Loon Mountain had received six months worth of bills, all of which excluded the six disputed accounts. Loon Mountain's silence on this issue at the 1995 hearing on the merits demonstrates, to NHEC, that Loon Mountain never intended the five disputed accounts to be covered by the Contract.

III. COMMISSION ANALYSIS

[1-3] Having reviewed the testimony and evidence presented at the August 8, 1996 hearing and briefs subsequently submitted, we find NHEC's interpretation of the load under the Contract to be proper and will, therefore, deny Loon Mountain's Motion to Enforce. We cannot conclude, based on the terms of the contract or the evidence presented, that 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.

It was clear in the 1995 hearings on the Contract that the purpose was to retain the load of Loon Mountain and other ski areas that were considering viable self-generation options. We found that the public good would be served by retaining the load for NHEC, because NHEC's member-customers would benefit from the contribution to fixed costs obtained by the Contract, albeit at a lower level than the contribution under tariffed rates. Throughout those hearings and in Order No. 21,812 there was discussion of the potential harm that loss of the ski operations load would cause to NHEC and its member-customers. With this background, it would be illogical to include in the discounted rate those portions of Loon Mountain's load that were not at risk of being lost to self-generation.

Further, we find NHEC's observations about the creation of the Monthly Base Demand with Loon Mountain's consultant to be telling. RES was involved in 1994 in the development of that Monthly Base Demand and in fact provided the billing determinants, which did not include the five disputed accounts, to develop the discounted rate.

We are also persuaded that the terms of the contract requiring the discounted load to be recorded on a 30 minute interval basis is further evidence that the Contract did not envision inclusion of the five disputed accounts, which are not capable of being recorded at 30 minute

Page 866

intervals. To include those accounts would make meaningless the requirement of 30 minute interval billing.

Loon Mountain would have us look only to the portion of the Contract itself which states that the Contract applies to "all" of Loon Mountain's load. Though we consider the language of the Contract to provide the compelling evidence that the five disputed accounts were never intended, as discussed above, we will nevertheless address Loon Mountain's argument.

The Commission is not limited to the four corners of the document when interpreting a

contract. Rather, the written document is only a manifestation of the underlying agreement and while the primary aid in interpretation, it is not the only aid. *MacLeod v. Chalet Suisse*, 119 238, 243, citing RESTATEMENT (SECOND) OF CONTRACTS (complete citation omitted) (1979). Intent should be determined not only in light of the instrument itself, but also in view of all the surrounding circumstances. *Rogers v. Cardinal Realty, Inc.*, 115 N.H. 285, 286 (1975).

Based on the language of the Contract, the purpose of this discounted Contract to retain the load that otherwise would have been lost to self-generation and the practical limitations of the disputed accounts' load, we conclude that the Contract was not intended to include the five disputed accounts.

Based upon the foregoing, it is hereby

ORDERED, that Loon Mountain's Motion to Enforce is DENIED; and it is

FURTHER ORDERED, that the Contract applies only to the two meters directly related to Loon Mountain's ski operations and not to the five disputed accounts.

By order of the Public Utilities Commission of New Hampshire this sixth day of November, 1996.

FOOTNOTES

[1]Throughout this Order we will refer to representations made by RES on behalf of Loon Mountain as simply being the position of Loon Mountain, unless there is a particular reason to note RES' role in a given situation.

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 94-258 et al., Order No. 21,812, 80 NH PUC 568, Sept. 6, 1995.

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NH.PUC*11/06/96*[89414]*81 NH PUC 867*Public Service Company of New Hampshire

[Go to End of 89414]

81 NH PUC 867

Re Public Service Company of New Hampshire

DR 96-216
Order No. 22,405

New Hampshire Public Utilities Commission

November 6, 1996

ORDER approving separate new economic development (ED), business retention (BR), and load retention (LR) rate tariffs as proposed by an electric utility. The utility opts for definitive rate schedules rather than percentage discounts as to the demand charge component for ED and BR customers, but uses a 75% demand charge discount for LR customers with self-generation alternatives and a complete waiver of demand charges for LR customers having cogeneration capability. Although the tariffs are expected to largely replace special rate contracts, the commission acknowledges that special contracts will still have to be used under certain circumstances.

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1. RATES, § 166

[N.H.] Factors affecting reasonableness — Solicitation of business — Economic development (ED) rate tariffs — For new customers and/or new load — Set dollar amounts in lieu of percentage discounts for demand charge component — ED rates as compatible with

Page 867

emerging competition — Electric utility. p. 872.

2. RATES, § 166

[N.H.] Factors affecting reasonableness — Solicitation of business — Business retention (BR) rate tariffs — For existing customers or load with generating alternatives — Set dollar amounts in lieu of percentage discounts for demand charge component — BR rates as compatible with emerging competition — Electric utility. p. 872.

3. RATES, § 166

[N.H.] Factors affecting reasonableness — Solicitation of business — Load retention (LR) rate tariffs — For existing customers or load with self-generation capabilities — Percentage discounts for demand charge component — Discount of 75% for customers with self-generation options — No demand charge for customers with cogeneration options — LR rates as compatible with emerging competition — Electric utility. p. 872.

4. RATES, § 333

[N.H.] Electric rate design — Demand charges — Applicable discounts under economic development (ED), business retention (BR), and load retention (LR) rate tariffs — Set discount amounts for ED and BR customers — Percentage discount for LR customers — Waiver of demand charges for LR customers with cogeneration abilities. p. 872.

5. RATES, § 322

[N.H.] Electric rate design — Load factors — New or incremental load versus load retention initiatives — Separate new economic development, business retention, and load retention rate tariffs — As substitute for special rate contracts. p. 872.

6. RATES, § 211

[N.H.] Special rate contracts — For economic development (ED), business retention (BR),

and load retention (LR) purposes — Electric utility — Replacement of ED, BR, and LR contracts with tariffed rate schedules — Continued use of special contracts under certain circumstances. p. 872.

7. CONSERVATION, § 1

[N.H.] Conservation and load management programs — Customer participation — As affecting eligibility for new economic development, business retention, and load retention rate tariffs — Electric service. p. 872.

APPEARANCES: Gerald M. Eaton, Esq., for Public Service Company of New Hampshire; Michelle Chicoine and Steven V. Camerino, Esq., for EnergyNorth Natural Gas, Inc.; Jacqueline Lake Kilgore, Esq., for Public Utility Policy Institute; Daniel P. Bittel, for Unitrode; John B. Pendleton, Esq., and Lisa Shapiro, for Wausau Papers of New Hampshire; Dom S. D'Ambruoso, Esq., for Portland Pipeline Corporation; Hugh T. Lee, Esq., for Heidelberg Harris, Inc.; James Monahan for Cabletron Systems; Deborah M. Barradale, Esq., for EnerDev, Inc.; Andrew J. Harmon, Esq., for Enron Capital & Trade Resources; Ronald A. Baillargeon for Crown Advantage; Charles Clough and James T. Rodier, Esq., for Freedom Energy Company; Henry Veilleux for Business and Industry Association of New Hampshire; Carlos A. Gavilondo, Esq., for Granite State Electric Company; Scott J. Mueller, Esq., and Susan Geiser, Esq., for Concord Electric Company and Exeter & Hampton Electric Company; Robert Backus, Esq., for Campaign for Ratepayers Rights; Michael W. Holmes, Esq., for Office of Consumer Advocate; and Eugene F. Sullivan, III, Esq., for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

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ORDER

I. PROCEDURAL HISTORY

On June 26, 1996, Public Service Company of New Hampshire (PSNH) filed with the New Hampshire Public Utilities Commission (Commission) a Business Retention Service Rate BR and Economic Development Energy Service Rate ED, (collectively, ED/BR Rate) in accordance with Senate Bill 533 (1996 N.H. Laws 186) and Commission Order No. 22,027 in Docket DR 95-180. PSNH's filing was intended to supplement its 1995 economic development and business retention filing made prior to passage of Senate Bill 533 and which were conditionally approved by the Commission. *See*, Order No. 22,027 (February 23, 1996).

The Commission issued a procedural order setting a deadline for intervention requests, scheduling a hearing on the merits for August 6, 1996, taking administrative notice of the record in Commission Docket DR 95-180, and suspending the tariff pages. *See*, Order No. 22,235 (July 11, 1996).

The Commission granted intervention requests of Enron Capital & Trade Resources (Enron), EnergyNorth Natural Gas, Inc. (ENGI), EnerDev, Inc. (EnerDev), Heidelberg Harris, Inc.,

(Heidelberg), Granite State Electric Company, Inc. (GSEC), Wausau Papers NH (Wausau), Unitrode, Freedom Energy Company (Freedom), Portland Pipeline Corporation (Portland), New Hampshire Business and Industry Association (BIA), Crown Vantage (Crown), Osram Sylvania, Inc., Isaacson Structural Steel, Inc., Campaign for Ratepayers Rights (CRR), Cabletron Systems, Inc., Public Utility Policy Institute (PUPI) and Concord Electric Company and Exeter & Hampton Electric Company (collectively, Unitil). The Office of Consumer Advocate (OCA) is a statutorily recognized intervenor. NYLTECH and the City of Manchester, New Hampshire, each submitted comments in lieu of intervention.

On August 6, 1996, the Commission notified those members of the Service List in Docket DR 95-180 (PSNH's then pending Economic Development and Business Retention filing) that DR 96-216 was a separate docket in which the Commission would address the most recent ED/BR Rate Filing of PSNH. The Commission closed Docket DR 95-180 April 8, 1996.

The Commission took evidence on August 6, 1996 but kept the record open until August 16, 1996 in order that the parties in Docket DR 95-180 would have the opportunity to request intervention. On July 30, 1996, PSNH filed a Motion to Limit Scope, which Wausau supported in separate comments. PSNH sought to limit the scope of the proceeding to the rates offered by PSNH and not to include the question of whether the term provisions of Rates ED/BR should be reconsidered in light of changes in the industry. Freedom objected to PSNH's Motion to Limit Scope, as did Enron and PUPI. PSNH responded to Freedom's and Enron's objections and PUPI's comments on August 21, 1996. PSNH's Motion to Limit Scope was denied at the hearing. The Commission found that certain issues, including term provisions, which had been addressed in the original Order of Notice, were appropriate for reconsideration in the instant docket.

PSNH filed a Motion for Late-Filed Report and Confidential Treatment of Customer-Specific Information on August 6, 1996. Freedom filed a Motion for Authorization to Serve Eligible Customers on August 15, 1996. PSNH and Enron objected, on August 22 and August 26, 1996, respectively. Freedom responded to Enron's objection September 3, 1996.

PUPI filed a Joint Motion to Consolidate Market Structure Issues and Establish Bridging Mechanism for Customers (Joint Motion) on behalf of itself and OCA, Freedom, Cabletron, CRR, and Enron on August 23, 1996. PSNH filed an Objection to the Joint Motion on September 3, 1996; GSEC filed a response concurring in part with the motion but requesting that the Commission deny the request for bridging mechanisms. The Commission denied the Joint Motion in its order approving the Crown Vantage special contract. *See*, Order No. 22,355 (October 15, 1996).

This order will address PSNH's June 26, 1996 filing, as amended by supplemental pre-filed testimony and attachments of Gary A.

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Long filed on July 20, 1996, for approval of its proposed Economic Development Service Rate ED, Load Retention Service Rate LR, and changes to its existing tariffed rates for business retention, Business Retention Service Rate BR, as well as other pending procedural matters.

II. POSITIONS OF THE PARTIES AND STAFF

A. *PSNH and others in support of PSNH's filing*

In conformance with SB 533, PSNH supported changes in its rate schedules for both Rate BR and Rate ED that reflected the need to change the demand charge discount from a percentage discount off the applicable demand charge to a specific charge per kW or kVA of demand. The currently effective demand charges for Rate BR are the demand charges specified for Rate GV or Rate LG customers discounted by the applicable percentage off the demand charge for eligible Rate BR customers. PSNH also filed a provision under Rate BR, a Maximum Monthly Bill, which ensures customers that they will never be billed a greater amount under Rate BR than they would have been billed under standard tariff rates. The Maximum Monthly Bill provision was not necessary when Rate BR customers received a percentage discount off of the demand charge. Upon Commission approval of proposed Rate BR, PSNH would like to transfer its existing Rate BR customers to the new tariff rate if the customers agree to the change.[1(121)] If they do not want to transfer, PSNH would like to "grandfather" them to the existing Rate BR tariff.

PSNH made a number of changes to its economic development service rate, Rate ED, that were conditionally approved by the Commission. They include using a schedule of rates for Rates GV and LG in lieu of the percentage discount applied to the demand and energy charges filed previously. The rates were derived to yield the same discount as in DR 95-180, but they exclude the FPPAC credit of 0.772 cents per kWh because PSNH does not believe it is necessary to price lower than what was proposed in DR 95- 180 to provide an incentive for businesses to locate or expand in New Hampshire. PSNH basically adopted Staff's percent discounts in DR 95-180 for term lengths other than 5 years. The Sole Supplier Provision now reflects the language contained in Rate BR as approved in DR 95-180 and the option of the customer to choose a schedule of fixed rates based on forecasted and discounted rates has been removed. Other language was added to the Rate ED tariff to reflect changes contained in Rate BR such as a Maximum Monthly Bill and the use of the same language in the Successor and Assigns section of the tariff.

Based on the procedural order which sought input on whether Rate BR was sufficient under NH RSA 378:11-a as amended, PSNH filed supplemental testimony in support of a proposed load retention rate, Rate LR. PSNH developed Rate LR to provide customers that have a generation option with an alternative to displacing the electricity now provided by PSNH. PSNH believes the economics of self-generation or cogeneration are sufficiently different that many of the tariff provisions of Rate BR are not applicable to Rate LR. In particular, PSNH avers that mandating conservation and load management (C&LM) programs or determining whether the customer has competitors in-state is irrelevant when assessing Rate LR eligibility. Ex. 2 at 5-6. Rate LR is designed to compete with the customer's own cost of generation as opposed to Rate BR's intent to provide the customer with assistance in reducing its overall costs so it can compete effectively in its markets, thereby becoming a more viable New Hampshire industrial entity.

The pricing contained in Rate LR is a discount off the applicable Rate GV or Rate LG demand charge. For customers who have self-generation options, the demand charge discount is 75 percent less than the current tariffed demand charge. Customers with a cogeneration option will have no demand charge. PSNH does not expect the proposed rates for load retention to meet the needs of customers. PSNH believes some customers, such as Crown Vantage and Wausau, will still need special contracts.[2(122)]

PSNH and others, such as Portland, agree that statutes are meant to be read consistently. PSNH states that restructuring and 1996 Laws

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Chapter 129 do not inhibit the Commission's authority to expeditiously review and approve economic development and retention rates if the Commission finds the rates are in the public interest as specified in 1996 Laws 186:1,II. Brief at 2-3. PSNH further states that in order to have business or load retention rates pursuant to RSA 378:11-a,III(a), the utility must represent that the load, absent the discounted rate, would otherwise leave the utility. PSNH argues that the record is clear, based on testimony of its witness and the statements of others, that decisions to install generation or relocate operations are not made based on a sixteen-month time frame. To restrict the term of the tariff to the beginning of competition, in PSNH's opinion, would not affect the customer's decision to relocate or install generation. Those customers would be essentially "free-riders" causing PSNH's other customers to be worse off. Brief at 1.

PSNH argues that the terms of the rates for ED/BR/LR cannot continue beyond December 31, 2002 and that shorter terms are available. The rates and their terms, it argues, will not hinder competition and are not anti-competitive or in violation of any anti-trust laws. Brief at 2.

I. *OCA, CRR and others opposing PSNH's filing*

OCA did not file testimony, but argues that the Commission may use special rates to assist the State's economy in an expeditious manner if it is in the public interest. OCA believes that determining whether the economy is assisted must be done in light of HB 1392. If special discounted rates for economic development and business/load retention violate the principles of deregulation contained in HB 1392, OCA avers that to approve the rates the Commission must start with the assumption that competitive rates have a greater benefit to the economy than do discounted rates. OCA then posits that by extension of the greater benefit argument, the Commission must find specific proof that the benefits of the special rates outweigh the adverse effects those rates will have on competition. Brief at 1 and 2. OCA argues that no such proof has been offered by PSNH. OCA also comments on the inappropriateness of referring to the legislative history and points out that SB 533 does not contain any limit on the term length that can be offered. The OCA is also concerned about potential anti-trust effects that special rates and terms may have as the electric industry is deregulated.

CRR opposes special contracts and discounted rates of any type unless the discounted rates are available to all customers. CRR believes that, until restructuring is accomplished and competition is available to all customers, the Commission must treat all customers in a fair and equitable manner. Brief at 1-2. The passage of SB 533 does authorize the Commission to approve ED, BR and LR rates; however, CRR urges the Commission to continue to link approval of such rates to the implementation of competition, or "C-Day" as espoused in the Crown Vantage order, Order No. 22,225.

EnerDev filed comments similar to those expressed by OCA and CRR. GSEC's comments pertained to the application of existing or pending special contracts and tariffs filed before May 21, 1996 versus those filed after passage of HB 1392. GSEC also filed comments addressing the need for a "Bridging Mechanism." GSEC asks the Commission to limit approval of the tariffs to

the period when customers can begin choosing alternative providers or in the alternative condition approval such that customers may "opt out" at the commencement of statewide customer choice. Ex. 11 at 3. Existing special contracts and tariffs, in GSEC's opinion, should be modified to allow customers to choose, but the appropriate docket for such revisions is the restructuring docket, DR 96-150. According to GSEC, the restructuring docket is also the appropriate proceeding to address issues raised such as near term rate relief and other issues associated with the Joint Motion.

C. *Staff*

Staff did not file testimony, but requests that the Commission take administrative notice of Staff's testimony in DR 95-180 in which Staff addressed, among other things, its concerns about the term provisions of tariffed rates that extend beyond the advent of competition.

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III. COMMISSION ANALYSIS

[1-7] We have reviewed the record in this proceeding, as well as the record in DR 95-180, in light of the recent changes in legislation and the on-going restructuring of the electric utility industry. Based on our review, we find the rates as filed by PSNH for economic development, business retention and load retention to be in the public interest.

Our overarching concern in this docket is balancing the directives of the Legislature as specified in 1996 Laws Chapter 186, which finds "that economic development and retention rates are useful tools in assisting the state's economy" and should be "established as expeditiously as possible," with 1996 Laws Chapter 129, the Legislature's electric utility restructuring bill. Many of the issues raised by the Parties and Staff in this proceeding, such as the potential anti-competitive effects of term provisions lasting longer than the anticipated advent of electric utility retail competition, are similar to the issues addressed in our order in Crown Vantage. *See*, Order No. 22,355 (October 15, 1996). We read the 1996 Laws Chapter 129 and 186 as consistent. Nothing in 1996 Laws Chapter 129, passed before 1996 Laws Chapter 186, denies us the latitude to approve rates for economic development and load retention while we pursue electric utility restructuring if those rates will bring benefits to New Hampshire's customers and do not preclude restructuring.

This does not mean we are not concerned about the effects such term lengths may have on customers and competition. We do not find, however, that our approval of these tariff rates will diminish the viability or delay the commencement of competition. Customers will have two term length options available from which to choose and these tariff rates may be further affected by our restructuring docket, DR 96-150. Additionally, new load customers may participate in the "Pilot Program," which gives the customer an additional choice. We believe our approval of these rates, and the language contained in the tariff pages to minimize "free- riders," should provide assurance that a larger market, not a smaller one, is available for competition. We wish to affirm, again, that we are committed to fulfilling our obligations under 1996 Laws Chapter 129 in a thorough and timely manner.

We disagree in part with PSNH's position that imposing a C&LM requirement is inappropriate for load retention customers because C&LM does not affect the overall average

price of electricity, but is designed only to reduce the usage and therefore does not change the economics of customer generation. The important point concerning this issue is that customers are interested in lowering their electric bill because it is an important cost of business. If cost effective measures with short payback periods, for example, that lower the overall cost of business are not pursued, one must question the viability of the customer's generation option, if it is more capital intensive and has a longer payback period. In assessing customer eligibility for rate LR, PSNH must determine that the load would have left the utility absent the rate. Similarly, we believe that it is appropriate for PSNH to examine the customer's participation in C&LM programs. Cost effective C&LM measures undertaken by a potential load retention customer should help to test whether the customer is in fact serious about reducing its overall cost of energy. Therefore, while we will not direct PSNH to adopt formally this measure as part of its tariff, we urge PSNH to use it as one of its screening measures in determining whether customers qualify for Rate LR.

We would hope that existing BR customers will transfer to the new BR tariff. The new BR rates are designed to give customers the same savings as proposed in the original BR rate and are consistent with legislative directive not to use discounts off the tariffed rates. We direct PSNH, therefore, to contact those existing BR customers to arrange for the transfer prior to the next billing cycle. If any existing BR customer affirmatively states, however, that it chooses not to transfer to the new BR tariff, we will allow those customers to be grandfathered to remain under the previously approved BR tariff.

As found in Order No. 22,355 (October 15, 1996), the Motion for a Bridging Mechanism, known as the Joint Motion, is rendered moot by our Crown Vantage decision as well as our decision today.

Finally, we have accorded confidential treatment to the information for which PSNH requested confidentiality on an interim basis since the filing. Having fully reviewed the request, we find it appropriate to grant confidential treatment to the customer specific information identified. 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) and *Re NET*, Order No. 21,731 (July 10, 1995), the benefits of non-disclosure to PSNH, its ED/BR and LR customers and the general body of ratepayers in this case appear to outweigh the benefits of disclosure to the public.

Based upon the foregoing, it is hereby

ORDERED, that PSNH's proposed tariff pages for Economic Development and Business Retention as filed on June 26, 1996, and the tariff pages for Load Retention Rate LR as filed on July 30, 1996 are APPROVED effective on all bills rendered for meters read on and after November 6, 1996; and it is

FURTHER ORDERED, that PSNH file tariff pages in compliance with this order by November 18, 1996; and it is

FURTHER ORDERED, that PSNH contact customers on the existing BR tariff regarding transfer to the newly approved BR tariff within the next billing cycle and allow certain

"grandfathering" as stated herein; and it is

FURTHER ORDERED, that PSNH's request for confidential treatment is GRANTED; and it is

FURTHER ORDERED, that this order on confidential treatment is subject to reconsideration in the event that the Commission or any party raises concerns and it is subject to the on-going right 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 sixth day of November, 1996.

FOOTNOTES

[1]As of August 5, 1996, there were seven customers under the existing Rate BR.

[2]A hearing on Commission Order No. 22,225, conditioning approval of the special contract proposal between PSNH and Crown Vantage, Special Contract No. NHPUC-112, was heard in a separate proceeding, i.e. DR 95-114. Many of the issues addressed in this docket were applicable to our decision in Crown Vantage and we took administrative notice of the record in this proceeding in our reconsideration of NHPUC-112. *See*, Order No. 22,355.

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. [N.H.] Re Public Service Co. of New Hampshire, DR 95-180, Order No. 22,027, 81 NH PUC 109, 170 PUR4th 538, Feb. 23, 1996. [N.H.] Re Public Service Co. of New Hampshire, DR 95-114, Order No. 22,225, 81 NH PUC 518, July 8, 1996. [N.H.] Re Public Service Co. of New Hampshire, DR 96-216, Order No. 22,235, 81 NH PUC 547, July 11, 1996. [N.H.] Re Public Service Co. of New Hampshire, DR 95-114, Order No. 22,355, 81 NH PUC 746, Oct. 15, 1996.

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NH.PUC*11/12/96*[89415]*81 NH PUC 873*Public Service Company of New Hampshire

[Go to End of 89415]

81 NH PUC 873

Re Public Service Company of New Hampshire

DR 96-058
Order No. 22,406

New Hampshire Public Utilities Commission

November 12, 1996

ORDER approving an electric utility's proposed special rate contract with the Elliot Rose Company, which will provide the customer with the same discounts afforded a competitor of the customer in Order No. 21,835 (80 NH PUC 598). The contract is designed to regain lighting load by waiving demand charges for incremental consumption above a base demand level.

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1. RATES, § 166

[N.H.] Factors affecting reasonableness — Solicitation of business — Load retention initiatives — Targeting of lighting load — Retention via special rate contracts — Waiver of demand charges for incremental demand above base level — Electric utility and greenhouse/nursery customer. p. 874.

2. RATES, § 333

[N.H.] Electric rate design — Demand charges — Waiver of — Via special rate contracts — Relative to additional incremental use beyond base demand levels — Pursuant to lighting load retention incentives — But long-term nature of contract as matter of concern to commission. p. 874.

3. RATES, § 211

[N.H.] Special rate contracts — Provisions for waiver of demand charges — For additional incremental use beyond base demand levels — As incentive for regaining lighting load — Commission preference for five-year versus ten-year contract term — Electric utility and greenhouse/nursery customer. p. 874.

BY THE COMMISSION:

ORDER

On February 27, 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-128 (NHPUC-128) between PSNH and Elliott Rose Company of Madbury, Inc. (Madbury Rose). Madbury Rose is a New Hampshire corporation engaged in the growing of roses for wholesale and retail sale. Madbury Rose's principal place of business is located in Madbury, New Hampshire. PSNH describes the intent of its filing as an opportunity to regain lighting load that has gradually decreased in response to increasing rates and to offer Madbury Rose prices and conditions for electric service similar to those offered Elliott & Williams Roses, a competitor that receives service under a special contract from PSNH, Special Contract No. NHPUC-111. (*See* Order No. 21,835, September 26, 1995).

PSNH's filing included, in both redacted and unredacted form, the special contract and testimony supporting a discounted rate for Madbury Rose. PSNH also requested protective

treatment for certain information considered confidential in the filing. On March 26, 1996, the Commission approved PSNH's Motion for Protective Order by Order No. 22,073.

[1-3] NHPUC-128 is designed to regain lost lighting load from Madbury Rose and to offer Madbury Rose the same rates its competitor, Elliott & Williams, receives under NHPUC-111. In PSNH's filing with Elliott & Williams, PSNH noted that Madbury Rose was a competitor of Elliott & Williams and that PSNH would be willing to offer Madbury Rose a special contract with similar pricing and conditions contained in NHPUC-111 so Madbury Rose would not be adversely affected by NHPUC-111.

PSNH asserts that the cost of lighting represents a significant cost component of Madbury Rose's business. Artificial lighting and, therefore, the cost of electricity, are a major component of the rose growing business. NHPUC-128 will enable Madbury Rose to increase its use of electricity and its production of roses, especially during the winter months. Because of the substantial amount of lighting used in its greenhouses and the highly competitive nature of the rose business, PSNH believes NHPUC-128 will enable Madbury Rose to better compete. PSNH states that regaining the lighting load will result in additional sales that will contribute to recovery of additional fixed costs which will, among other things, help to keep rates lower for all other customers and help to ensure that Madbury Rose will remain a viable rose growing business and not be disadvantaged as a result of NHPUC-111.

As in NHPUC-111, NHPUC-128 provides discounted rates for the ten-year term of the contract by waiving the demand charge on all

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kilowatts of demand above the designated "Firm Contract Demand" specified in NHPUC-128. All demand above Firm Contract Demand is specified as Interruptible Demand upon one-hour notice by PSNH. Energy usage associated with Madbury Rose's demand above Firm Contract Demand will be charged at a rate which equals the total FPPAC costs in PSNH's tariff plus the charge for Nuclear Decommissioning plus a one and one-half cent per kWh adder. All demand and energy used by Madbury Rose below the specified Firm Contract Demand level will be at PSNH's standard tariff rates. NHPUC-128 also provides that Madbury Rose will never be charged less than the equivalent of 103% of the short-term avoided cost of PSNH. Madbury Rose must use PSNH as its sole supplier of electricity during the term of the contract. Failure to interrupt and reduce load to the Firm Contract Demand level will result in resetting a new Firm Contract Demand level for Madbury Rose based on the excess demand above the Firm Contract Demand level used during the period of the called interruption. PSNH states that supplemental lighting is ideal interruptible load as an interruption will not adversely affect rose quality or growth.

Upon review of the filing and Staff's recommendation, the Commission finds that NHPUC-128 is a special contract that will provide Madbury Rose with the same opportunity to cut its costs of production as Elliott & Williams now realizes under NHPUC-111. Because of the potentially adverse effects on Madbury Rose of NHPUC-111, and the benefits to PSNH and its customers of additional sales during the transition to retail competition, we find NHPUC-128 to be in the public interest and will, therefore, approve it as filed.

We are, however, concerned about the length of the term, ten-years, of this contract, especially because it does not contain an early termination provision. We will approve NHPUC-128 because it was entered into prior to passage of SB 533 and because the potential short-term competitive effects on Madbury Rose as it competes with Elliott & Williams outweigh the potential negative effects on competition as we move toward a restructured electric industry. In accordance with our conditional approval of other special contracts, however, we urge PSNH to amend both contracts, NHPUC-111 and NHPUC-128, to allow either party or PSNH to terminate the contract after five years.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that Special Contract No. NHPUC-128 between PSNH and Elliott Rose Company of Madbury, Inc. 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 November 19, 1996 and to be documented by affidavit filed with this office on or before November 26, 1996; and it is

FURTHER ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or file a written request for a hearing on this matter before the Commission no later than December 3, 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 December 10, 1996; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective December 12, 1996, 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 twelfth day of November, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 95-113, Order No. 21,835, 80 NH PUC 598, Sept. 26, 1995. [N.H.] Re Public Service Co. of New Hampshire, DR 96-058, Order No. 22,073, 81 NH PUC 220, Mar. 26, 1996.

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NH.PUC*11/12/96*[89416]*81 NH PUC 876*Touch 1 Communications, Inc.

[Go to End of 89416]

81 NH PUC 876

Re Touch 1 Communications, Inc.

Additional applicant: Touch 1, Inc.

DE 96-153
Order No. 22,407

New Hampshire Public Utilities Commission

November 12, 1996

ORDER approving the merger and transfer of an interexchange telephone carrier, Touch 1 Communications, Inc., with and into its newly created parent holding company, Touch 1, Inc.

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1. CONSOLIDATION, MERGER, AND SALE, § 16

[N.H.] Factors affecting commission authorization — Merger with and transfer to parent holding company — No change in operations — Compliance with standard of no net harm — Telecommunications carriers. p. 876.

BY THE COMMISSION:

ORDER

Touch 1 Communications, Inc. (T1C) and Touch 1, Inc. (Touch 1) (the Petitioners), jointly filed with the New Hampshire Public Utilities Commission (Commission), on May 14, 1996, a petition for a pro forma transfer of control of T1C to Touch 1.

T1C is a privately held Alabama corporation. T1C was granted authority to conduct business as a telecommunications public utility in the State of New Hampshire by Order No. 21,824 (October 19, 1995) in Docket DE 95-151.

[1] Touch 1, a privately held Alabama corporation, will be the parent of T1C and other affiliated entities. The transfer of control of T1C to Touch 1 will be a pro forma transaction because shareholders of Touch 1, having exchanged their stock in T1C for stock in Touch 1, will hold ownership interests in Touch 1 identical to the ownership interests previously held in T1C. T1C will continue to provide service in New Hampshire under the T1C name and pursuant to its tariff currently on file with the Commission.

T1C evidenced its technical, managerial, and financial competence in the record of DE 95-151. The Petitioners anticipate achieving economic and marketing efficiencies from the proforma transfer of control.

We find that the transfer from T1C to Touch 1 of authority to transact business as a telecommunications public utility in the State of New Hampshire is in the public interest. Moreover, to the extent this transaction constitutes a merger, it 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). The transfer of control may in fact produce net benefits to T1C customers and ratepayers. We will, therefore, approve the Petition.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that the Petitioners' request for approval of a proforma transfer of control

of Touch 1 Communications, Inc. to Touch 1, Inc. is granted; 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 November 19, 1996 and to be documented by affidavit filed with this office on or before November 26, 1996; and it is

FURTHER ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or file a written request for a hearing on this matter before the Commission no later than December 3, 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 December 10, 1996; and it is

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FURTHER ORDERED, that this Order *Nisi* shall be effective December 12, 1996 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 twelfth day of November, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Touch 1 Communications, Inc., DE 95-151, Order No. 21,824, 80 NH PUC 584, Sept. 9, 1995.

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NH.PUC*11/12/96*[89417]*81 NH PUC 877*MCI Telecommunications Corporation of New Hampshire

[Go to End of 89417]

81 NH PUC 877

Re MCI Telecommunications Corporation of New Hampshire

DS 96-326
Order No. 22,408

New Hampshire Public Utilities Commission

November 12, 1996

ORDER authorizing an interexchange telephone carrier to eliminate "Friends and Family" discounts associated with directory assistance service and to initiate various other tariff revisions, including the offering of customized toll service products.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll services — Tariff revisions — As to "Friends and Family" discounts — Inapplicability to directory assistance — Interexchange carrier. p. 877.

2. RATES, § 582

[N.H.] Telephone rate design — Toll services — Tariff revisions — Development of customized toll products — Interexchange carrier. p. 877.

BY THE COMMISSION:

ORDER

[1, 2] On October 15, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from MCI Telecommunications Corporation of New Hampshire (MCI) requesting authority to remove Friends & Family discounts from Directory Assistance calls, introduce the Basic Calling Plan Option and MCI True Rate to Execunet and introduce networkMCI One for effect November 13, 1996.

The proposed revision removes discounts from Directory Assistance calls for Friends & Family customers.

The Basic Calling Plan Option and MCI True Rate allow customers to designate two telephone numbers which they most frequently call. Calls to the designated telephone numbers will be charged discounted rates.

NetworkMCI One is a customized telecommunications service which offers outbound toll, inbound toll-free and calling card calls. The service may be used by single or multi-location companies using switched or dedicated origination or termination.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize MCI to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of MCI's tariff, NHPUC No. 1 are approved for effect November 13, 1996:

60th Revised Page 1

34th Revised Page 2

35th Revised Page 3

38th Revised Page 3.1

7th Revised Page 3.2

16th Revised Page 4

9th Revised Page 25.3

1st Revised Page 25.3.1

3rd Revised Page 25.5

Original Page 25.5.1

1st Revised Page 45

Original Page 45.1

Original Page 45.2;

and it is

FURTHER ORDERED, that MCI file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this twelfth day of November, 1996.

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NH.PUC*11/13/96*[89418]*81 NH PUC 878*Northern Utilities, Inc.

[Go to End of 89418]

81 NH PUC 878

Re Northern Utilities, Inc.

DR 96-334
Order No. 22,409

New Hampshire Public Utilities Commission

November 13, 1996

ORDER suspending a natural gas local distribution company's proposed 1996/1997 demand-side management program plan, which basically is a continuation of the plan last approved for the company.

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1. CONSERVATION, § 1

[N.H.] Demand-side management programs — Continuation of program components for another year — Proposal for minor modifications — Suspension — To allow for adequate investigatory period — Local gas distribution company. p. 878.

BY THE COMMISSION:

ORDER

[1] On October 18, 1996, Northern Utilities, Inc. (Northern) filed with the New Hampshire Public Utilities Commission (Commission) its Demand Side Management (DSM) Program for the period November 1, 1996 through October 31, 1997 which essentially proposes continuing its currently approved DSM programs, with one modification, for an additional year. The filing contained Northern's tariff page NHPUC No. 8 - Gas, Third Revised Page 36 which details the rate schedule for Northern's Conservation Charge. On October 23, 1996, Northern filed schedules providing the benefit/cost ratios for each program along with supporting workpapers.

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 1995/96 DSM program costs, are still in effect. Staff has recommended that Northern continue its DSM programs as approved in Commission Order No. 21,881 (October 30, 1995) until the Commission's final order in this proceeding and that any over/under-recoveries be reconciled at that time.

We have reviewed Staff's request and will suspend the proposed filing to allow a thorough review of the filing and supporting materials. Further, we will order Northern to continue its DSM programs as originally approved until this docket is resolved.

Based upon the foregoing, it is hereby

ORDERED, that the following tariff page of Northern is suspended:

NHPUC No. 8 - Gas Third 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 Commission Order No. 21,881 until this docket

Page 878

is resolved and a final order is issued.

By order of the Public Utilities Commission of New Hampshire this thirteenth day of November, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Northern Utilities, Inc., DR 95-101, Order No. 21,881, 80 NH PUC 682, Oct. 30, 1995.

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NH.PUC*11/13/96*[89419]*81 NH PUC 879*Excel Telecommunications, Inc., of New Hampshire

[Go to End of 89419]

81 NH PUC 879

Re Excel Telecommunications, Inc., of New Hampshire

Additional applicant: Excel Telecommunications, Inc.

DE 96-202
Order No. 22,410

New Hampshire Public Utilities Commission

November 13, 1996

ORDER approving the merger and transfer of an interexchange telephone carrier, Excel Telecommunications, Inc., of New Hampshire, with and into its parent holding company, Excel Telecommunications, Inc.

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1. CONSOLIDATION, MERGER, AND SALE, § 16

[N.H.] Factors affecting commission authorization — Merger with and transfer to parent holding company — No change in operations — Compliance with standard of no net harm — Telecommunications carriers. p. 879.

BY THE COMMISSION:

ORDER

Excel Telecommunications, Inc. of New Hampshire (Excel-NH) and Excel Telecommunications, Inc. (Excel) (Petitioners), jointly filed with the New Hampshire Public Utilities Commission (Commission), on June 21, 1996, a petition to transfer from Excel-NH to Excel the authority to operate as a telecommunications utility in the State of New Hampshire.

Excel-NH, a New Hampshire corporation, was granted authority in DE 92-128, by Order No. 20,738 (January 26, 1993). Excel-NH was originally formed to comply with the domestic incorporation requirements in effect at that time. The 1994 amendment, RSA 374:25 IV (1994), exempted telecommunications carriers from incorporation within the State, provided they register with the Secretary of State.

Excel, the parent company of Excel-NH, is registered with the Secretary of State and certifies it will comply with the terms of the authority granted to Excel-NH in DE 92-128, all Commission rules and orders, and will assume Excel-NH's obligations.

[1] All rates and services are unaffected as Excel proposes to adopt the tariff of Excel-NH. The Petitioners represent that the transfer will be essentially transparent to Excel-NH's customers. The Petitioners anticipate achieving economic and marketing efficiencies from the

transfer.

We find that the transfer from Excel-NH to Excel of authority to transact business as a telecommunications public utility in the State of New Hampshire is in the public interest. Moveover, to the extent this transaction constitutes a merger, it 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). The transfer of control may in fact produce net benefits to Excel-NH's customers and ratepayers. We will, therefore, approve the Petition.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that the Petitioners' request to transfer control of Excel-NH to Excel is granted; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules, Puc 1601.05, the Petitioner

Page 879

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 20, 1996 and to be documented by affidavit filed with this office on or before November 27, 1996; and it is

FURTHER ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or file a written request for a hearing on this matter before the Commission no later than December 4, 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 December 11, 1996; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective December 13, 1996 unless the Commission provides otherwise in a supplemental order issued prior to the effective date; and it is

FURTHER ORDERED, that Excel shall adopt the currently effective tariff of Excel-NH, by filing a title page; and it is

FURTHER ORDERED, that the Petitioner shall file a compliance tariff with the Commission within 30 days of this order, in accordance with N.H. Admin. Rules, Puc 1601.04(b).

By order of the Public Utilities Commission of New Hampshire this thirteenth day of November, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Excel Telecommunications, Inc., DE 92-128, Order No. 20,738, 78 NH PUC 34, Jan. 26, 1993.

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NH.PUC*11/13/96*[89420]*81 NH PUC 880*WorldCom, Inc., dba LDDS WorldCom

[Go to End of 89420]

81 NH PUC 880

Re WorldCom, Inc., dba LDDS WorldCom

Additional applicant: BLT Technologies, Inc.

DE 96-259
Order No. 22,411

New Hampshire Public Utilities Commission

November 13, 1996

ORDER approving the merger and transfer of an interexchange telephone carrier, BLT Technologies, Inc., with and into another carrier, WorldCom, Inc.

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1. CONSOLIDATION, MERGER, AND SALE, § 18

[N.H.] Grounds for approval — Marketing and economic efficiencies — No change in operations — Compliance with standard of no net harm — Telecommunications carriers. p. 881.

BY THE COMMISSION:

ORDER

WorldCom, Inc. d/b/a LDDS WorldCom (WorldCom), and BLT Technologies, Inc. (BLT), (the Petitioners), filed with the New Hampshire Public Utilities Commission (Commission) a petition for approval to transfer control of BLT to WorldCom through a merger. The Petitioners proposed that a newly formed subsidiary of WorldCom will merge into and with BLT.

BLT will be the surviving entity and BLT will become a wholly-owned subsidiary of WorldCom. BLT, a privately held Washington corporation, was granted authority in DE 94-168, by Order No. 21,364 (September 20, 1994).

Page 880

WorldCom, formerly known as LDDS Communications, Inc., a publicly held Georgia corporation, is the nation's fourth largest interexchange carrier. In New Hampshire, Worldcom and its subsidiary WorldCom Network Services (WNS) are certificated interexchange service providers. WorldCom was authorized in DE 92-133 by Order No. 20,575 (August 18, 1992) to conduct business as a telecommunications public utility in the State of New Hampshire. WNS received its authority in DE 91-165, by Order No. 20,632 (October 13, 1992).

[1] The Petitioners evidenced technical, managerial, and financial competence in the record of the above dockets. Staff has reviewed updated financials filed with this petition and believes the Petitioners remain financially qualified. The Petitioners represent that the transfer of control

will be essentially transparent to the customers, as it proposes BLT will continue to operate as it has in the past with the same name, tariff and operating authority. The Petitioners anticipate achieving economic and marketing efficiencies from the transfer.

We find that the transfer of control of BLT will result in no net harm, which is the standard by which we evaluate merger petitions. *See, Re Eastern Utility Associates*, 76 NHPUC 236 (1991). The transfer of control may in fact produce net benefits to BLT's customers and ratepayers. We will, therefore, approve the Petition.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that the Petitioners' request for approval of a transaction whereby WorldCom will acquire operating control of BLT is GRANTED.

FURTHER ORDERED, that pursuant to N.H. Admin. Rules, Puc 1601.05, the Petitioners 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 20, 1996 and to be documented by affidavit filed with this office on or before November 27, 1996; and it is

FURTHER ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or file a written request for a hearing on this matter before the Commission no later than December 4, 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 December 11, 1996; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective December 13, 1996 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 November, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re ATC New Hampshire, Inc., DE 92-133, Order No. 20,575, 77 NH PUC 431, Aug. 18, 1992. [N.H.] Re Bottom Line Telecommunications, Inc., DE 94-168, Order No. 21,364, 79 NH PUC 513, Sept. 20, 1994. [N.H.] Re WilTel of New Hampshire, Inc., DE 91-165, Order No. 20,632, 77 NH PUC 649, Oct. 13, 1992.

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NH.PUC*11/13/96*[89421]*81 NH PUC 881*WorldCom, Inc.

[Go to End of 89421]

81 NH PUC 881

Re WorldCom, Inc.

Additional applicant: MFS Communications Company, Inc.

DE 96-284
Order No. 22,412

New Hampshire Public Utilities Commission

November 13, 1996

ORDER approving the merger and transfer of an interexchange telephone carrier, MFS Communications Company, Inc., with and into another carrier, WorldCom, Inc.

Page 881

1. CONSOLIDATION, MERGER, AND SALE, § 18

[N.H.] Grounds for approval — Marketing and economic efficiencies — No change in operations — Existence of competition — Compliance with standard of no net harm — Telecommunications carriers. p. 882.

BY THE COMMISSION:

ORDER

WorldCom, Inc. (WorldCom), and MFS Communications Company Inc. (MFSCC) (Petitioners), jointly filed with the New Hampshire Public Utilities Commission (Commission) on September 3, 1996, a petition for an approval of Agreement and Plan of Merger and related transactions. The Petitioners seek Commission approval: (1) of a merger agreement between WorldCom and MFSCC, whereby MFSCC will become a wholly-owned subsidiary of WorldCom; (2) to increase WorldCom's number of authorized shares of stock and to issue the number of WorldCom's shares required to complete the merger; (3) for the guaranty of WorldCom's pre-existing credit facility by MFSCC and its operating subsidiaries; and (4) for MFSCC senior discount notes, credit facilities and equipment lease transactions.

MFSCC is a Delaware corporation and is the parent of Metropolitan Fiber Systems of New Hampshire, Inc. (MFS-NH) and MFS Intelenet of New Hampshire, Inc. (MFSI-NH). MFSCC, through its subsidiaries, is the nation's largest competitive local exchange carrier and Internet access provider. MFSCC subsidiaries are authorized to provide non-switched intrastate intraLATA, interexchange private line and intrastate long distance services in New Hampshire. MFS-NH was granted authority in DE 94-025, by Order No. 21,405 (November 2, 1994). MFSI-NH received authority in DE 94-070, by Order No. 21,270 (June 14, 1994).

WorldCom, formerly known as LDDS Communications, Inc., is a Georgia corporation and is the parent of WorldCom Network Services, Inc. (WNS). WorldCom is the nation's fourth largest interexchange carrier. WorldCom and its subsidiary, WNS, are authorized to provide non-switched interstate intraLATA, interexchange private line and intrastate long distance services in New Hampshire. WorldCom operates in New Hampshire under authority issued in DE 92-133, by Order No. 20,575, issued August 18, 1992. WNS received authority in DE

91-165, by Order No. 20,632 (October 13, 1992).

The lengthy merger history of WorldCom's certificated telecommunication providers in the state of New Hampshire is recounted in 77 NH PUC 431 (1992), 78 NH PUC 445 (1993), and 79 NH PUC 671 (1994). On June 1, 1996, WorldCom filed with the Commission a NH PUC Revised Tariff Title Page as notification of the name change of LDDS Communications, Inc. to WorldCom, Inc. d/b/a LDDS WorldCom.

The Petitioners seek Commission approval of three items, as described below. Our analysis follows.

(1) WorldCom and MFSCC seek approval of an Agreement and Plan of Merger. The Petitioners proposed that HIJ Corp, a newly formed subsidiary of WorldCom, will merge into MFSCC. MFSCC will be the surviving entity and MFSCC will become a wholly-owned subsidiary of WorldCom. The Petitioners request timely approval in order to complete the merger no later than December 1, 1996.

[1] The Petitioners expect that MFSCC will continue operating its certificated New Hampshire subsidiaries under their current names and no certificated holder name will change. WorldCom anticipates that their trade name LDDS WorldCom will change to MFS WorldCom. WorldCom will notify the Commission and will file a revised tariff with the new name upon closing of the merger transaction. The Petitioners assert that the proposed merger will be essentially transparent to the MFSCC customers, as they propose that MFSCC operations will not change, current management of MFSCC will remain in place, and the quality of service will not be affected as a result of the transaction. The Petitioners anticipate a

strengthened competitive position in the telecommunications market as a result of the merger due to greater financial resources, experienced management, and the ability to offer a full range of competitively priced services.

(2) The Petitioners seek authority to issue the number of authorized shares of WorldCom common stock and preferred stock determined to be required to complete the merger as provided for in the agreement.

The Petitioners assert that as part of the merger, MFSCC stockholders will exchange each issued and outstanding share of MFSCC common stock for 2.1 shares of WorldCom common stock.

(3) The Petitioners seek approval for MFSCC and its subsidiaries to execute a guaranty of WorldCom's pre-existing Amended and Restated Credit Agreement in the amount of $3.75 billion, executed on June 28, 1996. The Petitioners also request the approval of MFSCC obligations consisting of two senior discount notes with a current accreted value of approximately $1.3 billion, credit facilities providing for borrowing of up to $390 million in the aggregate, and equipment leases up to an aggregate of $60 million.

The original Credit Agreement that enabled WorldCom to borrow up to $3.5 billion was addressed in Docket No. DE 94-202, by Order No. 21,452 (December 6, 1994). In that docket Staff asserted that LDDS operates in a competitive interexchange resale carrier market for whom

traditional rate of return regulation does not apply. Because there are no monopoly customers at risk of cross-subsidization, the failure of an interexchange resale carrier as a result of inappropriate financing arrangements will be the burden of the company's stockholders and will not harm the public interest. Staff also recommended that the Commission not imply a guarantee of the securities by the state. Staff also noted that, pursuant to RSA 369:8 *Foreign Business*, LDDS as a foreign business is exempt from the provisions of RSA 369:1-7 as they apply to the approval of securities. We accepted Staff's recommendation and in Order No. 21,452 we found that statutes requiring approval for participation by LDDS in a new Credit Facility Agreement and the issuance of authorized shares of common stock and preferred stock were not applicable.

The issues raised in this petition are similar. Consistent with our prior order, we find that WorldCom is a foreign business exempt from the provisions of RSA 369:1-7 as they apply to securities and that approval need not be obtained for the participation of WorldCom and MFSCC in WorldCom's Credit Facility Agreement and MFSCC's senior discount notes and other credit facilities.

Although the merger of two competitors leads us to consider potential antitrust issues, those concerns are not present in this case due to the fact that NYNEX presently dominates the intraLATA toll market in New Hampshire.

We find that the merger of MFSCC into WorldCom 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). Therefore, we will approve the merger petition and other obligations incurred as a result of the merger.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that the petition for approval of the proposed merger of WorldCom, Inc. and MFS Communications Company, Inc. 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 November 20, 1996 and to be documented by affidavit filed with this office on or before November 27, 1996; and it is

FURTHER ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or file a written request for a hearing on this matter before the Commission no later than December 4, 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 December 11, 1996; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective December 13, 1996, unless the Commission provides otherwise in a

Page 883

supplemental order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this thirteenth day of November, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re ATC New Hampshire, Inc., DE 92-133, Order No. 20,575, 77 NH PUC 431, Aug. 18, 1992. [N.H.] Re Metropolitan Fiber Systems, DE 94-025, Order No. 21,405, 79 NH PUC 608, Nov. 2, 1994. [N.H.] Re MFS Intelenet of New Hampshire, Inc., DE 94-070, Order No. 21,270, 79 NH PUC 370, June 14, 1994. [N.H.] Re WilTel of New Hampshire, Inc., DE 91-165, Order No. 20,632, 77 NH PUC 649, Oct. 13, 1992. [N.H.] Re WilTel of New Hampshire, Inc., DE 94-202, Order No. 21,452, 79 NH PUC 671, Dec. 6, 1994.

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NH.PUC*11/13/96*[89422]*81 NH PUC 884*AT&T Communications of New Hampshire, Inc.

[Go to End of 89422]

81 NH PUC 884

Re AT&T Communications of New Hampshire, Inc.

DS 96-332
Order No. 22,413

New Hampshire Public Utilities Commission

November 13, 1996

ORDER authorizing an interexchange telephone carrier to introduce software defined data network (SDDN) service and to reduce rates for switched digital service.

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1. SERVICE, § 467

[N.H.] Telephone — Special switched service — Introduction of software defined data network (SDDN) service — Interexchange telephone carrier. p. 884.

2. RATES, § 592

[N.H.] Telephone rate design — Toll service — Products requiring switched access — Reduction in rates for switched digital service — Interexchange telephone carrier. p. 884.

BY THE COMMISSION:

ORDER

[1, 2] On October 17, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from AT&T Communications of New Hampshire, Inc., (AT&T) requesting authority to introduce rates for 1.536 Mbps Software Defined Data Network Service (SDDN)

and reduce rates for Switched Digital Service, for effect November 18, 1996.

The filing introduces an SDDN option at a transmission speed of 1.536 megabits per second (Mbps). The rates apply to calls which originate from and terminate at on-network locations using digital special access. In addition, rates for 1.536 Mbps Switched Digital Service are being reduced.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize AT&T to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of AT&T's tariff, NHPUC No. 1 are approved for effect as filed:

Section 2, Original Page 13.1

Section 27, 1st Revised Page 7;

and it is

FURTHER ORDERED, that AT&T file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as

required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this thirteenth day of November, 1996.

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NH.PUC*11/13/96*[89423]*81 NH PUC 885*Metropolitan Fiber Systems of New Hampshire, Inc.

[Go to End of 89423]

81 NH PUC 885

Re Metropolitan Fiber Systems of New Hampshire, Inc.

DE 96-351
Order No. 22,414

New Hampshire Public Utilities Commission

November 13, 1996

ORDER reissuing the authority granted in Order No. 21,405 (79 NH PUC 608) to an interexchange telecommunications carrier for providing nonswitched, private line, intrastate, interexchange telephone service.

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1. CERTIFICATES, § 123

[N.H.] Telecommunications services — Nonswitched, private line, intrastate interexchange service — Reissuance of operating authority — Additional two-year term of operation. p. 885.

2. CERTIFICATES, § 135

[N.H.] Modification — Renewal — Factors — Expiration of original term — Market competition — Telecommunications services — Nonswitched, private line, intrastate interexchange service — Reissuance of operating authority — Renewal for two-year term. p. 885.

BY THE COMMISSION:

ORDER

[1, 2] Metropolitan Fiber Systems of New Hampshire, Inc. (MFS-NH) filed a petition (Petition) with the New Hampshire Public Utilities Commission (Commission), on October 28, 1996, to reissue the Authority granted to MFS-NH on November 2, 1994, to provide non-switched intrastate interexchange private line telecommunication services in the NYNEX local service territory. *See*, 79 NH PUC 608 (1994).

MFS-NH is affiliated with MFS Intelenet of New Hampshire, Inc., an authorized intrastate toll provider. *See* 79 NH PUC 370 (1994). MFS-NH is a subsidiary of MFS Communications Company, Inc. (MFSCC). MFSCC and WorldCom, Inc. recently filed for Commission approval of their proposed merger in DF 96-284.

In DE 94-025, MFS-NH filed for authority to provide private line service or special access. The Petition was in anticipation of a successful bid for the then-existing private network of Digital Equipment Corporation in southern New Hampshire and Massachusetts. MFS-NH was unsuccessful in winning that bid; MCI Metro instead won the bid and received authorization in DE 94-151.

Under RSA 374:27 "Authority granted under RSA 374:20-22 and 374:24-26 may only be exercised within two years after the same shall be granted, and shall not be exercised thereafter." MFS-NH was granted authority in November 1994 but has not exercised such authority to date. MFS-NH notes that it is arguable that "... the two year certificate effectiveness set out in N.H. Rev Stat. Ann. § 374:27 may constitute a barrier to entry into the intrastate telecommunications market in violation of 47 U.S.C. § 253."

MFS-NH asserts that reissuance of MFS-NH's authority is in the public interest, submitting that the existence of certificated entities preserves a competitive environment in the New Hampshire competitive access market.

Staff recommends approval based on its belief that the authorization of MFS-NH to operate within the State will enhance competition opportunities. We accept the petitioner's representations and Staff's recommendation and find that granting the petition will not

prejudice or harm third parties. We will, therefore, reissue the authorization of MFS-NH for an additional two years.

Based on the foregoing it is hereby;

ORDERED *NISI*, that the Petition is granted; and it is

FURTHER ORDERED, that the authority granted to MFS-NH in DE 94-025 by Order 21,405 is reissued pursuant to RSA 374:27; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules, Puc 1601.05, the MFS-NH 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 20, 1996 and to be documented by affidavit filed with this office on or before November 27, 1996; and it is

FURTHER ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or file a written request for a hearing on this matter before the Commission no later than December 4, 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 December 11, 1996; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective December 13, 1996, 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 November, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Metropolitan Fiber Systems, DE 94-025, Order No. 21,405, 79 NH PUC 608, Nov. 2, 1994.

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NH.PUC*11/13/96*[89424]*81 NH PUC 886*Great Bay Water Company, Inc.

[Go to End of 89424]

81 NH PUC 886

Re Great Bay Water Company, Inc.

DE 96-369
Order No. 22,415

New Hampshire Public Utilities Commission

November 13, 1996

ORDER requiring a water utility to show cause why its operating authority should not be

revoked or it should not otherwise be sanctioned for its alleged failure to abide by directives in Order No. 21,630 (80 NH PUC 233) for improving its system and its water quality and correcting its pressure problems.

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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 — Show cause order — Possible revocation of certificate or other sanctions. p. 887.

2. FINES AND PENALTIES, § 5

[N.H.] Grounds for imposing — Failure to make mandated system improvements — Water utility — Show cause order — Possible revocation of certificate. p. 887.

3. CERTIFICATES, § 149

[N.H.] Revocation — Grounds — Failure to make mandated system improvements — Water utility — Show cause order — Other possible sanctions. p. 887.

BY THE COMMISSION:

ORDER

Page 886

[1-3] The New Hampshire Public Utilities Commission (Commission) issued Order No. 21,630 in DR 94-185 which required a number of actions of Great Bay Water Company (Great Bay) in relation to its operation of the Schanda Farms water system in the Town of Newmarket. The order put Schanda Farms on notice regarding various penalties for failure to comply. Commission Engineering Staff has submitted testimony opening this docket, representing that Great Bay has substantially failed to comply with the Order and has otherwise been deficient in its operation of the Schanda Farms system.

Based upon the foregoing, it is hereby

ORDERED, that Great Bay appear before the New Hampshire Public Utilities Commission at its offices at 8 Old Suncook Road, Concord, New Hampshire at 10:00 a.m. on January 16, 1997 to show cause why its authority to operate the Schanda Farms water system should not be revoked or why other actions and penalties should not be imposed; and it is

FURTHER ORDERED, that Great Bay send a copy of this Order to each customer of the Schanda Farms Community Association, by first class mail, on or before December 6, 1996.

By order of the Public Utilities Commission of New Hampshire this thirteenth day of November, 1996.

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[Go to End of 89425]

81 NH PUC 887

Re Northland Telephone Company of Maine, Inc.

DS 96-337
Order No. 22,416

New Hampshire Public Utilities Commission

November 15, 1996

ORDER suspending a local exchange telephone carrier's proposal for the elimination of four-party residential service, where questions remained as to the impact on revenues from such a change.

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1. SERVICE, § 452

[N.H.] Telephone — Party-line service — Proposed elimination of four-party residential service — Suspension of proposal — Factors — Questions as to impact on revenues. p. 887.

BY THE COMMISSION:

ORDER

[1] On October 21, 1996, Northland Telephone Company of Maine, Inc. (Northland) filed a proposed tariff page to eliminate four party service in the exchanges of Chatham and East Conway. Although Northland provided reasons why it wishes to eliminate the service, it did not provide information regarding, among other things, the revenue effect and the notification of the change to the affected customers. Staff is requesting supporting information from Northland.

Staff has requested that the Commission suspend the proposed tariff page to permit Northland to provide further information and to permit Staff to review the filing and the supporting materials it expects to receive from Northland.

We have reviewed Staff's request and will suspend the proposed filing to permit Northland to file additional information and to allow a thorough review of the filing and supporting materials.

Based upon the foregoing, it is hereby

ORDERED, that the following tariff page of Northland Telephone Company of Maine, Inc. is suspended:

Section 3, First Revision Page 12, Canceling Original

By order of the Public Utilities Commission of New Hampshire this fifteenth day of November, 1996.

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[Go to End of 89426]

81 NH PUC 888

Re Statewide Electric Utility Restructuring Plan

Petitioners: Connecticut Valley Electric Company; Public Service Company of New Hampshire

DR 96-150
Order No. 22,417

New Hampshire Public Utilities Commission

November 18, 1996

PETITIONS by two electric utilities for rehearing of Order No. 22,370 (81 NH PUC 787, *supra*), Order No. 22,372 (81 NH PUC 792, *supra*), and Order No. 22,393 (81 NH PUC 838, *supra*), all of which pertained to requests for protective treatment for certain projected cost and revenue data required to be submitted by all electric utilities as part of a commission-initiated proceeding examining a restructuring of the state's electric utility industry; denied. Commission affirms that there is no need to issue a blanket protective order as to forecasted stranded cost data and that individual utility concerns can best be met by negotiating individual nondisclosure agreements with those parties actually participating in the stranded cost recovery phase of the restructuring proceeding.

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1. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective treatment — As to certain operating cost and market revenue data — Required data submissions — In electric industry restructuring proceeding — As to stranded cost recovery — Denial of blanket protective order — Use of individual nondisclosure agreements — Disclosure only to real parties in interest — No disclosure to general public. p. 889.

2. EXPENSES, § 120

[N.H.] Electric utilities — Stranded costs — Associated with the sale or divestiture of generating plant — Under industry restructuring plan — Cost and revenue data pertinent to stranded costs — Limited protective treatment — No public disclosure — But disclosure to real parties in interest — Pursuant to individual nondisclosure agreements. p. 889.

BY THE COMMISSION:

ORDER

This order addresses motions for rehearing filed by Public Service Company of New Hampshire (PSNH) and Connecticut Valley Electric Company (CVEC) (CVEC and PSNH jointly, "the movants") relative to several previous Commission orders that granted protective treatment to certain stranded cost data filed by those utilities pursuant to the Commission's Preliminary Restructuring Plan (September 10, 1996).[1(123)]

PSNH seeks rehearing of Commission Order No. 22,372 (October 18, 1996), which addressed PSNH's request for confidential treatment, and Order No. 22,393 (November 4, 1996), which established a protective order that would apply to each of the jurisdictional utilities. In addition to seeking rehearing of those orders, PSNH also moves for the Commission to stay the release of the aforementioned data until such time as PSNH exhausts its appeal rights.

CVEC seeks rehearing of Commission Order No. 22,370 (October 18, 1996) addressing CVEC's request for confidential treatment and Order No. 22,393. CVEC does not move for a stay of those orders, although in its cover letter accompanying its motion CVEC requests that the Commission "refrain from disclosing its protected material until such time as [its] appeal is exhausted or until a satisfactory non-disclosure agreement can be agreed upon." (CVEC letter dated November 14, 1996, p.2).

The essence of both rehearing requests is that the Commission must, as a matter of law, deny parties in this proceeding access to certain forecasted stranded cost information even if such data is disclosed under the terms of the protective order established in Order No. 22,393.[2(124)] In support of their motions, CVEC and PSNH rely primarily on N.H. Admin. Rules Puc 204.07(b)(2) and the New Hampshire Uniform Trade Secrets Acts, RSA Chapter 350-B. The movants contend that the Commission erred by not requiring intervenors to execute more stringent non-disclosure agreements and that access to the protected information should be prohibited until they have exhausted their appeal rights on that issue. Finally, both companies allege that disclosure by the Commission under the terms of Order No. 22,393 would constitute a "misappropriation" of trade secrets under RSA 350-B:3.

[1, 2] We find that the movants are raising the same arguments raised in earlier filings before the Commission, which were also advanced in their unsuccessful attempt to obtain preliminary and permanent injunctive relief in Merrimack County Superior Court, Docket No. 96-E-329. We continue to believe that the protective order established by Order No. 22,393 appropriately balances the interests of the utilities and other parties in this proceeding.[3(125)]

In denying the movants' request for an injunction, the Merrimack County Superior Court (McGuire, J.) agreed with the Commission that N.H. Admin. Rule, Puc 204.07(b)(2) does not apply because the Commission granted the motions for confidential treatment. *See*, Attachment A. Thus, we are acting in accordance with a judicial finding that is consistent with our belief that the implementation of Order No. 22,393 does not violate the Commission's rules.

Moreover, we continue to believe that Puc Rule 204.07 (b)(2) does not apply in this instance inasmuch as the protected information will only be provided to the parties to the proceeding and not to the public. The New Hampshire Supreme Court has distinguished the rights of real parties

in interest to "examine all of the evidence relied upon by the Commission" from the rights of the public under the Right-to-Know Law. *See, Society for Protection of New Hampshire Forests v. Water Supply and Pollution Control Commission*, 115 NH 192, 195 (1975). In this case, we have limited disclosure by issuing a protective order that requires parties to execute non-disclosure certifications. Thus, the information is not generally available to the public.

The Superior Court also noted that the Commission may waive its own rules pursuant to N.H. Admin. Rules, Puc 201.05. Accordingly, to the extent necessary to release the protected information to the parties and to the extent the rule applies, we waive the applicability of Puc 204.07(b)(2) under the instant circumstances. We find that such a waiver is in the public interest in light of the strict statutory deadlines controlling this proceeding and our finding that "ratepayers ... have a right to have these proceedings conducted in public and with the maximum participation of all stakeholders." Order No. 22,393.

CVEC and PSNH both allege that we are prohibited from disclosing the protected information because such data is protected by the New Hampshire Trade Secrets Act, RSA Chapter 350-B. Neither company provides support for the contention that the information at issue here is a formula or process which would constitute a trade secret. Even assuming, *arguendo*, that this information qualifies for trade secret protection, we find that our disclosure of such information to parties in this proceeding would not be a "misappropriation" under RSA 350-B:1.

Accordingly, consistent with N.H. Admin. Rules, 204.07(b)(1) and 204.08(c), the subject information will be made available to full parties who seek to participate in the interim stranded cost proceedings of CVEC and PSNH and who agree to the terms of protective treatment set forth in Order No. 22,393.

As stated in the Commission's November 14, 1996 Secretarial Letter, we encourage the parties to arrange among themselves to the fullest extent practicable for the exchange of the protected information. However, we believe that the fair and prompt conduct of the proceeding

requires us to serve as a disseminator of protected information in cases where parties are unable or unwilling to make suitable arrangements. Before the Commission will release any protected material, parties must submit a copy of an executed non-disclosure agreement. The original agreement must be delivered to counsel for the utility generating the data.

Finally, we deny PSNH's request for a stay. In our view, a stay is inappropriate because it would only cause further prejudice to the parties in this proceeding who seek to meaningfully participate in the companies' interim stranded cost hearings which are scheduled to begin in December. Moreover, we note that RSA 374-F requires the Commission to develop a Statewide electric utility restructuring plan and establish utility-specific interim stranded cost charges by February 28, 1997. Granting the stay would seriously jeopardize our ability to meet that statutory deadline. As noted in Justice McGuire's order, PSNH and CVEC have the procedural right to seek a suspension of the Commission's Order from the New Hampshire Supreme Court. In order to obtain such relief, they would have to show that they will suffer irreparable harm and that such harm outweighs the public interest. *See, Union Fidelity Life Ins. Co. v. Whaland*, 114 N.H.

549 (1974). The Superior Court rejected those same arguments in denying the companies' requests for an injunction. *See*, Attachment A, p.5.

Accordingly, we will deny the Motions for Rehearing. The Commission will take action on requests for the data at issue after noon on Tuesday, November 19, 1996.

Based upon the foregoing, it is hereby

ORDERED, that PSNH's Request for Rehearing of Order Nos. 22,372 and 22,393 and Request for Stay is DENIED; and it is

FURTHER ORDERED, that CVEC's Motion for Rehearing of Order No. 22,370 and Order No. 22,393 is DENIED; and it is

FURTHER ORDERED, that action on requests for the data at issue will be taken after noon on Tuesday, November 19, 1996.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of November, 1996.

FOOTNOTES

[1]The information at issue relates only to forecasted cost and revenue data which the Commission requires in order to calculate each utility's interim stranded cost charges pursuant to RSA 374-F:4, VI.

[2]Although not expressly stated in previous Commission orders, only full intervenors in this proceeding are eligible to receive protected information. Limited intervenors, having no right to cross-examine witnesses or present testimony, do not need such data for their limited participation in this proceeding.

[3]We acknowledge herein that Order No. 22,393 incorrectly stated that PSNH did not file a response to Granite State Electric Companies's (GSEC's) Motion for Entry of Protective Order. PSNH did in fact file a letter dated October 31, 1996 regarding GSEC's Motion. Notably, the letter did not propose an alternative protective order in the case of PSNH. Nothing in that letter causes us to reconsider the directives of Order 22,393.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Statewide Electric Utility Restructuring Plan, DR 96-150, Order No. 22,370, 81 NH PUC 787, Oct. 18, 1996. [N.H.] Re Statewide Electric Utility Restructuring Plan, DR 96-150, Order No. 22,372, 81 NH PUC 792, Oct. 18, 1996. [N.H.] Re Statewide Electric Utility Restructuring Plan, DR 96-150, Order No. 22,393, 81 NH PUC 838, Nov. 4, 1996.

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NH.PUC*11/22/96*[89427]*81 NH PUC 891*Statewide Electric Utility Restructuring Plan

[Go to End of 89427]

81 NH PUC 891

Re Statewide Electric Utility Restructuring Plan

DR 96-150
Order No. 22,418

New Hampshire Public Utilities Commission

November 22, 1996

ORDER establishing 14 panels for the purpose of taking and administering oral comment in a proceeding examining a proposed restructuring of the state's electric utility industry.

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1. PROCEDURE, § 2

[N.H.] Commission authority to govern procedural direction — In proceeding addressing restructuring of electric utility industry — Reliance on rulemaking versus adjudicatory procedures — Informal oral comment versus formal evidentiary hearings — Panel discussions — Establishment of panel participants and timetables. p. 891.

2. ELECTRICITY, § 1

[N.H.] Industry restructuring proceeding — Procedural guidelines — Legislative-style hearings — Reliance on informal oral comment versus formal evidentiary hearings — Panel discussions as to policy issues — Establishment of panel participants and timetables. p. 891.

BY THE COMMISSION:

ORDER

I. Introduction and Procedural History

On October 16, 1996, the Commission issued Order No 22,364 establishing a procedural schedule in the above-captioned proceeding. Among other things, the Commission stated that it intended to conduct informal legislative style hearings in order to take oral comments on policy issues raised in the September 10, 1996 report, Restructuring New Hampshire's Electric Utility Industry: A Preliminary Plan. The Order establishes December 3-6, and 10-12 as hearing days for policy-related issues. Parties were given until November 8, 1996 to notify the Commission of their requests to present oral comments. In the same Order, the Commission encouraged the parties to work cooperatively so that the available hearing time could be used most efficiently. Finally, the Commission proposed that the informal hearings employ panels of expert witnesses, each covering a single broad policy issue raised in the Preliminary Plan.

Proposed panels and panelists were submitted by the following parties: City of Manchester (Manchester), Retail Merchants Association (RMA), Cabletron System, Inc. (Cabletron), New Hampshire Municipal Association (NHMA), Sen. King (King), Sen. Rubens (Rubens), Coos County (Coos), City of Berlin (Berlin), New Hampshire Legal Assistance (NHLA), Public Service Company of New Hampshire (PSNH), Public Utility Policy Institute (PUPI), Northeast

Energy Efficiency Council (NEEC), Center for Energy and Economic Development (CEED), Enron Capital and Trade Resources (Enron), Bellwether Solutions (Bellwether), Granite State Energy, Inc. (GSEI), New Hampshire Electric Cooperative (NHEC), Connecticut Valley Electric Company (CVEC), Granite State Electric Company (GSEC), Conservation Law Foundation (CLF) and Community Action Programs (CAP).

[1, 2] After reviewing the various proposals, we have decided to schedule fourteen (14) panels addressing the major policy issues raised in the Preliminary Plan. In choosing the panelists, we have sought to establish panels that reflect different interests and perspectives, although in some cases that goal has proven difficult to attain. For instance, most of the parties requesting representation on the public policy panels appear to share similar viewpoints.

The schedule set forth in Appendix A accommodates, to the best of our ability, the

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many requests for specific dates, panels and panelists. Because some of the proposed panels were heavily over-subscribed, we have been unable to satisfy all requests for representation on specific panels. However, we believe the panelists identified on the following pages provide a reasonable representation of the diverse opinions expressed in the initial written comments. Morning sessions will begin at 10:00 A.M. and continue until 1:00 P.M. Afternoon sessions will begin at 2:00 P.M. and continue until 5:00 P.M.

Each panelist will be allowed to make a short statement (no more than 5 minutes) at the beginning or at the end of the session. For administrative efficiency, we have placed a limit of five (5) panelists per panel. Panelists will take questions from Commissioners, the Commission Staff, and the Commission's consultants. Panelists will not be available for cross-examination by other parties.

Individuals who were not selected for specific panels will nonetheless be provided an opportunity to present oral comments at the conclusion of each panel session. We will limit those comments to five (5) minutes per individual. The individuals whose requests will be accommodated on an individual basis are listed in Appendix B.

By order of the Public Utilities Commission of New Hampshire this twenty-second day of November, 1996.

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

                              APPENDIX A

Tuesday, December 3, 1996Panel Topics
Commenters

     1(126)                                NEPOOL Reform
John O'Brien (RMA)            Mkt. Models/ISO/
Richard Tabors (Enron)        Power Exch./Reliability/
Frank Sabatino (PSNH)
Bruce Bentley (CVEC)
Bruce Biewald (OCA)
Commenters                    Corporate Structure
Roland Van Ohlsen (NHEC)      Divestiture/Funct. Separation/
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Meg Meal (Cabletron)	Affiliate Trans./Code of Conduct/
Richard Shapiro (Enron)	
Arthur Pearson (GSEI)	
John Forsgren (PSNH)	

Wednesday, December 4, 1996Panel Topics

Commenters	Transmission
John Kersten (Manchester)	Jurisdiction/T&D Split/
Joe Stazowski (PSNH)	RTG/Pricing/ISO Operations/
John O'Brien (RMA)	
George Sansoucy (NHMA)	
Arnold Turner (GSEC)	
Commenters	Market Power/Antitrust
Joseph Kalt (PSNH)	Horiz. & Vert. Mkt. Power/
Bruce Biewald (OCA)	Antitrust/Merger Safeguards/
William Shepard (Cabletron)	
George Gantz (Unitil)	
Richard Tabors (Enron)	

Thursday, December 5, 1996Panel Topics

Commenters	Unbundled Rates & Services
Bill Deehan (CVEC)	Extent of Unbundling/Ratemaking/
Ashok Rao (Enron)	Metering v. Load Est./Billing/
Peter Zschokke (GSEC)	Data Transfer/Special Contracts/
William Shepard (Cabletron)	
George Gantz (Unitil)	

Commenters	Renewables/Environment
Eugene Trisko (CEED)	Mkt. Barriers/Renewable Portfolio/
Barry Ilberman (PSNH)	R&D/Funding/
Joe Chaisson (CLF)	
Ken Traum (OCA)	
Dick Henry (Bellwether)	

Friday, December 6, 1996 Panel Topics

Commenters	Customer Protection/Education
Cliff Below (NHMA)	Reg. Mkt./Unreg. Mkt./
Roland Van Ohlsen (NHEC)	Public Education Programs/
Ken Traum (OCA)	Redlining/Supplier Reg./
Deborah Schachter (NHLA)	
John Ryan (CAP)	

Commenters	Low Income Customers
John Ryan (CAP)	Affordability Programs/Funding/
Barbara Alexander (NHLA)	Qualification Stnds/
Cliff Below (NHMA)	
Peter Flynn (GSEC)	
George Gantz (Unitil)	

Tuesday, December 10, 1996Panel Topics

Commenters	Universal Service
Steven Kean (Enron)	Oblig. to Connect/Default Power/
Gary Long (PSNH)	Stnd. Offer/Trnstl. Service/
Nancy Brockway (NHLA)	Availability/
Dick Henry (Bellwether)	
Peter Flynn (GSEC)	

Commenters	Strd. Cost Measurement
Bill Deehan (CVEC)	Definition/Measurement Methods/
Sherry Brown (Manchester)	Market Rates/Uncertainty/
Peter Flynn (GSEC)	
Paul Chernick (OCA)	
Steve Kaminski (NHEC)	

Wednesday, December 11, 1996Panel Topics

Commenters	Strd Cost Mitigation
John Forsgren (PSNH)	Specific Measures/Franchise Sale/
Sherry Brown (Manchester)	
George Sansoucy (NHMA)	
Malisa Lavinson (Cabletron)	
Paul Chernick (OCA)	
Commenters	Strd. Cost Recovery
Bill Deehan (CVEC)	Av. Retail Rate Approach/
John Noyes (PSNH)	Self-generation/
Sherry Brown (Manchester)	
Charles Douglas (Cabletron)	
Peter Bradford (OCA)	

Thursday, December 12, 1996Panel Topics

Commenters	Energy Efficiency
Peter Flynn (GSEC)	Mkt. Barriers/Mkt. v. Disco Funding/
George Gantz (Unitil)	Mkt. Transfn./Least Cost planning/
Paul Gromer (NEEC)	
Cort Richardson (CLF)	
Bill Deehan (CVEC)	
Commenters	Tax Effects
Robert Barber (Cabletron)	Franch. Tax/Bus. Enterprise Tax/
George Sansoucy (NHMA)	Bus. Profits Tax/Local Prop. Tax
Ken Traum (OCA)	
John Forsgren (PSNH)	
Roland Van Ohlsen (NHEC)	

APPENDIX B

Tuesday, December 3, 1996Panel Topics

Commenters	NEPOOL Reform
John Malley (GSEC)	
Steve Kaminski (NHEC)	
Commenters	Corporate Structure
John O'Brien (RMA)	

Thursday, December 5, 1996Panel Topics

Commenters	Unbundled Rates & Services
Gary Long (PSNH)	
George Sanscoucy (NHMA)	
Commenters	Renewables/Environment
Peter Flynn (GSEC)	
Cliff Below (NHMA)	

Friday, December 6, 1996 Panel Topics

Commenters	Energy Efficiency
John Ryan (CAP)	
Cliff Below (NHMA)	
Dick Henry (Bellwether)	
Nancy Brockway (NHLA)	
Commenters	Universal Service
John Ryan (CAP)	
Roland Van Olsen (NHEC)	
Cliff Below (NHMA)	
Paul Gromer (NEEC)	
George Gantz (Unitil)	
Malisa Lavinson (Cabletron)	

Tuesday, December 10, 1996Panel Topics

Commenters	Low Income Customers
Dick Henry (Bellwether)	
Commenters	Strd. Cost Measurement
John Noyes (PSNH)	
George Sansoucy (NHMA)	
Malisa Lavinson (Cabletron)	

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Wednesday, December 11, 1996Panel Topics
Commenters                    Strd Cost Mitigation
Peter Flynn (GSEC)
Bill Deehan (CVEC)
Steve Kaminski (NHEC)
Commenters                    Strd. Cost Recovery
Peter Flynn (GSEC)
Jim Rubens
Terry Muzzey (NHEC)
George Sansoucy (NHMA)
John O'Brien (RMA)

Thursday, December 12, 1996Panel Topics
Commenters                    Customer Protection/Education
Peter Flynn (GSEC)
Dick Henry (Bellwether)
Jackie Killgore (PUPI)
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FOOTNOTES

[1]Panelists will be expected to be familiar with NEPOOL's latest reform proposals.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Statewide Electric Utility Restructuring Plan, DR 96-150, Order No. 22,364, 81 NH PUC 774, Oct. 16, 1996.

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NH.PUC*11/25/96*[89428]*81 NH PUC 896*Statewide Electric Utility Restructuring Plan

[Go to End of 89428]

81 NH PUC 896

Re Statewide Electric Utility Restructuring Plan

DR 96-150
Order No. 22,419

New Hampshire Public Utilities Commission

November 25, 1996

ORDER identifying certain members of the commission staff as being designated as decisional participants in a proceeding examining a proposed restructuring of the state's electric utility industry, but limited only to those phases addressing utility-specific stranded cost matters.

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1. COMMISSIONS, § 48

[N.H.] Investigation and action — Through staff or agents — Designation of decisional staff — In proceeding addressing restructuring of electric utility industry — As limited to

utility-specific stranded cost matters only. p. 897.

2. ELECTRICITY, § 1

[N.H.] Industry restructuring proceeding — Procedural matters — Designation of commission staff as decisional participants — As limited to utility-specific stranded cost matters only. p. 897.

BY THE COMMISSION:

ORDER

I. INTRODUCTION AND PROCEDURAL HISTORY

This order addresses motions to designate Staff filed by Public Service Company of New Hampshire (PSNH) and the Office of Consumer Advocate (OCA).[1(127)] Both motions were filed in accordance with Order No. 22,364 (October 16, 1996), wherein the Commission decided to conduct utility-specific adjudicative hearings in order to establish interim stranded cost charges.[2(128)]

A timely objection to PSNH's motion was filed by the New Hampshire Municipal Association (NHMA). PSNH filed a response to OCA's motion to which Commission Staff responded by letter dated November 7, 1996.

Granite State Electric Company (GSEC) filed a letter stating that it did not seek designation of Staff with respect to its interim stranded cost proceeding. Similarly, the Unitil Companies (Unitil) filed a letter stating that it did not seek designation of Staff for its interim stranded cost proceeding.

II. POSITION OF THE PARTIES

A. PSNH'S MOTION

In its motion, PSNH avers that certain unidentified Staff members "have committed or are likely to commit to a highly adversarial position in this proceeding and may not be able to neutrally advise the Commission on all positions advanced herein." *See*, RSA 363:32,I(a)(1). PSNH argues that the issue of stranded costs represents the most contentious and controversial matter in this proceeding and one that has the most significant potential consequences for PSNH. PSNH contends that certain Staff members involved in this proceeding are the same Staff members who participated in the Retail Electric Competition Pilot (Pilot) proceedings, DR 95-250.

The NHMA objects to PSNH's request contending that none of the parties in the Pilot are bound by the positions taken in that proceeding. NHMA further argues that even if certain Staff participated in developing the Preliminary Plan in this proceeding, the fact that the Plan is preliminary demonstrates that Staff has not committed to a particular outcome in this proceeding.

B. OCA'S MOTION

The OCA's motion requests the

Commission to designate all Commission Staff as advisory employees with regard to both the adjudicative and non-adjudicative portions of this proceeding. According to the OCA, there may still be unidentified factual issues in this proceeding that will require formal adjudication. The OCA requests that we designate Staff as advisory employees for this entire proceeding "[a]lthough the OCA does not profess to know any clear legal case or statutory law" that supports its request.

PSNH filed a response to the OCA's motion in which it argues against OCA's request to designate all Staff as advisory. According to PSNH, Staff employee George McCluskey should not be designated as a decisional employee because "Mr. McCluskey has made public comments concerning a wide variety of issues in this proceeding, most notably the issue of stranded cost recovery." Response, ¶ 7. PSNH cites several press reports to support its contention.[3(129)]

C. GSEC AND UNITIL

As indicated above, GSEC and Unitil both filed letters stating that they did not seek designation of Staff with respect to their interim stranded cost proceedings.

III. COMMISSION ANALYSIS

A. PSNH's Motion

[1, 2] As suggested in previous orders, we agree that the designation of Staff pursuant to RSA 363:30 *et seq.*, is appropriate with regard to utility-specific interim stranded cost proceedings. Although we are called upon in this docket to establish only "interim" stranded cost charges, we agree that this issue "is particularly contentious or controversial and ... significant in consequence." RSA 363:32,I(a)(2).[4(130)] Accordingly, we grant PSNH's motion and designate the following employees as decisional employees pursuant to RSA 363:30, *et seq.*: George McCluskey, Mary Coleman, Amanda Noonan, Minot Hill and Robert Frank.[5(131)] In addition, pursuant to RSA 363:31, VII, we also designate the following consultants as decisional employees: LaCapra Associates and our legal consultant, Scott Hempling.

Although PSNH's motion did not seek designation with respect to any particular Staff members, we will briefly address its response to OCA's motion and, specifically, its contentions regarding Staff employee George McCluskey. PSNH has offered no evidence that leads us to reasonably question Mr. McCluskey's impartiality "concerning issues of fact involved in pending matters." *Appeal of Seacoast Anti-Pollution League*, 125 N.H. 465, 472 (1984). On the contrary, the comments attributed to Mr. McCluskey are of a general nature and relate to the express economic policies underlying RSA Chapter 374-F. *Id.* Mr. McCluskey shall serve as a decisional employee with respect to PSNH's interim stranded cost proceeding.

B. OCA's Motion

Pursuant to RSA 363:32, the Commission is required to designate Staff only when we conduct an adjudicative proceeding. As a party with full rights of participation, the OCA has proper standing to request designation relative to any adjudicative phase of this proceeding. RSA 363:32 I(a). Accordingly, we grant the OCA's request to designate, but only in relation to the interim stranded cost proceedings of each jurisdictional utility in DR 96-150. We decline to designate all Commission Staff as advisory for this entire proceeding. There is no legal basis for

the OCA's request and there is no showing that the public would be better served by ordering such relief.

Based upon the foregoing, it is hereby

ORDERED, that PSNH's Motion for Designation of Staff is GRANTED IN PART and DENIED IN PART as set forth herein; and it is FURTHER ORDERED, that OCA's Motion to Designate Staff as Advisory is GRANTED IN PART and DENIED IN PART as set forth herein.

By order of the Public Utilities Commission of New Hampshire this twenty-fifth day of November, 1996.

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FOOTNOTES

[1]"Designation of Staff" refers to the statutory obligation of the New Hampshire Public Utilities Commission (Commission) under certain circumstances to designate its Staff as decisional employees or advocates. *See*, RSA 363:30 *et seq.*

[2]RSA 363:33 recognizes that proceedings may be conducted in adjudicative and non-adjudicative phases. For purposes of designating Staff, only the adjudicative phase(s) of such proceedings are subject to the designation standards set forth in RSA 363:32.

[3]Commission Staff Attorney, Robert Frank, filed a November 7, 1996 letter that responded to PSNH's allegations regarding Mr. McCluskey. Mr. Frank contends that PSNH has misapplied the law on this issue and that Mr. McCluskey may be designated as either Staff advocate or advisor, whichever the Commission deems appropriate.

[4]The interim stranded cost charges must be based on our preliminary determination of what is equitable, appropriate, balanced and in the public interest. RSA 374-F:4,IV.

[5]These employees comprise the Commission's Electric Utility Restructuring Division.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Statewide Electric Utility Restructuring Plan, DR 96-150, Order No. 22,364, 81 NH PUC 774, Oct. 16, 1996.

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NH.PUC*11/25/96*[89429]*81 NH PUC 898*Statewide Electric Utility Restructuring Plan

[Go to End of 89429]

81 NH PUC 898

Re Statewide Electric Utility Restructuring Plan

DR 96-150
Order No. 22,420

New Hampshire Public Utilities Commission

November 25, 1996

ORDER denying rehearing of Order No. 22,364 (81 NH PUC 774, *supra*) in which the commission had affirmed its reliance on nonadjudicative procedures for a proceeding examining a proposed restructuring of the state's electric utility industry. Commission reiterates that only utility-specific stranded cost issues require adjudication and formal evidentiary hearings within the context of this proceeding.

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1. PROCEDURE, § 2

[N.H.] Commission authority to govern procedural direction — In proceeding examining restructuring of electric utility industry — Reliance on nonadjudicative procedures — Factors — Most phases as addressing policy rather than factual matters — Adjudicative hearings as appropriate for factual disputes — As needed for utility-specific stranded cost issues only — Affirmation. p. 899.

2. ELECTRICITY, § 1

[N.H.] Industry restructuring proceeding — Procedural matters — Continued reliance on nonadjudicative procedures — For resolving issues of policy — But use of adjudicative hearings for factual disputes — Such as utility-specific stranded cost matters. p. 899.

3. PROCEDURE, § 26

[N.H.] Conduct of hearings — Adjudicative versus nonadjudicative procedures — Only factual issues as appropriate for adjudicatory hearings — Policy issues as appropriate for nonadjudicative proceedings — Affirmation — Electric industry restructuring proceeding — Resolution of utility-specific stranded cost issues in adjudicatory hearings — All other matters to be addressed in less formal proceedings. p. 899.

BY THE COMMISSION:

ORDER

Motions for rehearing were filed by Public Service Company of New Hampshire (PSNH) and Connecticut Valley Electric Company (CVEC) on October 16, 1996 relative to

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Commission Order No. 22,364. Both companies seek rehearing with regard to the Commission's decision to conduct this proceeding primarily through non-adjudicative procedures.

By Order of Notice dated May 13, 1996, the Commission advised the subject utilities and interested parties that this proceeding would be conducted "primarily through non-adjudicative processes," but that specific requests for adjudicative proceedings would be entertained. Order of Notice, p.3. On June 21, 1996, PSNH filed its first request for the Commission to commence a formal adjudication. In that request, PSNH alleged that it was entitled to formal adjudication of "every issue" in this docket. The Commission denied PSNH's request in Order 22,244 (July 22, 1996).[1(132)] The Commission agreed with PSNH and others, however, that the establishment of utility-specific interim stranded cost charges required formal adjudication because that issue implicates the "legal rights, duties or privileges" of those parties. *Id.* at 10; *See*, RSA 541-A:1,IV.

On August 21, 1996, PSNH filed a motion for rehearing of Order 22,244. In its motion, PSNH again alleged that it was entitled to formal trial-like procedures to resolve "every issue" in this docket. The Commission denied PSNH's motion for rehearing in Order No. 22,316 (September 17, 1996), but once again indicated that it would entertain requests for evidentiary hearings provided that parties could clearly identify the factual issues for which such procedures were requested. Order No. 22,316 at 14-15.

[1-3] In Order No. 22,364, the Commission reviewed the list of alleged factual issues submitted by PSNH and CVEC and reiterated its earlier finding that only interim stranded cost charges warranted the commencement of an adjudicative proceeding pursuant to RSA 541-A:31. The Commission concluded that PSNH and CVEC failed to identify any specific factual issues associated with the other subject matters raised in their filings.

We have reviewed the motions for rehearing submitted by CVEC and PSNH and find that neither company has raised any argument that we have not already considered and rejected in previous orders. Both companies have once again failed to identify the factual issues for which they seek evidentiary hearings.

Based upon the foregoing, it is hereby

ORDERED, that CVEC's Motion for Rehearing of Order No. 22,364 is DENIED; and it is

FURTHER ORDERED, that PSNH's Request for Rehearing of Order No. 22,364 is DENIED.

By order of the Public Utilities Commission of New Hampshire this twenty-fifth day of November, 1996.

FOOTNOTES

[1]In that order, the Commission concluded that its statutory duty to develop a statewide restructuring plan was "clearly legislative in character." Order 22,244 at 9.

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.

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NH.PUC*11/25/96*[89430]*81 NH PUC 899*Retail Competition Pilot Program

[Go to End of 89430]

81 NH PUC 899

Re Retail Competition Pilot Program

DR 95-250
Order No. 22,421

New Hampshire Public Utilities Commission

November 25, 1996

PETITIONS by unregulated power marketers for protective treatment of data submitted

Page 899

quarterly in reports on their pilot programs for competitive electric services; granted in part and denied in part. Commission finds that individual, supplier-specific data on customers and load served need not be revealed but that aggregate information on program participation levels should be disclosed.

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1. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric service — Pilot program for retail competition — Quarterly data reports — Of unregulated power marketers — Protective treatment of data — Only as to supplier-specific data — Disclosure of aggregate information on participation levels, load served, and average prices. p. 901.

2. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective treatment — As to quarterly data reports — Required in the course of a pilot program for retail electric competition — Denial of blanket protective treatment — Confidentiality only as to supplier-specific data — Disclosure of aggregate information on participation levels, load served, and average prices — Unregulated power marketers. p. 901.

3. RATES, § 323

[N.H.] Electric rate design — Load factors — Determination of — Estimation techniques — As to pilot program for retail electric competition — Electronic data transfer system — Value added network system — Analysis and review of estimation methods. p. 902.

BY THE COMMISSION:

ORDER

I. INTRODUCTION AND PROCEDURAL HISTORY

On July 25, 1996, Cabletron Systems, Inc. (Cabletron) filed a motion with the New Hampshire Public Utilities Commission (Commission) to convene a technical session for the purpose of allowing interested parties "to develop a program for the collection, analysis and distribution of information, data and other materials related to the Pilot Program." On August 5, 1996, Green Mountain Energy Partners (GMEP) filed a partial objection to Cabletron's motion in which it argued that Cabletron's request was over-inclusive in describing what is public data. On August 8, 1996, Granite State Electric Company (GSEC) filed an objection to Cabletron's motion on the grounds that the information that Cabletron sought was already publicly available.

On September 3, 1996, the Commission issued Order No. 22,300 granting Cabletron's request to convene a technical session, but reserved any determination relative to the confidentiality of the data gathered in the Pilot Program. The Commission scheduled the technical session for September 25, 1996 and encouraged interested parties to submit written proposals to assist in developing a meaningful agenda. Written proposals were submitted September 18, 1996 by Cabletron, the Public Utility Policy Institute (PUPI) and GSEC.

On a related matter, Granite State Energy, Inc. (GSEI), Unitil Resources, Inc. (URI), Wheeled Electric Power Company (WEPCO), and Enron Power Marketing (EPM), all unregulated power marketers, filed motions requesting confidential treatment of the data submitted in their Quarterly Pilot Program Reports. The information for which protection is sought relates to customer usage and pricing data. This data, according to GSEI and URI, would enable someone to calculate commercially sensitive supplier market share information. WEPCO and EPM do not specify why their data should be protected. GSEI recommends that the Commission only make available the following information:

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(a) average energy price by customer class;

(b) range of prices by customer class;

(c) number of suppliers with market share by customer class; and

(d) range of market share by customer class.

Further, GSEI requests that the information contained in its quarterly report be accessible only to the Commission and its Staff, and that all others, including the Commission's agents or consultants, be denied access to such information. On October 10, 1996, the Office of the Consumer Advocate (OCA) filed a motion in opposition to GSEI's request for confidential treatment. The OCA states that GSEI's request would deny it access to empirical data regarding the effect of competition on residential ratepayers.

On October 15, 1996, Cabletron[1(133)] filed with the Commission a report summarizing the

conclusions and recommendations of the September 25, 1996 technical session. The report recommends that the Commission publish an interim report on the Pilot by about December 1, 1996 and that it contain the following information:

(i) Number of customers by customer class by utility who sought to participate in the Pilot.

(ii) Number of customers selected by customer class by utility to participate in the Pilot;

(iii) Number and nature of Pilot customer contacts/complaints made to the Commission, Attorney General's Office and host utilities;

(iv) Provisional results from studies conducted by utilities to determine the accuracy of the load estimation process applied to small users in the Pilot;

(v) Provisional results from studies conducted by utilities to determine the effectiveness of the electronic data transfer system used in the Pilot.

The report also recommends that the Commission conduct a survey of Pilot customers and hold public hearings to receive comments on the Pilot's effectiveness.

The technical session participants failed to reach consensus on whether the interim report should include the following information:

(a) Number of customers and total load served by each competitive supplier;

(b) Market share by customer class by utility by competitive supplier;

(c) Market price by customer;

(d) An analysis of the value of increasing the size of the Pilot; and

(e) An interim evaluation of the effectiveness of the code of conduct.

II. COMMISSION ANALYSIS

[1, 2] It is our view that data gathered in a public experiment like the Pilot should be subjected to the broadest possible disclosure consistent with the provisions of RSA 91-A. However, we are cognizant of certain exemptions from the general rule favoring public disclosure of information held by this agency. *See* RSA 91-A:5,IV. For example, we are generally opposed to the release of customer-specific information without the prior authorization of the affected customers. As this has been a long-standing practice of the utilities under our jurisdiction, customers possess a reasonable expectation that such information would remain private. Accordingly, we will protect data relating to customer-specific power purchases and prices.

We believe that very little would be achieved by releasing supplier-specific information such as the number of customers and total load served, market share, and average selling price. Moreover, since this information is arguably exempt from public disclosure because it is considered confidential, commercial information, we will not order its disclosure. Nevertheless, to the extent that other parties seek access to such information, we will entertain requests for its disclosure in redacted form.

We agree, however, with the report's conclusion that the aggregate information listed in (i)

through (v) above is appropriate for disclosure. To that list we will add the information in

Page 901

(a) through (c) above but amend (d) to read "market share for unidentified suppliers by customer class." We will also add the following requirement: the number of customers by class by utility that actually purchased energy from competitive suppliers.

We now address the OCA's request to access the data submitted by competitive suppliers. There is little doubt that the information the OCA seeks has great value to its constituency, given that the Pilot was designed in part to determine whether all customers could benefit equally from competitive electric markets. We will therefore grant the OCA's request. Of course, OCA will be subject to the same confidentiality restrictions imposed on our Staff.

On the issue of public hearings, the Commission on November 19, 1996 notified the parties in docket DR 96-150 of its plan to hold six evening forums at different locations throughout the state during January 1997. We do not rule out the possibility of similar public forums at some point to allow Pilot customers an opportunity to express their concerns to the Commission.

We also issued on October 28, 1996 a request for proposals (RFP) to conduct surveys of Pilot participants. On November 20, 1996, the Governor and Council approved a contract with the University of New Hampshire to conduct the surveys. The RFP requires a final report to be submitted to the Commission by January 30, 1997.

[3] With regard to the recommendation on electronic data transfer, we believe that the success of industry restructuring depends in part on an efficient system to transfer billing and other data between suppliers, distribution companies and customers. To this end, the Commission ordered the host utilities in the Pilot to employ a common electronic system and a common data format to transfer billing data. We direct the host utilities to report by December 16, 1996 on the effectiveness of the Value Added Network (VAN) system and the common data format, including recommendations on how this system could be improved. The Commission is particularly interested in whether VAN type systems are capable of handling the volumes of traffic expected in 1998 when retail access is broadly available. We also encourage competitive suppliers to share with the Commission their experiences with the VAN system.

As stated in Order No. 22,098, the hourly load estimation methodology developed by GSEC (using load profiles) for the Pilot raises the prospect that small consumers will not be burdened with high transaction costs as they attempt to participate in competitive electric markets. As with the electronic data transfer system, we subsequently directed the host utilities to employ GSEC's load estimation method in the Pilot. At issue is: (i) whether the load estimation technique is sufficiently accurate to ensure power costs are fairly allocated among competitive suppliers, and (ii) whether the method is capable of handling significantly higher volumes of traffic than were experienced in the Pilot.

In light of the importance of load estimation to small customers, we direct the host utilities to submit by December 16, 1996 their initial conclusions as to the accuracy of the method and the practicality of applying it to a much larger market, including recommendations for improvement. Those reports should also address how the estimation technique has been received by the NEPOOL settlements staff and whether changes will be needed to accommodate higher volume

traffic.

Based upon the foregoing, it is hereby

ORDERED, that the motions for protective treatment of the quarterly data submitted by GSEI, URI, WEPCO and EPM are GRANTED IN PART AND DENIED IN PART as noted above; and it is

FURTHER ORDERED, that the OCA's Motion for access to the quarterly data submitted by competitive suppliers is GRANTED.

By order of the Public Utilities Commission of New Hampshire this twenty-fifth day of November, 1996.

FOOTNOTES

[1]On behalf of those who attended the technical session.

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EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Retail Competition Pilot Program, DR 95-250, Order No. 22,098, 81 NH PUC 270, Apr. 12, 1996. [N.H.] Re Retail Competition Pilot Program, DR 95-250, Order No. 22,300, 81 NH PUC 669, Sept. 3, 1996.

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NH.PUC*11/26/96*[89431]*81 NH PUC 903*New Hampshire Electric Cooperative, Inc.

[Go to End of 89431]

81 NH PUC 903

Re New Hampshire Electric Cooperative, Inc.

DR 96-213
Order No. 22,422

New Hampshire Public Utilities Commission

November 26, 1996

ORDER granting an electric cooperative a $2.2 million temporary rate increase, pending resolution of the cooperative's request for a permanent increase of $3 million.

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1. RATES, § 630

[N.H.] Temporary rates — Pending completion of permanent rate case — Less stringent

evidentiary basis — Electric cooperative. p. 904.

2. RATES, § 432

[N.H.] Electric cooperative — Proposed rate increase — Allowance for temporary increase. p. 904.

APPEARANCES: Dean, Rice and Howard by Mark W. Dean, Esq. for New Hampshire Electric Cooperative, Inc.; Kenneth E. Traum and Michael W. Holmes, Esq. of Office of Consumer Advocate for residential ratepayers; Amy L. Ignatius, Esq. for 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 million or 3.9%. Subsequently, on September 3 and September 27, 1996, respectively, NHEC submitted a motion and testimony requesting that its proposed level of permanent rates be allowed to take effect as temporary rates on October 1, 1996. The Commission suspended the temporary rate tariff by Order No. 22,314 (September 16, 1996). There are no intervenors other than the Office of Consumer Advocate (OCA) which is a statutorily authorized intervenor.

The Commission approved a procedural schedule which set a temporary rate hearing for October 24, 1996 and a permanent rate hearing for March 6, 1997. *See*, Order No. 22,342 (October 7, 1996).

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.

Pursuant to Order No. 22,342 (October 7, 1996), the Commission heard evidence on the temporary rate request on October 24, 1996. In response to matters that arose during the course of the hearing, the Commission allowed the Parties and Staff to meet in a technical session; the hearing was completed on October 31, 1996. This order will address the request for temporary rates and the method of recovery.

II. POSITIONS OF THE PARTIES AND STAFF

A. *NHEC*

NHEC sought a $3 million increase in revenues on a permanent basis and asked that the full amount be ordered on a temporary basis, subject to reconciliation at the conclusion of the

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permanent rate proceeding. The increase is necessary, according to NHEC, to meet debt obligations and other expenses, including an expanded right-of-way clearing project.

A $3 million increase in revenues would result in a Times Interest Earned Ratio (TIER) of 1.25 which NHEC argued is low but acceptable. NHEC further requested that the revenue increase be allocated differently among classes, such that residential customers would see an increase of 5.1% and all other customers see an increase of 2%. NHEC argued that this allocation would be consistent with its proposed rate redesign.

In addition, NHEC anticipates a reduction in its wholesale purchased power adjustment of anywhere from 2% to 5%, on bills rendered on or after January 1, 1997. This decrease would lessen the impact of the temporary rate increase.

NHEC challenged Staff's adjustments as being beyond the scope of a temporary rate proceeding and argued that Staff had misused the 1.25 TIER in calculating its proposed increase.

B. *OCA*

OCA recommended temporary rates in the amount of current rates, or if a temporary increase were to be granted, then a revenue increase of $1.5 million, to be recovered on an across-the-board basis. The increase should coincide with the power cost adjustment decrease. Further, OCA recommended that the power cost adjustment be broken out in bills as a separate line item as the first step towards more detailed billing, which is appropriate in a competitive energy market.

C. *Staff*

Staff recommended a temporary rate increase of $2.2 million. Mr. Cunningham's original testimony had recommended a $1.5 million increase but, after review of certain information regarding treatment of patronage capital, he concluded that it was appropriate to allocate certain gains as had NHEC and revised his recommendation accordingly.

Staff's recommendation is based upon three pro forma adjustments made to the 1995 test year: an adjustment to reflect the impact of NHEC's long-term debt refinancing; an adjustment to eliminate C&LM revenue and expense from the test year; and, an adjustment to remove clearly unallowable costs for lobbying expenses and out-of-period costs. Staff used a 1.25 TIER in its calculations, based on NHEC's position that it could accept that level of TIER coverage.

Staff recommended that the temporary rate increase be collected on an across-the-board basis. Any reduction due to the wholesale power cost adjustment would lessen the impact of this increase.

III. COMMISSION ANALYSIS

[1, 2] Having reviewed the evidence presented regarding temporary rates, we find NHEC is entitled to an increase in rates on a temporary basis, pursuant to RSA 378:27, subject to reconciliation at the conclusion of the permanent rate case. We do not find it appropriate, however, to grant the full amount requested by NHEC. We find Staff's adjustments to be reasonable and will approve an increase in revenues of $2.2 million to be collected on an across the board basis. Although the statute requirements for establishing temporary rates are less stringent, we nonetheless believe it is appropriate to recognize Staff's adjustment to test year revenues. In addition, while the ultimate rate design may reflect further steps towards mirroring NHEC's cost of service study, we do not find it appropriate to make a weighted allocation for

temporary rate purposes.

Based upon the foregoing, it is hereby

ORDERED, that temporary rates in the amount of $2.2 million are APPROVED, to be recovered on an across-the-board basis; and it is

FURTHER ORDERED, that the temporary rate increase will be effective on December 1, 1996 on a service rendered basis; and it is

FURTHER ORDERED, that NHEC shall submit compliance filings within 15 days of this order.

By order of the Public Utilities Commission of New Hampshire this twenty-sixth day of November, 1996.

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Citations in Text

[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.

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NH.PUC*11/26/96*[89432]*81 NH PUC 905*Trescom U.S.A., Inc.

[Go to End of 89432]

81 NH PUC 905

Re Trescom U.S.A., Inc.

DE 96-079
Order No. 22,423

New Hampshire Public Utilities Commission

November 26, 1996

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

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1. CERTIFICATES, § 123

[N.H.] Telephone carrier — Intrastate intraLATA long-distance services — Interim authority — Assessment of competitive impacts — Exclusion of local exchange services. p. 905.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate intraLATA toll services — Interim authority — Assessment of competitive impacts — Exclusion of local exchange services. p. 905.

BY THE COMMISSION:

ORDER

[1, 2] On March 20, 1996, Trescom U.S.A., Inc. (Trescom), a Florida corporation, petitioned the New Hampshire Public Utilities Commission (Commission) for authority to do business as a telecommunications public utility in the State of New Hampshire (petition) pursuant to, *inter alia*, RSA 374:22 and RSA 374:26. Trescom has demonstrated the financial, managerial and technical ability to offer service as conditioned by this order. The Commission previously approved numerous, similar petitions filed during the Trial Period, pursuant to the Modified Stipulation Agreement (Stipulation) in Docket No. DE 90-002, approved by Order No. 20,916 (August 2, 1993). Our orders in those numerous dockets granted the petitioner(s) interim authority to offer intraLATA toll service, specifically excluding local exchange service, for the service territory of the entire State of New Hampshire, during the Trial Period, in order to allow the Commission to analyze competition during the two-year Trial Period.

Because the Trial Period identified by the Stipulation expired on September 30, 1995, we have explicitly clarified that the authority we had granted remains in effect until we specifically modify or revoke that authority, after analysis of the Trial Period. *See* Order No. 21,851 (October 3, 1995). Likewise, our grant of authority ordered herein remains in effect until we specifically modify or revoke that authority.

The public good is served by permitting such competition by telecommunications companies. The Commission permits competitive entry in order to foster competition in the New Hampshire intrastate toll market and to allow the Commission to analyze the effects of such competition.

The public should be provided an opportunity to respond in support of, or in opposition to, this petition.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that Trescom is granted interim authority to offer as a telecommunications public utility intraLATA toll service, specifically excluding local exchange service, for the service territory of the entire State of New Hampshire, subject to the following conditions:

1. The services shall be offered by

approved tariffs.

2. The services shall be offered until the Commission orders otherwise.

3. Trescom shall file tariffs for new services and changes in approved services (other than rate changes), with effective dates of no less than 30 days after the date the tariffs are filed with the Commission.

4. Within one business day of offering an approved service to the public at a rate different from its rates on file with the Commission, Trescom shall notify the Commission of the change.

5. Trescom is exempted from NH Admin. Rules, Puc 406.03 Accounting Records; Puc 407 Forms Required of All Telephone Utilities; and Puc 409 Uniform System of Accounts for Telecommunications Companies.

6. Trescom shall maintain its book and records in accordance with Generally Accepted Accounting Principles.

7. Trescom 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. Trescom 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. Trescom shall compensate the appropriate Local Exchange Company for all originating and terminating access used by Trescom pursuant to NET Tariff N.H.P.U.C. 79, Switched Access Service Rate or its successors or its relevant equivalent contained in the tariffs of the Independent Local Exchange Companies.

10. New Service offerings filed for approval with the Commission shall be accompanied by tariff pages describing the service, rates and effective dates; and it is

FURTHER ORDERED, that the authority granted herein remains in full force and effect until the Commission orders otherwise; and it is

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

FURTHER ORDERED, that Trescom shall publish a copy of the Notice of Conditional Approval attached to this Order once in a statewide newspaper of general circulation. Said publication shall occur no later than December 3, 1966, and an affidavit proving publication shall be filed with the Commission on or before December 10, 1996; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, et seq., Trescom shall pay all assessments levied upon it by the Commission based on the amount of gross revenues received as a result of doing business in New Hampshire; and it is

FURTHER ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or file a written request for a hearing on this matter before the Commission no later than December 17, 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 December 24, 1996; and it is

FURTHER ORDERED, this Order *Nisi* shall be effective December 26, 1996, unless the Commission provides otherwise in a supplemental order issued prior to the effective date and it

is

FURTHER ORDERED, that Trescom shall file a compliance tariff with the Commission on or before December 10, 1996, in accordance with NH Admin. Rules, Puc 1601.01 (b).

By order of the Public Utilities Commission of New Hampshire this twenty-sixth day of November, 1996.

Notice of Conditional Approval of
TRESCOM U.S.A., INC.

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

On March 20, 1996, Trescom U.S.A., Inc. (Trescom), a Florida corporation, filed with the

New Hampshire Public Utilities Commission (Commission) a petition to do business as a telecommunications public utility in the State of New Hampshire, specifically to provide intrastate long distance telecommunications services.

In Order No. 22,423, issued in Docket No. DE 96-079, the Commission granted Trescom conditional approval to operate as of December 26, 1996, subject to the right of the public and interested parties to comment on Trescom 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 Trescom's petition to do business in the State must be submitted in writing no later than December 17, 1996, and reply comments no later than December 24, 1996, 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 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*11/26/96*[89433]*81 NH PUC 907*Town of Hudson v. Consumers New Hampshire Water Company

[Go to End of 89433]

81 NH PUC 907

Town of Hudson
v.
Consumers New Hampshire Water Company

DE 96-227
Order No. 22,424

New Hampshire Public Utilities Commission

November 26, 1996

ORDER compelling a water utility to respond to certain of a municipality's data requests in the course of an action in eminent domain against the utility. However, minimal responses are required for some of the requests while other requests are denied.

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1. PROCEDURE, § 17

[N.H.] Discovery and inspection — Order compelling production — Responses to data requests — Denial of certain requests — Eminent domain proceeding — Water utility and municipality. p. 908.

BY THE COMMISSION:

ORDER

As part of this proceeding by which the Town of Hudson (Hudson) petitions to take certain property of Consumers New Hampshire Water Company (Consumers), Hudson issued data requests to Consumers on August 30, 1996. Consumers provided Hudson with "Preliminary Responses to Hudson's First Set of Data Requests," dated September 13, 1996. Those Preliminary Responses indicated refusal, on varying grounds, to answer a large number of the data requests. We note and approve of Consumers' efforts to move the process forward by offering Preliminary Responses. On October 24, 1996, Hudson filed at the New Hampshire Public Utilities Commission (Commission) a

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Motion to Compel Further Answers to Data Requests. Hudson stated that the Data Requests were relevant, focusing on the identity and value of the property, severance damages, and allocation of monies paid to Consumers by Hudson. Hudson provided copies of the relevant Data Requests and a summary of the responses made by Consumers in Consumers' Preliminary Responses.

[1] The Commission Staff filed a Motion in Response to Hudson's Motion to Compel, on

October 25, 1996. Staff's Motion in Response considered each of Hudson's data requests on the basis of relevance, scope and ease of access to the information. On the basis of its review Staff recommended that Consumers be compelled to answer some completely, others after clarification by Hudson, and others in reduced form. Staff also recommended that some of Hudson's requests be denied.

We accepted Staff's analysis and, at our public meeting on November 4, 1996, announced our decision to require Consumers to answer Hudson's Data Requests pursuant to Staff's recommendations. On the afternoon of the same day we received a filing from Consumers entitled "Objection to Staff's Motion in Response to Hudson's Motion to Compel." Although our rules do not provide for objections to motions made in response, we nonetheless have reviewed Consumers' Objection and we find no reason to revise our original decision.

Based upon the foregoing, it is hereby

ORDERED, that Hudson's Motion to Compel Further Answers is GRANTED, pursuant to the limitations identified in Staff's Motion in Response, with regard to Data Requests 4, 5, 11, 12, 14, 15, 16, 17, 20, 21, 32, 33, 34, 35, 37, 38, 41, 42, 43, 45, 46, 47, 48, 49, 53, and 54; and it is

FURTHER ORDERED, that Hudson's Motion to Compel Further Answers is DENIED with regard to Data Requests 18, 31, 38, 29, 40, 50, 51, 52, and 55 are denied.

By order of the Public Utilities Commission of New Hampshire this twenty-sixth day of November, 1996.

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NH.PUC*12/02/96*[89434]*81 NH PUC 908*Public Service Company of New Hampshire

[Go to End of 89434]

81 NH PUC 908

Re Public Service Company of New Hampshire

DE 96-308
Order No. 22,425

New Hampshire Public Utilities Commission

December 2, 1996

ORDER authorizing an electric utility to construct and maintain a 34.5-kilovolt distribution tie line over the Souhegan River in Milford.

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1. ELECTRICITY, § 7

[N.H.] Authorization for new power lines — Distribution tie line — Crossing of public waters as a factor — Backup feed line. p. 908.

2. CONSTRUCTION AND EQUIPMENT, § 5

[N.H.] Cable lines — Distribution tie line — Crossing of public waters as a factor — Electric utility. p. 908.

BY THE COMMISSION:

ORDER

[1, 2] On September 24, 1996, Public Service of New Hampshire (PSNH) filed a petition with the NH Public Utilities Commission (Commission), pursuant to RSA 371:17, to install and maintain a new three phase, 34.5 kV distribution line (tie-line) across the public waters of the Souhegan River in the Town of Milford, New Hampshire. The tie-line is part of a project which will provide a backup feed for loss of the 314 circuit at the South Milford Substation, which is a radial line with 26MW of load including several large power customers.

On November 25, 1996, PSNH filed with the Commission copies of easements and

permits from the affected landowners, consisting of the Town of Milford and the American Stage Festival. 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 200 feet.

In order to meet the requirements of reliable service to the public, PSNH must maintain electric lines over and across certain public waters; those lines are an integral part of its electrical 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."

PSNH has attested and Staff agrees 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. In its November 25, 1996 filing, PSNH further stated that in order to maintain reliable service in the Milford area, it is important to begin this construction as soon as possible, particularly considering the impending winter weather. As a result, PSNH has requested expeditious issuance of an order that would allow for December 1996 construction.

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 PSNH to meet its obligation to provide reliable electric 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 PSNH is authorized, pursuant to RSA 371:17 *et seq.*, to install and maintain a three phase, 34.5 kV distribution line over the Souhegan River in Milford, NH as well as associated plant depicted in Drawing Numbers D-7649-398 and D-7649-398A and other documentation on file with this Commission, such authority to be effective immediately; 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 statewide newspaper of general circulation, such publication to be no later than December 4, 1996 and to be documented by affidavit filed with this office on or before December 11, 1996; and it is

FURTHER ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or file a written request for a hearing on this matter before the Commission no later than December 10, 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 December 16, 1996; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective December 18, 1996, 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 December, 1996.

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NH.PUC*12/02/96*[89435]*81 NH PUC 909*EnergyNorth Natural Gas, Inc.

[Go to End of 89435]

81 NH PUC 909

Re EnergyNorth Natural Gas, Inc.

DR 96-239
Order No. 22,426

New Hampshire Public Utilities Commission

December 2, 1996

ORDER denying rehearing of Order No. 22,343 (81 NH PUC 731, *supra*) and declining to expand the scope of a proceeding addressing a natural gas local distribution company's proposed introduction of a new natural gas engine firm transportation rate.

Page 909

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1. RATES, § 382

[N.H.] Natural gas rate design — Proposed gas engine firm transportation rate — For certain qualifying customers — Scope of proceeding — Reasonableness and cost basis of proposed rate — Exclusion of issue of competitive impacts — Affirmation — Local distribution company. p.

911.

2. MONOPOLY AND COMPETITION, § 50.1

[N.H.] Interutility competition — Utility-on-utility competition — Nonconsideration in proceeding addressing proposed gas engine firm transportation rate — Affirmation — Local distribution company. p. 911.

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 Transportation Tariff (NGEFT). The NGEFT rate is designed for customers that are dominant commercial and industrial summer users with a high load factor and who take a large volume of gas. ENGI has limited the availability of the rate to end-users employing natural gas for small power production with a capacity of one megawatt or less.

By Order No. 22,283 (August 19, 1996) the Commission suspended the proposed filing to investigate the tariff and accompanying supporting materials. On August 22, 1996, ENGI submitted a letter to the Commission requesting an expedited procedural schedule. Order No. 22,283 also set a prehearing conference for October 1, 1996, a deadline for intervention requests and called for initial positions of the parties and Commission Staff (Staff). Concord Electric Company, Hannaford Bros. Co. (Hannaford) and Public Service Company of New Hampshire (PSNH) each sought intervention. The Office of Consumer Advocate is a statutory intervenor.

On October 6, 1996, the Commission issued Order No. 22,343 holding that the scope of this proceeding would be confined to an inquiry and analysis of whether the proposed tariff rates are just and reasonable. The Commission further held that it "will 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 requested a rehearing or reconsideration of the above referenced holding on scope pursuant to RSA 365:21 and RSA 541:3 (Motion). On October 21, 1996 and October 22, 1996, Hannaford Brothers Co. and ENGI, respectively, filed objections to the Motion.

II. POSITIONS OF THE PARTIES AND STAFF

A. *PSNH*

In its Motion, PSNH asserted that this filing raises important issues concerning "utility on utility" competition and the potential for further tariffs by utilities designed to capture other utilities' load. PSNH further asserted that this particular tariff and the resultant loss of load would result in higher rates to its customers. PSNH stated that the Commission should hear testimony as to whether the benefits to ENGI customers outweighed the harm to PSNH customers.

PSNH argued that this would be the first rate approved by the Commission specifically

designed to take existing customers away from one utility by another. PSNH pointed out that all of its discounted rate programs including Rates BR, LR, ED, Sawmill Generation Deferral and Rate LCS and all of its discounted rates under special contracts to its commercial and industrial customers are designed to retain PSNH's existing load, while this rate is directly aimed at

Page 910

soliciting load from PSNH.

PSNH also asserted that, should the Commission approve the Rate NGEFT tariff, then self generation would become a much more economic alternative to some of PSNH's ratepayers who are currently paying PSNH's tariffed rates. Thus, PSNH concluded that the approval of this rate would force PSNH to file a "supplemental Rate LR in order to compete with the NGEFT tariff." Motion at 3.

PSNH finally asserted that the filing raised issues relative to the Limited Electrical Energy Producers Act, RSA chapter 362-A (LEEPA) and the Public Utilities Regulatory Policy Act (PURPA).

B. *ENGI*

ENGI objected to PSNH's request to address the issue of utility on utility competition. ENGI argued that utility on utility competition has existed for years, and that every day all classes of customers make decisions to use one form of energy versus another.

ENGI also argued that all of its rates for service, including proposed rate NGEFT, are cost based and are not discounted to maintain or attract load. ENGI further contended that so long as its rates covered both its marginal and embedded costs of service the issue was one of customer choice and not "poaching" as argued by PSNH.

C. *Hannaford*

Hannaford noted its concern that PSNH's participation in this proceeding is designed merely to delay the process, and also argued that the issue in this case is not utility on utility competition but whether the proposed rate is just and reasonable. Hannaford contended that if the Commission found the rate just and reasonable, then customers should be free to choose their preferred source of energy.

D. *Staff*

At the prehearing conference, Staff argued that the issue of utility on utility competition should be outside the scope of this proceeding. The only issue should be an analysis of the cost study and its support of the proposed rate.

III. COMMISSION ANALYSIS

[1, 2] We agree with ENGI, Hannaford and Staff that the issue for our consideration in this proceeding is whether the proposed rate is supported by ENGI's marginal and embedded cost of service studies (COSS).[1(134)] If the rate is supported by the COSS it is sound because it does not require one customer or class of customers to subsidize another. Furthermore, if the rate is supported by the COSS it will provide a contribution to ENGI's fixed costs, thus "reducing" rates to ENGI's other customers.

With regard to PSNH's assertions relative to LEEPA and PURPA, the Commission will address any such issues if and when a customer requests to make power sales in accordance with applicable law.

Based upon the foregoing, it is hereby

ORDERED, that Public Service Company of New Hampshire's motion for rehearing or reconsideration is DENIED.

By order of the Public Utilities Commission of New Hampshire this second day of December, 1996.

FOOTNOTES

[1]We note that Staff has raised another valid issue relative to the availability of the rate.

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.

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NH.PUC*12/02/96*[89436]*81 NH PUC 912*SmarTalk Teleservices, Inc.

[Go to End of 89436]

81 NH PUC 912

Re SmarTalk Teleservices, Inc.

DF 96-283
Order No. 22,427

New Hampshire Public Utilities Commission

December 2, 1996

ORDER finding that the commission is without jurisdiction to rule on a foreign corporation's proposed issuance of common stock to the public.

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1. SECURITY ISSUES, § 35

[N.H.] Commission jurisdiction — As to foreign businesses — Lack of authority over proposed stock issuance — Interexchange telephone carrier. p. 912.

BY THE COMMISSION:

ORDER

On September 3, 1996, SmarTalk TeleServices, Inc. (SmarTalk or Company), pursuant to RSA 369:3, filed a petition with the New Hampshire Public Utilities Commission (Commission) for authority to issue shares of common stock to the general public. SmarTalk, a California corporation, was authorized to transact business as a telecommunications public utility pursuant to Commission Order No. 21,945, issued in DE 95-221 (December 12, 1995).

SmarTalk seeks approval to issue 4,830,000 shares of common stock (the Offering) to the general public. SmarTalk asserted in its petition that of the 4,830,000 shares of common stock, 4,000,000 shares are being sold by the Company, 200,000 shares are being sold by certain shareholders of the Company, and 630,000 shares are subject to the underwriters' over-allotment option. The Company intends to use the net proceeds of the Offering as follows: 1) to repay various loan indebtedness; 2) to fund capital expenditures; 3) to fund marketing, new business development, and expansion of business internationally; and 4) to provide for additional capital for working capital and general corporate purposes.

SmarTalk is a foreign corporation pursuant to RSA 374:25 and operates in a competitive interexchange resale carrier market to which traditional rate of return regulation is not applied. Because there are no monopoly customers at risk of cross-subsidization, any failures on the part of SmarTalk, as a result of inappropriate financing arrangements, will be the burden of its stockholders and will not harm the public interest.

[1] As a foreign business covered under RSA 369:8, the Company is not subject to the issuance of stock provisions of RSA 369:1-7. Because SmarTalk is a foreign corporation and is not subject to rate of return regulation, the Commission therefore finds no jurisdiction regarding the participation by SmarTalk in the issuance of authorized shares of SmarTalk common stock. To the extent that such approval is necessary, we find the transaction to be in the public interest.

Based upon the foregoing, it is hereby

ORDERED, that this Commission finds no jurisdiction over the issuance of securities by SmarTalk TeleServices, Inc. and, to the extent approval is necessary, we find the transaction to be in the public interest.

By order of the Public Utilities Commission of New Hampshire this second day of December, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re SmarTalk TeleServices, Inc., DE 95-221, Order No. 21,945, 80 NH PUC 787, Dec. 12, 1995.

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NH.PUC*12/02/96*[89437]*81 NH PUC 912*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 89437]

81 NH PUC 912

Re New England Telephone and Telegraph Company dba NYNEX

DR 96-321
Order No. 22,428

New Hampshire Public Utilities Commission

December 2, 1996

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 Sprint Communications for the provision of high-usage Centrex service.

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1. RATES, § 566

[N.H.] Telephone rate design — Centrex service — Special high-usage service — Service via special rate contract — Protective treatment of customer-specific usage data contained therein — Local exchange carrier. p. 913.

2. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective treatment — As to certain customer-specific marketing, usage, and cost data — As cited in a special rate contract — Benefits of nondisclosure as outweighing those of disclosure — High-usage telephone Centrex service — Local exchange carrier. p. 913.

BY THE COMMISSION:

ORDER

On October 3, 1996, the 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 Sprint Communications Company L.P.(Sprint) for the provision of high-usage Centrex services for SprintNet. Concurrent with the special contract, NYNEX filed a Motion for Confidential Treatment of portions of the contract and supporting materials (hereinafter collectively the Information). Neither the Commission Staff nor the Office of Consumer Advocate took a position regarding the motion.

In its motion, NYNEX argues that the Information should be afforded protective treatment because it falls 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, NYNEX states that it provided the documents required in Puc 204.08(b)(1) and cited the statutory support required by Puc 204.08(b)(2). NYNEX states that the Information consists of details of special contracts relating to pricing and incremental cost information for competitive services not reflected in tariffs of general application, as well as information the

disclosure of which is likely to create competitive disadvantage, thus meeting the requirements of Puc 204.08(b)(4)b. and d. NYNEX further offers facts supporting the benefits of non-disclosure, thus meeting the requirements of Puc 204.08(b)(3).

[1, 2] We recognize that the detailed customer specific information regarding customer usage, costs and terms of service contained in the Information is critical to review of the special contract by the Commission and Commission Staff, as required by RSA 378:18. We also recognize that businesses engaged in discussions with regulated utilities are reluctant to disclose sensitive commercial and financial information if it is to become part of the public record.

NYNEX has alleged that disclosure of the information would result in harm to itself, its customers, and Sprint. Harm to Sprint would allegedly occur because valuable marketing information could be obtained by competitors providing alternatives to the services Sprint provides.

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 to NYNEX and Sprint appear to outweigh the benefits of disclosure to the public. The Information, therefore, will 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 NYNEX's Motion for Confidential Treatment of portions of its special contract for the provision of high- usage Centrex services, and the supporting materials thereto, is GRANTED; and it is

FURTHER ORDERED, that this order is subject to reconsideration in the event that the Commission Staff or any party raises concerns and it is subject to the on-going right 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 second day of December, 1996.

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NH.PUC*12/02/96*[89438]*81 NH PUC 914*New Hampshire Electric Cooperative, Inc.

[Go to End of 89438]

81 NH PUC 914

Re New Hampshire Electric Cooperative, Inc.

DR 96-380
Order No. 22,429

New Hampshire Public Utilities Commission

December 2, 1996

ORDER approving an electric cooperative's proposed special discounted rate contract with a reopened ski resort, designed to resurrect load. The contract contains interruptible service provisions and rates high enough to provide a positive contribution to fixed costs but low enough to dissuade bypass.

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1. RATES, § 360

[N.H.] Electric rate design — Seasonal customers — Ski resort — Reopening of resort — Service via special discounted rate contract — Factors — Possibility of bypass — Benefits of resurrecting load — Terms of contract — Periodic service interruptions — Positive contribution to cost — Electric cooperative. p. 915.

BY THE COMMISSION:

ORDER

On November 19, 1996, New Hampshire Electric Cooperative, Inc. (NHEC), filed with the New Hampshire Public Utilities Commission (Commission) a special contract with one of its member ski areas, Tenney Mountain Ski, LLC (Tenney Mountain). Although Tenney Mountain has not operated for the past several years, it was purchased in July 1996 and will be open for business this winter. The special contract is essentially identical to the special contracts between NHEC and five of its other member ski areas which were filed with and approved by the Commission. *See* Order No. 21,812 in docket nos. DR 94-258, DR 94-259, DR 94-260, DR 94-261 (hereafter DR 94-258) and Order No. 21,965 in DR 95-327.[1(135)]

As in the special contracts approved in Order Nos. 21,812 and 21,965, the special contract between NHEC and Tenney Mountain is based on an Interruptible Power Supply Service Agreement (Interruptible Service Agreement) filed by Public Service Company of New Hampshire (PSNH) with the Federal Energy Regulatory Commission (FERC) on August 1, 1994. Concurrent with the Interruptible Service Agreement filing, PSNH filed with FERC amendments to its Partial Requirements Resale Service Agreement between PSNH and NHEC, providing *inter alia* reduced wholesale rates to NHEC for ski area loads for which NHEC arranges special contracts.

NHEC's special rate agreement with Tenney Mountain is intended to resurrect ski area load and provide Tenney Mountain with the same discounted electric rates its closest competitors, Loon Mountain and Waterville Valley, receive under the special rate contracts approved in Order No. 21,812.

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[1] In DR 94-258, the Commission reviewed the ski area special contracts, the testimony and the exhibits relating to NHEC's special contracts for its member ski areas, and the effect of those

contracts on the ski areas, NHEC's other members, PSNH, and other PSNH customers. After that review, the Commission concluded that the special contracts between NHEC and its member ski areas provide benefits to the ski areas, NHEC's members, and PSNH and its customers. *See* Order No. 21,812 at 6. The Commission made a similar finding in its approval of the special contract between NHEC and Black Mountain. *See* Order No. 21,965 at 3. Based on our review of the record in those proceedings and the record in this filing, we find that the special contract between NHEC and Tenney Mountain, which is essentially identical to those we have previously reviewed and approved, should provide Tenney Mountain, NHEC's other members, and PSNH and its customers with similar benefits as those found previously by this Commission in our approval of the other ski area contracts.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that the special contract between New Hampshire Electric Cooperative, Inc. and Tenney Mountain Ski, LLC, is APPROVED as filed; and it is

FURTHER ORDERED, that NHEC file on June 1st of each year a report on the number of times the ski areas, including Tenney Mountain, were asked to interrupt service under the contracts, their compliance level, and the level of savings NHEC is receiving from the special contracts, including Tenney Mountain, based upon actual ski area load data.

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 December 9, 1996 and to be documented by affidavit filed with this office on or before December 16, 1996; and it is

FURTHER ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or file a written request for a hearing on this matter before the Commission no later than December 16, 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 December 20, 1996; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective December 23, 1996, 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 December, 1996.

FOOTNOTES

[1]By Order No. 21,812, the Commission approved special contracts between NHEC and four member ski areas: Mt. Attitash Lift Corp., Loon Mountain Recreation Corp., Mt. Cranmore, and Waterville Company. Black Mountain was offered a special contract at the same time as the other four, but did not respond to NHEC. NHEC testified in DR 94-258, *et al.*, that should Black Mountain want to enter into a similar arrangement with NHEC as the other ski areas, NHEC would offer Black Mountain a similar agreement. Tr. at 42, June 1, 1995. Black Mountain later did enter into a special agreement with NHEC under the same terms and conditions as the other four ski areas. That special contract was filed with, and subsequently approved by, the Commission. *See*, Order No. 21,965 in DR 95-327.

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 95-327, Order No. 21,965, 81 NH PUC 3, Jan. 8, 1996.

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NH.PUC*12/02/96*[89439]*81 NH PUC 916*Public Service Company of New Hampshire

[Go to End of 89439]

81 NH PUC 916

Re Public Service Company of New Hampshire

DR 96-285
Order No. 22,430

New Hampshire Public Utilities Commission

December 2, 1996

ORDER issuing a preliminary finding that an electric utility's fuel and purchased power adjustment clause rate for the next six-month period should be a credit of 0.848 cents per kilowatt-hour.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 12

[N.H.] Direct energy costs — Fuel and purchased power adjustment clause — Six-month rate — Credit as opposed to charge — Preliminary findings — Documentation of associated nuclear plant and Clean Air Act components to follow — Electric utility. p. 916.

BY THE COMMISSION:

ORDER

[1] On August 13, 1996, the Commission issued an Order of Notice which, among other things, opened Docket No. DR 96-285, Public Service Company of New Hampshire (PSNH) Fuel and Purchased Power Adjustment Clause (FPPAC), for the period December 1, 1996 through May 31, 1997, and set a prehearing conference for September 17, 1996. On September 12, 1996, PSNH filed testimony and exhibits supporting an FPPAC credit of $0.00347 per kWh.

By Order No. 22,331 (September 23, 1996), the Commission granted New Hampshire Electric Cooperative and the Campaign for Ratepayer Rights full intervention and granted EnerDev limited intervention status. Order No. 22,331 also approved a proposed procedural

schedule that included hearings on November 12-14, 1996 and the filing of Briefs no later than November 25, 1996.

Based on the record in this proceeding, including sworn testimony presented at the hearing, we find that the appropriate FPPAC rate for PSNH to bill customers for the period December 1, 1996 through May 31, 1997, is a credit of $0.00848 per kWh. A written report describing our findings on the FPPAC credit and other issues, such as the appropriate Clean Air Act costs for Merrimack Unit 2 to be included in FPPAC and the treatment of the Seabrook Unit 2 generator sales, will be forthcoming.

Based upon the foregoing, it is hereby

ORDERED, that the Fuel and Purchased Power Adjustment rate for the period December 1, 1996 through May 31, 1997, shall be a credit of $0.00848 per kWh; and it is

FURTHER ORDERED, that the avoided costs paid by PSNH to qualifying facilities is approved as filed by PSNH on October 29, 1996 in Exhibit 14 - Revised.

By order of the Public Utilities Commission of New Hampshire this second day of December, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 96-285, Order No. 22,331, 81 NH PUC 714, Sept. 23, 1996.

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NH.PUC*12/03/96*[89440]*81 NH PUC 917*Total National Telecommunications, Inc.

[Go to End of 89440]

81 NH PUC 917

Re Total National Telecommunications, Inc.

Additional applicant: International Standards Group Ltd.

DE 96-268
Order No. 22,431

New Hampshire Public Utilities Commission

December 3, 1996

ORDER approving the transfer of an interexchange telephone carrier, Total National Telecommunications, Inc., to another carrier, International Standards Group Ltd., via an exchange of stock.

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1. CONSOLIDATION, MERGER, AND SALE, § 18

[N.H.] Factors affecting approval — Exchange of stock — No change in operations — Compliance with standard of no net harm — Telecommunications carriers. p. 917.

BY THE COMMISSION:

ORDER

[1] Total National Telecommunications, Inc. (TNT) and International Standards Group Limited (ISG) (collectively, the Petitioners), jointly filed with the New Hampshire Public Utilities Commission (Commission), on August 21, 1996, a petition for a pro forma transfer of control of TNT to ISG.

TNT is a privately held Texas corporation. TNT was granted authority to conduct business as a telecommunications public utility in the State Of New Hampshire on May 9, 1996, in Docket No. DE 95-301, by Order No. 22,096.

ISG, a publicly traded Delaware corporation, will be the parent of TNT. The transfer of control of TNT to ISG is a pro forma transaction as a result of TNT stockholders having exchanged their stock in TNT for stock in ISG. In addition, certain TNT employees who also received shares of ISG will give TNT shareholders and employees a controlling interest in ISG.

TNT will continue to provide service in New Hampshire under the TNT name and pursuant to its tariff currently on file with the Commission. The officers and directors of TNT will remain unchanged and two former directors of TNT will become directors of the parent company, ISG, as a result of the transaction.

TNT previously evidenced its technical, managerial, and financial competence in DE 95-301. Moreover, the Petitioners anticipate receiving economic and marketing efficiencies from the pro forma transfer of control. Accordingly, we find the transfer of control to be in the public interest.

Based upon the foregoing, it is hereby

ORDERED, that the petition for approval of a pro forma transfer of control of Total National Telecommunications, Inc. to International Standards Group Limited is granted.

By order of the Public Utilities Commission of New Hampshire this third day of December, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Total National Telecommunications, Inc., dba Total World Telecom, DE 95-301, Order No. 22,096, 81 NH PUC 265, Apr. 9, 1996.

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[Go to End of 89441]

81 NH PUC 918

Re Statewide Electric Utility Restructuring Plan

DR 96-150
Order No. 22,432

New Hampshire Public Utilities Commission

December 3, 1996

ORDER clarifying that data requests made of electric utilities by way of a commission secretarial letter in the course of a proceeding examining a proposed restructuring of the state's electric utility industry were made on behalf of the commission and not commission staff.

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1. PROCEDURE, § 17

[N.H.] Discovery and inspection — Power to compel production of evidence — Written data requests — As made by commission secretarial letter — As made on behalf of the commission itself and not commission staff — In proceeding addressing restructuring of electric utility industry. p. 918.

BY THE COMMISSION:

ORDER

On September 10, 1996, the New Hampshire Public Utilities Commission (Commission) released its Preliminary Plan to restructure the State's electric utility industry. The Commission's Preliminary Plan also required jurisdictional electric utilities to respond to certain data requests by October 18, 1996; such requests relate to utility-specific cost and revenue data, both historical and forecasted. *See*, Preliminary Plan, Appendix C.[1(136)]

Following a review of the utilities' initial data responses, the Commission directed each utility to file supplemental responses. *See*, Secretarial Letters dated November 20, 1996. The Commission issued a second Secretarial Letter on November 27, 1996 to PSNH directing it to furnish the Commission with additional data and information.

On November 21, 1996, PSNH filed a letter stating, *inter alia*, that it considered those data requests which were issued by Secretarial Letter to be have been propounded by the Commission Staff, not the Commission. The purpose of this order is to clarify the nature of the aforementioned data requests and to direct all utilities to submit complete responses to those requests.

As part of our statutory duty to implement RSA Chapter 374-F, the Legislature has authorized and directed us to establish interim stranded cost charges for each jurisdictional electric utility as part of developing a statewide electric restructuring plan. We are required to

fulfill these responsibilities by February 28, 1998. RSA 374-F:4,II and RSA 374-F:4,III.

[1] In order to establish interim stranded cost charges for each utility, the Commission and its consultants must evaluate certain historical cost data and forecasts of future costs and revenues. Thus, the data requests that we issued through Secretarial Letters seek information for the Commission, not for the Commission Staff. We have ample authority to order utilities to file this information. RSA 374:18 empowers the Commission to order the production of any "accounts, records, memoranda, books or papers" in the possession of jurisdictional utilities. Moreover, the Commission has certain inherent powers which are necessary to carry out its statutory responsibilities. *See*, RSA 374:3. In this case, the information is necessary to carry out the mandates of RSA 374-F:4. Accordingly, we adopt as a Commission order all data requests referenced above which were previously issued by Secretarial Letter. Each of the subject utilities shall file complete responses to all outstanding data requests no later than the close of business, Friday, December 6, 1996.

Based upon the foregoing, it is hereby

ORDERED, that PSNH, GSEC, NHEC and Until shall file complete responses to the Commission's data requests referenced herein no later than the close of business on Friday,

December 6, 1996.

By order of the Public Utilities Commission of New Hampshire this third day of December, 1996.

FOOTNOTES

[1]The jurisdictional electric utilities are Public Service Company of New Hampshire (PSNH), New Hampshire Electric Cooperative (NHEC), Granite State Electric Company (GSEC) and Unitil Service Company (for Concord Electric Company and Exeter & Hampton Electric Company).

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NH.PUC*12/04/96*[89442]*81 NH PUC 919*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 89442]

81 NH PUC 919

Re New England Telephone and Telegraph Company dba NYNEX

Additional applicant: AT&T Communications of New Hampshire, Inc.

DE 96-252
Order No. 22,433

New Hampshire Public Utilities Commission

December 4, 1996

ORDER largely adopting an arbitrator's recommendation as to an interconnection agreement between an incumbent local exchange telephone carrier and an interexchange telephone carrier (IXC) by which the IXC would enter the local telecommunications market as a competitor. The commission differs from the arbitration report only with respect to collocation for remote switching modules, which the commission believes should be required on a space available basis. Commission affirms the arbitrator's decision that pricing of interconnection arrangements be based on deaveraged costs per density zone (urban, suburban, and rural) rather than on straight statewide averages.

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1. TELEPHONES, § 10

[N.H.] Connecting carriers — Interconnection arrangements — For opening local markets to competition — Under the Telecommunications Act of 1996 — Arbitration proceedings thereto — Between incumbent local exchange telephone carrier and interexchange carrier — Commission endorsement and clarification. p. 923.

2. MONOPOLY AND COMPETITION, § 83

[N.H.] Telephone services — Local exchange competition — Pursuant to the Telecommunications Act of 1996 — Interconnection arrangements between incumbent local exchange telephone carrier and interexchange carrier — Arbitration proceedings — Commission review and clarification. p. 923.

3. SERVICE, § 171

[N.H.] Resale — Of telecommunications service — Under interconnection agreement between incumbent local exchange telephone carrier and interexchange carrier (IXC) — IXC as entering competitive local market — Purchase of wholesale public access line service for resale — Applicability to payphone providers and coin telephone affiliates as well. p. 924.

4. SERVICE, § 467

[N.H.] Telephone — Switching requirements — Under interconnection agreement between incumbent local exchange telephone carrier and interexchange carrier — Collocation of remote switching modules (RSMs) — On space available basis — Factors — Facilitation of local market competition — RSMs as serving both switching and transmission functions — Federal telecommunications policies. p. 924.

5. TELEPHONES, § 10

[N.H.] Connecting carriers — Interconnection arrangements — For opening local markets to competition — Switching components — Collocation of remote switching modules (RSMs) — On space available basis — Factors — Facilitation of competition — RSMs as

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serving both switching and transmission functions — Federal telecommunications policy. p.

924.

6. TELEPHONES, § 14

[N.H.] Connecting carriers — Interconnection arrangements — For opening local markets to competition — Compensation for — Basis for pricing — Total element long-run incremental costs — Geographically deaveraged costs by density zone (urban, suburban, rural) — Rejection of straight statewide cost averages. p. 926.

7. RATES, § 553

[N.H.] Telephone rate design — For interconnection arrangements between carriers — For opening local markets to competition — Basis for pricing — Total element long-run incremental costs — Geographically deaveraged costs by density zone (urban, suburban, rural) — Rejection of straight statewide cost averages — Unbundling of service elements. p. 926.

APPEARANCES: Victor D. Del Vecchio, Esq. for New England Telephone and Telegraph d/b/a NYNEX; Robert J. Aurigema, Esq. and Palmer & Dodge LLP by Kenneth W. Salinger, Esq. for AT&T; Devine, Millimet & Branch, PA by Frederick J. Coolbroth, Esq. for Granite State Telephone, Inc., Merrimack County Telephone, Inc., Hollis Telephone Company, Inc., Contoocook Valley Telephone, Inc., Dunbarton Telephone Company, Northland Telephone Company of Maine, Bretton Woods Telephone Company, Dixville Telephone Company, and Wilton Telephone Company, Inc.; Robert A. Glass, Esq. for MCI Telecommunications Corporation; Brown, Olson & Wilson, PC by Peter W. Brown, Esq. and David J. Shulock, Esq. for Vanguard Cellular Systems, Inc.; Orr and Reno by Thomas C. Platt, Esq. for CCI Telecommunications of New Hampshire, Inc.; the Office of the Consumer Advocate by Thomas E. Lyle for residential ratepayers of the State of New Hampshire, and E. Barclay Jackson, Esq. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

Pursuant to Section 252 of the Telecommunications Act of 1996[1(137)] (the Act), AT&T Communications of New Hampshire, Inc. (AT&T) and New England Telephone and Telegraph Company d/b/a NYNEX (NYNEX) conducted negotiations for an interconnection agreement that would permit AT&T to enter NYNEX's local telecommunications market in New Hampshire. When negotiations failed to produce a complete interconnection agreement within the timeframes specified in the Act, on August 9, 1996, AT&T filed with the New Hampshire Public Utilities Commission (Commission) a Petition for Arbitration of an Interconnection Agreement. Four hours later, NYNEX filed a Petition for Arbitration of an Interconnection Agreement. Because the Act does not specifically address the issue of multiple petitions, the Commission deemed NYNEX's Petition to be a Response to the AT&T Petition, and allowed NYNEX to supplement the Response.

In its Order of Notice dated August 19, 1996, the Commission followed its decision in DE 96-177, Implementation of Telecommunications Act of 1996, Order No. 22,236 (July 12, 1996)

(hereinafter Implementation Order), in which the strict timeframes of the Act were acknowledged and the Commission reserved its right, as permitted by the Act, to consolidate proceedings, change the schedule, limit intervention and take any other steps necessary to insure that the deadlines of the Act are met. The Implementation Order also put all parties on notice that the arbitration process would consist of a formal process of witnesses' testimony and cross-examination if the Arbitrator was unable to resolve differences through any informal means the Arbitrator chose to employ. In its Order of Notice the Commission named Paul

M. Hartman of Hartman Associates, Inc. as Arbitrator of this NYNEX-AT&T docket and ordered him to file periodic status reports about the arbitration proceeding. The Commission also scheduled a Prehearing Conference for August 27, 1996, before the Arbitrator.

At the Prehearing Conference on August 27, 1996, MCI Telecommunications Corporation (MCI), Vanguard Cellular Systems, Inc. (Vanguard), and Sprint Communications (Sprint), and, collectively, Granite State Telephone, Inc., Merrimack County Telephone, Inc., Hollis Telephone Company, Inc., Contoocook Valley Telephone Inc., and Wilton Telephone Company, Inc. submitted Motions for Intervention, all of which NYNEX opposed. After argument, the Arbitrator granted the motions to intervene. On September 10, 1996, CCI Telecommunications of New Hampshire, Inc. moved for late intervention, which was granted. The Office of the Consumer Advocate (OCA) participated as a statutorily authorized intervenor.

Also at the Prehearing Conference, the Arbitrator distributed a document outlining the process by which arbitration would proceed. In order to meet the compressed timeframe dictated by the Act, the Arbitrator ordered that the process occur by electronic filings on the ERMIS bulletin board in a public forum entitled New Hampshire Arbitration Process (NHAP) to which all interested persons have access.

The following process occurred:

(1) identification of issues by September 3, 1996,

(2) schedule arbitration dates for particular issues,

(3) comments on each issue filed electronically on NHAP, by NYNEX and AT&T, seven days prior to scheduled arbitration date,

(4) reply comments on each issue filed electronically on NHAP by other parties, 48 hours prior to scheduled arbitration date,

(5) arbitration (individual sessions between the Arbitrator and AT&T or NYNEX, followed by joint session with the Arbitrator and both AT&T and NYNEX, followed by a joint public session with all parties during which comments could be made,

(6) issuance of the Arbitrator's draft decision on each issue within 24 hours of the arbitration date,

(7) comments on the Arbitrator's draft decision,

(8) issuance of the Arbitrator's final decision,

(9) filing of suggested contract language comporting with the Arbitrator's decision within 48 hours of the final decision date,

(10) filing of the Arbitrator's final report on November 15, 1996.

With the exception of providing contract language, the parties generally observed the above process. Arbitration meetings took place during the weeks of September 16 - 20, October 7 - 11, October 21 - 25, and October 28 - November 1. In addition, arbitration meetings occurred on October 17 and 18. No contract language for arbitrated issues was submitted prior to the end of the arbitration meetings, and contract language has yet to be submitted for non-arbitrated issues.

The Arbitrator's Initial Status Report to the Commission, filed September 9, 1996, stated that he had granted requests to consider the Total Element Long Run Incremental Cost (TELRIC) Study issues, and issues still in negotiation, late in the process in order to allow completion of the study and further pursuit of negotiation.

The Arbitrator's Initial Status Report to the Commission identified and scheduled the issues to be arbitrated. It stated that the "key element of the Final Report to the Commission will be the entire contract, both the arbitrated and non-arbitrated portions, for Commission approval." Contract language for negotiated issues was to be submitted by September 13, 1996. On September 9, 1996, the contracting parties requested an extension to October 14, 1996, for submission of contract language, which the Arbitrator granted. Nonetheless, the Arbitrator's Second Status Report to the Commission, dated October 24, 1996, indicated that the parties would not meet the October 14th date. The Arbitrator ordered that the negotiated contract

language be filed incrementally from October 17 to November 4, 1996. He ordered that arbitrated contract language be filed October 21, 1996, and then in three day increments.

NYNEX filed its TELRIC Study on October 22, 1996. By that time, the United States Court of Appeals for the Eighth Circuit (8th Circuit) had stayed the Federal Communications Commission (FCC) rules that established the TELRIC methodology and mandated its use in state arbitration proceedings. Therefore, NYNEX submitted its TELRIC Study without admitting that the methodology is appropriate or required for use by the Commission and reserving the right to challenge its use in this docket. In addition, NYNEX and AT&T both agreed that any rates set in this docket would be subject to a retroactive true-up in the event that the standard used by the Arbitrator to set rates is later modified by the FCC or a court.

On October 25, 1996, the OCA filed a letter with the Arbitrator objecting to the process and schedule. The OCA noted the "unreasonably compressed timeframe to analyze the cost studies," as well as its inability to conduct discovery and to cross examine witnesses. The Arbitrator pointed out that the OCA seemed to object to the requirements of the Act, which are not in the control of the Arbitrator.

Arbitrated contract language was filed by the contracting parties on November 8, 1996. The Arbitrator's Final Report to the Commission was filed on November 15, 1996. Although the Final Report included some arbitrated contract language, the contract language had not been reviewed or approved by the Arbitrator.

Hearings before the Commission to consider the Arbitrator's Final Report were held on November 22, 25 and 26, 1996. The Hearings included oral argument by the contracting parties and comments by other parties and Staff. MCI was unable to attend the hearings but filed written comments registering opposition to certain of the Arbitrator's awards. MCI's written comments were entered into evidence as an exhibit.

At the hearings, the contracting parties agreed that complete contract language for the outstanding arbitrated issues and for all non-arbitrated issues would be submitted to the Commission by November 30, 1996. That date was later extended, upon request of NYNEX and AT&T, to December 6, 1996.

II. POSITIONS OF THE PARTIES

A total of twenty-eight issues were arbitrated. Many more were submitted for arbitration but were subsequently "negotiated out." For that reason, the twenty-eight issues for which arbitration awards were made are not numbered consecutively. The issues are:

1. Resale of Public Access Lines
2. Resale of Public Payphones at Wholesale Prices
3. Resale of Semi-Public Payphones at Wholesale Rates
4. Reservation of Space in Rights of Way, Conduits and Poles
5. Branding of Operator Services and Directory Assistance
6. Alternate Billing to Third Number
7. Bona Fide Request Process - Unbundling
8. Advance Notification of Tariff Structure Changes
9. Interim Number Portability

22a. Discounts for Resold Services - Avoided Costs

22b. Discounts for Resold Services - Res/Bus Discounts

24. Compensation for Unrated Call Information for Local Measured Service
28. Customer Proprietary Network Information
29. Alternate Dispute Resolution

30c. Resale Tariff Restrictions

30e. Directory Listing for Centrex

30f. Elimination of Resale Restrictions - volume discounts

30g. Business vs. Residence Usage

31. Term and Termination
32. Rerouting Operator Services and Directory Assistance
33. Service Quality and Performance Criteria

34c. Unbundling of Directory Services from Basic Service

35a. Collocation of Switching as an

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Unbundled Network Element

35f. Collocation Timetable and Damages

35f(2). Payment of Charges to NYNEX for Collocation

38. Branding of NYNEX Directories

40. TELRIC

41. Mutual Compensation

At the hearings, the OCA reiterated its objection to the arbitration process. Citing its lack of resources and the extreme time constraints, especially with regard to pricing elements, the OCA contended that residential ratepayers' due process rights were violated. Therefore, the OCA did not endorse either the Arbitrator's Report or the contracting parties' agreement.

The contracting parties each applauded the skill and expertise of the Arbitrator and the efforts expended by him to complete the arbitration process fairly, reasonably, and accurately. Each contracting party disagreed with some of the Arbitrator's decisions.

The positions of the contracting parties with regard to each issue and the Arbitrator's decisions on each issue are attached to this order as Appendix 1.

III. COMMISSION ANALYSIS

[1, 2] This is the first arbitrated interconnection agreement to come before us pursuant to the Telecommunications Act of 1996 (the Act). As stated on the title page of the Bill as enacted, the purpose of the Act is: "to promote competition and reduce regulation in order to secure lower prices and higher quality services for American Telecommunications consumers and to encourage the rapid deployment of new telecommunications technologies." As the FCC professed in Paragraph 1 of the First Report and Order, FCC 96-325, released August 8, 1996, (hereinafter First Report and Order and cited by paragraph number), the Act "fundamentally changes telecommunications regulation ... . [It] directs us and our state colleagues to remove not only statutory and regulatory impediments to competition, but economic and operational impediments as well."

According to Section 252(b)(4)(C) of the Act, it is our responsibility to resolve each issue by imposing appropriate conditions as required to implement the standards contained in Section 252(c). The standards, as stated in Section 252(c), include: (1) ensuring that our resolution of each issue meets the requirements of Section 251, including the regulations prescribed by the FCC pursuant to Section 251; (2) establishing any rates for interconnection, services, or network elements according to Section 252(d); and (3) providing a schedule for implementation of the terms and conditions by the parties to the agreement. These are the standards we directed the Arbitrator, as our agent, to apply in crafting arbitration awards. Pursuant to our Implementation Order, however, the Arbitrator's Final Report merely recommends awards resolving the issues presented; the Commission completes the arbitration process by reviewing the awards and

issuing this order. After issuance of this order and upon receipt of contract language comporting with this order, the requirements of Section 252(e) apply. Section 252(e) requires approval or rejection of the arbitrated portions of the interconnection agreement within 30 days and approval or rejection of the negotiated portions of the interconnection agreement within 90 days using the standards set out in Section 252(e)(2).

We acknowledge and value the OCA's concerns relating to the highly compressed timeframe in which this process has occurred. Congress considered the importance of the full panoply of trial procedure safeguards as well as the importance of speedy implementation of the Act. Because the latter issue is manifested in the Act by specific time frames, we have an obligation to abide by those specifications.

We have reviewed the evidence presented, including numerous exhibits and the Arbitrator's awards and have considered the oral arguments made by the parties with regard to the 10 awards to which exceptions were taken. In all cases but one we have been convinced by the thorough and logical decisions of the Arbitrator. Accordingly, we resolve issues 1 through 9, 22(a) and 22(b), 24, 28, 29, 30(c), 30(e), 30(f), 30(g), 31 through 33, 34(c), 35(f), 35(f)(2), 38, 40, and 41 by approving the

Arbitrator's awards therefor, although we will clarify the awards for issues 1, 4, and 8 below. The one issue we resolve differently from the Arbitrator's award is issue 35(a), Collocation of Switching as an Unbundled Network Element. Additionally, although we adopt the Arbitrator's award for issue 40, we do so in the context of an argument NYNEX raised at the hearing which had not been raised in the arbitration process.

Issue 1 — Resale of Public Access Lines

[3] We agree with the Arbitrator that AT&T is a "carrier" for purposes of purchasing wholesale services for resale, including Public Access Line (PAL) service. The Arbitrator's award states AT&T may not purchase PAL service from NYNEX for resale to AT&T's payphone affiliate at a discount, i.e. at the wholesale rate. We clarify the Arbitrator's award. If AT&T purchases NYNEX PAL service for resale to payphone providers, AT&T may purchase NYNEX PAL service for resale to AT&T's payphone affiliate on the same terms and conditions.

Issue 4 — Reservation of Space in Rights of Way, Conduits, and Poles

We agree with the Arbitrator's award and clarify it with regard to its effect on New Hampshire statutes. This award does not alter or modify existing statutory provisions, including but not limited to RSA 371.

Issue 8 — Advance Notification of Tariff Structure Changes

We agree with the Arbitrator's award and clarify it with regard to its effect on our rules, Chapters Puc 1300 and Puc 1600. The award states "the current situation where NYNEX is required to provide advance notice to the commission per the commission's rules is awarded." It does not indicate a particular time period which would constitute advance notice but the Arbitrator's recitation of the parties' positions and his analysis relate to the 30 day notice period regarding structural changes to NYNEX tariffs, currently required by commission rules. The rule

relevant to structural changes in tariffs is Puc 1601.05.

At the hearing, NYNEX questioned whether this award affects Puc 1307.04 of our recently adopted Local Telecommunications Competition Rules. Puc 1307.04(a) requires both incumbent and competitive local exchange carriers (ILECs and CLECs respectively) to notify the Commission in writing of any proposed price changes. Puc 1307.04.(d) requires ILECs to notify CLECs of a price increase 30 days prior to the effective date of the increase.

The Arbitrator's award deals only with structural changes to NYNEX tariffs and has no impact on Puc 1307.04(d), which deals with price increases only and not with structural changes. NYNEX and other ILECs must notify CLECs of price increases 30 days prior to the effective date of the increase.

Issue 35(a) — Collocation of Switching as an Unbundled Network Element

[4, 5] The issue presented is whether NYNEX must accede to AT&T's request to collocate Remote Switching Modules (RSMs). Section 251(c)(6) of the Act places on NYNEX, as an incumbent Local Exchange Carrier,

> "(T)he duty to provide, on rates, terms and conditions that are just, reasonable, and nondiscriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier ... "2(138)

RSMs, as AT&T and NYNEX agree, are not indispensable for interconnection or access but are used and useful for interconnection or access. The FCC's First Report and Order, at Paragraph 579, clarified the word "necessary" in Section 251(c)(6) to mean used and useful. The dispute over RSM collocation arises because, although the RSM contains transmission functionality necessary for interconnection, it also contains a switching function which AT&T and NYNEX agree is not used for interconnection or access. NYNEX argued that a specific rule promulgated by the FCC, 47

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C.F.R. 51.323(c) (hereinafter 51.323(c)) permits NYNEX to deny collocation of switching equipment.

The Arbitrator agreed with NYNEX that 51.323(c) is determinative. In doing so, the Arbitrator was following his chosen hierarchy of authority: looking first to the FCC rules, then to the Order, and finally to the Act to resolve ambiguities, if any. In his award, the Arbitrator noted that although 51.323(c) clearly enables NYNEX to deny collocation of switching equipment, modern technology has blurred the definition of switching equipment itself. The Arbitrator supported this contention by citing Paragraph 583 of the First Report and Order and FCC Advice letters RAO 21 and RAO 25, which highlighted the difficulty in distinguishing switches from circuit equipment. After determining that the FCC has no intention of again revisiting its most recent determination of RSMs as switching equipment for accounting purposes, the Arbitrator awarded NYNEX authority to deny collocation of RSMs.

We find that 51.323(c) is not determinative in this situation and will order NYNEX to permit collocation of RSMs on a space available basis. The Arbitrator's decision to look first to the rules

to resolve a question does not prevent us from recognizing conflicting or ambiguous provisions in the rules, the First Report and Order, and the Act. We find that the procompetitive purposes of the Act and Congress's desire to facilitate entry into the local telephone market by competitive carriers require us to resolve differences between the rules, the First Report and Order, and the Act in favor of the provision of efficient competitive service.

Section 251(d)(3) specifically reserves a state commission's right to enforce any regulation, order, or policy that: a) establishes access and interconnection obligations of local exchange carriers; b) is consistent with the Act; and c) does not substantially prevent implementation of the requirements of Section 252. The FCC concludes that Section 251(c)(6) does not preclude a competing carrier from choosing any method of technically feasible interconnection or access at a particular point (Paragraph 549). Here, AT&T wishes to use an RSM as the method of interconnection or access.[3(139)] In addition, RSMs are capable of switching functions to connect local calls between AT&T customers who are served by the CO where the RSM is collocated. AT&T agrees that the switching function could be disabled and the RSM used only for interconnection and access. However, AT&T argues that the RSM's switching function is a more efficient mode of connecting the AT&T customer's local call. Without the switching function the local call would be completed by sending it to an AT&T switch elsewhere and then back to the originating CO before sending it out to the other local AT&T customer.

NYNEX agrees that space is available in many CO's, but argues that safety concerns must also be considered. We do not discount the safety factor. Section 251(c)(2), as interpreted by the First Report and Order, requires physical collocation, as well as virtual collocation and meetpoint interconnection, if requested, only where technically feasible (Paragraph 553). We are confident that NYNEX will impose the same standards of safety and security on AT&T as it does upon itself.

Even though efficient competition would be served, space is available, and competing carriers may choose the method of interconnection they wish, NYNEX argues that 51.323(c), which states "[n]othing in this section requires an incumbent LEC to permit collocation of switching equipment..." would prohibit us from ordering collocation of RSMs. The question is whether 51.323(c) is determinative.

We note that Paragraph 581, which NYNEX cited for further support, states only that "At this time, we do not impose a *general* requirement that switching equipment be collocated since it does not appear that it is used for the actual interconnection or access to unbundled network elements." (Emphasis added.) Paragraph 580 states that "[S]tate commissions may designate specific additional types of equipment that may be collocated pursuant to section 251(c)(6)." In Paragraph 558, the FCC found that "specific rules defining *minimum* requirements for nondiscriminatory collocation arrangements will remove barriers to entry by potential competitors and speed the development of competition." (Emphasis added.)

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Paragraph 581 identified certain types of equipment, such as enhanced services equipment, for which collocation cannot be mandated; switching equipment is not among the list. Further, Paragraph 558 expressly indicates that "states should therefore adopt, to the extent possible,

specific and detailed collocation rules."

In summary, we are persuaded that RSMs should be collocated. Among the reasons for this determination are: a) the procompetitive nature of the Act; b) the FCC's express unwillingness to promulgate a "general" requirement that switching equipment be collocated; c) the fact that RSMs have both transmission and switching functions; d) the public policy interest in making the most efficient use of available space; e) the FCC's decision not to prohibit collocation of switching equipment; e) an FCC directive to the states to adopt specific collocation rules; and f) FCC authority to designate specific additional types of equipment that may be collocated. We will direct NYNEX to collocate RSMs.

Issue 40 — TELRIC Pricing of Unbundled Elements

[6, 7] Section 252(d)(1)(a)(i) of the Act mandates that rates for interconnection and unbundled elements be "based on the cost...of providing the interconnection of network elements." In order for the Arbitrator to determine the prices for unbundled elements, AT&T and NYNEX provided studies based on the TELRIC methodology, as required by the FCC's First Report and Order. The Arbitrator made a decision, well supported in his award, regarding methodology and individual results for specific elements. We adopt the Arbitrator's decision, which provides cost based prices for unbundled elements in each of three density zones.

At the hearing, NYNEX requested that we consider adopting statewide average prices rather than using the three density zones. To do so, however, would directly conflict with the conclusions of the FCC in its First Report and Order. The FCC stated that "rates for interconnection and unbundled elements must be geographically deaveraged," Paragraph 764, and "states shall create a minimum of three cost-related rate zones to implement deaveraged rates for interconnection and unbundled elements" Paragraph 765. However, as noted in the Procedural History above, the 8th Circuit has issued a stay of those portions of the First Report and Order relating to pricing. Therefore, we are free to consider NYNEX's request.

AT&T contended that statewide average TELRIC prices for unbundled network elements, as requested by NYNEX, would erect a barrier to facilities-based competition. As a pure business decision, AT&T would choose not to provide facilities-based local exchange service at that price. AT&T strongly supported cost- based pricing for unbundled network elements as required by the Act and interpreted by the First Report and Order.

Currently, although NYNEX's retail rates cover its cost on a class by class basis, the rates for particular customers in New Hampshire may be inversely proportional based on value of service. Thus, rural customers' rates are lower than urban rates even though the costs to serve urban customers are generally lower. NYNEX argued that deaveraging rates creates a by-pass opportunity allowing uneconomic migration of customers to competitors. State-wide average TELRIC prices would therefore, according to NYNEX, permit fairer competition and encourage facilities based competition. NYNEX did note, however, that deaveraged rates more accurately reflect costs and that there is a regulatory movement toward deaveraged rates in order to reflect costs.

We do not find NYNEX's arguments persuasive. The term of this interconnection contract with AT&T is two and a half years for prices. The likelihood of facilities-based competition in that timeframe is small, as acknowledged by AT&T and NYNEX, but is greatest in urban areas.

Therefore, moving urban rates closer to cost by using urban, suburban and rural TELRIC prices, will increase the likelihood that lower volume urban customers will receive the opportunity for facilities-based competition, an effect encouraged by the Act.

For rural zones, statewide averaged TELRIC prices for unbundled network elements would be lower than deaveraged prices.

However, competitors like AT&T would choose not to compete through unbundled elements in that case because resale pricing would be even lower than the statewide averaged TELRIC prices. Therefore, facilities-based competition is unlikely to develop in rural areas even with statewide averaged prices. Further, in urban areas, statewide averaged TELRIC prices would not be significantly different from resale prices for residential customers. Therefore, because resale service is easier to provide, averaged prices would not encourage development of facilities-based competition in urban areas either. We choose to promote the possibility of facilities-based competition, at least in urban areas, by approving deaveraged, zoned, pricing as awarded by the Arbitrator.

We note that Section 254 of the Act requires a a universal service fund support mechanism of some kind which will be assessed in the future. The universal service fund support mechanism will make *explicit* the subsidy *implicit* in averaged rates. Section 254(b)(5) requires any universal service support mechanism to be specific, predictable, and sufficient to provide rural customers access and rates that are reasonably comparable to access and rates in urban areas. A Federal-State Joint Board on Universal Service is currently preparing a universal service plan.

We cannot predict the exact impact of deaveraged unbundled element pricing. We recognize a potential revenue loss to NYNEX should too many urban customers move to competitors, triggering a loss of what may be an implicit subsidy for individual rural customers. That loss could impel NYNEX to file for a general rate case.

In addition, although we would not and do not base our decision on this fact alone, we are hesitant to foretell the 8th Circuit's final decision regarding pricing rules. While a stay has been granted, no decision has been rendered after a full hearing on the merits.

In consideration of the above discussion, we adopt the Arbitrator's award of deaveraged unbundled element pricing, reserving our right to alter our decision based upon any significant change in circumstances, including but not limited to the final result of the 8th Circuit litigation, the Federal-State Joint Board Universal Service Plan, or a general rate case proceeding.

Based upon the foregoing, it is hereby

ORDERED, that the Arbitrator's awards for issues 1 through 9, 22(a) and 22(b), 24, 28, 29, 30(c), 30(e), 30(f), 30(g), 31 through 33, 34(c), 35(c), 35(f), 35(f)(2), 38, 40, and 41 are approved as clarified herein; and it is

FURTHER ORDERED, that NYNEX shall collocate RSMs upon request; and it is

FURTHER ORDERED, that prices for unbundled network elements shall be deaveraged consistent with the Arbitrator's award for issue 40.

By order of the Public Utilities Commission of New Hampshire this fourth day of December, 1996.

ATTACHMENT 1

Resale Issues

Resale of Public Access Lines (PAL)

Description of issue:

AT&T has requested resale of NYNEX PAL

Per the Act and FCC rules, all incumbent LECs have the duty to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers. Restrictions, such as class of subscribers, may apply, but are not at issue in this case. (51.605 and 251c4)

For these issues there is a three part test. First is this a retail service provided to subscribers? Secondly, what exactly is this retail service. Third, is it being bought by an "resale" eligible carrier, i.e., telecommunications carrier?

Parties' Positions:

Both AT&T and NYNEX agreed that PAL is a retail service provided to subscribers. Secondly, PAL service is a service ordered by an

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end user and paid for by an end user. Furthermore NYNEX does not have unilateral discretion as to placement of the PAL facilities. It is available at the customer's option, not NYNEX's. Third, it is being bought by a telecommunications carrier — AT&T. Therefore it appears that PAL should indeed be available for resale at wholesale rates. Both AT&T and NYNEX agree that PAL is a service subject to resale at wholesale rates, except that NYNEX does not believe that AT&T can resell PAL for use by its own payphone affiliate.

NYNEX bases this argument on paragraph 875 which states that section 251(c)(4) does not require incumbent LECs to make services available for resale at wholesale rates to parties who are not "telecommunications carriers" or *who are purchasing service for their own use*. (Emphasis added) Therefore NYNEX objects to reselling PAL to AT&T for use of AT&T's own pay telephone affiliate.

NYNEX cites paragraph 876 as further support for its argument. NYNEX also points to a pending FCC order on the implementation of Section 276 Provision of Payphone service will clarify or at least change this issue.

NYNEX also argued that if AT&T were able to buy PAL at a discount for its own use, AT&T would have a competitive advantage by virtue of its affiliate receiving the resale discount while another similarly situated independent payphone provider would not be able to receive this "resale" discount. Therefore in order to avoid the creation of a discriminatory third party effect, NYNEX argues that AT&T should not be able to buy PAL for resale for its own use.

Arbitrator's Analysis:

In order to more fully understand NYNEX's line of reasoning, it is important to look at the context of paragraph 875. It appears that 875 is the concluding paragraph for the FCC's discussion about whether exchange access service is subject to resell at a discount to interexchange carriers. The FCC concludes in paragraph 874 that because exchange access would be used by an interexchange carrier for its own use, an interexchange carrier is not entitled to buy exchange access as a resold service at wholesale rates. In paragraph 874, there is the following linking language to paragraph 875. "Furthermore, as explained in the following paragraph ..." In this context it appears that paragraph 875 is simply expanding the specific case of exchange access as an interexchange carrier bought service for its own use to a more general case of any service that is bought for its own use.

NYNEX also advances the argument that paragraph 876 specifically states that independent payphone providers (IPP) are not telecommunications carriers. Since AT&T's own pay telephone affiliate is acting like an IPP, NYNEX argues, that portion of AT&T's business should no longer be treated as a telecommunications carrier, but rather an IPP. AT&T seems to argue that because it is clearly a telecommunications carrier in one area, it must also be a telecommunications carrier in all areas.

When determining whether a telecommunications carrier is a common carrier both the 1996 Act and the FCC reach the conclusion that even if a telecommunications carrier is a common carrier in one area, its entire operations may not necessarily be common carrier. In that definition (47 U.S.C. 153 (r)(49)), it was clear that all common carriers are telecommunications carriers, but that not all portions of a telecommunications carriers may necessarily be common carriers. It appears that a telecommunications carrier can be both a common carrier and a non-common carrier. It all depends on which service is provided. By that reasoning, it would be logical that if a telecommunications carrier had an IPP operations, and IPP carriers are not telecommunications carriers, then for that portion of their business, AT&T would be considered an IPP and therefore would not be eligible to buy PAL from NYNEX as a resold service at a discount for use by its "IPP" affiliate.

The arbitrator also agrees with NYNEX that an unwanted and unwarranted creation of a third party effect would occur if NYNEX were required to resell PAL service at a discount to AT&T for its own use.

It was noted in discussions that PAL does not contain any "bundled" screening features in

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order to deter fraud. However, NYNEX acknowledged that these features are available from another tariff and agreed that they would be available for resale at wholesale rates.

AWARD

NYNEX is not required to sell PAL for resale to AT&T at a discount for AT&T's own use. This award was not affected by the FCC order on Implementation of Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC96-128 and CC91-35, released September 20, 1996.

Issue #2

Resale of Public pay phone at a discount

Description of issue:

AT&T has requested resale of NYNEX Public Pay Telephone Service

Per the Act and FCC rules, all incumbent LECs have the duty to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers. Restrictions, such as class of subscribers, may apply, but are not at issue in this case. (51.605 and 251c4)

For these issues there is a three part test. First is this a retail service provided to subscribers? Secondly, what exactly is this retail service? Third, is it being bought by a "resale" eligible carrier, e.g., a telecommunications carrier?

Parties' positions:

Both AT&T and NYNEX agree that there is a retail service associated with public pay telephone that is provided to subscribers. The key issue is what exactly is that retail service that NYNEX provides. AT&T appeared to want to resell the public pay phone facilities. However, the only retail tariff that was produced regarding pay phone was one governing the USE of the pay phone for local coin service. The retail tariff did not include and offering of public pay phone facilities. Therefore, NYNEX argues that it is not required to sell public pay phone facilities to AT&T.

NYNEX also argues that a pending FCC order on the implementation of Section 276 Provision of Payphone service will clarify or at least change this issue. It was agreed by both AT&T and NYNEX that when the FCC payphone order became available, any relevant portions would be incorporated into this decision.

Arbitrator's Analysis:

Public payphone service appears to be a unique service in that the end user of the service (coin customer) is not the one that orders the facilities necessary for the service. After discussion it seems clear that public payphone are placed (and removed) at the sole discretion of NYNEX. The only apparent tariff that references public payphone does not relate to facilities, but rather service. At paragraph 872, the FCC order states that State Commissions can determine the services that an incumbent LEC is obligated to provide at wholesale rates by examining the incumbent LEC's retail tariff. Since NYNEX's tariff does not include the public payphone facilities, it is clear that NYNEX cannot be required to offer them for resale.

Another indication that public payphones are not themselves a retail service available to end users is the fact that currently there is no interstate end user charge applied to public payphones.

AWARD

Based on the recent FCC order concerning the Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC96-128 and CC91-35, released September 20, 1996, there will be a retail tariff that will allow NYNEX to offer the public payphone line without the terminal equipment to its pay telephone service provider. This tariff will be available to AT&T. Due to the above referenced FCC order, the above analysis is no longer

relevant.

Issue #3

Resale of Semi-Public payphone at wholesale rates

Description of issue

AT&T has requested resale of NYNEX Semi-Public Pay Telephone Service

Per the Act and FCC rules, all incumbent LECs have the duty to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers. Restrictions, such as class of subscribers, may apply, but are not at issue in this case. (51.605 and 251c4)

For these issues there is a three part resale test. First is this a retail service provided to subscribers? Secondly, what exactly is this retail service? Third, is it being bought by a "resale" eligible carrier, e.g., a telecommunications carrier?

Parties' Positions:

Both AT&T and NYNEX agree that Semi-Public payphone is a retail service. In addition both agree that there is a retail tariff that makes the facilities available per the tariff. However AT&T indicated that it wanted to resell a NYNEX retail service that is more unbundled than at present.

NYNEX also argues that a pending FCC order on the implementation of Section 276 Provision of Payphone service will clarify or at least change this issue.

Discussion

The only issue appears to be whether NYNEX is obligated to unbundle and rebundle a retail service on request from a new entrant who want to purchase the rebundled service at wholesale for resale to end users. This rebundled service is a new retail service that is not currently available to end users. Therefore the rebundled service is not a candidate for purchase at a discount rate under the resale provisions. In other words, if a service eligible for resale is a "packaged" service, any requested unpacking that creates a new service that is not offered to subscribers and therefore is not required to be offered at a wholesale price for resale.

AWARD

Based on the recent FCC order concerning the Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC96-128 and CC91-35, released September 20, 1996, that there will be a retail tariff that will allow NYNEX to offer the semi-public payphone line without the terminal equipment to its pay telephone service provider. This tariff will be available to AT&T. Due to the above referenced FCC order, the above analysis is no longer relevant.

Resale Issue 4: Reservation of space in rights of way, conduits and poles

Issue:

This issue is simply, how much space in rights of way, conduits and pole should NYNEX be able to reserve for its own future use. Since space on rights of way, conduits and poles is a limited and valuable commodity, excessive reservation by NYNEX could be detrimental to new entrants while not enough reservation by NYNEX could be detrimental to NYNEX. While this issue was only raised with regards to NYNEX, it applies to all telecommunications carriers needing space on rights of way, conduits and poles.

Parties' Positions:

NYNEX states that it must be able to reserve up to 5 years of projected space requirements because the traditional construction cycle is that long. AT&T, on the other hand, argues on the basis of Paragraph 1170 that any reservation of space could be detrimental to a new

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entrant and therefore NYNEX should not be allowed any reservation.

NYNEX asserts that the definition of the term "premises" in Part 51 supports its argument for a 5 year reservation. The definition mentions rights of way and the term premises is a term used in collocation; collocation contains a 5 year reservation of space. Therefore, NYNEX argues that a 5 year reservation should likewise be allowed for rights of way, conduits and poles.

During discussions it was noted that having zero reservation and only relying on current needs could present problems for both new entrant and incumbent LEC. At the extreme, this zero reservation could be interpretted that if the requested space is not used within some very short time frame, such as 24 hours, then the request is for a future reservation of space. When taken to this extreme, this clearly will not work for either the new entrant or NYNEX because it would require that equipment, material and labor would have to be at the job site and ready to roll BEFORE space would be granted, which could cause the situation that everything is on site but when the space request was requested, there was no space available. Clearly the definition of "current needs" must be carefully established.

Arbitrator's Analysis:

NYNEX, as the incumbent, has an obligation and a right to provide service; any new entrant has the right to provide service. In situations where both need to use the limited and valuable right of way, a detriment would be likely for either party if space were not available.

While it might be tempting to merely "split the difference" and award something half way between 5 years and zero, this issue is too important for such a simplistic solution. What is required is a process whereby these situations can be expediently and fairly handled on a case by case basis.

It would seem reasonable that any new entrant that applies for use of NYNEX rights of way, conduits and poles must apply in writing with the specific request including what detriment, if any, not granting the request would have. NYNEX would have 30 days to reply in writing. If space is available, then there is no problem. However in the cases where sufficient space is not available, NYNEX must also supply in the written reply the reason the request in not being granted. The reason must be specific and include the following: total capacity of the relevant

system, amount currently in use and the amount reserved for future use. In addition the amounts currently in use must specify if the space is being used to provide "non-revenue producing" services. For example, NYNEX must identify if any currently occupied space is being used for "dead" equipment which may not have been removed yet. The amounts reserved for future use must indicate who has reserved the space and the intended time period for the start of utilization. Furthermore, NYNEX must offer any alternative solutions that may be available, including but not limited to conduit sharing, and removing the "dead" cable.

This must all be in writing and available for public inspection. The requesting party then has the right to request "fast track" arbitration. This means that there must be available a means whereby the requesting carrier can take this information and have an impartial hearing to determine what can be done, if anything. This second phase should take no longer than 20 days so that the entire process will be resolved in 50 days. Because accurate information will be needed very quickly in order to have an effective arbitration, the requesting carrier has the right to contact any similarly competitive LEC for inclusion in this arbitration. This may be helpful in determining actual growth in the area and better determine the needs for the future.

While this issue started out as directly effecting a new entrant and NYNEX, this situation could very well involve two new entrants needing NYNEX's available space. In that case, NYNEX as the administrator needs to have a way to impartially resolve this dispute between two new entrants. The above framework would also be applicable.

AWARD

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No specific time frame for reservation of space is awarded. Rather a process that was outlined above is awarded.

Branding of Operator Services and Directory Assistance

Issue:

NYNEX currently brands calls to its Operator Services and Directory Assistance. AT&T has requested that NYNEX rebrand Operator Services and Directory Assistance Services (OSDAS) calls with the AT&T name when such services are provided to AT&T customers by NYNEX, or if rebranding is not possible then AT&T requests NYNEX to unbrand all calls (both NYNEX and non-NYNEX) to NYNEX's OSDAS.

Parties' Positions:

AT&T asserts that, pursuant to the Telecommunications Act of 1996 (the Act) and the FCC First Report and Order in the Matter of the Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 - CC96-98 - FCC96-325, August 8, 1996 (the First Report), NYNEX must either provide rebranding or unbrand all calls to its Operator Services and Directory Assistance including those from its own customers until such time that NYNEX can rebrand AT&T's customers' calls to NYNEX's OSDAS as an AT&T service. AT&T claims that rebranding is technically feasible now.

NYNEX's position is that rebranding in a resale environment is not technically feasible at

this time. Therefore, both NYNEX and non-NYNEX customers hear a message identifying NYNEX as the OSDAS provider. NYNEX asserts that rebranding will not be technically feasible until after January 1, 1998, when the Advanced Intelligent Network (AIN) is deployed. At that time rebranding for AT&T can be accomplished via AIN. In the meantime, NYNEX maintains that neither the Act nor the First Report, e.g., Section 51.613(c), requires NYNEX to unbrand its own OSDAS in the event that it is not feasible to provide rebranded OSDAS for AT&T customers.

NYNEX indicates that an interim solution of unbranding new entrant customer's traffic to NYNEX OSDAS will be technically available, by June 1, 1997, using line class codes to provide separate trunks for NYNEX vs. non-NYNEX customers. As a result of the interim solution, NYNEX customers will continue to hear a NYNEX brand message but non-NYNEX customer will hear no brand message at all. Upon further questioning it was established that it is currently technically feasible for NYNEX to unbrand all traffic on its OSDAS, i.e. unbranding both NYNEX and non-NYNEX OSDAS. It was also acknowledged that portions of the current network are not equipped to handle multi-vendor applications.

AT&T counters NYNEX's argument, claiming that Section 51.613(c)(2) requires NYNEX to unbrand all customers. Per Section 51.613(c)(2), unbranding means that the "incumbent LEC's brand name or other identifying information is not identified to subscribers." AT&T argues that the subscribers to whom the brand name is not identified include NYNEX customers as well as customers of new entrants who utilize NYNEX's OSDAS.

AT&T also claims that paragraph 970 of the First Report requires that "service made available for resale be at least equal in quality to that provided by the incumbent LEC to itself or to any subsidiary, affiliate, or any other party to which the carrier directly provides the service, such as end users." Therefore, if NYNEX cannot provide rebranding for AT&T's customers, then it should not be able to provide branding for its customers.

Arbitrator's Analysis

As stated above, NYNEX does not have a currently available solution in place now to even provide unbranding for the new entrant's customers and will not have the AIN solution for rebranding deployed until around January 1, 1998. Upon further discussions concerning the interim solution per the utilization of line class codes, it was determined that NYNEX probably did have the capability to provide rebranding for at least some of the expected new entrants

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that may want to resell NYNEX's OSDAS via line class codes. However, NYNEX claimed that it forecasts that the demand for line class codes for this and other services would exceed capacity and that therefore NYNEX would be unable to provide rebranding for all new entrants. Since NYNEX would not have enough line class code available for *all* of the anticipated users of rebranding, NYNEX argued, NYNEX should not have to provide rebranding to *any* new entrant via line class codes.

In short, NYNEX was arguing that if NYNEX could not provide rebranding for all expected new entrants, then it did not have to provide rebranding service to any new entrant. This is similar to arguments made in the "reservation" issue which was arbitrated on September 16,

1996. The issue in that case concerned rights of way, conduits and poles. Translating the above situation into a conduit issue, it is as though only one vacant conduit exists and four new entrants each requested the use of the entire conduit. Applying NYNEX's above logic, NYNEX argued that because NYNEX could not meet the needs of all of the new entrants requesting conduit space, it did not have to meet the needs of any of the new entrants.

Because NYNEX argues that the rebranding is not currently technically feasible and will not be technically feasible until AIN is deployed in 1998, the issue of technical feasibility arises. It is expected that the issue of technical feasibility will be a continuing issue and concern in this arbitration. For that reason, it would be efficient to determine a "decision tree" approach or in order to aid in the determination of technical feasibility and possible remedies. Although the technical feasibility decision tree may not apply to all circumstances, it may apply to many and it will be applied to the instant issue of branding.

The decision tree consists of five questions. First, is the ILEC technically capable of providing it to anyone, including itself? If the answer is no, then the inquiry ends. If the answer is yes, the second question arises: is NYNEX providing it to itself? If the answer is no, then there may be no harm if NYNEX is providing the service to others or is willing to provide it. If the answer is yes, then the inquiry proceeds to the third question: is a new entrant requesting it? If the answer is no, then the inquiry ends. If the answer is yes, then the fourth question arises: does NYNEX agree to provide it now? This time the inquiry ends if the answer is yes. But, if the answer is no because of technical infeasibility, the question to be determined is the level or true extent of the claimed technical infeasibility.

There are three levels of technical infeasibility to provide a service to a new entrant. Level 1 is when there is a solution available that has not been deployed by the ILEC. Level 2 is when there is no solution available to provide the service to the new entrant. Level 3 is when there is an available solution which has been deployed by the ILEC but which can only accommodate a limited number of users.

In either Level 1 or Level 2 situations, inferior service is being provided to the new entrant as compared to that enjoyed by NYNEX. Appropriate steps are necessary to provide motivation for the ILEC which would otherwise have no incentive to seek a technical solution. In a Level 1 situation, when there is an available solution that has not been deployed by the ILEC, steps should be taken to encourage the ILEC to deploy the available solution in a reasonable timeframe. In a Level 2 situation, when there is no solution available whatsoever, steps should be taken to encourage the ILEC to develop a solution in a reasonable timeframe.

One way to encourage the ILEC to deploy an available solution is to not allow the ILEC to continue to utilize this feature, function or service. For example, in the case of branding, if NYNEX cannot provide rebranding for the new entrant's customers, then NYNEX should not enjoy the competitive advantage that the exclusive branding for its own customers would provide. Further, NYNEX should not be permitted to misbrand as NYNEX services those provided on a resold basis by AT&T.

It is noted that the above-described unbranding represents a purposeful degradation of service. Such a degradation of service would not be appropriate in cases involving essential network functionalities, i.e. network reliability.

NYNEX must be able to continue utilizing the essential feature, function, or service despite the possibility of the new entrant being placed in a detrimental position as a result of the inferior service provided to the new entrant. In other words, if the feature, function or service is essential to the quality of the network, then it cannot be purposely degraded.

Another way to encourage the ILEC to find and deploy a solution is the historical one for inferior service: the application of a discount. This discount would be above and beyond any other discount and could last for the duration of the "inferior" service. While a general, across the board allocator could be used, e.g., 10%, a more ideal solution would be to base this discount factor on the reduced market value of the service due to the inferior feature, function or service received from the incumbent LEC. In most cases, the discount factor would be applied for the duration the "inferior" feature, function, or service is used by the new entrant. This discount factor would need to be set.

In a Level 3 situation, when there is an available solution which has been deployed by the ILEC but which can only accommodate a limited number of users, then the basic principles of the "reservation issue regarding right of way" process is applied. The general principle is that this will be handled on a first come first served basis until there is no more available. Once there is no more available, the process outlined below applies, which is similar to that in the above referenced right of way "reservation" arbitration.

Any new entrant that is requesting a particular service, e.g., rebranding, must apply in writing for resale of specific features, functions, and services. The written application must include a description of the detriment, if any, denial of the request would have. If granting the request is possible, NYNEX would have to respond in writing as soon as possible, granting the request. If supplying the request is not technically feasible, NYNEX must respond within 30 days, providing the reason the request is not being granted. The reason must be specific and include the following: total capacity of the relevant system, amount currently in use, and the amount reserved for future use. In addition, the amounts currently in use must specify if any of the available capacity is being used to provide "non-revenue producing" services. The amounts reserved for future use must indicate who has reserved the space and the intended time period for the start of utilization. Furthermore, NYNEX must detail in writing any alternative solutions that may be available. In the case of branding, there may be an Automatic Number Identification (ANI) based solution available. The new entrant's request and the NYNEX response must all be available for public inspection.

The requesting carrier then has the right to request "fast track" arbitration. This means that there must be available a means whereby the requesting carrier can take this information and have an impartial hearing to determine what can be done, if anything. This second phase should take no longer than 20 days so that the entire process will be resolved in 50 days. Because accurate information will be needed very quickly in order to have an effective arbitration, the requesting carrier has the right to contact any similarly situated competitive LEC for inclusion in this arbitration. Unlike the right of way reservation case, the arbitrator may order that a discount is appropriate based on either a specific study of harm or a general percentage. In that way, the

requesting carrier would not receive some allocation of a portion of branding but would, instead, receive a discounted rate for "inferior" service.

Applying the above analysis results in a conclusion that the branding issue is currently a Level 2 situation and will become a Level 3 situation at the time that line class codes are available to provide separate trunks for NYNEX vs. non-NYNEX customers. During the Level 2 situation, NYNEX is required to unbrand its OSDAS because of the requirements of Paragraph 970 of the First Report and because the timeframe is too short to utilize a discount process efficiently. During the Level 3 situation, NYNEX is required to rebrand for any new entrant on a first come first served basis.

Award

If at the time AT&T asks for delivery of

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branding, NYNEX is incapable of delivering branding because there is no solution available to the technical feasibility problem, as is currently the case, a Level 2 situation exists. The Level 2 situation will continue to exist until line class codes are available to provide separate trunks for NYNEX vs. non-NYNEX customers, at which time a Level 3 situation will arise. For the duration of this Level 2 situation, NYNEX shall unbrand its OSDAS. Unbranding is necessary both because of the requirements of Paragraph 970 of the First Report and because the timeframe is too short to utilize a discount process efficiently.

During the Level 3 situation, which will commence at the time line class codes are available to provide separate trunks for NYNEX vs. non-NYNEX customers, NYNEX shall rebrand OSDAS for any new entrant on a first come first served basis. In the event that NYNEX becomes unable to provide rebranding to any new entrant, the arbitration process outlined above will be precipitated, similar to the right of way "reservation" arbitration process but including consideration of an award of discounted rates.

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[TO BE SHOT - MS. P. 15]

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Alternate Billing to Third Number

Issue:

Normally, a message is billed to the number that originated the message. The situations addressed in this arbitration involve alternate billing to a "third" number, a number other than the originating number. Credit card, collect call, and charges billed to a third number (number other than the originating or terminating) are examples of third number billed messages. The issue here involves third number billing for local, not toll, messages which deal with a customer of AT&T as a result of AT&T reselling NYNEX local services.

AT&T and NYNEX agree that there are four basic scenarios for third number billing of local

messages involving an AT&T local-customer-by virtue-of-resale. All of the four scenarios deal with actual resale, *not* the use of unbundled elements or AT&T facilities-based services. For each of the four scenarios, AT&T and NYNEX disagree as to the proper method for billing. The disagreement extends to which company should receive payment, how much payment, and the path for billing information.

Parties' Positions:

The four scenarios can be categorized into two groups of two. The first two scenarios are exemplified by a regular collect call in which the call is billed to the terminating number; the second two scenarios are exemplified by a call billed to a number other than the terminating or originating number.

For each of the four scenarios, AT&T and NYNEX present conflicting billing processes, each based upon the same conflicting arguments. AT&T argues that the processes it proposes are approximately equivalent to that used in toll billing. The AT&T billing process is most efficient if it can apply uniformly to both toll and local for third-number billing. Therefore AT&T contends that its processes should be adopted for purposes of third-number billing in the interconnection agreement. NYNEX argues that the third-number billing issue does not turn on efficiency of processing but on the actual relationships that result from AT&T's resale of NYNEX services pursuant to the Act and as interpreted in the First Report.

In the first scenario, a caller originates an in-region local call from an AT&T local-customer-by-virtue-of-resale, that is served in a NYNEX exchange, and bills it to the terminating number which is a local customer of NYNEX. For example, a caller makes a call from a friend's house in Portsmouth to another friend in Hampton, charging the call to her friend in Hampton. The Portsmouth house belongs to an AT&T local-customer-by-virtue-of-resale and the Hampton friend is a local customer of NYNEX. The billing process suggested by AT&T and NYNEX for this scenario are compared below, side by side and step by step.

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


                                  Scenario # 1
ORIGINATOR: AT&T (AT) Customer     BILLED TO: NYNEX (NX)
by-virtue-of-Resale                Customer
NYNEX PROCESS                      AT&T PROCESS
1. NX records & handles call1. NX records & handles call
2. NX rates call at NX rate2. NX sends UNRATED message to AT
3. NX bills call to its customer3. AT rates message at AT rate
                                   4. AT returns rated message to NX for B&C


                                   5. AT pay NX 5¢* for B&C
                                   6. NX remits "net" $ to AT
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* Note: the 5 cents for B&C is merely a convention for these examples and may not represent actual charges.

AT&T argues that their billing process is most efficient if it can handle calls in a similar way for all third party calls, both local and toll. The AT&T process is approximately equivalent to that used in their toll billing and would be therefore more efficient from a processing standpoint.

NYNEX argues that processing costs are not the issues but rather the particular required relationship between NYNEX, AT&T and AT&T's customer as a result of AT&T reselling NYNEX services as pursuant to the Act and FCC's First Report.

In the second scenario, a caller originates an in-region local call from a NYNEX local customer location and bills it to the terminating number which is an AT&T local-customer-by-virtue-of-resale who is served in a NYNEX exchange. For example, a caller from a friend's house in Laconia makes a call to another friend's house in Meredith, charging the call to the friend in Meredith. The Laconia house belongs to a NYNEX customer and the other friend in Meredith is an AT&T customer-by-virtue-of-resale. The billing process suggested by AT&T and NYNEX for this scenario are compared below, side by side and step by step.

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


                            Scenario # 2

ORIGINATOR: NYNEX (NX) Customer          BILLED TO: AT&T (AT) Customer-
                                         by-virtue-of-resale
NYNEX PROCESS                            AT&T PROCESS
1. NX records & handles call1. NX records & handles call
2. NX sends AT unrated call - daily2. NX rates call at NX retail rate
3. NX bills AT @ wholesale rate 3. NX sends rated
(rated less discount) monthly            retail call to AT for B&C
4. AT rates call at "AT&T" retail rate4. AT charges NX 5¢ for B&C
5. AT bills customer            5. AT remits "net" $ to NX
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AT&T argues that their billing process is most efficient if it can handle calls in a similar way for all third party calls, both local and toll. The AT&T process is approximately equivalent to that used in their toll billing and would be therefore more efficient from a processing standpoint. NYNEX argues that processing costs are not the issues but rather the particular required relationship between NYNEX, AT&T and AT&T's customer as a result of AT&T reselling their services as outlined in the Act and the First Report.

In the third scenario, a caller originates an in-region local call from an AT&T local-customer-by-virtue-of-resale that is served in a NYNEX exchange and bills it to a terminating number which is out-of-region. For example, a caller in Laconia calls a friend in Meredith, charging the call to a number in California. The caller in Laconia is an AT&T local-customer-by-virtue-of-resale and the out-of-region California number is served by Pacific Bell (PB) for local calls. (The identity of the local service company of the friend in Meredith is immaterial for purposes of this scenario.) The billing process suggested by AT&T and NYNEX for this

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scenario are compared below, side by side and step by step.

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[Graphic(s) below may extend beyond size of screen or contain distortions.]
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                                        Scenario # 3

ORIGINATOR: AT&T (AT) Customer-by- BILLED TO: Pacific Bell
virtue-of-Resale                   (PB) customer

NYNEX PROCESS                      AT&T PROCESS

1. NX record & handle call1. NX record & handle call

2. NX sends rated call to 2. NX sends unrated call
PB via CMDS                        to AT

3. PB bills & collects call3. AT rates call at AT
already rated by NX                tariff rate

4. PB remits net to NX (less 5¢4. AT sends rated
for B&C) via CMDS                  call to its CMDS host for
                                   transmission to PB via CMDS

                                   5. PB bills & collects call

                                   6. PB remits to AT host net (less 5¢ for B&C) via CMDS

                                   7. CMDS host remit to AT
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AT&T argues that their billing process is most efficient if it can handle calls in a similar way for all third party calls, both local and toll. The AT&T process is approximately equivalent to that used in their toll billing and would be therefore more efficient from a processing standpoint. NYNEX argues that processing costs are not the issue but rather the particular required relationship between NYNEX, AT&T and AT&T's customer as a result of AT&T reselling their services as outlined in the Act and the First Report.

In the fourth scenario, a caller originates an out-of-region local call that is billed to an in-region AT&T (AT) local-customer-by-virtue-of-resale that is served in a NYNEX (NX) exchange. For example, a person from Claremont who is visiting a friend in San Francisco makes a call from the friend's house to an acquaintance in another part of San Francisco, charging the local call to her number in Claremont. The San Francisco number is provided with local service by Pacific Bell (PB); the Claremont number is an AT&T local-customer-by-virtue-of resale and is served by a NYNEX exchange. The billing process suggested by AT&T and NYNEX for this scenario are compared below, side by side and step by step.

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


                                Scenario # 4
ORIGINATOR: PB Customer            BILLED TO: AT&T Customer via resale in N.H.

NYNEX PROCESS                      AT&T PROCESS

1. PB record & rate call  1. PB record & rate call

2. PB transmits via CMDS to NX2. PB transmits via
due to 6 digit translation         CMDS to NX due to 6 digit translation

3. NX retransmits to AT via3. NX retransmits to AT
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daily usage feed, charging         via daily usage feed,
AT record transmission fee         charging AT record transmission fee

4. NX bills AT full PB    4. AT bill & collect
rate on monthly bill               their customer

5. NX remits billed rate less 5¢5. AT remits to
for B&C to PB (keeps 5¢)           NX less 5¢ for B&C to PB

6. AT bill & collect their
customer
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AT&T argues that its billing process is most efficient if it can handle calls in a similar way for all third party calls, both local and toll. The AT&T process is approximately equivalent to that used in their toll billing and would be therefore more efficient from a processing standpoint. NYNEX argues that processing costs are not the issues but rather the particular required relationship between NYNEX, AT&T and AT&T's customer as a result of AT&T reselling their services as outlined in the Act and the First Report.

Arbitrator's Analysis

In choosing an appropriate billing methodology, the key consideration is the specific relationship created in the provision of resold local services in each scenario between (1) AT&T and NYNEX, (2) AT&T's local customer and AT&T, and (3) AT&T's local customer and NYNEX. Even though the AT&T billing methodology may in fact be more efficient from a billing standpoint, the AT&T methodology is not appropriate unless AT&T has the appropriate relationship to the customer.

Also of great importance is the fact that, under the resale provisions of the Act, AT&T resells NYNEX's local services, not facilities. Other provisions of the Act, for providing local service through the use of unbundled network elements or AT&T's own local facilities, involve the sale of facilities, but this issue deals with resale and therefore the sale of services. This distinction between services and facilities is crucial and will be discussed below.

As articulated in three of the arbitrations of September 16, 1996, for resale a three part test applies. First, is this a retail service provided to subscribers? Second, what exactly is this retail service. Third, is the service being requested for resale by a telecommunications carrier as defined in the Act?

In applying the first question of the test in this situation, NYNEX and AT&T agreed that the resold service involved "third number service" contained in NYNEX tariff 77, is provided to subscribers and therefore is available for resale. The second question of the test asks what exactly is the retail service. As indicated in the description, third number billing is distinguished by the fact that a number other than the originating number is being billed. The answer to the third question is yes, for each of

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these four scenarios AT&T is a telecommunications carrier as defined in the Act.

In the first scenario (a collect call), the terminating customer, who is a NYNEX customer, is the so-called "third number" being billed as outlined in the applicable tariff. The customer having the relationship to the applicable tariff is NOT the originating number, as is the usual

case, but rather the third number customer, a NYNEX customer. Since the third number is not an AT&T local customer, neither AT&T nor the originating caller, AT&T's local customer, has a relationship to the applicable NYNEX tariff.

It is at this point that the importance of the distinction between services and facilities becomes clear. Third number service does indeed utilize the same *facilities* that also are utilized by other local *services* that are resold by AT&T to the originating number. In other words, if the originating number were an AT&T customer by virtue of a facilities "type" arrangement, e.g., unbundled network elements or actual provisioning of local facilities by AT&T, then *all* usage over those facilities would be AT&T's. However, under resale, only the usage generated from those NYNEX local services being resold by AT&T are AT&T's. In this scenario, AT&T is not reselling any NYNEX service. Rather, the originating caller is asking the NYNEX customer to pay for the call and allow the call to be completed. The third number (NYNEX) customer, by accepting the collect call, is subscribing to his local telephone company's (NYNEX) service and will be charged for by his local telephone company (NYNEX).

Hence, in scenario #1 there is no NYNEX local service being resold by AT&T to its local-customer-by-virtue-of-resale. AT&T is not involved in this service and is not entitled to any of the revenues. The NYNEX billing methodology follows these principles. Even though the AT&T billing methodology may in fact be more efficient from a billing standpoint, it does not follow these principles.

In scenario #2, there is no disagreement that the service is one provided to subscribers out of a retail tariff and is therefore available for resale. Likewise, for purposes of this scenario, AT&T is a telecommunications carrier as defined in the Act. As in scenario #1, the issue here arises out of the second question in the resale test. The issue again revolves around the relationship between NYNEX and AT&T and the relationship between NYNEX and AT&T's local customer by virtue of resale. Here, unlike the situation described in scenario #1, it is AT&T's local-customer-by-virtue-of-resale which is the third number. Therefore, it is AT&T that provides the service, via resale.

The NYNEX local service is being sold by NYNEX to AT&T so that AT&T can resell the service to the local customer. NYNEX's relationship, therefore, is with AT&T and not with the local customer using the resold service. NYNEX must bill AT&T at the NYNEX "wholesale" rate (retail less avoided cost). AT&T, on the other hand, as the reseller, can bill its customer for this service at its chosen rate for this service. In theory, and ignoring other possible constraints, AT&T can rate this service below, above or exactly equal to the equivalent NYNEX service.

The NYNEX billing methodology follows these principles. Even though the AT&T billing methodology may in fact be more efficient from a billing standpoint and may indeed create less customer confusion, it does not follow these principles.

In Scenario #3, there is no disagreement that the service is provided to subscribers out of a retail tariff and is therefore available for resale. Nor is there disagreement that for purposes of this scenario, AT&T is a telecommunications carrier as defined in the Act.

The issue in Scenario #3 turns on the second question in the test: what exactly is the retail service being resold? Scenario #3 is similar in many respects to scenario #1 except that, instead of being billed to an in-region third number, the local call is being billed to a third number which

is out-of-region, in this example the number of a customer of Pacific Bell. Since the terminating customer (third number) is not an AT&T local customer, neither AT&T nor the originating customer, AT&T's local customer, has a relationship to the applicable PB tariff. (While it may appear that a further area of

dispute may be the relationship of the third number party to Pacific Bell, both NYNEX's billing process and AT&T's billing process treat Pacific Bell in the same manner.) Exactly what amount Pacific Bell bills and to whom PB remits is not a matter for arbitration between NYNEX and AT&T.

The NYNEX billing methodology conforms to the actual relationships between AT&T, NYNEX, and the billed customer and is therefore appropriate for this scenario. Even though the AT&T billing methodology may in fact be more efficient from a billing standpoint, it does not conform to the actual relationships and is inappropriate.

In the scenario #4, a caller originates an out-of-region local call that is billed to an in-region AT&T local customer-by-virtue-of-resale that is served in a NYNEX exchange. As an example, a New Hampshirite visiting California makes a call from a California friend's house to a local California acquaintance and charges the call to her New Hampshire number, which is an AT&T resold customer for local service. It may appear that NYNEX should not be involved at all. However, the current routing service for billing, CMDS, "routes" the message based on the first 6 digits of the "billed to" telephone number. Because AT&T's local customer-by-virtue-of-resale resides in a NYNEX exchange, the call will route to NYNEX. Therefore, CMDS currently sends the message to NYNEX rather than AT&T. This misrouting requires an industry solution and the parties have indicated that a solution is being developed and will be implemented in the future. In the mean time, the message will be misrouted to NYNEX.

The key difference identified between the proposed billing processes is that in the NYNEX process, NYNEX keeps the billing & collection money when, in fact, AT&T is doing the billing & collection. This clearly is a mismatch and is unacceptable. NYNEX agreed to modify their process to correct this mismatch.

AT&T's process seems to be missing a step when compared to the NYNEX process. The missing step is the billing of AT&T by NYNEX for the rated message CMDS sent to NYNEX. In the actual process, CMDS debits the receiving party, NYNEX, with the amount of the message and credits NYNEX only when the net amount is remitted. NYNEX needs to bill AT&T for this as is shown in the NYNEX process. In step #3 of both parties' processes, there is a "record transmission fee" that NYNEX charges to AT&T. Record transmission fees occur in other steps, but were not relevant to the issue being arbitrated. AT&T can not currently have its message sent directly to it or its designated receiver. The network solution being worked on will address this problem of misrouting. When the network solution is operational, there should be no record transmission fee since the record will be transmitted to the correct carrier in the first place. In order to provide a continuing reason to address this misrouting problem, it would seem reasonable that AT&T should not have to pay NYNEX the record transmission fee in this specific situation until such time as the solution is actually in place.

AWARD

In the first scenario, a caller originates an in-region local call from an AT&T local-customer-by-virtue-of-resale that is served in a NYNEX exchange and bills it to the terminating number which is a local customer of NYNEX, the NYNEX's process is awarded. In the second scenario, a caller originates an in-region local call from a NYNEX local customer and bills it to the terminating number which is an AT&T local-customer-by-virtue-of- resale that is served in a NYNEX exchange, the NYNEX process is awarded. In the third scenario, a caller originates an in-region local call from an AT&T local-customer-by-virtue-of-resale that is served in a NYNEX exchange and bills it to a terminating number in another region, the NYNEX process is awarded. In the fourth scenario, a caller originates an out-of-region local call and bills it to an in-region AT&T local customer by virtue of resale that is served in a NYNEX exchange, the AT&T approach is awarded with the addition of step #4 from the NYNEX process that indicates NYNEX will bill AT&T monthly for the entire rated message. In order to make sure that a solution to the

misrouting problem is found and implemented quickly, it is also awarded that, for this specific type of call, the record transmission fee in step #3 shall not be charged by NYNEX to AT&T, until such time as the national solution is successfully operational.

Bona Fide Request (BFR) Process — Unbundling

Issue:

This issue presents a disagreement regarding some components of the Bona Fide Request (BFR) process for use by AT&T to request unbundled network elements from NYNEX. The BFR process includes a request from AT&T, a Preliminary Report from NYNEX, and a Detailed Report from NYNEX which is a full statement of at least the feasibility, availability, and costs of associated with AT&T's request. The components in dispute include: the length of time for NYNEX to complete the Preliminary Report (component #1); the length of time for NYNEX to complete the Detailed Report (component #1); the charges or fee paid to NYNEX for completing the BFR process (component #2); and an additional step proposed by NYNEX for confirmation of the request (component #3).

Parties' Positions:

NYNEX indicated that section 156 of the First Report and Section 251© of the Act does not require NYNEX to use a BFR process in this situation. Nonetheless, NYNEX has agreed to use a BFR process but disputes several of the components of the proposed process.

Component #1: It appears by the comments filed by AT&T and NYNEX that the issue has been partially resolved. Both AT&T and NYNEX have essentially agreed by virtue of the time line filed in their comments that the first 30 days of each proposed BFR processes are essentially the same. The only difference being that the NYNEX time line indicates that the dates are "no later than," thus indicating that, if possible, the indicated process will be completed in a shorter period of time.

The remaining issue involves the length of time for NYNEX to complete the Detailed Report once it has been requested by AT&T. NYNEX states that this Detailed Report process should be no more than 90 days while AT&T contends that this process should take 35 days. NYNEX indicated that the reason for this longer period of time is that some of the requests may be complex and require detailed information from non-NYNEX sources, e.g., equipment vendors. AT&T contends that the process should not take this long.

Component #2: The pricing plan for the BFR process is an issue in dispute. NYNEX proposes that there be no charge for the preliminary report but that NYNEX should be reimbursed for its actual costs for completing the Detailed Report. AT&T would rather that a flat application fee be determined for the BFR process.

Component #3: The NYNEX BFR process includes an additional step after this Detailed Report process where AT&T must either confirm its order or seek arbitration within 30 days. If the 30 day period expires, then AT&T would have to start the entire process over again. AT&T contends that more time might be needed to fully evaluate the practicality of actually deploying the requested element before confirming the order.

Arbitrator's Analysis:

Component #1 As stated above, the time lines of both AT&T and NYNEX are essentially the same up through the preparation of the Preliminary Report by NYNEX. The time involved to produce the Detailed Report is at issue. Neither NYNEX or AT&T seemed to be able to quantify all of the probable scenarios and the length of time to produce a Detailed Report. This appears to be due both to the fact that the process is new and that it is difficult to predict such things as the type/complexity of each BFR, the number of simultaneous BFRs. Therefore, it seems that the effort required to accurately and fully complete the Detailed Report is difficult to estimate, as is a date certain for its completion. Because the NYNEX-proposed 90 day time limit is a no-later-than date, earlier

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completion is possible and reasonable in certain situations. There may also be a risk to NYNEX that if the tighter time limit is consistently missed, for legitimate reasons, NYNEX might be perceived as delaying the process. For these reasons the NYNEX proposal of no more than 90 days in which to complete the Detailed Report appears reasonable.

Component #2 NYNEX's pricing plan for the BFR process appears to be reasonable. Not charging for the Preliminary Report should encourage new entrants to look into developing innovative new services. In addition, by the nature of a Preliminary Report, the costs involved to produce it should be minimal. On the other hand, the preparation of a Detailed Report implies higher, and sometimes significantly higher, costs to produce. As stated earlier the inability to accurately forecast the types of BFRs would make it too difficult to develop a single BFR process charge. However, the requestor should have a fairly accurate idea on the anticipated charges and time involved for its specific BFR. NYNEX has agreed to include in the Preliminary Report an estimate on the time and the cost for the development of a Detailed Report. In addition, NYNEX has agreed to produce a separate, more detailed explanation of the cost estimate upon request. The cost estimate put forward in the Preliminary Report will be payable at

the time the request for the Detailed Report is made. There will be a true up at the end of the process, which is either at the completion date or the date NYNEX is notified by the requesting company to cancel the Detailed Report. In order to protect the requesting company from incurring unexpected, high true up costs, an upper limit of 20% on the margin of error is appropriate.

Requesting a Detailed Report should indicate that the requestor is very seriously considering utilizing the requested network elements. Therefore, very few cancellations of requests for Detailed Reports are anticipated. Nonetheless, in order to protect NYNEX from expending resources that will not produce a Detailed Report, a lower limit for refund of the cost estimate amount by NYNEX is appropriate. The lower limit is -20%.

Component #3 While the idea underlying NYNEX's proposed requirement for a response within a certain length of time after the Detailed Report is completed is reasonable and comports with general industry practices regarding responses to Request For Proposals, the length of time proposed is too short. The 30 day time limit does not comport with general industry practices. A 90 to 120 day expiration date is more in keeping with general industry practice. The low end of this time limit, 90 days, appears more reasonable. AT&T certainly has the right to respond to NYNEX in less than 90 days.

Award:

Component #1 The "no later than" time frame, as proposed by NYNEX for the maximum time for completion of the Preliminary Report is awarded. The 90 day time line, as proposed by NYNEX for the maximum time for completion of the Detailed Report, is awarded.

Component #2 The pricing arrangement for the Preliminary and the Detailed Reports outlined above was agreed to by NYNEX and AT&T, incorporating the inclusion in the Preliminary Report of a time and cost estimate for completion of the Detailed Report. NYNEX and AT&T also agree upon the provision of a more detailed explanation of the time and cost estimate upon request. Therefore, those parts of the pricing arrangement are not subject to award. The true-up at the end of the process is subject to award: as discussed above, AT&T shall have the protection of a +20% limitation on the margin of error; NYNEX shall have the protection of a lower limit of -20% on the refund of the cost estimate amount.

Component #3 The BFR process shall include the additional step as outlined by NYNEX but the period shall be extended to a 90 day period in which AT&T must confirm its intent to deploy.

Advance Notification of Tariff Structure Changes

Issue:

AT&T requests that the 30 day notice requirement on NYNEX for tariff structure

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changes, currently required by commission rules, be codified in the interconnection agreement.

Parties' Positions:

There is no filed disagreement concerning the length of the commission mandated 30 day notice period regarding structural changes to NYNEX tariffs involving retail services that are now subject to resale by AT&T. However, AT&T wants to put the current 30 day notice requirement in the interconnection agreement because of potential changes in commission rules due to future legislative activity.

AT&T references paragraph 518 of the First Report to support the importance of electronic interfaces for Operational Support Systems (OSS). NYNEX counters that paragraph 518 only refers to the interface with incumbent LEC's OSS in for the purpose of accessing current information, not future tariff changes.

NYNEX asserts that the current 30 day requirement of the commission is still in place so no further action is required, since both parties agree with the current 30 day time period.

While AT&T was willing to sign a non-disclosure agreement with NYNEX, NYNEX was concerned that a non-disclosure agreement may not be easily enforceable, especially if dealing with less than scrupulous individuals. This characterization did not apply to AT&T, but because of the Most Favored Nation clause, any paragraph in this contract may be available to anyone.

Arbitrator's Analysis:

The only issue subject for arbitration is whether the 30 day advance notification should be as a result of commission rules or awarded. Although Paragraph 518 of the First Report, when read alone, may be interpreted as applying to future changes, when read in conjunction with Paragraph 519 it appears that Paragraph 518 also is referring to on-line/real-time access. Paragraph 519 refers to the experiences with Rochester Telephone's lack of on-line systems and also refers to NYNEX's provision of real-time electronic access to its systems. Therefore, Paragraph 518 is referring to on-line, real-time access.

It is interesting to note that AT&T has argued in the past, in its quest for non-dominant status as an interexchange carrier, that it was competitively disadvantaged by having to file tariffs for changes in both existing service and new service with the FCC for approval because its competitors received advance notice of its service offerings. Now, when the roles are reversed as in this case, AT&T insists on the importance of advance notification. It is true that AT&T is a facilities based interexchange carrier but, to the extent that AT&T sold any of its previously tariffed service to resellers, they probably experienced the same problems that AT&T now sees.

On the other hand, a 30 day notice may be reasonable because of the symbiotic relationship between the reseller and the resellee. AT&T expressed difficulty in getting tariff changes in a timely manner even today because they do not have regulatory personnel in Concord. This difficulty in getting tariff changes in a timely manner may have to be factored into any personnel cost savings decisions considered by AT&T.

Arbitrator's Award:

The current situation where NYNEX is required to provide advance notice to the commission per the commission's rules is awarded. It is also awarded that the commission should post NYNEX tariff submission, either as a status report or the full tariff filing on its WEB page, if possible, in order to provide better notice.

Interim Number Portability

Issue:

During the course of arbitration of this issue, the parties came to agreement on terms and conditions for interim Local number portability, including a compensation mechanism. Therefore, the issue is not one for which an award is made. Nevertheless, the interpretation of section 252(e)(2) of the Act, regarding

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compensation for interim number portability, became a topic of discussion and is here identified as requiring a Commission decision.

Discussion:

The parties reached agreement on all of the "start up" issues for interim number portability. However, as a part of this agreement, the issue was raised of how the costs and price for interim number portability for the entire state of New Hampshire should be handled. Therefore, despite the fact that no issue for arbitration is presented, recognizing the issue is important.

Both NYNEX and AT&T pointed to Section 251(e)(2) of the Act "the cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by *all* telecommunications carriers on a competitively neutral basis as determined by the Commission" (emphasis added). Therefore, even if AT&T and NYNEX agreed to a cost or even if the arbitrator were asked to set a cost, the issue could not be settled because all affected telecommunications carriers were not present.

Both AT&T and NYNEX also referenced Paragraph 130 of CC95-116, the FCC's decision on number portability entitled "First Report and Further Notice on Number Portability" (FCC's Number Portability Report), released on July 2, 1996. The FCC's Number Portability Report states that "... states may require all telecommunications carriers — including incumbent LECs, new LECs, CMRS providers, and IXCs — to share the costs incurred in the provision of currently available number portability arrangements." Four methods were outlined in the FCC's Number Portability Report that, according to the FCC, complied with the criteria established in Section 251(e)(2) of the Act.

On the record, during a session attended by Intervenors as well as the parties, the arbitrator disclosed, with permission, the parties' rationale for agreement. In the course of discussion during the open meeting, it was established that the so-called Bill and Keep Method had been discussed. However, rather than choosing one of the four methods outlined in the FCC's Number Portability Report or devising another method which would be consistent with the Act, which action would affect other telecommunications carriers, the parties have agreed upon an initial interim number portability compensation mechanism for use until the Commission (or the FCC) orders otherwise in the manner necessary to meet the specifications of Section 251(e)(2).

Contract language reflecting the parties' agreement will be presented to the Commission as a negotiated issue for review using the appropriate standards contained in Section 252(e)(2)(A). The agreement does not represent a decision or approval by the arbitrator.

22a. Discounts for Resold Services — Identification of Avoided Costs

Issue: Identification of the specific avoided costs to be included in the discounts for resold services.

Parties' Positions:

The positions of the parties will be indicated in the arbitrator's analysis and award below.

Arbitrator's Analysis

Wholesale discount factor — the New Hampshire method and potential problems

Basic Methodology

This wholesale discount factor(s) is to be applied to rates of NYNEX resellable services which are defined as those NYNEX services that are currently offered to NYNEX end users. Application of this factor(s) to these NYNEX retail rates will calculate the discount between the retail rate charged by NYNEX to its retail customers and the wholesale rate that will be charged by NYNEX to AT&T when AT&T resells these NYNEX services.

Conceptually there are 8 steps in the calculation of this discount factor. While a specific methodology was not found in New Hampshire, dividing this process into steps may make the discussion more understandable. These

conceptual steps are:

1. Categorization of expenses between the three FCC determined categories

2. Calculation of the "costs"/revenues of all services available for resale

3. Potential adjustment of the expenses to include only those adjustments included in the rates of the resellable services

4. Calculation of the avoided and not avoided expenses for the "direct" expenses, both presumptively avoided and presumptively not avoided

5 Calculating the "indirect" factor to be used on the presumptively avoided-indirect expenses

6. Application of the "indirect" factor to the presumptively avoided-indirect expenses

7. Calculation of the overall wholesale discount factor

8. Redistribution of wholesale discount factor between business and residence resellable services

Step #1 — Categorization of expenses between the three FCC determined categories.

The FCC determined that there would be three categories of expenses relating to all of the expenses of resellable services. The first category consists of those expenses that are presumptively avoided and are to be directly assigned between actually avoided and actually not avoided. The presumption is that these are avoided, so it would be expected that most, if not all of these expenses would be actually avoided. Per the FCC rules, NYNEX bears the burden of proving to the satisfaction of the state commission if any of these expenses are not avoided.

While the FCC did not specify subcategories, it appears that within this category, there are two distinct subcategories. The first subcategory consists of those expenses that are presumptively avoided by virtue of NYNEX moving from a retail structure to a wholesale structure. Product management, sales, and product advertising expenses are examples per 47 CFR 51.609(c)(1). The second subcategory consists of those expenses that are presumptively avoided by virtue of these expenses being included in a resellable service's rate and provided either by NYNEX under a separate NYNEX contract or provided by another company other than NYNEX. Operator services is the example in the FCC 1st Report and Order. The FCC indicated that resellers indicated a desire that operator services be provided either by a contract with NYNEX or by some other provider, e.g. the reseller or another provider. The second subcategory consists of the expenses of that portion of the resellable services that are provided by other means other than the wholesale rate. As stated above per 47 CFR 51.609(c)(1), call completion and number services expenses fit this description.

The second category consists of those expenses that are presumptively not avoided and are to be directly assigned between actually not avoided and actually avoided. The presumption is that these are not avoided. These expenses consist of plant-specific expenses and plant non-specific expenses other than general support expenses [47 CFR 51.609(c)(3)].

The third category, per paragraph 918, consists of those expenses that are tied to the overall level of operations in which an incumbent LEC engages and are presumptively avoided in proportion to the ratio of directly assigned actually avoided expenses, both presumptively avoided and presumptively not avoided, to total directly assigned expenses, both presumptively avoided and presumptively not avoided. Per 47 CFR 51.609(c)(2), examples of these expenses are general support, corporate operations and uncollectible expenses.

Step #2 Calculation of the "costs"/revenues of all services available for resale

This number will be the denominator in the calculation of the overall discount factor. While it may be more technically correct to use the costs associated with resellable services, this may entail extensive cost allocations. Use of the revenues of resellable services is simpler but still results in a reasonable surrogate. Another way to think about this number, resellable revenues, is that it is equal to total revenues (Part 32) less the revenues of non-regulated (Part 64), less Shared Network Facilities Arrangements

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(SNFA) revenues and less the revenues of non-resellable services, such as access. This is an important calculation because the services' expenses in the numerator should be for the same services as the services' revenues in the denominator.

Step #3 Potential adjustment of the expenses to include only those adjustments included as the basis for the rates of the resellable services

This potential adjustment depends on exactly what services are included in the first pass at the expenses. For example, if total services are used, then non-regulated service, SNFA services, interstate access and intrastate access services, and perhaps some miscellaneous services' expenses and revenues may need to be deducted from the total amounts in the accounts outlined 51.609. The key is that only the expenses for those services that are available for resale are

included in the calculation of the wholesale discount factor. If this is not done there may be a mismatch, which is discussed at length below.

Step #4 Calculation of the avoided and not avoided expenses for the "direct" expenses, both presumptively avoided and presumptively not avoided

This step requires an account by account analysis of whether a presumptively avoidable direct expense is not avoided and whether a presumptively not avoidable direct expense is avoided.

Step #5 Calculating the factor to be used on the presumptively avoided-indirect expenses

The objective of this factor is to allocate the expenses categorized as indirect expenses between avoided and not avoided in proportion to the ratio of presumptively avoided and presumptively not avoided actually avoided expenses to total presumptively avoided and presumptively not avoided expenses. The key word is proportion.

The factor is calculated by dividing the sum of the actually avoided expenses of the presumptively avoided direct expenses (category 1) and the actually avoided expenses of the presumptively not avoided direct expense (category 2) by the sum of both the actually avoided and actually not avoided expenses of the presumptively avoided direct expenses (category 1) and both the actually avoided and actually not avoided expenses of the presumptively not avoided direct expenses (category 2). All of these expenses are for only those services that are resellable.

Step #6 Application of the "indirect" factor to the presumptively avoided-indirect expenses

While this may appear as a simple arithmetic function, from a mathematics standpoint, it is conceptually important to make sure that this factor is applied to all and only the indirect expenses. If some of these presumptively avoided indirect expenses are directly assigned, then additional steps may need to be taken and previous steps recalculated.

Step #7 Calculation of the wholesale discount factor

This step is really an arithmetic operation of adding together all of the actually avoided expenses from the three categories (presumptively avoided direct, presumptively not avoided direct and presumptively avoided indirect), i.e., categories 1, 2, and 3 and dividing by the total amount of sum of these three categories.

Step #8 Redistribution of wholesale discount factor between business and residence resellable services

This step is a redistribution of the single wholesale discount factor between business and residence. It may be done based on a lines, minutes, etc.

Which number to use? — The "units" problem

What became known during the meetings as the "units" problem developed into something more. This issue was triggered by the

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unexplained relationship between the numerator and denominator of the wholesale discount factor as originally presented by both AT&T and NYNEX.

As stated earlier, the wholesale discount factor has a numerator consisting of the amount of the total actually avoided expenses of resellable services and a denominator of total costs or revenues of resellable services. The issue revolved around the numerator. The denominator was relatively easy to calculate — resellable revenues, which in the case on New Hampshire is almost all, if not all, intrastate revenues, since New Hampshire is a single LATA state and therefore NYNEX has very few, if any, intrastate interLATA access services. As stated above, this number could also be calculated by subtracting non-regulated revenues (part 64) and SNFA revenues and revenues from non-resellable services (interstate access, including billing and collection) from total revenues. For New Hampshire, a single LATA state, this equates to intrastate revenues. Both NYNEX and AT&T calculated this in approximately the same way. The numerator was another story.

AT&T calculated the numerator by starting with total regulated expenses (ARMIS 43.03) and subtracting the *incremental* costs of interstate access and other miscellaneous services. According to AT&T this difference is the "real" expenses associated with resellable services. These incremental presumptively avoided direct expenses associated with non-resellable services (interstate access and some miscellaneous services) was approximately 0.2% of the embedded amount associated with these specific expenses of interstate access. As might be expected, the resulting numerator looked much larger than the separated intrastate amount per Part 36 for these same expenses. For example, according to AT&T, the incremental amount for customer services (account 6623) for the non-resellable services would be approximately 0.2% of total regulated amount ($30,763,000 * .002 = $61,526), which would then leave 99.8% of the total regulated amount ($30,763,000 * .998 = $30,701,474) for the resellable services. As stated earlier, New Hampshire is a single LATA state and the resellable services are very close to the intrastate services and therefore the intrastate costs. Per the ARMIS 43.04, the intrastate amount for Other Customer Services is $24,201,000. By only subtracting incremental expenses for the non-resellable services from the numerator while subtracting full revenues for the non-resellable services from the denominator insured a relatively high wholesale discount factor. In fact when it was pointed out to AT&T that this factor could theoretically be above 100%, AT&T indicated that this would be reasonable since clearly, per AT&T, interstate access is being subsidized and without this kind of calculation NYNEX would retain windfall profits.

Example 1

AT&T demonstrated these windfall profits in the following example. Assume local service is the only resellable service, the local rate is $10/month, there is a $2/month "subsidy" included in the current interstate access rates and there is $1/month of avoided local costs. One method of calculating the discount rate would be to take the $1/month of avoided local costs and divide it by the resellable revenues of $10/month, thus calculating a wholesale discount factor of 10%. The wholesale rate for local service would be $9/month ($10/month - ($10/month * 10%)). Since NYNEX would still retain the $2/month subsidy in interstate access rates, NYNEX would have $11 of revenue. This would amount to windfall profits, per AT&T since the costs underlying the $2/month subsidy would also disappear.

Example 2

According to AT&T the more correct method would be to calculate the wholesale discount

rate by adding the $1/month avoided costs and the $2/month subsidy in current interstate access rates together ($3/month) and calculate a proper wholesale discount of 30% ($3/$10). Applying this 30% factor to the $10/month local rate would make a wholesale local rate of $7/month ($10/month - ($10/month * 30%)). NYNEX would not have windfall profits since the total revenues from resale ($7)

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and interstate access subsidy ($2) would be only $9/month.

Example 3

In addition, according to AT&T, if the $2/month interstate subsidy were properly placed in local rates in the first place, thus raising the local rate to $12/month, this would be an even more economically correct method. This even more correct method would calculate the wholesale discount rate by adding the $1/month avoided costs and the $2/month subsidy formerly in interstate access rates but now properly in local together ($3/month) and calculate an even more proper wholesale discount of 25% ($3/$12). Applying this 25% factor to the more proper $12/month local rate would make a wholesale local rate of $9/month ($12/month - ($12/month * 25%)). NYNEX would not have windfall profits since the total revenues from resale ($9) and interstate access subsidy ($0) would be only $9/month.

It is interesting to understand the assumptions underlying these three examples. In the first example, AT&T assumes that there is a subsidy in interstate access rates and that this subsidy is directly linked to the $1/month of avoided costs in local rates. In the second example, AT&T assumes that the alleged interstate subsidy properly belongs in the state jurisdiction and more precisely in the local rates, which are subject to resale. AT&T suggests that the $2/month allocated interstate expense be used in the calculation of the avoided costs associated with intrastate wholesale rates. What this means is that despite the fact that current federal rules (Part 36) allocate this $2/month to the interstate jurisdiction, a state regulator is to offset intrastate revenues by this uneconomic, but legal "misallocation." To the extent that there may be an intrastate shortfall, AT&T responded that this "alleged `shortfall' is an artifact of jurisdictional accounting only. It is not a true shortfall." It is difficult to understand how AT&T can maintain this argument in the face of a jurisdictional cost allocation process that has its own set of federal rules, has existed for decades and most importantly, these federal rules have not been changed one iota by the FCC (or a joint board) as a result of the interconnection portion (section 251/252) of the 1996 Telecommunications Act. In the third example, AT&T clearly insists that local rates need to be increased by the assumed $2/month interstate subsidy. As AT&T is no doubt aware, the New Hampshire Commission found that local rates were not being subsidized in DR89-010. However, if AT&T wants to insist that the current rates are being subsidized, then they need to make a formal petition to the New Hampshire Commission or to the FCC. Since AT&T has not yet done so, and since AT&T can not unilaterally raise NYNEX's local rates, it is difficult to take this example very seriously.

In addition, a major problem with all three of these AT&T scenarios is the unproven assumption that all of the alleged interstate subsidy is 100% local. If there is a subsidy, it could be in other areas. For example, in the FCC's Open Video Systems cost allocation docket

(CC96-112), it was acknowledged that currently virtually no Cable and Wire Facilities investment is allocated to non-regulated by most LEC's implementation of Part 64 rules, even though in the case of Open Video Systems a significant portion of Cable & Wire Facilities investment in a joint voice-video system may indeed be utilized by the non-regulated Open Video Systems. To the extent that construction has commenced, a portion of these "joint" video-voice costs may be included in interstate access rates. If this is part of the subsidy that AT&T is talking about, it is not caused by local.

There are other problems. While the arithmetic of the AT&T method may be interesting, it is the underlying assumptions of AT&T that is flawed when applied to how today's world operates. The practical effect given the current rules of what AT&T wants to do is to have the non-incremental portion of interstate access paid for by NYNEX customers of NYNEX services.

NYNEX is rate-of-return regulated in New Hampshire. In the second example, if AT&T's methodology is used, assuming the wholesale discount rate would be 30% and assuming a local rate of $10/month, the wholesale local rate would be $7/month. As stated above $2/month of this discount is *interstate* not intrastate, but

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AT&T wants the state to make up the shortfall. The shortfall occurs because even AT&T admits that the underlying intrastate costs of the wholesale local rate would be $9/month but the wholesale intrastate revenues would be only $7/month. Since NYNEX is rate of return regulated, rates for other intrastate NYNEX services may need to be raised to cover the shortfall caused by this methodology. AT&T responds that if this shortfall happens, it will be made up by the Universal Service Fund (USF) being contemplated by the FCC. Regardless of whether this *will* happen in the future, under current interstate USF rules it will not happen. Apparently the interstate USF rules will not be rewritten by the FCC until the June, 1997 time frame. By the way, if the FCC intends to make up this kind of shortfall, it might be wise to indicate this to the states since at this point, this does not appear to be the direction the FCC is taking.

This aside, it appears that AT&T wants NYNEX retail customers of NYNEX resellable services to subsidize AT&T's retail customer via resale of NYNEX services. This appears to be a violation of section 254(k) that indicates that a telecommunications carrier may not use services that are not competitive to subsidize services that are subject to competition. While the Act does seem to indicate that subsidization may be appropriate in certain specific instances, e.g., universal services, averaging of rural rates to non-rural rates and services to hospitals, schools and libraries, this particular situation does not seem to meet these criteria.

Fix #1

Given this, the next issue is how to fix this problem so that there is a match between the revenues actually associated with resellable services and the expenses actually associated with resellable services. NYNEX ARMIS information has been used in these calculations because it is publicly available and is certified by an officer of NYNEX.

One thought is to use subject to separations-intrastate numbers in both the numerator and the denominator. AT&T argued that separations results are arbitrary and non-cost based and therefore should not be used. It was noted that AT&T had used "Total Regulated" amounts from

the ARMIS 43.03 which is derived after the allocation of expenses to non-regulated per Part 64. Since Part 64 is not an incremental cost allocation methodology, it seemed inconsistent that the Part 64 non-cost based allocation was apparently acceptable, but separations (Part 36) was not. In addition, the incremental factor (0.2%) used by AT&T was based on a Bell Atlantic - Pennsylvania "study." How a study based on Pennsylvania data was relevant at all to New Hampshire was explained by AT&T with the statement that NYNEX had not done a study for New Hampshire. Thus not only is the methodology employed by AT&T appear to be inconsistent, the application of the methodology appears to be not completely logical and/or not yet fully developed. Regardless of the application of methodology, the methodology itself causes significant problems.

Therefore the subject to separations-intrastate numbers per ARMIS 43.04, adjusted for non-resellable intrastate services' expenses (numerator) and non-resellable intrastate services' revenues (denominator) are used in New Hampshire. Since New Hampshire is a single LATA state, adjustments are expected to be minor. This really is applying the example #1 above. To the extent there is any interstate "windfall," this is an interstate problem and the FCC should be more than capable of handling the situation. This is not in the jurisdiction of the New Hampshire PUC. While this may not be the ideal solution, it certainly does not fall into the traps of the examples (#2 and #3) presented by AT&T where either a blatant cross subsidization by NYNEX customers (#2) or an across the board local rate increase (#3) is required.

Problem #2

Per 51.609(d) there is reference that costs can be considered as not avoided if specific costs are not included in the retail prices of resold services. Furthermore the FCC states in paragraph 911 " `the portion [of the retail rate] ... attributable to costs that will be avoided' includes all of the costs that the LEC incurs in

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maintaining a retail, as opposed to a wholesale, business. In other words, the avoided costs are those that an incumbent LEC would no longer incur if it were to cease retail operations and instead provide all of its services through resellers." Later in the same paragraph the FCC interprets the Act "as requiring states to make an objective assessment of what costs are reasonably avoidable when a LEC sells its services wholesale." If an objective assessment is to be made, it must include the actual effect that will occur rather than just a theoretical view. Therefore the existing systems in operation today, e.g., part 32, part 64, and part 36, must be considered in order to complete this objective assessment. If these systems are not taken into account, then a theoretical assessment is made, not an objective assessment.

A real separations (part 36) problem — how the real world works today.

Intrastate marketing expense per the ARMIS 43.04 is $13,979,000 out of a total subject to separations amount of $20,894,000 for an intrastate allocation factor of approximately 66.9%. The interstate allocation factor would be 33.1%, which means that $6,916,000 is allocated to the interstate jurisdiction. If all of the $13,979,000 of intrastate marketing expense were to be presumptively avoided, then all $13,979,000 would be treated as avoided. The problem stems from the fact that not all NYNEX services are wholesale and therefore the expenses treated as

avoidable for the resellable services would not be avoidable for the non-resellable services. Therefore the $6,916,000 interstate marketing expense is not avoided since interstate access is not a resellable service. This could cause a problem with separations since the allocation factor of marketing expense is revenues, the allocation factor would not reasonably be expected to change too much. (The marketing expense allocation factor may actually be higher interstate because the resold local services generate less revenue.) Therefore if all but $6,916,000 of marketing is not avoided (the old interstate amount), 66.9% of the now total subject to separations amount of $6,916,000 ($4,626,804) would still be allocated to the intrastate jurisdiction and only 33.1% ($2,289,196) would be allocated to the interstate jurisdiction despite the fact that all $6,916,000 of the marketing expenses was generated solely by the non-resellable interstate access service.

The state rates would then reflect an expected intrastate expense reduction of $13,979,000, but instead of actually realizing the full amount, only $9,352,196 is actually avoided because $4,626,804 is still allocated to the state jurisdiction. As seen above, this could cause a potential intrastate revenue shortfall of $4,626,804, thus causing a potential rate increase for NYNEX customers of NYNEX intrastate services, and once again raising a cross subsidy issue. While in the interstate jurisdiction, there is an equal reduction in interstate expenses of $4,626,804. If NYNEX had selected the highest productivity factor, then potentially none of this reduction in interstate expenses would be reflected in a reduction of interstate rates. If this is the case in the interstate jurisdiction, it may be of interest to the FCC, but is of little direct interest for the New Hampshire commission.

AT&T dismissed and/or minimized this problem by saying that no marketing costs should be allocated to interstate and therefore if any marketing costs are allocated to interstate, it is inappropriate but more importantly, whatever shortfall this might cause in intrastate is made up for in the interstate. Once again AT&T insisted that "this `shortfall' on intrastate services is only an accounting shortfall that is offset exactly by a windfall on interstate access." As stated above, there are still two regulators — one federal and one state, unlike the world that AT&T seems to believe exists, these two worlds, while related, do not yet cross over to claim revenues from the other jurisdiction.

This same problem exists with other presumptively avoided - direct expenses, e.g., customer operation (6723) as well as those expenses that are presumptively avoided-indirect, e.g., corporate operations-general and administration expenses (6720) and general support expenses (6120). The arithmetic becomes a little more complex, but the logic remains the same. Since account 6120 will also drag with it other General Support investment

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related expenses, e.g., return and taxes, the arithmetic now becomes even more complex but again the logic remains the same. AT&T has yet to make a representation as to how much of the allocated interstate costs for these expenses are "truly" avoided. Neither has AT&T indicated how much of the allocated interstate costs associated with operator services including the investment portion are "truly" avoided. It would appear that these do not fit into the same "true" cost allocation category as marketing.

Fix #2

One way to mitigate this allocation problem would be through direct assignment. Under direct assignment, returning to the "marketing" case, all $6,916,000 would be directly allocated to the interstate jurisdiction and $0 would end up in the state jurisdiction. Direct assignment was prohibited as a general philosophy in the FCC's "Letter of Interpretation" dated 08/21/91 (including associated petitions for waiver and Memorandum Opinion and Order). Since direct assignment is not available, the only way for NYNEX to actually avoid $13,979,000 in the intrastate jurisdiction would be to actually cut all $20,894,000 of marketing expense, which is not reasonable since not all NYNEX services are wholesale services and therefore would not have any reduction in these "retail" expenses. It must be noted that if the expense that is reduced is 100% allocated to state, as is the case in local service order processing, this would not be much of a problem. This is the only large expense of this type that readily comes to mind.

As stated above, this jurisdictional mismatch is potentially large. These Part 36 rules are not new nor have they been recently modified as a result of the Act nor has the FCC indicated at the time of their First Report and Order that they are intending to modify this process. Therefore it can be assumed that this process is still in place and is intended to continue working as it is and has been. While it might be argued that this mismatch is all caused by an entirely too complex and little understood process known as separations (Part 36), it must be noted that the wholesale discount study, TELRIC studies, and the Hatfield Model (as well as other models such as the Benchmark Costing Model) are certainly much more complex and even less understood. If half as much time that has been spent and will be spent understanding these new processes were to be spent on understanding the existing separations process, there would not be these mismatches and/or they would be solved quickly.

Arbitrator's Award

There are two categories of awards for this issue.

Award Category #1

As discussed above and for the reasons stated above, the initial arbitrator's award is the use of subject to separations-intrastate from the 1995 ARMIS 43.04 for NENH.

Award Category #2

The specific awards for the individual accounts/subaccounts are as follows:

Awards for Wholesale Discount Rate

Presumptively Avoided-Direct

6611 — Product Management

NYNEX offered a study by Cambridge Strategic Management Group that stated in an all wholesale environment, NYNEX would continue 100% or more of its current spending on product management (6611) and advertising (6613). AT&T stated that this account should be 100% avoided.

DECISION — 10% of this account will be retained in a resale environment in order to maintain the AT&T account with NYNEX; 90% will be avoided.

6612 — Sales

NYNEX generally concurs that the majority of the expense is avoided (98.66%), excluding E911. AT&T stated that this account should

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be 100% avoided.

DECISION — All of this account is avoided, with the exception of E911. Therefore 98.66% of this account will be avoided.

6613 — Advertising

NYNEX offered a study by Cambridge Strategic Management Group that stated in an all wholesale environment, NYNEX would continue 100% or more of its current spending on product management (6611) and advertising (6613). AT&T stated that this account should be 100% avoided.

DECISION — All of this account is avoided.

6621 — Call Completion

6622 — Number Services

NYNEX initially maintained that it intended to offer operator services to all resellers, but later offered a study that indicated what the avoided discount rate would be if the reseller provided the operator services. It appeared that regardless of which NYNEX study, there were no reductions in either 6621 or 6622. AT&T offered that this account should be 100% avoided since AT&T evidently intended to either provide these services themselves and/or contract with another provider. After discussion, it was decided that a "net avoided" analysis would be used where the revenues associated with operator services would be netted against the entire costs of providing operator services. This would include more than the 6621 and 6622 accounts.

DECISION — Two sets of ratios will be calculated. One with operator services provided by NYNEX and therefore not avoided and another with operator services provided by AT&T and therefore avoided. In the latter case, the "net avoided" analysis discussed above will be used.

6623 — Customer Services

NYNEX offered detailed accounting cost analysis of which sub "functions" will be avoided and not avoided.

6623.1 — Customer Accounting

NYNEX offered that most of these expenses would be avoided (84.59%). AT&T offered that this account would be 100% avoided.

DECISION — NYNEX's detailed analysis is reasonable and therefore 84.59% will be avoided.

6623.2 — Service Order Operations

NYNEX offered that most of these expenses would be avoided (86.03%). AT&T offered that this account would be 100% avoided.

DECISION — NYNEX's detailed analysis is reasonable and therefore 86.03% will be avoided.

6623.3 — Coin

DECISION — As a result of the recent FCC pay phone order, this account will be removed in its entirety. All pay phone costs that have been declared as deregulated must be removed. This will affect many accounts.

6623.4 — Instruction

Both NYNEX and AT&T agree that 100 % of these expenses should be avoided.

DECISION — 100% of these expense will be avoided.

6623.5 — Message Investigation

NYNEX offered that none of these expenses will be avoided since they will still have to do these investigations. AT&T indicated that it will do these investigations and therefore stated that 100% of these expenses should be avoided.

DECISION — Based on the information at hand, NYNEX will still be doing these investigations for AT&T and therefore none of these expense will be avoided.

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6623.7 — Non Pub Commissions

Both NYNEX and AT&T agree that 100 % of these expenses should be avoided.

DECISION — 100% of these expense will be avoided.

6533/6533.21 Testing

Per NYNEX records, 6533.21 amounts to approximately 19.87% of total 6533 account and will be avoided. AT&T offered that 20% of account 6533 will be avoided. Discussions were held in order to attempt to determine exactly which functions would be done by AT&T and which functions would remain with NYNEX.

DECISION — NYNEX's detailed analysis is reasonable and therefore 19.87% will be avoided. NOTE: This account moved from an indirect account to a direct account. As a result, 80.13% will not be avoided.

6534 — Plant Operations

AT&T argued that this account is directly related to 6533 Testing and therefore it should be allocated in the same proportion. NYNEX responded that this account applies to the entire plant operations, not just testing.

DECISION — Since the portion attributable to testing was small, NYNEX's explanation appears reasonable and none will be considered as avoidable.

INDIRECTS

6711 — Executive

NYNEX argued that this account is a fixed common cost and will not vary with the move to a wholesale environment. NYNEX also maintained that even if there is a change in revenue level, there will not be a reduction in this fixed common cost. AT&T argued that this account should be treated as a true indirect expense.

DECISION — AT&T's analysis is more reasonable and therefore this account is an indirect expense.

6712 — Planning

NYNEX argued that this account is a fixed common cost and will not vary with the move to a wholesale environment. NYNEX also maintained that even if there is a change in revenue level, there will not be a reduction in this fixed common cost. AT&T argued that this account should be treated as a true indirect expense.

DECISION — AT&T's analysis is more reasonable and therefore this account is an indirect expense.

6721 — Accounting Operations

6721.1 — General Accounting

NYNEX represented that this subaccount deals with the preparation of financial reports and since these financial reports will continue to be required, 38.4% of the entire 6721 account will not be avoided. The rest of the expenses in this account will be treated as an indirect expense. AT&T argued that this account should be treated as a 100% indirect expense.

DECISION — This account will be treated as an indirect expense with 38.4% as directly not avoided and 61.6% as an indirect expense.

6722 — External Relations

DECISION — This account will be treated as an indirect expense with the exceptions listed below, These exceptions cause 6.5% of this account to be directly not avoided and 93.5% to ve indirectly allocated.

6722.4 Connecting Company Relations

NYNEX represented that this subaccount will not be avoided because NYNEX must continue to deal with the independent telephone companies just as today. AT&T argued that this subaccount should be treated as an indirect expense.

DECISION — NYNEX's analysis appears reasonable. Therefore this subaccount will not be avoided.

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6722.5 Government Relations

NYNEX represented that this subaccount will not be avoided because NYNEX must continue to deal with the government/regulators in much the same way as today. AT&T argued that this subaccount should be treated as an indirect expense.

DECISION — AT&T's analysis appears to be reasonable since at least some of the

regulatory burden should be shifting to the competitive entrant and/or the regulatory burden may decline as a result of competition. Therefore this subaccount will be treated as an indirect expense.

6723 — Human Resources

Both NYNEX and AT&T agree that this account is an indirect expense.

DECISION — This account will be treated as an indirect expense.

6724 — Information Management

Both NYNEX and AT&T agree that this account is an indirect expense.

DECISION — This account will be treated as an indirect expense.

6725 — Legal

Both NYNEX and AT&T agree that this account is an indirect expense.

DECISION — This account will be treated as an indirect expense.

6726 — Procurement

Both NYNEX and AT&T agree that this account is an indirect expense.

DECISION — This account will be treated as an indirect expense.

6727 — Research and Development

NYNEX stated that none of the expenses in this account will be avoided in the new environment since these expenses have to do with research and development for non-market research, e.g., network. Expenses associated with the following groups are examples for this account: Bellcore and NYNEX's Science and Technology. AT&T argued that this account should be treated as a true indirect expense, especially since NYNEX did not show that this account was not applicable to other directly avoided expenses such as operator services and/or improved billing arrangements.

DECISION — AT&T's analysis appears reasonable and this account will be treated as an indirect expense.

6728 — Other General and Administration

DECISION — This account will be treated as an indirect expense with the following exceptions listed below:

6728.17 — Accidents Settlements

NYNEX initially argued that the level of accidents will not decline and therefore none of the expenses in this subaccount will be avoided. Upon further discussion, NYNEX indicated that 94% of this subaccount was paid in association with plant/network/operations and 6% was paid out to general operations. AT&T argued that this subaccount should be treated as a true indirect expense.

DECISION — NYNEX's analysis appears more reasonable. Therefore 94% will not be avoided and the remaining 6% will be treated as an indirect expense.

6728.9 — Other General and Administration

NYNEX argued that all of this subaccount will not be avoided since it is associated with the general costs of doing business. Upon further discussion, NYNEX noted that pension enhancements were a large portion of this subaccount (subaccount 6728.91 — Death Benefit Accruals = $23,000 out of the subaccount total of $33,000) with the remaining portion ($10,000) being other fees. NYNEX argued that these pension enhancements (primarily due to downsizing) are one time costs and furthermore no expenses in pension

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enhancements were included in the 1988 test year that was used as the basis for setting current rates in the last rate case, DR89-010. AT&T observed that these costs are included in today's rates by virtue of NYNEX - New Hampshire having state earnings of 9.84% for the last 12 months ending June, 1996. Furthermore, NYNEX has yet to file a rate case in New Hampshire, which would be one expectation if these costs were not being recovered in existing rates. In addition NYNEX argued that the costs associated with NYNEX corporate costs (subaccount 6728.95) are not avoided. AT&T argued that this entire subaccount should be treated as a true indirect expense since these expenses are indeed related to the overall operations of NYNEX - New Hampshire.

DECISION — AT&T's analysis appears more reasonable and therefore this subaccount will be treated as an indirect expense.

5301 — Uncollectibles

NYNEX believed that none of the current uncollectibles will be avoided while AT&T believed that all of the uncollectibles will be avoided by NYNEX in a pure wholesale environment. NYNEX countered that they will have to deal with other resellers who may not be as responsible as AT&T and thus there will indeed be uncollectibles. AT&T responded that since all resellers will be certified by the state PUC, this should not be a problem. NYNEX stated that the certification process was not extensive. After further discussions, AT&T indicated that they have experience with resellers and their true uncollectible rate for resellers is 0.6% of revenues. Per AT&T, this figure did not include those allowances that were written off because the reseller did not meet the contracted for level of operations. NYNEX indicated that these write offs should be included and if they were would cause the resulting uncollectible factor to exceed the existing 2.1%.

DECISION — 0.6% of revenues are to be directly assigned as not avoided and the remainder are to be directly assigned as an avoided indirect expense.

There was no discussion concerning the other indirect expenses identified by the FCC.

Presumptively Not Avoided

Operator Services

AT&T suggested that since the actual operator services expenses are avoided, so too should the actual operator investment and related expenses. NYNEX was not initially sure that this was completely appropriate, but after discussion agreed that there needed to be a symmetry between the "netting" of the costs of operator systems and the revenues. It was noted by NYNEX that the

return should be grossed up for state taxes of approximately 6%.

DECISION — AT&T's analysis appears reasonable. Therefore the related operator services expenses, e.g., depreciation, return and taxes will be allocated on the same basis as the related operator investment.

General Support Facilities

As a result of account 6121 — Land and Buildings being treated as an indirect expense, AT&T argued that all of the related "GSF" expenses should also be included. NYNEX disagreed.

DECISION — AT&T's analysis appears reasonable. Therefore the related "GSF" expenses, e.g., depreciation, return and taxes will be allocated on the same basis as account 6121.

7240 — Other Operating Taxes, other than income taxes

NYNEX argued that only "non-plant" related taxes should be allocated other than those allocated to the avoided Operator Systems and GSF as noted above. This amounts to almost all of this account. After discussion, AT&T acknowledged this may be true, but since this is going to be such a small number, no allocation will be necessary.

DECISION — Property taxes associated with "common land and buildings" will be considered an avoided indirect expense. Property taxes associated with central office facilities and

the like will be considered a not avoided expense, except to the extent that they are associated with operator systems. Other expenses associated with this account will be treated as an indirect expense.

Account 6121 — Land and Buildings

DECISION — Expenses associated with "common land and buildings" will be considered avoided indirect expenses. Expenses associated with central office facilities and the like will be considered not avoided.

Account 6122, 6123, 6124 — Furniture and Artwork, Office Equipment, General Purpose Computers

DECISION — These accounts will be treated as indirect expenses.

Indirect Expense Allocation Factor

DECISION — The indirect expense allocation factor will be the avoided direct expense (numerator) divided by the total direct expenses, both avoided and not avoided (denominator).

Issue: 22b Discounts for Resold Services — Residence and Business Discounts

Description of Issue:

The discounts to be applied to resold NYNEX services purchased by AT&T. There will be separate discounts for residence and business resold services.

Position of the parties

Both NYNEX and AT&T agreed to separate discounts for business and residence. In addition AT&T agreed that the methodology employed by NYNEX to spread the overall discount to business and residence would be used. Despite the specific awards in issue 22a, there were still differences in the results between AT&T and NYNEX. The four major issues were the different methods for exclusion of coin telephone expenses and revenues from the studies per the recent FCC order; the inclusion/non-inclusion of return [$35.3M] in the total direct expenses; use of overall separations factors by account as opposed to the individual separations factors per separations categories; and the inclusion/non-inclusion of taxes in the total direct expenses.

The first issue — exclusion of coin telephone expenses and revenues from the studies caused questions on exactly which revenues should be included and if there were a shortfall should a "netting" process similar to that used for operator services be used. After considerable discussion, it was still difficult to determine with any certainty exactly which revenues should be used. NYNEX believed that these revenues were bundled with other revenues which made the exclusion of the appropriate revenues exceedingly difficult. AT&T did not have specific information but believed that there may be a shortfall of revenues based on a summary analysis of expense and revenue data. Concerning the second issue, NYNEX believed that return should be included in the total direct expenses while AT&T did not. In the third issue, AT&T believed that a significant portion of the Interexchange Carrier Service Center expenses (ICSC) [$2.36 million - intrastate factor $1.85 million] would be allocated to the state jurisdiction, even though the specific separations allocator is predominately interstate. This caused an overallocation of costs that should be avoided to intrastate. NYNEX believed that if AT&T wanted to look at this particular function that has a separate separations factor, that all functions that had separate separations factors should also be investigated. Unfortunately there was not time for this analysis. According to NYNEX, the fourth issue is really an extension of the return issue. Unfortunately this was not included in any calculation by NYNEX, but it should have been. AT&T believed that these expenses should not be included in the calculation of the indirect factor.

Arbitrator's Analysis

Although it would have been ideal, the primary purpose of this issue was to develop the

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actual discounts that are to be applied to the various rates for the services subject to resale and not to reconcile the two approaches advocated by AT&T and NYNEX in the calculation of these discounts. As a result of applying the awards in issue 22a, the following rates were calculated. As can be seen, AT&T and NYNEX still had different rates up to the end.

The first issue on the exclusion of coin telephone expenses and revenues from the studies per the recent FCC order is not an easy issue since it is trying to forecast the effect of the FCC order on historical information. Further complicating this issue is that because of the newness of this order, NYNEX may not have completely developed their corporate strategy in regards to this issue. In addition, the current accounting system may not provide enough detail on pay telephone, especially with regards to revenue. The second issue is more an issue of symmetry. Since it was awarded that return and taxes associated with the avoided general support facilities

and operator services investments was also avoided, it would seem reasonable that these same "expenses," return and taxes should also be included for the non-avoided investments. The third issue stems from the decision to use "account" level separations factors rather than specific separations factors by specific separations category. While this is not usually a problem, in the case of account 6623 and local business office category, this is a problem because of the sheer number of subcategories and most of these are directly assigned. It would appear that the overall separations allocation to intrastate is correct, but in the case highlighted by AT&T, there appears to be a mismatch. Since the overall intrastate amount is correct, this would mean that any adjustment in the Interexchange Carrier Service Center expense would require an offsetting adjustment in another subcategory or subcategories. The fourth issue concerning taxes is covered in the previous discussion on return.

Arbitrator's Award

The four issues are awarded as follows:

1. Exclusion of pay telephone expenses and revenues.

As stated above, this is not an easy process. There was not sufficient time to iron out the differences regarding the different approaches associated with the exclusion of coin telephone expenses and revenues. Therefore as was indicated to both parties, if these differences could not be arbitrated quickly, then the differences would be "mid-pointed." Both parties agreed that the overall difference between the models on this issue is 0.7 percentage points (0.0075). Therefore each model will be adjusted by 0.35 percentage points. Each of NYNEX's factors will be adjusted upward by 0.0035 and each of AT&T's factors will be adjusted downward by 0.0035.

2. Return included in direct expenses

For the reasons stated above, it is awarded that return should be included in the total direct expenses. Since NYNEX included return in their calculation of the factors, no adjustment is necessary. Since AT&T did not include return in their calculation of the factors, AT&T's rates need to be adjusted downward by 0.7 percentage points (0.007). This number was agreed to by both NYNEX and AT&T.

3. Inaccurate allocation and treatment of Interexchange Carrier Service Center expense

The effect of this problem has not been accurately calculated. However, one very rough estimate indicated that the effect of increasing the indirect allocation factor is less than 0.1 percentage points (0.001). If there had been more time, changes would have probably been made in order that a more accurate effect could be determined and used. This award is tied to the next award, since it is anticipated that they will be offsetting to some extent. Since this change was not reflected in the rates of either AT&T or NYNEX, no change is required.

4. Taxes included in direct expenses

This was not included in the revised

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calculations, but probably should have been as discussed above. Preliminary estimates indicate that this change may change the percentage downward by a full percentage point. While

NYNEX did not include this change in their calculations, if there had been more time available, changes would probably have been made and a more accurate effect could be determined and used. As stated in award #3, this award is tied to the above award and is expected to be offsetting to some extent. Since this change was not reflected in the rates of either AT&T or NYNEX, no change is required.

The different rates and the effect of the above awards is indicated below. The "Award" column should be 0.035 higher than NYNEX's rate and 0.1050 lower than AT&T's rates. The "Award" column contains the awarded rates.

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

Wholesale Discount Rates

          NYNEX AT&T  Award

With Operator Service provided by NYNEX

Business  18.43% 19.83% 18.78%
Residence 16.95% 18.35% 17.30%

With Operator Service provided by AT&T

Business  19.90% 21.30% 20.25%
Residence 18.69% 20.09% 19.04%
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Issue #24

Compensation for Providing Unrated Call Information for Local Measured Service

Issue Description

The specific issue is whether NYNEX is entitled to compensation when it incurs additional costs in providing unrated call usage detail for AT&T as a reseller, on a daily basis, that is not included in the wholesale rates for resold services. The level of compensation is not at issue here, only whether compensation is due at all.

Position of Parties

NYNEX believes that it will incur additional costs in providing the information requested by AT&T as a reseller and therefore is entitled to compensation for those costs. At least five steps have been identified as necessary to create this information provision system. The steps for processing sent paid messages are:

1. Determine if AMA record is for a resold line and if so, identify which reseller is involved.
2. Copy "resell" AMA record.
3. Convert "resell" AMA record to "resell" EMR record.
4. Sort "resell" EMR record by reseller identity.
5. Transmit sorted "resell" EMR records to reseller.

Since the additional costs to accomplish those steps are not included in NYNEX's wholesale rates for resold services, NYNEX argues that a separate charge to AT&T is appropriate.

AT&T was not sure that NYNEX would incur any additional costs and, assuming there were any additional costs, whether the costs were or were not included in NYNEX wholesale rates. If NYNEX did in fact incur additional costs and they were in fact not included in NYNEX wholesale rates, AT&T was unsure whether NYNEX was entitled to compensation. AT&T also argued that, since AT&T would incur costs processing these records that they receive from NYNEX in order to bill their end user customers and AT&T would not bill NYNEX for these additional costs, NYNEX should not bill AT&T for NYNEX's additional costs, if any.

Arbitrator's Analysis

After explanations by NYNEX concerning the general characteristics of the requested changes by the resellers for unrated call usage detail records in the EMR format on a daily basis, AT&T seemed to acknowledge that there might in fact be at least some recurring costs involved. While there may also be some developmental costs involved, NYNEX stated that

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these costs were not going to be recovered through recurring rates. It appeared that AT&T's concern was more focused on the rate level for these services, especially in light of recent developments in New York. However, the rate level is not an issue that will be resolved in this particular arbitration.

After further discussion, AT&T's logic underlying their desire for a mutual "no bill" arrangement for these additional costs is understood to be a concern regarding continued "nickel and dime" charges to AT&T from NYNEX that are not fully understood by AT&T but are nonetheless payable by AT&T to NYNEX. Per AT&T, these yet to be identified costs could, for example, be sprung on them by NYNEX over the next three years with a demand for payment back to the original date of the execution of the contract. AT&T argued that such surprises could make an already unstable environment even more unstable. While this was not the direct issue, NYNEX appeared to be agreeable to developing some language to be included in the contract that may address at least some of the issues that concern AT&T.

Arbitrator's Award

This very narrow issue is decided in the affirmative. Yes, NYNEX is entitled to compensation for additional costs that are not included in NYNEX wholesale rates but are actually incurred in providing unrated call usage detail on a daily basis in EMR format to AT&T so that AT&T can bill their end users. What the level of costs that should be recovered and what the rate level should be are not at issue here.

#28 Customer Proprietary Network Information (CPNI)

Description of Issue

This issue concerns the use of information by NYNEX for marketing purposes relating to AT&T's "local" customers by virtue of resale.

Parties' Positions

AT&T vehemently opposes the use of any information derived from their customer's use of the NYNEX network for marketing purposes by NYNEX. AT&T bases its position on section

222(b) of the Act, which says that "a telecommunications carrier that receives or obtains proprietary information from another carrier for purposes of providing any telecommunications service shall use such information only for such purpose, and shall not use such information for its own marketing efforts." AT&T argues that it has a carrier relationship with NYNEX, not a customer relationship. Since CPNI rules only apply to customer information, the CPNI rules do not apply in this situation. AT&T does not seem to oppose the use of this information for other functions, e.g., network administration. Nor does AT&T oppose the use of information by NYNEX marketing that NYNEX may receive from other sources, e.g., surveys. AT&T is requesting a mandatory proprietary agreement in the contract with NYNEX or in the alternative structural safeguards to protect this information.

NYNEX, on the other hand believes that the current CPNI restrictions do apply and are sufficient. There is no need for a mandatory proprietary agreement or structural safeguards. According to NYNEX, AT&T is a NYNEX customer because AT&T is reselling NYNEX services. NYNEX bases its position on section 222(c)(3) which says that "a telecommunications carrier that receives or obtains customer proprietary network information by virtue of its provision of a telecommunications service may use, disclose, or permit access to aggregate customer information other than for the purposes described in paragraph (1)," which includes the use of such "individually identifiable customer proprietary network information in the provision of the telecommunications service from which such information is derived or services necessary to, or used in, the provision of such telecommunications services, including the publishing of directories." Furthermore CPNI is defined in section 222(f)(1)(A) as "information that relates to the quantity, technical specifications, type, destination, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier

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by the customer solely by virtue of the carrier-customer relationship." The CPNI rules do not apply an absolute restriction on the use of proprietary network information by marketing, but rather set up broad guidelines that must be followed before any information can be used by marketing. These rules are currently being investigated by the FCC and are a part of CC96-115. NYNEX would be willing to comply with any and all requirements of the final order in that docket.

Arbitrator's Discussion

There appears to be three types of information. The first is information that is required by NYNEX from the carrier for network planning. This information usually includes forecasted usage. Since this information is proprietary information obtained from AT&T, NYNEX marketing cannot use this information. This is not disputed by either AT&T or NYNEX. A second type of information could be obtained from sources other than the network. Such sources include surveys, publications, etc. This type of information can be used by NYNEX marketing. This too is not disputed by either NYNEX or AT&T.

It is the third type of information that causes the problem. This information is derived from NYNEX's network, e.g., traffic volumes, holding times, etc. NYNEX argues that this type of

information meets the definition of CPNI and therefore should be usable by its marketing department under certain conditions, e.g., aggregate customer information. Under section 222(f)(2), aggregate customer information means collective data that relates to a group or category of services or customers, from which individual customer identities and characteristics have been removed." AT&T argues that this information is not CPNI by virtue of this information coming to NYNEX via AT&T's status as a carrier.

Arbitrator's Award

There is no disagreement as to how the first two categories of information are to be handled. The first type is guaranteed confidentiality because NYNEX is requiring and receiving proprietary information from AT&T, e.g., forecasts, so that NYNEX can provide service. This is not information that NYNEX can get from its own network. Under section 222(a) "every telecommunications carrier has a duty to protect the confidentiality of proprietary information of, and relating to, other telecommunication carriers, equipment manufacturers, and customers, including telecommunications carriers reselling telecommunications service provided by a telecommunications carrier. This information is clearly proprietary, in that these forecasts are the property of AT&T and belong solely to AT&T. Therefore NYNEX marketing will never receive this information. Likewise there is no disagreement about information NYNEX gleans from other sources, e.g., market surveys. This is information not derived from AT&T, in this case, nor from NYNEX's network. This information is available to NYNEX marketing.

The third type of information, e.g., information derived from NYNEX's network, requires further analysis. The key decision is whether AT&T has a carrier relationship with NYNEX or has a customer relationship with NYNEX. It appears that if AT&T were requesting to interconnect their network with NYNEX's network for the mutual handling of calls, then there is a clear carrier to carrier relationship, as in the case of access. However, in the case of resale, AT&T is purchasing a service from NYNEX. Therefore there must be a customer relationship between AT&T and NYNEX, rather than a carrier relationship. Since AT&T is a customer of NYNEX, the CPNI rules apply to the resold traffic only.

As AT&T argued, there are additional concerns with the special relationship that exists when NYNEX is the provider of wholesale services to AT&T necessary to compete with NYNEX. It is easy to understand the sensitivity of any one in AT&T's position. The rules outlined in the Act regarding CPNI are fairly steep. As stated above, proprietary information provided by AT&T must be protected by NYNEX and not allowed to be used in marketing activities. In addition the Act clearly requires that under section 222(c)(3) if a carrier does use CPNI for other than the purposes stated in

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222(c)(1), e.g., provisioning the telecommunications services from which the information is derived and the provisioning of services necessary to, or used in, the provision of such telecommunications services, including the publishing of directories, it must only provide *aggregate* information to itself and others. As described in section 222(f)(2), information is aggregated only when "individual customer identities and characteristics have been removed." This is not as easy as may first appear. AT&T is a single customer to NYNEX, even though

AT&T will probably have many customers itself. Therefore NYNEX can use AT&T's customer information for the purposes described in 222(c)(3) referenced above but only when the customer (AT&T) identity and characteristics have been removed. If AT&T is the majority reseller, it would appear to be very difficult to remove the identity and characteristics of AT&T from total reseller traffic.

In order to allow AT&T to know about potential problems, NYNEX must inform AT&T in writing, whenever AT&T CPNI will be used for purposes other than described in 222(c)(1) in the Act at least 10 days before it intends to use the CPNI. The written information must include a brief description of the CPNI to be provided; to whom provided; for what general purpose, e.g., marketing; the level of aggregation provided; and a signed affirmation that AT&T's identity and characteristics have been removed. If AT&T believes that this is a violation of the CPNI rules, it has to respond to NYNEX in writing within 7 days and must file a complaint with the Commission regarding the alleged CPNI violation. The burden of proof will be on NYNEX to prove that this is not a violation. If the Commission does not act within 7 days of the filing of the complaint, then NYNEX can release the information as described.

The FCC is relooking at their CPNI rules in CC96-115. This award can be amended in the future so as not to directly violate any and all FCC orders in this or related dockets.

29 Alternate Dispute Resolution

Issue:

This issue is whether an alternative dispute resolution process (ADR) should be required in the contract between AT&T and NYNEX. And if so, what should it be.

Position of the parties:

Both AT&T and NYNEX agreed that there was no specific language in the FCC Rules, FCC First Report or the Act that required an ADR process be included in any contract. NYNEX also stated that there is already in place a dispute resolution processs by virtue of the Commission's complaint process. However, it was noted after discussion, that some sort of process for resolving disputes should probably be included in the contract. Furthermore the Commission should probably be involved if for no other reason than they have to initially approve the contract and should therefore have to be involved in any changes to the original contract.

Arbitrator's Discussion

It is evident that not all contingencies will be able to be included in the contract between NYNEX and AT&T. In addition, there may be occasions in the future where the two parties may disagree over portions of the contract. Therefore some sort of ADR would be warranted. As stated above, this ADR process should include the Commission, since the Commission has approval over the contract. The ADR process must be expedient.

Arbitrator's Award

The award consists of a 150 day process from beginning to end. There are three phases, negotiation, mediation and arbitration. The last two phases will be under the control of the Commission. The 150 day clock starts when either party initiates a formal contact, in writing to the other party. It is hoped that during this minimum 30 day period, the two parties will try to

resolve the issue. Once this 30 day period has elapsed, either party can petition the

Commission and request mediation. This starts the next 60 day phase. Within the first 10 days of this 60 day phase, it is expected that the Commission will assign a mediator. It is up to the Commission to decide who the mediator will be. After the 45th day of this 60 day phase, the mediator can declare that the mediations are deadlocked. At this time or when the normal 60 days have expired and there is no agreement, either party can petition the Commission for arbitration. The Commission has 10 days to select an arbitrator. It is up to the Commission to decide who the arbitrator will be. The 60 day arbitration clock starts after the 10th day. It is hoped that these dates will be treated as "not later than" dates and all deliberate speed will be undertaken.

In past arbitration awards, there were arbitration processes set forth, e.g., Branding and Reservation of space. There was a time limit set forth in each of these awards, but there was no assignment of responsibility for arbitration. This award does not change the dates of any of these awards or any future awards. However, this award firmly establishes that the Commission has the responsibility for any and all arbitrations/mediations to insure compliance with the Act. Therefore, these awards are modified to make sure that it is the Commission that oversees the arbitrations/mediations. One way that the Commission exercises its authority is by selecting who the mediator/arbitrator will be.

It is anticipated that both parties will share equally in the expense to the Commission caused by this process. In addition, if, in the Commission's judgement, one party's filing appears to be particularly and/or consistently frivolous, then the Commission may decide that this party bear the entire costs of the process.

Issue #30[c]

Resale Tariff Restriction

Issue

There may arise additional resale restrictions as the contract progresses. A mechanism must be devised to quickly resolve these issues.

Positions of the Parties

NYNEX identified three scenarios where alleged additional resale restrictions may be identified and will need to be removed quickly if found to be an actual restriction. Two of these scenarios occur with existing tariffs and one of these scenarios occurs with new tariffs.

In the case of new tariffs, these tariffs will have to be filed with and approved by the Commission. AT&T will have the opportunity to present any and all of their concerns to the Commission, as will any other interested party.

In the case of existing tariffs, NYNEX maintains that any obvious resale restriction will be removed from their tariff once it has been identified by AT&T. NYNEX has agreed to remove from its tariffs both of the resale restrictions brought to its attention by AT&T thus far. NYNEX has indicated that as long as this process is active, it will continue to review any potential

obvious restrictions identified by AT&T and make adjustments accordingly. For the duration of this arbitration process AT&T can either have NYNEX remove these restrictions via negotiation or arbitration.

It is the last scenario that has no clearly defined process for resolution. This scenario occurs regarding resale restrictions identified after this process is completed. Both AT&T and NYNEX recognize that a process needs to be articulated.

Arbitrator's Analysis

The position of the parties adequately defines the issue to be arbitrated, that is, whether the existing alternative dispute resolution process or some other process should be employed. The only readily apparent reason for a new dispute resolution process would be to have a more expedited process than the current alternative dispute resolution process.

While it is important to remove quickly all unreasonable restrictions to resale, setting up a distinctly different process could make an already complicated process even more complicated. Therefore, unless there is some overriding and compelling reason for a completely separate process, efforts should be made to use the

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existing processes. The current ADR process should be sufficient and will be awarded.

Arbitrator's Award

The current Alterative Dispute Resolution Process is awarded as the process to handle alleged unreasonable resale restrictions that are discovered existing in current tariffs after this arbitration process has completed.

Issue #30(e)

Directory Listing for Centrex

Issue Description:

Basic service includes one free directory listing. Resold basic service also includes one free directory listing. AT&T wants to purchase NYNEX Centrex and wants each AT&T customer on the Centrex to receive from NYNEX free directory listings. NYNEX objects to the request for more than one free directory listing.

Positions of the Parties

NYNEX agrees to provide any number of listings to any and all AT&T customers using resold NYNEX Centrex. However, all listings above the one free listing that it provides under its own tariff will be provided at a price. NYNEX argues that, consistent with prior arbitration awards concerning resale, a reseller is entitled to sell those retail services that are available to end users at the same terms and conditions as are available to end users. NYNEX references 51.603(b), which states: "(A) LEC must provide services to requesting telecommunications carriers for resale that are equal in quality, subject to the same conditions, and provided within the same provisioning time intervals that the LEC provides these services to others, including end users." NYNEX argues that complying with AT&T's request would go beyond what

51.603(b) requires, resulting in NYNEX providing service to AT&T that is in fact superior to that provided to its own customers.

AT&T argues that they will be disadvantaged if they buy Centrex in larger bulk quantities rather than buying in smaller quantities because, under current tariffs and special contracts, NYNEX only grants one free directory listing regardless of the quantity of the CENTREX lines purchased.

Arbitrator's Analysis

It is difficult to understand exactly how AT&T will be disadvantaged as a result of buying Centrex lines in larger quantities. If the issue of free directory listings is that important, AT&T has the right to buy smaller quantities of Centrex lines. By buying the same amount of CENTREX but in smaller quantities, then the rate may be higher but the number of free listings will increase.

Applying the additional tests, from prior arbitration awards, we look to see whether additional free directory listings are provisioned in any NYNEX Centrex offerings. If there are NYNEX Centrex offerings which provision more than one free directory listing, then this option must be made available for resale. Otherwise an unreasonable restriction of resale would exist. However, the provisioning of more than one free directory listing is not available in any other NYNEX Centrex offering. Therefore, it is not required to be made available for resale.

Arbitrator's Award

Since it has been represented and uncontroverted that there are no Centrex offerings under tariff or special contract in New Hampshire which provide multiple free directory listings, AT&T's request does not meet the requirements for lifting the restriction. Accordingly, NYNEX is not required to provide free multiple directory listings as part of its Centrex offering to AT&T for resale.

Issue #30[f]

Elimination of resale restrictions — volume discounts

Issue:

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The issue is whether AT&T, as a wholesale purchaser of NYNEX Centrex services for resale, is bound by the same terms and conditions which appear in NYNEX retail tariffs. In particular, but not necessarily limited to, the issue is whether aggregation of AT&T resold traffic is confined to the same terms and conditions as NYNEX retail customer's traffic which is not aggregated.

Position of Parties

NYNEX states that, consistent with prior awards concerning resale, a reseller is entitled to sell only those retail services that are available to end users, according to the terms and conditions available to end users. NYNEX references 51.603(b) that states a "LEC must provide services to requesting telecommunications carriers for resale that are equal in quality, subject to the same conditions, and provided within the same provisioning time intervals that the LEC

provides these services to others, including end users." NYNEX argues that complying with AT&T's requests, NYNEX would be providing service to AT&T that is not the same, but in fact superior to that provided to its own customers.

In addition, NYNEX references Paragraph 953, in which the FCC states "With respect to volume discount offerings, however, we conclude that it is presumptively unreasonable for incumbent LECs to require individual reseller end users to comply with incumbent LEC high-volume discount minimum usage requirements, so long as the reseller, in aggregate, *under the relevant tariff*, meets the minimum level of demand." The emphasis is added by NYNEX to the words "under the relevant tariff." NYNEX also references Paragraph 332. In that paragraph the FCC states that "More specifically, carriers reselling incumbent LEC services are limited to offering the same service an incumbent offers at retail. This means that resellers cannot offer services or products that incumbents do not offer. The only means by which a reseller can distinguish the services it offers from those of an incumbent, NYNEX argues, is through price, billing services, marketing efforts, and to some extent, customer service. Furthermore, the ability of a reseller to differentiate its products based on price is limited by the margin between the retail and wholesale price of the product."

NYNEX also refers to Paragraph 872 of the First Report and Order, which directs resellers to a LEC's retail tariffs in order to determine the services an incumbent LEC must provide at wholesale rates for resale. Paragraph 872 concludes: "The Act does not require an incumbent LEC to make a wholesale offering of any service that the incumbent LEC does not offer to retail customers." NYNEX cites this paragraph to support its argument that only the services in the tariff, including the terms and conditions of service in the tariff, are available to AT&T.

Finally, NYNEX cites Paragraph 970 states that "service made available for resale be at least equal in quality to that provided by the incumbent LEC to itself or to any subsidiary, affiliate, or any other party to which the carrier directly provides the service, such as end users. Practices to the contrary violate the 1996 Act's prohibition of discriminatory restrictions, limitations, or prohibitions on resale." NYNEX argues, therefore, that requiring provision of services which are more than equal in quality to that provided by the incumbent LEC would violate the Act.

AT&T replied that the key to this question is not so much what the tariff itself says but whether the tariff contains unreasonable restrictions on resale. AT&T points to many of the same paragraphs as NYNEX but emphasizes the FCC's conclusion that resale restrictions are presumptively unreasonable. AT&T relies especially on the portion of Paragraph 953 which states that:

> "restrictions on resale of volume discounts will frequently produce anti-competitive result without sufficient justification. We therefore, conclude that such restrictions should be considered presumptively unreasonable."

AT&T also references Paragraph 939, where the FCC essentially concludes that all resale restrictions are presumptively unreasonable

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> " ... Given the probability that restrictions and conditions may have anti-competitive results, we conclude that it is consistent with the pro-competitive goals of the 1996 Act to

presume resale restrictions and conditions to be unreasonable and therefore in violation of section 251[c][4]."

Arbitrator's Analysis

As demonstrated by the cites provided by the respective parties, the FCC's order appears to contain conflicting language. In addition to the order, reference on this issue may be made to the rules propounded by the FCC. For instance:

51.605[b] states that: "Except as provided in 51.613 of this part, an incumbent LEC shall not impose restrictions on the resale by a requesting carrier of telecommunications services offered by the incumbent LEC."

51.613[a] states that restrictions on resale may be imposed with regard to particular cross-class selling and to short term promotions.

51.613[b] states "with respect to any restrictions on resale not permitted under paragraph [a], an incumbent LEC may impose a restriction only if it proves to the state commission that the restriction is reasonable and nondiscriminatory."

As pointed out above, both the FCC rules and order are inconsistent to at least some extent. One way to unravel this apparent contradiction is to discern whether one principle overrides the other. However, the Act appears to be less ambiguous and the Act is the document which must be given the greatest weight when resolving apparent conflicts. Section 251[c][4][b] states that an incumbent LEC has the duty

> "not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications service, except that a State commission may, consistent with regulations prescribed by the Commission under this section, prohibit a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers from offering such service to a different category of subscribers."

Accordingly, it appears that the prevailing, overriding principle is that of strictly limiting the restrictions placed on resale except in certain sharply defined instances. The lesser but important principles must also be considered. Therefore, the test for resale must be supplemented or otherwise elaborated to include this hierarchy of concerns.

Arbitrator's Award

In addition to the previously awarded tests for resale, which determines the services available for resale and to whom, a new test for restriction is added that consists of the following three resale restriction subtests:

A. Existence of non-technical restriction that limits resale

Is there a restriction, either explicit or implicit, that limits resale? If so, then is this restriction due to a technical reason, e.g., network limitation? If the reason is technical, then the restriction need not be lifted. However, if the reason for the limitation is not technical, then a further test needs to be considered.

B. Non-technical restriction of resale that prevents use of another option, otherwise available

If the non-technical restriction prevents use of another option that is otherwise available (i.e, absent the restriction), e.g., existing volume discounts, then yet another test needs to be considered. If the non-technical restriction does not prevent the use of another option that is otherwise available, then the restriction need not be lifted.

C. Creation of a new service that is not provided to subscribers

If the restriction to be lifted does not create a new service, the restriction needs to be lifted for resellers. It need not be lifted for the retail

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tariff itself; only for the restriction(s) for the reseller. If the restriction to be lifted creates a new service that is not otherwise available, then the restriction need not be lifted for the reseller. Since no new service is created in this situation, this portion of the test does not apply here.

Applying the above subtests to this issue, results in the following analysis: First of all AT&T asserts that limiting volume discounts only to the retail tariffs is an unnecessary restriction. Per test A it is clear that this is not a technical restriction. Applying test B indicates that this restriction does indeed prevent the use of an otherwise available option. This leads to test C which investigates whether this lifting of the restriction would create a new service. In this case, it does not since these discounts are already available. Having met these tests, this particular restriction must be lifted, but only for the reseller.

It is expected that the parties to the contract will attempt to resolve these issues between themselves as they arise, pursuant to this elaborated test. However, if this proves not possible, then this issue can go to the alternative dispute resolution process awarded earlier.

Issue #30(g)

Business vs. Residence Usage

Issue

The issue here is whether the res-bus classification of an underlying service of a particular line classifies the line for any vertical service, feature, usage, etc. purchased in association with that line. Does an AT&T residential customer-by virtue-of-resale of NYNEX Centrex, a business service, become a business customer for other services? More specifically, if a residential customer purchases residential service from AT&T and AT&T satisfies this service request via a Centrex line resold by AT&T, can AT&T purchase only business services for that Centrex line since the underlying basic service is a business service? If the residential customer does become transformed into a business customer on the basis of a purchase of resold Centrex, and therefore subject to business rates, does that transformation represent an unreasonable restriction on resale?

Positions of the Parties

NYNEX argues that the existing NYNEX tariff determines the availability and terms of services for resale, referring to Paragraph 872 of the First Report and Order. Paragraph 872 states " ... resellers can determine the services that an incumbent LEC must provide at wholesale rates by examining that LEC's retail tariffs. The 1996 ACT does not require an incumbent LEC

to make a wholesale offering of any service that the incumbent LEC does not offer to retail customers." In addition, NYNEX points to Section 251[c][4][a] of the Act, which states that the duty of the incumbent LEC is to "offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers." NYNEX asserts that under the existing NYNEX tariffs Centrex is a business service that includes charges for the local loop and a bundle of central office based services. An additional charge occurs for local usage, which is available from existing local tariffs. In New Hampshire, there is no difference in business or residential local usage rates.

NYNEX also references Paragraph 332 which states that "carriers reselling incumbent LEC services are limited to offering the same service an incumbent offers at retail. This means that resellers cannot offer services or products that incumbents do not offer. The only means by which a reseller can distinguish the services it offers from those of an incumbent is through price, billing services, marketing efforts, and, to some extent, customer service. The ability of a reseller to differentiate its products based on price is limited, however, by the margin between the retail and wholesale price of the product."

AT&T bases its argument on a different section of the Act, 251[c][4][b], positing that transforming a residential customer into a business customer merely because of the use of resold Centrex represents an unreasonable restriction on resale. Section 251(c)[4](b) states that an incumbent LEC has the duty "not to

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prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications service, except that a State commission may, consistent with regulations prescribed by the Commission under this section, prohibit a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers from offering such service to a different category of subscribers."

AT&T wants to resell this business service, Centrex, to its residential customers. AT&T further wants its customer, if the customer would normally meet the requirements of a residential customer, to be able to purchase other resold residential services from AT&T, including the local usage for that line.

Arbitrator's Analysis

The question is whether the identity of the end user customer served by the reseller, AT&T, changes as a result of the classification of the NYNEX service that AT&T chooses to serve the customer. In other words, if a residential customer purchases residential service from AT&T as the reseller and it is provided to that customer by AT&T via resale of NYNEX's Centrex, a business only service, can only business services be added to that line even though the customer is an AT&T residential customer. According to NYNEX, this customer's line would be a business line per its existing tariffs, because Centrex is only offered as a business service. AT&T would be prohibited by NYNEX's tariff from purchasing residential services on or to a business line.

AT&T counters that the only two specific cross-class prohibitions identified in the Act are: (1) selling residential services to business customers and (2) selling lifeline services to

non-lifeline customers. Since this is a case of selling a business service to a residential customer, i.e. selling a local loop, dialtone and vertical services under a business tariff, an action not prohibited by the Act, it would not appear to violate the cross-class restrictions.

Another important aspect of this argument is the ruling in paragraph 984 while discussing which Subscriber Line Charge (SLC) would apply to subscribers buying resold NYNEX services from AT&T stated, "the reseller shall pay the SLC to the incumbent LEC for each subscriber taking resold service. The specific SLC that applies depends upon the identity of the end user served by the reselling telecommunications carrier." In other words, it is the identity of the end user that determines the identity of the end user, not the identity of the resold service.

Arbitrator's Award

Classification for buying telecommunications services on a particular line is not conditioned on the tariff from which a vertical service is purchased. Rather, classification of a line follows the purpose to which it is put. Therefore, a residential customer who purchases a Centrex line resold by AT&T, for residential purposes, is not restricted to business services for that Centrex line. The only restrictions are the already discussed cross-class restrictions.

Issue 31

Terms and Terminations

Issue

NYNEX wants a three year contract while AT&T wants a five year contract.

Position of the parties

Both parties agree that neither the Act nor the FCC First Report and Order addresses this issue. NYNEX is concerned that five years is too long a time to have rates in effect and instead argues for a three year contract for both parties.

AT&T argues that this interconnection contract process is too expensive and takes too long to allow the contract to remain in effect for only three years. AT&T further contends that stability is a very important issue and that five years is more appropriate as the contract applies to NYNEX. However, as the contract applies to AT&T, AT&T wants a clause by which the contract is to last no more than 60 days at its

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discretion.

Both parties recognized the need for continuity of service to customers of resellers even when the parties are "between" contracts. With regard to this need for continuity, both parties have agreed to use the termination language in the NYNEX-Freedom Ring interconnection contract filed in docket number DE96-290 at the NH PUC.

Arbitrator's Analysis

Addressing the minor issue first, there are a number of concerns regarding the process that will be employed to move from one contract to another. The first concern is that there can not be even the hint that the new entrant will be disconnected while negotiating in good faith simply

because the current contract expired before a new one could be finalized. NYNEX immediately responded that it does not have any intention of and does not have a history of disconnecting, i.e., "SNPing" (Suspension for Non-Payment), customers of new entrants, e.g., AT&T. While this is exceedingly helpful, it can tend to put NYNEX in a difficult position if a particular party is taking advantage of this NYNEX policy and not operating in good faith. An example of this would be intentional Non-Payment of a legitimate bill for an extended period of time. In this situation, NYNEX and NYNEX customers would be forced to cross subsidize a "bad actor." The key difference in this situation is more a matter of enforcing an existing contract rather than renegotiating an existing contract in good faith. In this case, NYNEX needs the ability to quickly disconnect any party to an interconnection agreement or contract for intentional and blatant disregard for the language of the contract. Therefore, when a party misses a payment by more than 30 days per the interconnection contract and makes no substantial effort to resolve this Non-Payment problem, NYNEX is to inform the Commission of this situation as well as the offending party. If this situation continues for another 30 days, then a second notification is to be sent to the Commission and the offending party. If the Commission has not ruled otherwise, NYNEX may disconnect the party 10 days after the Commission has received the second letter. It is the responsibility of the offending party to make its case to the Commission, not NYNEX's responsibility.

However, this issue of SNPing may not be the relevant issue since when a contract expires, it is not an issue of non-payment, but rather an issue of non-contract. In other words, the issue is SNCing (Subscriber Non-Contract). NYNEX made an honest statement of not leaving AT&T customers "high and dry" during good faith contract renegotiations. NYNEX should be held at its word as implied above and therefore will not disconnect AT&T customers during renegotiation.

The major issue is the length of the overall contract. AT&T makes a convincing argument that the length of the contract should be of a relatively longer length because of the inherent costs and time required to negotiate these initial interconnection contracts. It is anticipated, but by no means guaranteed, that the time required for renegotiation will be significantly reduced as actual experience is gained by both buyer and seller. Therefore, the five year contract life is a reasonable award. However, NYNEX makes an equally convincing argument that the pricing components of this contract are indeed the most volatile aspects of this contract and should be able to be reset in a lesser period of time. Therefore, an award that any prices contained in the contract can be renegotiated between the parties at the half life of the contract — 2-1/2 years — would be reasonable. While an argument was made that the terms of the contract were also volatile, no convincing examples were offered.

NYNEX has agreed to provide a safety net by not SNCing AT&T's customers when the most recent contract has expired and a new contract has not been signed. Therefore, the primary remaining issue is the continuity between the expiring and new contract. The concern is that there may be an incentive for either party to manipulate the process by allowing the contract to expire and delay in implementing the new contract in order to create a "no-contract" zone that might tend to advantage a particular party. In order to prevent such a situation, the contract language can be crafted so that the new contract

shall be retroactive back to the expiration of the old contract. True-ups would be required based on the new contract.

Arbitrator's Award

The award outlined above is granted. The contract will be a 5 year contract with a 2-1/2 year option for renegotiation on the prices contained in the contract. In order to insure service continuity, NYNEX shall not "SNC" AT&T customers if a new contract has yet to be negotiated; it is awarded that there will be no period without a contract. This means that if there is a period of time between the end of the most recent contract and the start of the new contract, the new contract will be made retroactive to the end of the most recent contract, thus insuring continuity. This may result in a financial true-up based on the difference between the new and old prices charged during the period between the end of one contract and the first billing date of the new contract. In addition, there is an expedited process for disconnect for flagrant non payment of resellers.

This award assumes that there is a continued legal obligation to negotiate per applicable federal and state law. This award does not address whether NYNEX should be restricted from using the New Hampshire tariff change process if the results of that process might have an effect on the interconnection contract between AT&T and NYNEX.

Issue 32

Rerouting Operator Services and Directory Assistance (OS/DA)

Issue Description:

Since NYNEX must make Operator Services and Directory Assistance available for resale, when, if ever, does NYNEX have to provide rerouting of Operator Services and Directory Assistance requests to AT&T when AT&T resells NYNEX basic service?

Positions of the Parties:

There does not appear to be significant disagreement on the capability of rerouting Operator Services and Directory Assistance (OS/DA) calls, recognizing that rerouting is necessary in order to accomplish rebranding as ordered in previous awards. The two solutions discussed were line class codes, which is technically available now, and Advanced Intelligent Network (AIN), which is scheduled to be available in the near future.

Arbitrator's Analysis:

As stated above, the issue is not if this can be done, because it appears that it can, but how it is to be done. This issue links with Issue 34, the award of which requires NYNEX to provide OS/DA as an unbundled resold service. Regardless of the award, however, there may be significant technical feasibility issues in the case of Directory Assistance. The technical feasibility question arises since there are free call(s) per month associated with Basic local service (5) and Centrex (1). Therefore, NYNEX would have to monitor the number of free DA calls actually used in a billing period and reroute subsequent DA calls. Therefore, the provision of unbundled OS/DA depends upon technical feasibility.

Since NYNEX must make Operator Services/Directory Assistance available for resale and

NYNEX must provide rerouting of OS/DA when it becomes technically feasible, a further issue arises. Does AT&T have to pay NYNEX for the costs involved in this arrangement? Both parties believe that NYNEX is entitled to compensation for rerouting when it is technically feasible.

Arbitrator's Award

NYNEX must provide rerouting of unbundled OS/DA to AT&T when it becomes technically feasible. In addition, care must be taken to apply the correct discount rate to the resold local service. If for example, AT&T wants to provide all OS/DA, then the discount calculated based on AT&T supplying its own OS/DA applies. This means that all calls to OS/DA from this AT&T resold NYNEX line must be

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routed to AT&T by NYNEX. Technical feasibility may be a temporary problem. If however, AT&T only wants to supply OS/DA *after* the "free" calls have been used, then the discount calculated based on NYNEX supplying its own OS/DA applies. This option appears to be technically infeasible at least for the near term since the number of times in a given billing period that a particular customer calls Directory Assistance must be available on a real time basis so that the switch can perform the proper routing. AT&T will compensate NYNEX for this rerouting.

Issue #33:

Service Quality and Performance Criteria

Issue Description:

Should NYNEX be required to meet performance criteria for unbundled network elements and resellable services sold to AT&T by NYNEX that is different than the performance criteria NYNEX provides to its own customers? If performance criteria are not met, should AT&T be entitled to damages from NYNEX?

Positions of the Parties:

AT&T argues that Paragraph 314 requires NYNEX, as an incumbent LEC, to provide unbundled elements, as well as access to the unbundled elements, that is at least equal in quality to that which NYNEX provides itself. That being so, AT&T proposes a timetable to identify exactly what is to be measured, collect actual data to determine performance criteria, and then set benchmarks by which to measure performance. AT&T's proposal includes penalties for failure to meet the benchmarks.

NYNEX argues that the FCC First Report and Order does not require provision of service different from that which it provides itself and that penalties are not envisioned by the FCC. In support of this argument, NYNEX refers to a number of paragraphs in the First Report and Order. First, NYNEX cites Paragraph 312, in which the FCC concluded that `nondiscriminatory access,' as used in Section 251[c][3] of the Act, means: (1) the quality of an unbundled network element that an incumbent LEC provides, as well as the access provided to that element, must be equal between all carriers requesting access to that element, and (2) where technically feasible, the access and unbundled network element provided by an incumbent LEC must be at least

equal-in-quality to that which the incumbent LEC provides itself. Next, NYNEX goes on to cite Paragraphs 313, and 314 for essentially the same point, as well as Paragraph 970 for the "at least equal in quality" requirement with regard to resale services.

In its rules, 47 C.F.R. 51.311[a], the FCC codified the requirements established in Paragraph 313. 51.331(a) reads:

> the quality of an unbundled network element, as well as the quality of the access to the unbundled network element, that an incumbent LEC provides to a requesting telecommunications carrier shall be the same for all telecommunications carriers requesting access to that network element, except as provided in paragraph [c] in this section.

(Paragraph [c] refers to the requesting carrier requesting and receiving service superior in quality than those provided by the incumbent LEC to itself, where technically feasible, or inferior in quality if the requesting LEC solely requests such service.) In 51.603[b] the FCC codified Paragraph 970: "an incumbent LEC must provide services to requesting telecommunications carriers for resale that are equal in quality, subject to the same conditions, and provided within the same provisioning time intervals that the LEC provides these services to others, including end users."

NYNEX reasons that it is only required to provide service equal in quality to the service it provides itself. NYNEX proposes to provide to AT&T a monthly report that indicates the quality of service that NYNEX is providing its own customers, all companies similarly situated to AT&T, and AT&T itself. The report would provide the information with respect both to resold services and unbundled network elements. This report would allow AT&T to measure whether the service it receives from NYNEX is equal in

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quality to that provided by NYNEX to its own customers.

NYNEX further argues that there is nothing in the FCC rules, First Report and Order, or in the Act that definitively requires NYNEX to provide any service that is of superior quality to that NYNEX provides itself. In addition there is nothing in any of those sources which provides for damages to be paid to a requesting carrier.

Arbitrator's Analysis:

The paragraphs cited by AT&T and NYNEX are authoritative and clear-cut. NYNEX must provide services and elements which are at least equal in quality to the services and elements it provides itself. No violation of the FCC rules and First Report and Order would occur if NYNEX were to provide poor quality service, so long as all carriers including NYNEX are provided with the same (poor) quality service. The apparent purpose of the rules and intent of the FCC is to prohibit discriminatory treatment. Therefore, an interconnection agreement which conforms to the FCC's rules can provide methods, such as the proposed monthly report, for discerning equal and unequal treatment but, absent agreement of the parties, cannot mandate standards of service.

Arbitrator's Award:

NYNEX is to provide AT&T with NYNEX's proposed monthly report card indicating the status of the quality of service NYNEX is providing AT&T, other carriers, and itself. There is no award for damages even if the quality is significantly different for a significant period of time.

This award could be interpreted that deterioration of service is now allowed, since even if NYNEX provided less than ideal service to AT&T, so long as NYNEX also provided the same less than ideal quality to its customers, there would be no violation of these rules. This certainly is not a desired outcome. The only clear way to prevent this from happening is if the New Hampshire Public Utilities Commission mandates and enforces service standards. Such action by the Commission is not precluded by the Act. While this is not part of the Award and may not be an issue today, it may be an issue to consider in the future.

Issue 34[c]

Unbundling of Directory Services from Basic Service

Issue Description:

AT&T wishes to purchase Basic Service without Directory Assistance on an unbundled basis. NYNEX objects.

Positions of the Parties

AT&T bases its request on Paragraph 536 of the First Report and Order in which the FCC finds "incumbent LECs must unbundle the facilities and functionalities providing operator services and directory assistance from resold services and other unbundled network elements to the extent technically feasible."

AT&T also references Paragraph 917 in support of its conclusion that Basic Service can be detached from Directory Assistance. Paragraph 917 states:

> "All costs recorded in 6621 (call completion) and 6622 (number services) are also presumed avoidable, because resellers have stated they will either provide these services themselves or contract for them separately from the LEC or from third parties." 47 CFR 51.609(c)(1) references costs that are avoided and shall "include, as direct costs, the costs recorded in USOA accounts ... 6621 (call completion services), 6622 (number services) ... ."

NYNEX objects to AT&T's conclusion by citing a number of paragraphs in the FCC First Report and Order, including:

Paragraph 872, which, as noted in several prior arbitration awards, states:

" ... resellers can determine the services that an incumbent LEC must provide at

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> wholesale rates by examining that LEC's retail tariffs. The 1996 ACT does not require an incumbent LEC to make a wholesale offering of any service that the incumbent LEC does not offer to retail customers";

Paragraph 332:

> "More specifically, carriers reselling incumbent LEC services are limited to offering the same service an incumbent offers at retail. This means that resellers cannot offer services or products that incumbents do not offer. The only means by which a reseller can distinguish the services it offers from those of an incumbent is through price, billing services, marketing efforts, and to some extent, customer service. The ability of a reseller to differentiate its products based on price is limited, however, by the margin between the retail and wholesale price of the product";

Paragraph 953:

> "With respect to volume discount offerings, however, we conclude that it is presumptively unreasonable for incumbent LECs to require individual reseller end users to comply with incumbent LEC high-volume discount minimum usage requirements, so long as the reseller, in aggregate, under the relevant tariff, meets the minimum level of demand";

and Paragraph 970:

> "service made available for resale (must) be at least equal in quality to that provided by the incumbent LEC to itself or to any subsidiary, affiliate, or any other party to which the carrier directly provides the service, such as end users. Practices to the contrary violate the 1996 Act's prohibition of discriminatory restrictions, limitations, or prohibitions on resale."

NYNEX also cites and FCC rule and a section of the Act for support. The rule is 47 C.F.R. 51.603(b):

> "LEC must provide services to requesting telecommunications carriers for resale that are equal in quality, subject to the same conditions, and provided within the same provisioning time intervals that the LEC provides these services to others, including end users."

The section of the Act is Section 251[c][4][a], which imposes a duty on incumbent LECs "to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers;". All of these cites, according to NYNEX, lead to a conclusion that separating Directory Assistance from Basic Service is not required.

Arbitrator's Analysis

After reviewing the relevant paragraphs in the FCC order, it is difficult to understand why the FCC allowed the unbundling of resold local services. It is clear that they did allow it, but it is unclear as to what grounds would cause them to violate their own stated rules as well as those that appear in the 1996 Act. Be that as it may, the procedure established during this process is to analyze this situation based on the resale test designed thus far.

According to the test, three questions must be answered. Is this a retail service provided to subscribers? What exactly is the retail service? Is it being purchased by a resale eligible carrier? In this case, there is a retail service: Basic service, purchased from the local service tariff. Upon closer analysis of the tariff, i.e what exactly is the service, there appear to be two distinct parts to

the local service tariff: Basic Local Service and Directory Assistance. Analysis of this anomaly of the local service tariff is required.

Analysis indicates that there may be significant linking of basic local service to other services, e.g., directory assistance. This conclusion is dictated by the difficulty encountered in attempting to define the local service tariff. It appears that the Basic local tariff is actually the Basic Local Service *portion* of the local tariff, and that Directory Assistance depends on the

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existence of the Basic Local Service portion. The fact that five "free" DA calls are included in the Basic Local Service rate is indicated in the Directory Assistance portion of the tariff. The Directory Assistance portion of the tariff also contains the charges for any calls above the 5 "free" DA calls included in the Basic Local Service rate. However, the DA portion of the local tariff cannot be resold, even though there is a separate charge for the DA, since DA is tied to the provision of Basic Local Service. Therefore, it appears that a strict reading of the tariffs would preclude the conclusion that Directory Assistance is a separate service which can be either resold or provided by the new entrant, despite the fact that there are separate charges for Directory Assistance and despite Paragraph 917's explicit reference to resellers providing number services either themselves or by separate contract. The FCC order appears to be at least inconsistent and at best not fully explained in this case.

To resolve the apparent inconsistency, it is important to turn to the 1996 Act for possible clarification. Section 251[c][4] provides some assistance. As NYNEX pointed out, subsection [a] of 251(c)(4) states that the incumbent LECs have a duty to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers. However, subsection [b] of 251(c)(4) forbids the incumbent LEC from prohibiting the resale of a service or imposing unreasonable or discriminatory conditions or limitations on resale services, with the exception that state commissions may permit certain cross-class restrictions.

It appears, as the relevant tariff is written, that a reseller can never have the option of reselling Directory Assistance as a separate service or providing Directory Assistance on its own. This is because it appears that Directory Assistance is inseparable from Basic Local Service. This is therefore an unreasonable limitation. Per the Act and the FCC First Report and Order, this limitation must be lifted. Since this tariff probably has its origins prior to contemplation of local competition, there will need to be an opportunity to reevaluate the existing tariffs and changes made accordingly. As stated above, it was the construction of this particular tariff that was the principal driver of this award. If the tariff had been constructed differently, this award would probably have been different.

For convenience and clarity the complete resale test is included below. Although previous versions of this award added extra sections to this test, these have been removed. This issue will be treated as as exception rather than as part of the test.

Resale Test

1. Is this a retail service provided to subscribers?

2. What exactly is this retail service?

3. Is it being bought by a "resale" eligible carrier, e.g., a telecommunications carrier?

4. Is there a restriction, either explicit or implicit, that limits resale?

A. If not, no further tests are required.

B. If so, is this restriction unreasonable or discriminatory?

In determining if a restriction is unreasonable or discriminatory, the tests set forth below are required.

5A. Is the restriction due to a technical reason, e.g., network limitation? If so the restriction need not be lifted.

B. Is the restriction due to a non-technical reason? If so:

1. Does it prevent the use of another option that is otherwise available (i.e, absent the restriction), e.g., existing volume discounts,

a. If not, then the restriction need not be lifted

b. If yes, then:

1. If the restriction to be lifted creates a new service tha is not otherwise available, then the restriction need not be lifted for the reseller.

2. If the restriction to be lifted does not create a new service, the restriction needs to be lifted for resellers. It need not be lifted for the retail tariff itself; only for

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the restriction(s) for the reseller.

Arbitrator's Award

All of the Directory Assistance and Operator Services costs must be removed from the calculation of the wholesale discount rate applied to those services that are "tied" to Operator Services and Directory Assistance via existing tariffs, i.e., Basic Local Services. Directory Assistance and Operator Services costs need not be removed from the calculation of the discount rate applied to any other non-basic local service that is not "tied" to Operator Service and Directory Assistance. It seems unreasonable that a service not related to a specific avoided cost should have a discount rate applied to it that includes these costs that are not avoided. Therefore, NYNEX will have 4 discount rates: business without Directory Assistance and Operator Services, business with Directory Assistance and Operator Services, residence without Directory Assistance and Operator Services. and residence with Directory Assistance and Operator Services.

Issue #35(a)

Collocation of Switching as an Unbundled Network Element

Issue Description:

AT&T wants NYNEX to allow collocation of AT&T's Remote Switching Modules (RSMs). NYNEX objects, arguing that housing of a new entrant's switching equipment is not contemplated as part of collocation.

Position of Parties

AT&T bases its argument on the Act's description of collocation in Section 251(c)(6). According to Section 251(c)(6), collocation is the:

> duty to provide, on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier ... .

AT&T then cites Paragraph 579 for the definition of "necessary" in the above section. Paragraph 579 states that "necessary," for Section 251(c)(6) means "used and useful," not "indispensable." AT&T indicated that its reason for collocating RSMs is to minimize the amount of "backhaul" for local calls. "Backhaul" would occur if RSMs are not collocated in NYNEX offices in New Hampshire, that is, all local calls would have to be transported to the "host" or stand-alone switch to be processed and then transported back to the original location for completion. Thus, AT&T argued, RSMs will be used and useful if collocated.

AT&T points to Paragraph 580 for further support of its position. Paragraph 580 states:

> whenever a telecommunications carrier seeks to collocate equipment for purposes within the scope of section 251(c)(6), the incumbent LEC shall prove to the state commission that such equipment is not "necessary," as we have defined that term, for interconnection or access to unbundled network elements. State commissions may designate specific additional types of equipment that may be collocated pursuant to section 241(c)(6).

NYNEX, on the other hand, argues that 47 C.F.R. 51.323[c] permits NYNEX to deny collocation of switching equipment. 51.323[c] reads: "Nothing in this section requires an incumbent LEC to permit collocation of switching equipment ... ."

Although NYNEX argues that 51.323[c] is definitive, NYNEX further points to Paragraph 581 for further support. That paragraph reads: "At this time, we do not impose a general requirement that switching equipment be collocated since it does not appear that it is used for the actual interconnection or access to unbundled network elements."

Arbitrator's Analysis

NYNEX is correct that a plain reading of 51.323[c] could not be clearer. What is not quite

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so clear is the definition of switching. The ambiguity concerning switching is recognized by the FCC in Paragraph 583:

> We recognize, however, that modern technology, has tended to blur the line between switching equipment and multiplexing equipment, which we permit to be collocated. We expect, in situations where the functionality of a particular piece of equipment is in dispute, that state commissions will determine whether the equipment at issue is actually used for interconnection or access to unbundled elements. We also reserve the right to reexamine this issue at a later date if it appears that such action would further achievement of the 1996 Act's pro-competitive goals.

The apparent ambiguity that the FCC refers to is probably the same ambiguity concerning its own accounting rules regarding switching vs. circuit equipment. This ambiguity is the issue in Responsible Accounting Officer letter (RAO) 21 and one of the issues in the recently rescinded RAO 25. In each of these RAOs, the FCC's original position concerning the proper accounting of switching equipment vs. line circuit equipment was reversed by the FCC and sent out for further comment. In RAO 21 the issue was that of distinguishing between switching (2210) and circuit equipment (2230). In RAO 25, categorization of ATM switches as circuit equipment was the issue. In RAO 21, the comments have been returned and nothing, to this date, has been heard.

Arbitrator's Award

The deciding factor in this issue is that, as stated in Paragraph 583, mainly that there is currently a blurred line between switching equipment and multiplexing equipment. This is not a particularly new phenomenon and it is not an easy issue. RAO 21 has trouble distinguishing remote switching equipment from digital line carrier equipment. The classification of the host switching equipment is not in doubt. The key distinction may be that host switching equipment has a "central processor" while the remote switching unit has a processor, but not the central processor for the entire unit. Therefore, this award grants NYNEX authority to deny collocation of switching equipment.

Because of the continued difficulty of the FCC in distinguishing the difference between remote switching equipment and circuit equipment, subject to a final ruling by the FCC in this matter NYNEX must permit collocation of remote switching equipment. It must be understood by AT&T that if AT&T decides to collocate their RSMs in NYNEX facilities and the FCC rules that RSMs are switching equipment and the FCC does not further modify its rules in this area, NYNEX would no longer be required to allow or continue to allow the collocation of the then newly defined switching equipment. If this sounds like a risk of doing business, it is. It should go without saying that if this circumstance occurs, NYNEX can not immediately disconnect AT&T's RSM(s) without warning. There must be a reasonable transition period.

Issue 35a — Collocation of switching as an unbundled network element

Background

Responsible Accounting Officer (RAO) Letter #21 Classification of Remote Central Office Equipment for Accounting Purposes

In its first RAO letter #21 dated 8/7/92, the FCC recognized that "recent technological advances in telecommunications have significantly increased the use of remote switches." The purpose of this letter was to "increase the uniformity in the Part 32 classification of remote switches." Therefore the FCC sought to "differentiate between remote switches and concentrators." The FCC stated that in this letter that the "distinguishing attribute between a remote switch and a remote terminal of a concentrator is that a remote switch can provide the switched path for calls between its directly connected local subscribers and a remote terminal of a concentrator cannot. A remote terminal of a concentrator depends on the host switch to switch all calls and the voice path always extends to the host switch."

In its revised RAO letter #21 dated 9/8/92, the FCC reissued the exact same letter of 8/7/92 with the addition of one additional sentence at the end of the first paragraph. This sentence stated that "[t]his letter is limited to defining a remote switch and a remote terminal of a concentrator because that appears to be the area of confusion; it does not cover any other remote central office equipment."

The FCC received Petitions for Reconsideration and Applications for Review on RAO #21 from various parties and on 10/23/92 requested comments on these pleadings in AAD92-86. There has been no further activity regarding RAO #21. One possible reason for this lack of action is the belief by the FCC that two major LECs that were in non-compliance with this interpretation have been brought into compliance.

RAO Letter #25 Accounting and Reporting Requirements for Video Dialtone Service

In the relevant portion of its RAO letter #25 regarding dated 4/3/95, the FCC found "certain inconsistencies in the accounting classification of asynchronous transfer mode (ATM) equipment." These inconsistencies were the same as referenced in RAO #21. Despite ATM generically being referred to as ATM switching equipment, the FCC ordered that "carriers shall classify ATM equipment as circuit equipment."

In its Memorandum Opinion and Order AAD 95-59, Subsidiary Accounting Requirements Concerning Video Dialtone Costs and Revenues for Local Exchange Carriers Offering Video Dialtone Services, dated 5/30/96, the FCC revoked RAO #25 in order to implement Section 302(b)(3) of the 1996 Act. In acknowledging the receipt of Petitions for Review and Petition for Waiver, the FCC reviewed the above referenced conclusion of RAO #25 and concluded, after considerable discussion, that the ATM switch "functions in the same manner as other packet switches and should be classified as switching equipment."

Universal Service Funding

The classification of equipment as either circuit equipment or switching equipment was at least partially motivated by Universal Service Funding mechanisms. There are two basic "Universal Service Fund" mechanisms, High Cost Fund and additional interstate allocation of local switching equipment for small Local Exchange Carriers. The High Cost Fund depends on loop costs which includes loop circuit equipment, including the remote terminals of a concentrator in RAO #21. The additional interstate allocation of local switching equipment for small Local Exchange Carriers depends on local switching costs which includes switching equipment, including the remote switching units in RAO #21.

This issue regarding these Universal Service Funding mechanisms have been in front of a Federal State Joint Board for at least 3 years. To this point, there has been no further clarification, even in the most recent Recommended Decision.

Separations Reform

This issue is believed to be one of the major issues to be discussed in any review of jurisdictional separations. This review may occur sometime in 1997.

Suggested Change

The award is technically correct up to the end of the first paragraph. The second paragraph is

not technically correct in that as far as the FCC is concerned there is no official need for now anticipation of a "final ruling." Therefore it might be rewritten as follows:

> This effect of this ruling may change as a result of any one of three possible events. First, there could be a determination made by the FCC or this commission that another definition of switching should be used regarding collocation other than that used for accounting purposes. Second, the accounting definition could be changed as a result of further FCC action. Third, the interpretation and implementation by NYNEX of the classification of this type of equipment could

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> change. If any of these events occur, then AT&T can collocate this type of equipment since the rationale for denying collocation of AT&T's remote switching units is that they would fit the current accounting definition and NYNEX interpretation of switching equipment . This does not preclude any types of filings by AT&T with any regulatory agency.

Issue #35(f) Collocation — Time table for provision and damages

Issue Description:

Is a precise time table is not necessary for the provision of collocated space by NYNEX? If so, should there be damage assessment?

Position of the Parties

NYNEX proposes a time table based on their experience with supplying collocation cages in both New York and Massachusetts. The proposed process is based on "best efforts" of both parties to insure completion based on the initial assessment. NYNEX's proposal does not include any assessment for damages.

AT&T pointed to Section 251[c][6] that imposes a duty on incumbent LECs to provide rates, terms and conditions that are just, reasonable, and nondiscriminatory, for physical collocation of equipment ... . AT&T also cited paragraphs from the First Report and Order which the FCC indicated that in the FCC's experience incumbent LECs have an economic incentive to interpret regulatory ambiguities so as to delay entry by new competitors. The FCC said that, in its experience:

> [R]eviewing the tariffs that incumbent LECs filed to implement our requirements for physical and virtual collocation suggests that rates, terms, and conditions under which incumbent LECs propose to provide these arrangements pursuant to Section 251[c][6] bear close scrutiny. We strongly urge state commissions to be vigilant in their review of such arrangements. Paragraph 569

and

> We and the states should therefore adopt, to the extent possible, specific and detailed collocation rules. We find, however, that states should have flexibility to apply additional collocation requirements that are otherwise consistent with the 1996 Act and our implementing regulations. Paragraph 558

The footnote to Paragraph 569, Footnote 1387, indicates that some areas the FCC's investigations had found problematic included channel assignment, letters of agency, charges for repeaters, and placement of point-of-termination bays.

According to AT&T, the problems identified by the FCC prescribe that a time table should be awarded for cage construction and cage completion for collocation. Based on their own experience with NYNEX in New York, AT&T also felt the need for liquidated damages in order to discourage excessive delays. The delays experienced in New York resulted in financial loss due to equipment delivery and installation scheduling problems.

Arbitrator's Analysis

A timetable that each party can depend on for planning and service provisioning is essential. Based on the actual experience of AT&T in New York, it is clear that at least some financial remuneration may be in order.

Arbitrator's Award

The following schedule is awarded:

Day 1 — Application, including payment in accordance with applicable NYNEX tariff

No later than Day 10

— Detailed Cost Estimate with time commitment (16 weeks or 80 work days)

— Detailed Special Circumstances (no more than additional 3 weeks (15 work days)

Within 10 days of delivery detailed cost

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estimate, AT&T accepts agreement

Interval Day 1 — Acceptance of cost and committed date, including payment in accordance with applicable NYNEX tariff

Interval Day 5 — Joint Planning Meeting to: Set milestone events and dates, e.g., Space walk through

By Interval Day 20 — Freeze drawings

Interval Day 80 (but no later than Interval Day 95) — Cage Acceptance Walkthru

If a breach of the cage construction agreement occurs, after going through the established ADR process, the schedule of contingency damages outlined below shall apply.

Within the first 12 months starting when the 1st cage construction contract is signed (interval day 1).

1st time - no compensatory damages

2nd time - compensatory damages

3rd time - compensatory damages + 10% of contract price

4th time - compensatory damages + 20% of contract price

5th time - compensatory damages + 30% of contract price

After 1st 12 months:

No free opportunity

1st time - compensatory damages

2nd time - compensatory damages + 10% of contract price

3rd time - compensatory damages + 20% of contract price

If there are no occurrences involving AT&T for a 12 month period, then this schedule is voided.

Issue #35(f2)

Payment of charges to NYNEX for Collocation

Issue:

Should AT&T be required to pay all reasonable charges for collocation incurred by NYNEX?

Position of the Parties

NYNEX unequivocally states that AT&T must pay all reasonable charges for collocation that it incurs on AT&T's behalf. AT&T agrees that they may pay reasonable charges for collocation incurred by NYNEX.

Arbitrator's Award

It is awarded that AT&T will pay all reasonable charges incurred by NYNEX for collocation, including any special charges required based on the type of equipment that AT&T wants to collocate provided that AT&T is informed of these charges before the costs are incurred. Reasonable charges are defined in this specific case as being based on the expanded interconnection tariff rates filed with the FCC to be replaced by NYNEX's approved TELRIC rates, which are to be available in April, 1997. Per NYNEX this use of TELRIC depends on the outcome of any judicial or regulatory determinations. NYNEX is not to allow the quality of its service to deteriorate or the safety of its personnel or customers to be put in jeopardy as a result of collocation. Therefore, NYNEX can require necessary equipment to be installed that will prevent safety and quality problems. However NYNEX must be ready to show that such preventative measures are not and have not been applied in an unreasonable and discriminatory fashion.

Issue #38

Branding of NYNEX Directories

Issue Description:

Should NYNEX be required to allow branding of its published directories by new entrants?

Positions of the Parties

NYNEX asserts that there is nothing that requires the branding of adjunct services such as directories. According to NYNEX such branding is clearly outside the scope of the Act. On the other hand, AT&T states that there is no clearer branding for a customer than the telephone directory and without branding their service will not be equal in quality as required by Section 251[c][4] and 47 C.F.R. 51.603[b].

Arbitrator's Discussion

This issue is not whether a description of the new entrants should be included inside the information section of the directory, similar, perhaps, to the section on long distance carriers. NYNEX has already agreed to this. The issue is whether NYNEX should be required to put AT&T's logo on the front cover of its published telephone directory or, in the alternative, to remove its own logo from the front cover. The alternative scheme would result in a directory bare of logos anywhere on the front cover.

Currently, all NYNEX New Hampshire directories appear to be "combination" directories, that is, with both white and yellow page directories combined. Upon reading the logo on the front cover of the Concord NYNEX published directory, the logo appears to be that of NYNEX Yellow Pages with only a small reference indicating "with White Pages." Regulation of the contents of the front cover of Yellow Pages is outside the scope of the Act and FCC order.

Arbitrator's Award

NYNEX is not required to "brand" the cover of its published directory.

Issue 40. TELRIC

Issue Description:

Determination of the rates for unbundled network elements per TELRIC methodology

Position of Parties and Arbitrator's Analysis

Both AT&T and NYNEX filed TELRIC studies. The results, models and underlying methods were different. There was not sufficient time to definitively determine if both, one or none of the studies actually satisfied TELRIC requirements. This should not be too surprising since other regulatory bodies, notably the FCC and the Federal-State Joint Board have been looking at models for more than a few years. Neither of these regulatory bodies have been able to certify a single model. This includes the FCC which has specifically been reviewing TELRIC models. Given the extremely short time frame to review these studies, approximately one week, it is not surprising that neither model was able to be certified by this process.

To further compound the issue, a careful reading of the relevant sections in the FCC rules, FCC order and 1996 Act were less than clear in their definition of TELRIC. This lack of specificity, the newness of these procedures and the extremely short time frame in implementing these requirements, including TELRIC did not minimize this already difficult process. As was stated repeatedly during the entire process, the final report is due to the commission on November 8, 1996.

The TELRIC studies for New Hampshire were not completely ready until the week of October 21. Since the 21st was a holiday, the 22nd was a more accurate first date. Additional

information was supplied by both parties during the week and each party had the limited opportunity to request further information.

The face-to-face meetings began on the week of October 27. It became quickly apparent that the approaches employed by NYNEX and AT&T were radically different, both in the final answers and the methodologies employed. The stark differences in the methodologies employed made it extremely difficult to compare the two models. AT&T in general appeared to calculate the total costs of their network components and then divided by the total demand for the network component to develop a per unit cost. On the other hand, NYNEX in general appeared to calculate the per unit cost in the beginning so as to make it extremely difficult to provide the totals underlying the model. Therefore it was exceedingly difficult to consistently

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compare the total forward looking costs as well as the demand quantities underlying the rates that were calculated. These costs included such items as total forward looking investment by element, total forward looking expenses by element, and a reasonable projection of the number of units by element. This seems to be a reasonable interpretation of 47 CFR 51.511.

On the rare occasions where totals were available, the differences between NYNEX TELRIC, AT&T TELRIC and NYNEX embedded (based on ARMIS) costs were eye opening. For example in switching, NYNEX TELRIC was nearly three times the NYNEX embedded costs and AT&T TELRIC was less than half the embedded costs. This was the most extreme example, but it did indicate that there was not time to redo or rerun the models.

The per unit costs also appeared to be different on occasions but also surprisingly similar on occasions between the two models. There was not time to further explore this issue.

Efficient Network Configuration

Per 47 CFR 51.505, one of the requirements of TELRIC is that it represents an efficient network configuration. A requirement for these proceedings was that the model represented a fully functioning network with at least the same level of service quality as exists today. First of all neither party provided a map of the entire state that indicated the explicit network configuration, including switch type, generic, trunk configurations including cable and transmission capacities and equipment, loop configurations including cable and transmission capacities and equipment. There were general representations, but neither party provided specific information. Even the general network differences were significant.

For example, NYNEX assumed that the basic switching architecture would be approximately what it is today — extensive use of host/remote switches. AT&T's model treated every switch location as a stand alone switch, including remotes. The problem with this seemingly small difference is that the facilities between host and remote locations may have been treated in NYNEX's model as part of the host/remote switching complex, while the AT&T model would treat these same facilities as normal trunks. This may in part explain the difference in the switching costs between NYNEX and AT&T. NYNEX's model may have included the costs of the trunks between the host/remote units as a part of switching, while AT&T's model did not. Logically this would have caused NYNEX's switching costs to be higher than AT&T's.

Another major difference in network configuration between the two models was the use of fiber in feeder trunks. NYNEX's model used fiber in all feeder while AT&T's model did not start to use fiber unless the feeder was over 9,000 feet in length. It was pointed out by AT&T that no other RBOC followed this configuration, but NYNEX responded that this was most efficient and was in keeping with their generally accepted network principles. There was insufficient time to further explore this area.

The above situation led to the accusation by AT&T that NYNEX's TELRIC recovered costs for a non-regulated video network that just happened to carry regulated voice traffic. NYNEX countered that this network was indeed extremely efficient for voice only traffic and for the "forward looking" services anticipated for this forward looking network. Once again there was insufficient time to further explore this potentially significant difference in network architecture.

In summary a determination could not be made on exactly what the specific configuration for the state of New Hampshire was underlying each model. While it appeared that the AT&T model was able to develop some numbers relating to the specific topology underlying the TELRIC study for New Hampshire, neither model was able to be fully verified in the length of time available. Therefore it could not be determined whether both, one or neither of the models reflected efficient network configuration. Furthermore, it could not be determined whether both, one or neither of the models would actually produce a fully functioning network providing service at least equal to today's service quality.

In order to begin to better understand the

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two TELRIC models, the following worksheet would have needed to be completed by each party. Unfortunately there was not sufficient time.

TELRIC questions

Logically TELRIC models need to answer these questions. Different models will answer them in different ways, but these macro steps should be calculated somewhere in the models.

"Bare" (unloaded) price of each component of the "modeled" network topology

1. Calculate "actual" demand on each component of "modeled" network topology, e.g., # loops, # minutes

2. Apply "fill" factor (breakage point) to "buyable units of a particular network component of the network topology to establish "able to buy" capacity of the unit for that particular network component of the network topology

1800 pr cable @ 80% "fill" yields 1440 pr breakage point or "able to buy" capacity

3. Apply utilization factor (50%) to "actual" demand to determine "wanting to buy" capacity of the particular network component of the network topology

700 actual subscribers (loops) @ 50% utilization yields 1400 "wanting to buy" capacity

4. Match "wanting to buy" capacity per unit of the particular network component of the network topology to the "able to buy" capacity of unit of the particular network component of

the network topology so that "wanting to buy" is less than or equal to "able to buy."

5. Apply price of appropriate "able to buy" unit to particular network component of the network topology.

6. What capacity was used as the denominator to calculate the unit price? 1800, 1440, 1400, 700

"Loaded" cost of particular network component of the network topology

Two basic types of "loaded" costs:

Type 1. Directly related to cost of the "bare" (unloaded) investment of the particular network component of the network topology, regardless of the cost of the "bare" (unloaded) investment e.g., depreciation. This relationship would never have to be recalculated if the "bare" (unloaded) investment level changes because it is constant.

Type 2. Related to a particular cost level of the "bare" (unloaded) investment of the particular network component of the network topology. The relationship is a particular amount of "loadable" cost to a particular amount of "bare" investment. Examples are plant specific, corporate operations, etc. This relationship must be recalculated if the "bare" investment level changes significantly.

Questions to be answered for each model:

1. How does the model handle "bare" investment steps 1-5. Need to tie to exhibits already supplied. Two types, if appropriate, "basic" joint network element, loop and local switch and dedicated element, OC-12. Please provide for subscriber loop, local switch and a dedicated element

2. Calculation of "loaded" costs factors.

Type 1 — If other than depreciation, please explain why

Type 2 —- Provide basis of calculation

It was at this time that it became apparent that neither model was going to be able to be changed significantly except for preprogrammed inputs. While it appeared that the AT&T model was more flexible in this area than the NYNEX model, neither were able to be changed significantly. The two inputs, depreciation lives and cost of capital, that will be decided by the state commissions were able to be adjusted in each model. Therefore the next step was to award the depreciation lives and cost of capital.

Economic depreciation lives

NYNEX appeared to want shorter depreciation lives for almost all of their investment. AT&T wanted longer lives. When compared with the range of depreciation lives established by the FCC and the New Hampshire specific lives, generally the NYNEX lives were below both. The AT&T depreciation lives were generally within the range established by the FCC and close to those of the New Hampshire specific lives. One problem with comparing the

rates of the two companies was the issue of salvage value. It appeared that each party treated

salvage differently, either included in the depreciation life or as a separate factor. It did not appear to be a significant problem that could not be handled through a translation, but rather indicated that each model handled depreciation lives differently once again making quick comparisons difficult in a short time period. It was interesting to note that NYNEX - New Hampshire current interstate depreciation rates for cable and wire facilities investment are not at the most aggressive level in the range set by the FCC.

Forward looking cost of capital

In a nutshell, NYNEX argued for a higher overall cost of capital of 13.178 % while AT&T argued for a lower nominal cost of funds in the range of 9.2% to 10.6%, or more specifically 9.8%. The arguments centered around some technicalities, but in the end the issue was the measurement of risk, in particular the relationship between depreciation lives and risk. One of the technicalities was how the various parties viewed "short term" risk. NYNEX appeared to rely on the assumption that the current forecasted earnings growth of the S&P Industrials is maintained forever, while AT&T appeared to rely on the assumption that the current forecasted earnings growth will last for five years and then converge on the long-run growth rate of the economy at the 20th year.

Arbitrator's Award

There are five basic awards: depreciation rates, cost of capital, "mid-point" methodology of the two differing models, the resulting rates and the certification of the submitted TELRIC studies.

In paragraph 702 of the First Report and Order, the FCC stated that "the current authorized rate of return at the federal or state level is a reasonable starting point for TELRIC calculations, and incumbent LECs bear the burden of demonstrating with specificity that the business risks that they face in providing unbundled network elements and interconnection services would justify a different risk-adjusted cost of capital or depreciation rate." In order to start to solve these interrelated issues, depreciation was the first issue to be addressed.

Depreciation

Because of the lack of time and the complexity of the models it was decided that the depreciation rates needed to be either AT&T's or NYNEX's. Mixing rates or selecting new ones would cause unnecessary problems especially because, as stated above, the two models handle salvage differently. If other than either of these two rates were selected, then these "other" rates would have to be converted. Time constraints did not make this a viable alternative. Based on paragraph 702 and the fact that NYNEX - New Hampshire interstate depreciation rates are not currently set at the most aggressive level within the FCC prescribed range gives the indication that the current rates may be a reasonable starting point. In addition the current competitive situation does not appear to be enough to cause NYNEX - New Hampshire to set their interstate depreciation rates for cable and wire facilities (account 2410) at the lowest possible lives within the FCC range of lives. This gives the impression that the economic lives of cable and wire facilities are longer than the current depreciation lives.

The NYNEX proposed economic lives appear to be consistently lower than the current depreciation lives while the AT&T lives appear to generally follow the current depreciation lives, with some lower and some higher. Since this contract can be reopened for rate purposes in

2-1/2 years, and there was not a sufficient showing of increased risk in this 2-1/2 year time frame by NYNEX, there was little reason to award the lower depreciation lives supported by NYNEX. Instead the depreciation rates proposed by AT&T are awarded.

Cost of capital

The logic underlying the NYNEX cost of capital studies that the current earnings growth would last forever (20 years) was less persuasive than that presented by AT&T. However

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once selecting the AT&T methodology, the output needed to be adjusted for the increased risk inherent in the longer depreciation lives selected above. It appeared that neither party's cost of capital studies factored in the depreciation rate used in the same study. Since the longer depreciation lives proposed by AT&T were awarded above, it would appear that there would be more risk than if the investment were written off over a shorter time frame and that the AT&T cost of capital would need to be adjusted to the higher range.

As stated above AT&T's range was 9.2% to 10.6%. Since the higher end of the range appears more consistent with the risk associated with the previously selected lower depreciation rates, the 10.6% cost of capital is awarded. The specifics that are awarded are as follows:

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

   7.8% Cost of debt
  12.9% Cost of equity
45%/55% Debt/Equity ratio
 10.61% Overall cost of capital
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While not being offered as an excuse, it must be noted that above decision was rendered less than 2 hours after the last witness had finished. This was the last day of scheduled meetings and a decision had to be made so that the parties could run their respective models over the weekend in order to allow further discussion on the resulting numbers. Further analysis may have allowed for more options to be considered.

"Mid-pointing" Methodology

The following table shows the result of the rates based on the above awards. The next step was to look at the differences and then "mid-point" the rates. As stated above, the individual models were not able to be analyzed sufficiently to bring closure between them, assuming that closure could ever be accomplished.

AT&T's TELRIC model developed a significantly different set of rates and different rate structure than that proposed by NYNEX. Through negotiations between the parties, they agreed to use the rates where there was agreement between the two models, not in level but in structure and element. For example AT&T had one "loop" element with 6 "density" zones while NYNEX had four "loop" elements (two-wire analog voice grade; four-wire analog voice grade; two-wire conditioned for digital; and four-wire conditioned for digital) with 3 "density" zones. After considerable discussion, AT&T agreed to the rate structure proposed by NYNEX. This meant that there would be the 3 "density" zones and there needed to be a single set of NYNEX rates that can be legitimately compared to a single set of AT&T rates so that these two rates can then

be "mid-pointed." The change in NYNEX's single set of rates due to the "mid-pointing" is then applied to the other related sets of rates. In the above example, the comparable rate to AT&T's "total" loop element is NYNEX's 2-wire analog voice grade "total" rate. This rate is then "mid-pointed" with AT&T's "loop" rate and the resulting difference in NYNEX's 2-wire analog voice grade rate is first applied to the "density" zones associated with the 2-wire analog voice grade rate and then applied to the other related "loop" elements and density zones.

The following table shows the "matching" NYNEX and AT&T rates, the "mid-point" and the resulting % change.

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

TELRIC RESULTS

NYNEX	*AT&T*	*Mid Point*	*% Change*
*2 Wire Analog — State Wide Average**			
$18.92*	$16.14	$17.53	-7.35%
Apply to other loop charges			
NID — 2 wire NIDs			
$0.93*	$0.46	$0.70	-24.7%
End Office — Port — Analog			
$2.81*	$1.20	$2.00	-28.80%
End Office — Port — Digital			
$3.98*	$1.70	$2.84	-28.6%
		Applies to ISDN-BRI	
End Office — Port composite applies to port additives (28.7%)			
End Office — Trunk Port — Digital			
$10.50* $3.40/tk port		$6.95	-33.80%
Apply to Trunk port MOU and ISDN-PRI			
End Office — Usage			
$0.011384*	$0.00203/MOU	$0.00671	-41.1%
Port Additives at 28.7% (mid point EO - Port - Analog and EO-Port - Digital)			
Transport			
Tandem Switching			
$0.00902**	$.00260	$.00581	-35.6%
Apply to all tandem elements p7 of 7			
**NYNEX — composite of state and type			
Common Transport			
$0.00080	$0.00105	$0.00092	+15.0%
Does not apply to any other element except time of day			
Interoffice Dedicated Transport (@ 20 miles average @ DS-1 on DS0 equivalent)			
Dedicated (per DS0)			
$4.82	$4.16	$4.49	-6.8%
Applied to all Interoffice Dedicated Transport and SS7 link			
Signaling System 7 (SS7)			
Link			
$41.77	N/A	N/A	-6.8%
Why not difference of dedicated transport therefore use dedicated transport (-6.8%)?			
Agreed to use dedicated transport % change			
STP			
Calculate total costs (NYNEX and AT&T) and apply to all STP charges			
$2,289,5099,509	$640,434	$1,464,972	-36.0%
To be applied to STP Port rate			

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SCP
LIDB+800 (/query)[2 messages/query]
      $0.001176      $0.00200     $0.00159              +35.2%
Applied to SCP rate structure
```

Rate award

The above "mid-pointing" procedure and application to related rates is awarded. Attached is the rate sheet that was calculated by and provided by NYNEX and has applied these principles. These rates are also awarded.

Submitted TELRIC studies

As stated above there was not sufficient time to determine if both, one or neither of these studies comply fully with TELRIC methodology. However, it is assumed that since both of these studies are represented to be TELRIC compliant, to the same extent, the "mid-point" process should also be TELRIC compliant and result in rates that are based on TELRIC methodology.

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


UNBUNDLED NETWORK ELEMENT PRICES (ADJUSTED)
11/18/96

                                FINAL
                                NYNEX
ELEMENT               ZONE      PRICE

2W ANALOG LINK        URBAN     $12.67
                      SUBURBAN  $15.59
                      RURAL     $23.00
                      STATEWIDE $17.53

4W ANALOG LINK        URBAN     $38.31
                      SUBURBAN  $43.17
                      RURAL     $72.54
                      STATEWIDE $52.46

2W LINK CONDITIONED   URBAN     $28.66
FOR DIGITAL           SUBURBAN  $29.37
                      RURAL     $70.38
                      STATEWIDE $43.79

4W LINK CONDITIONED   URBAN     $148.20
FOR DIGITAL           SUBURBAN  $157.42


                      RURAL     $392.52
                      STATEWIDE $238.84

NETWORK INTERFACE     URBAN     $0.72                 (See Note A)
DEVICE                SUBURBAN  $0.72
2W ANALOG LINK        RURAL     $0.72
                      STATEWIDE $0.72

NETWORK INTERFACE     URBAN     $0.86
DEVICE                SUBURBAN  $0.86
4W ANALOG LINK        RURAL     $0.86
                      STATEWIDE $0.86

NETWORK INTERFACE     URBAN     $0.72
DEVICE                SUBURBAN  $0.72
2W LINK CONDITIONED   RURAL     $0.72
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FOR DIGITAL	STATEWIDE	$0.72
NETWORK INTERFACE	URBAN	$0.86
DEVICE	SUBURBAN	$0.86
4W LINK CONDITIONED	RURAL	$0.86
FOR DIGITAL	STATEWIDE	$0.86
LOCAL SWITCHING	URBAN	$2.24
ANALOG PORT	SUBURBAN	$2.07
	RURAL	$1.82
LOCAL SWITCHING	URBAN	$3.08
DIGITAL PORT	SUBURBAN	$2.87
	RURAL	$2.68
LOCAL SWITCHING	URBAN	$26.55
ISDN-BRI PORT	SUBURBAN	$30.84
	RURAL	$29.11
LOCAL SWITCHING	URBAN	$6.96
DIGITAL TRUNK PORT	SUBURBAN	$6.77
	RURAL	$7.35
LOCAL SWITCHING	URBAN	$412.80
ISDN-PRI PORT	SUBURBAN	$371.84
	RURAL	$371.84
LOCAL SWITCHING	URBAN	$0.000863
TRUNK PORT PER MOU	SUBURBAN	$0.000904
DAY	RURAL	$0.000925
LOCAL SWITCHING	URBAN	$0.001096
TRUNK PORT PER MOU	SUBURBAN	$0.001149
EVENING	RURAL	$0.001176
LOCAL SWITCHING	URBAN	$0.000000
TRUNK PORT PER MOU	SUBURBAN	$0.000000
NIGHT	RURAL	$0.000000
LOCAL SWITCHING	URBAN	$0.003197
USAGE PER MOU	SUBURBAN	$0.005262
DAY	RURAL	$0.009101
LOCAL SWITCHING	URBAN	$0.003871
USAGE PER MOU	SUBURBAN	$0.006074
EVENING	RURAL	$0.010106
LOCAL SWITCHING	URBAN	$0.000707
USAGE PER MOU	SUBURBAN	$0.002263
NIGHT	RURAL	$0.005389
LOCAL SWITCHING	URBAN	$0.7767
PORT ADDITIVE	SUBURBAN	$0.7767
CENTREX	RURAL	$0.7767
LOCAL SWITCHING	URBAN	$0.9267
PORT ADDITIVE	SUBURBAN	$0.9267
RINGMATE SVC.	RURAL	$0.9267
LOCAL SWITCHING	URBAN	$0.3451
PORT ADDITIVE	SUBURBAN	$0.3517
THREE-WAY CALLING	RURAL	$0.3300
TANDEM SWITCHING		
DIGITAL TRUNK	ALL ZONES	$5.94 *Corrected
COMMON TRUNK PER MOU	ALL ZONES	
DAY		$0.003071 *Corrected
EVENING		$0.003903 *Corrected

NIGHT		$0.000000 *Corrected
USAGE PER MOU	ALL ZONES	
DAY		$0.002575 *Corrected
EVENING		$0.002792 *Corrected
NIGHT		$0.001776 *Corrected
DEDICATED TRANSPORT	ALL ZONES	
OC-48 FIXED		$8,976.19
OC-48 PER MILE		$178.75
OC-12 FIXED		$3,575.40
OC-12 PER MILE		$74.59
OC-3 FIXED		$1,455.74
OC-3 PER MILE		$18.65
DS-3 FIXED		$791.63
DS-3 PER MILE		$6.22
DS-1 FIXED		$103.27
DS-1 PER MILE		$0.22
CO MUXING 3/1		$211.97
COMMON TRANSPORT	ALL ZONES	
USAGE		
DAY		$0.000886
EVENING		$0.001127
NIGHT		$0.000000
SIGNALING	ALL ZONES	
STP PER LINK		$38.93
STP PER PORT		$752.00
SCP "800" QUERY		$0.001786
SCP LIDB QUERY		$0.001394
EXTENDED LINK		
	URBAN	$51.60
	SUBURBAN	$54.52
	RURAL	$61.93
	STATEWIDE	$56.46

NOTES

A. The Arbitrator's original decision on 11/6/96 for the NID was based on a NYNEX adjusted price of $0.93 and a reduction of 24.7% resulting in a $0.70 NID price.

NYNEX's actual adjusted NID price is actually $0.97. A reduction of 25.7% is then applied resulting in a final NID price of $0.72.

Issue 41: Mutual Compensation

Issue Description:

The issue here is whether Bill and Keep should be adopted as the procedure for reciprocal compensation of transport and termination of telecommunications between AT&T and NYNEX for an interim period, i.e. during transition to a fully competitive market. In addition, if bill and keep is not awarded, should TELRIC rates apply?

Positions of the Parties

According to the Act, Section 251(b)(5), all LECs have a duty to establish reciprocal compensation arrangements for recovery of the costs associated with transport and termination of calls originating on other carrier's facilities. The charges for termination are to be based on a "reasonable approximation" of the additional costs of terminating such calls, Section 252(d)(2). One method of reciprocal compensation is the so-called Bill and Keep method. Bill and Keep was defined by the FCC, in Paragraph 1096 of the First Report and Order, as arrangements in which neither of two interconnecting networks charges the other network for terminating traffic that originated on the other network. AT&T argues in support of Bill and Keep; NYNEX argues against it.

Per NYNEX Pursuant to Paragraph 1111

of the First Report and Order, as well as 47 C.F.R. 51.713, Bill and Keep is only permitted if the traffic between two carriers is in balance, that is, when (1) the volume of traffic is roughly equal and expected to remain so, and (2) the presumption of symmetrical rates has not been rebutted. NYNEX traces support for this two part test through numerous paragraphs. NYNEX argues that this two part test is not met in New Hampshire and that therefore Bill and Keep is not permitted.

Citing Paragraph 1085, NYNEX argues that the FCC has adopted incumbent LECs' current transport and termination prices as presumptively reasonable t & t prices for other, competing, carriers. In Paragraph 1086, the FCC concluded that imposing symmetrical rates based upon the incumbent LEC's transport and termination prices will not substantially reduce carriers incentives to minimize those costs. NYNEX also points to Paragraph 1089 where the FCC states that "in the absence of ... a cost study justifying a departure from the presumption of symmetrical compensation, reciprocal compensation for the transport and termination of traffic shall be based on the incumbent local exchange carrier's cost studies." Therefore, NYNEX argues, symmetrical rates are established — those based on NYNEX's current transport and termination rates, meeting the first part of the test. NYNEX asserts, however, that the second part of the test is not met because the volume of traffic is not roughly equal.

Pointing to Paragraph 1089, NYNEX argues that the FCC itself found that traffic flow is unequal. In Paragraph 1086, the FCC said: "We expect that incumbent LECs will transport and terminate much more traffic that originates on their own networks than traffic that originates on competing carriers' networks." and "... the LEC's revenues from terminating traffic originating from another local carrier are based on the net difference in traffic, which is likely to be much smaller than the total traffic it terminates."

AT&T argues that Bill and Keep is not precluded. AT&T points to paragraph 1113 that concludes that states may

> "If state commissions impose bill-and-keep arrangements those arrangements must either include provisions that impose compensation obligations if traffic becomes significantly out of balance or permit any party to request that the state commission impose such

> compensation obligations based on a showing that the traffic flows are inconsistent with the threshold adopted by the state. *States may, however, also apply a general presumption that traffic between carriers is balanced and is likely to remain so.* In that case a party asserting imbalanced traffic arrangements must prove to the state commission that such imbalance exists. Under such a presumption, bill-and-keep arrangements would be justified unless a carrier seeking to rebut this presumption satisfies its burden of proof." (Emphasis added.)

AT&T also pointed to 47 CFR 51.713[c], which states:

> "nothing in this section precludes a state commission from presuming that the amount of local telecommunications traffic from one network to the other is roughly balanced with the amount of local telecommunications traffic flowing in the opposite direction and is expected to remain so, unless a party rebuts such a presumption."

On the basis of the above language, AT&T argues that Bill and Keep is permissible if the state makes the presumption and it is not rebutted.

In addition to arguing that Bill and Keep can be imposed so long as traffic is presumed to be in balance, AT&T argues that Bill and Keep can be imposed even without traffic balance. Bill and Keep has benefits, due primarily to the relief from costly recording and billing measures which would otherwise be required of a new entrant, which make it clearly in the public interest. Competition will best be encouraged by Bill and Keep. If Bill and Keep is not adopted, the costs for measuring and billing could be proportionately higher for the new entrant on a per unit basis because of the low start up volumes. This burden, AT&T argues,

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puts AT&T at a competitive disadvantage.

Both parties agree if Bill and Keep is not adopted, charges for transport and termination would be based on TELRIC rates.

Arbitrator's Analysis

In paragraph 1055, the FCC outlines three options for establishing transport and termination rate levels. The options are:

1) The TELRIC-based methodology outlined in the section on the pricing of interconnection and unbundled elements.

2) The default prices pursuant to the default proxies.

3) Bill and Keep, in certain circumstances.

AT&T and NYNEX agree that if traffic is found to be in balance, Bill and Keep can be awarded. The issue is whether Bill and Keep is permitted if traffic is not found to be in balance.

Based on the FCC order and rules, a finding of traffic balance is required before bill-and-keep can be awarded. It also seems exceedingly logical. Therefore, the issue of traffic balance needs to be answered.

While the FCC allows a presumptive finding that traffic is in balance during a short period of

time until more definitive traffic studies can be performed, it does not appear reasonable that there can be traffic balance — either in a start-up period or in the future. The only possibility of achieving traffic balance is if the distribution of customers of the new entrant, in this case AT&T, were to be precisely equal to the distribution of customers remaining with NYNEX. The customers being distributed would also have to have the same local calling habits. As stated above, this appears to be highly unlikely, if not impossible. In addition, it would seem that balanced traffic is even more unlikely in the start-up period due to the small number of customers of the new entrant, especially given the emergence of "one way" services such as Internet Service Providers and their customers.

Imbalance is even more likely today. In order to have local traffic balance, it must be assumed that AT&T will attract only "average local usage" customers. Despite AT&T's assertion that it wants to serve the entire state beginning on its first day of operation, the ability of AT&T to attract only "average local usage" customers, even assuming there will be no attempt to target specific types of customers, is remote at best.

One of the primary concerns expressed by AT&T was that the costs for measuring and billing could be proportionately higher for the new entrant on a per unit basis because of the low start up volumes. One way to minimize costs is discussed in Paragraph 1114 where the FCC noted that state commissions may require that local traffic and access traffic be carried on separate trunk groups, if they deem such measures to be necessary to ensure accurate measurements and billing.

Arbitrator's Award

To permit Bill and Keep, traffic must be found to be in balance or a presumption must be established that traffic is in balance. Given the finding that traffic will not logically be in balance for the transport and termination of local traffic between AT&T and NYNEX, Bill and Keep is not awarded.

In order to lessen any disproportionate costs for either AT&T or NYNEX, both NYNEX and AT&T are encouraged to use "best efforts" to institute the least costly means to accomplish mutual billing accurately. While CABS (Carrier Access Billing System) type billing may be an ultimate objective, this could be overly costly on a per unit basis for the new entrant with this potentially low priced service. Therefore, "best efforts" must be taken to reduce these costs, up to and including, at the new entrant's choice, the use of separate trunk groups for local traffic and access traffic. These trunks can be one way for ease and accuracy of measurement, at the request of the new entrant. Whatever trunk arrangement is requested by the new entrant, the new entrant must also offer this same arrangement for its traffic terminating to the incumbent. In other words, if AT&T wants separate one way trunks for terminating local traffic from NYNEX, AT&T must also be

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willing to provide separate one way trunks for terminating its local traffic to NYNEX, if NYNEX so requests.

Tied to the above discussion on direct trunk groups, there is another concern that has not been directly discussed above, mainly the effect of a minute sensitive rate for transport and

termination of local telecommunications on traditionally flat rated basic local service. It seems clear that if there are two or more local networks that charge each other on a per minute basis for terminating the others' local minutes, that this may put significant pressure to make basic local service pricing consistent and thus get rid of flat rated basic local service. While this may certainly be an intellectual outcome, it may not be required. For example it may prove more efficient to institute a "flat" transport and termination rate based on trunk capacity. This would give some traffic sensitivity but may retain the flat local rate. This is not the issue here, but may need to be addressed in the future.

Since Bill and Keep is not awarded, per the above mentioned agreement of both parties, the charges for transport and termination will be the appropriate TELRIC rates.

FOOTNOTES

[1]Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, to be codified at 47 U.S.C. sections 151 *et seq*.

[2]The premises of the local exchange carrier, for purposes of this discussion, will be referred to as the Central Office (CO). The First Report and Order defines premises in Paragraph 573, finding that "In light of the 1996 Act's procompetitive purposes, we find that a broad definition of the term premises is appropriate in order to permit new entrants to collocate at a broad range of points under the incumbent LEC's control ... . We therefore interpret the term premises broadly to include LEC central offices, serving wirecenters and tandem offices, as well as all buildings or similar structures owned or leased by the incumbent LEC that house LEC network facilities."

[3]The Act uses the terms "interconnection" or "access"; at our hearings the parties referred to the same function as "transmission."

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Implementation of Telecommunications Act of 1996, DE 96-177, Order No. 22,236, 81 NH PUC 549, July 12, 1996.

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NH.PUC*12/05/96*[89443]*81 NH PUC 993*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 89443]

81 NH PUC 993

Re New England Telephone and Telegraph Company dba NYNEX

Additional applicant: Freedom Ring Communications, L.L.C.

DE 96-336
Order No. 22,434

New Hampshire Public Utilities Commission

December 5, 1996

ORDER adopting a procedural schedule and determining the scope of a docket addressing a proposed interconnection agreement between an interexchange telephone carrier and a local exchange telephone carrier.

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1. TELEPHONES, § 11

[N.H.] Connecting carriers — Proposed intereconnection agreement — Procedural schedule for considering — Scope of hearings — Exclusion of intercorporate relation issues — As not pertinent to reasonableness of agreement itself — Local exchange and interexchange carriers. p. 995.

BY THE COMMISSION:

ORDER

On October 21, 1996, New England Telephone and Telegraph Company (NYNEX) filed

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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 of 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.

At the prehearing conference, NYNEX, Freedom Ring, OCA, and Staff agreed to the following procedural schedule which was developed in accordance with Order No. 22,236 (July 22, 1996):

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

Rolling Data Requests and Responses	November 21 through December 9, 1996
Testimony by any Party Opposing the Filing	December 13, 1996
Hearing	January 6, 1997, 11:00 a.m.
Order	January 13, 1997

Also 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). Union is a wholly owned subsidiary of UTEL. ACN, Inc., which is also a subsidiary of UTEL, owns 50% of Freedom Ring. The remaining 50% of Freedom Ring is owned by an affiliate of Saco River Telephone, an independent local exchange carrier (LEC) in Saco, Maine. Staff is concerned that Union, as an incumbent LEC, could misuse its power to gain advantage for its parent company's affiliated interest in Freedom Ring. Pursuant to § 252(c), which prohibits approval of any interconnection agreement that is against the public interest or discriminatory to other carriers, Staff recommended expanding the scope of the docket to explore the relationship between Union and Freedom Ring.[1(140)] OCA concurred in the request to expand the scope.

NYNEX and Freedom Ring opposed the effort to expand the scope, arguing that the relationship between Union and Freedom Ring is not relevant to the approval of the Agreement and, in fact, is beyond the scope of the Act. Both NYNEX and Freedom Ring noted that Union was not a party to this docket and neither had authority to represent Union. If the issue needs exploration, both argued, it should be done in a docket involving Union, rather than NYNEX or Freedom Ring.

In accordance with the Order of Notice, NYNEX and Freedom Ring summarized the filing, stating that it was modeled in great part on the negotiated agreement reached between NYNEX and Metropolitan Fiber Systems in New York. A nearly identical agreement between NYNEX and Freedom Ring has already been approved by the Maine Public Utilities Commission.

OCA expressed concern that the Agreement, at § 3.0, stated that the Agreement satisfied the requirements of the § 271 checklist under which a regional bell operating company can petition to serve outside its region. OCA disagrees with the use of the Freedom Agreement as a basis for meeting the checklist. Staff concurred in this concern.

NYNEX and Freedom Ring both stated that though § 3.0 states that the Agreement satisfies the § 271 checklist, it does not bind the Commission or estop any party from asserting

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otherwise at the time NYNEX seeks to provide service outside its region. According to NYNEX and Freedom Ring, only Freedom Ring is bound by § 3.0 and would be prohibited in the future from arguing that the Agreement does not satisfy the checklist.

Staff had no further issues to address at this stage of the proceeding.

[1] We find the proposed procedural schedule to be reasonable and will approve it for the

duration of the case. As to the scope of the docket, although we recognize the need to scrutinize the activity of any LEC that is affiliated with an entity providing competitive services, we do not believe this docket should be expanded to include Union's relationship to Freedom Ring. The fact that UTEL has a subsidiary that is a joint owner of Freedom Ring does not, in itself, cause us to make Union a mandatory party to the Agreement docket. We reserve the right to consider whether this issue should be addressed as part of the Freedom Ring authorization docket or other proceeding. Should the Staff or any party become aware of a misuse of power by Union or, for that matter, by any LEC, including NYNEX, it should request an investigation at that time.

Regarding the § 271 checklist issue, although we appreciate the statements of NYNEX and Freedom Ring that § 3.0 is not intended to constitute a finding that § 271 is satisfied, we are concerned that our approval could be interpreted as such. Therefore, we will put the Parties on notice that we will not approve § 3.0 as written. If, after hearing, we determine that the rest of the Agreement meets the Act's standards for approval, we will only approve it on the condition that § 3.0 be stricken or modified to make clear there is no finding that NYNEX has satisfied § 271 by entering into this Agreement.

Based upon the foregoing, it is hereby

ORDERED, that the Staff's request to expand the scope of the docket to address Union's relationship to Freedom Ring is DENIED; and it is

FURTHER ORDERED, that the Parties are put on notice that if, after hearing, we find the Agreement meets the Act's standards for approval, we would approve it on the condition that § 3.0 be stricken or modified to make clear there is no finding that NYNEX has satisfied § 271 by entering into this Agreement.

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

By order of the Public Utilities Commission of New Hampshire this fifth day of December, 1996.

FOOTNOTES

[1]Staff noted other dockets which might be used for this investigation, though it argued this docket would be most appropriate, for instance, DR 96-165, involving Freedom Ring's petition to be authorized to operate as a competitive LEC, and a docket Freedom Ring has asked to be opened to take a "fresh look" at telephone special contracts in light of the Act and growing competitive opportunities.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Implementation of 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.

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NH.PUC*12/09/96*[89444]*81 NH PUC 995*Resale of Retail Toll Services by Switchless Aggregators

[Go to End of 89444]

81 NH PUC 995

Re Resale of Retail Toll Services by Switchless Aggregators

DE 95-054
Order No. 22,435

New Hampshire Public Utilities Commission

December 9, 1996

ORDER finding that the Telecommunications Act of 1996 provides for switchless aggregators to purchase retail toll services for resale. Commission determines that such aggregators, although not meeting the traditional definition

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of a public utility, nevertheless must file for commission recognition as an approved reseller.

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1. SERVICE, § 171

[N.H.] Resale services — Of retail toll services — Through switchless aggregators — As provided for in the Telecommunications Act of 1996. p. 1001.

2. PUBLIC UTILITIES, § 50

[N.H.] Regulatory status — Aggregators — As resellers of retail toll services — Necessity of filing for commission recognition and approval. p. 1002.

3. SERVICE, § 171

[N.H.] Resale services — Of retail toll services — Through switchless aggregators — "Customized Netsaver" (CNS) as a component of service — No restrictions on the resale of CNS to single locations. p. 1002.

4. RATES, § 582

[N.H.] Telephone rate design — Toll services — Resale of — Via switchless aggregators — Tariff provisions — Necessity of joint recommendation. p. 1002.

APPEARANCES: Victor D. Del Vecchio, Esq. for New England Telephone and Telegraph Company; Devine, Millimet and Branch by Frederick J. Coolbroth, Esq. for Granite State Telephone, Inc., Merrimack County Telephone, Inc.; Hollis Telephone Company, Inc.; Dixville Telephone Company; Contoocook Valley Telephone, Inc.; Wilton Telephone Company, Inc.; Dunbarton Telephone Company, Inc.; and Bretton Woods Telephone Company, Inc.; Mark C. Perkell, Esq. for Frontier Communications of New England, Inc.; Glass, Siegle, and Liston by

Robert Glass, Esq. for MCI Telecommunications Corporation; Eleanor Richter Olarsch, Esq. for AT&T Communications of New England, Inc.; Martin C. Rothfelder, Esq. for Union Telephone Company; Ernest Carpenter for Capital Region Health Care Corporation; James R. Anderson, Esq. of the Office of the Consumer Advocate for residential ratepayers; and E. Barclay Jackson, Esq. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

By Order of Notice dated March 6, 1995, the New Hampshire Public Utilities Commission (Commission) initiated an investigation into whether resale of retail toll services should be permitted. After the duly noticed Prehearing Conference on March 20, 1995, the Commission granted full intervenor status to New England Telephone and Telegraph Company (NYNEX), Granite State Telephone, Inc., Merrimack County Telephone Company, Contoocook Valley Telephone, Inc., Dunbarton Telephone Company, Inc., Wilton Telephone Company, Inc., Hollis Telephone Company Inc., Bretton Woods Telephone Company, Inc. and Dixville Telephone Company (independent telephone companies participating jointly, hereinafter the Independents), AT&T Communications of New England, Inc. (AT&T), MCI Telecommunications Corporation (MCI), Union Telephone Company (Union), and Frontier Communications of New England, Inc. (Frontier). The Office of the Consumer Advocate (OCA) is a statutory party. The Commission granted limited intervenor status to Capitol Region Health Care Corporation (Capital Corporation) and directed that the Telephone Resellers Association, which had filed written comments but did not request intervenor status, be placed on the service list.

At the Prehearing Conference, the parties and Commission Staff (Staff) agreed, and the Commission subsequently ordered, that the scope of the proceeding would be limited to the

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following questions: (a) Can switchless aggregators of customers (aggregators) purchase toll services for resale, whether or not they are public utilities? and (b) If such purchases for resale are permissible, what tariff is appropriate to govern them?

NYNEX, the Independents, Union, AT&T, OCA, and Staff conducted discovery, filed testimony, and participated in settlement discussions. MCI and Frontier did not participate in the docket after the Pre-hearing Conference. MedNet participated in discovery and attended all hearings but did not present oral comments.

On August 8, 1995, AT&T notified the Commission of its inability to present its witness for cross examination at the scheduled hearing. AT&T requested that the Commission accept its witness' testimony as comments deserving the weight the Commission warrants.

The Commission heard evidence on August 9 and 10, 1995. NYNEX, the Independents, Union, and the OCA filed briefs, as requested by the Commission, on September 14, 1995.

During the pendency of this docket, Congress was considering legislation by which to open telecommunications markets to competition. On February 8, 1996, the Telecommunications Act

of 1996 (the Act) was signed into law. Because the Act and regulations subsequently promulgated by the Federal Communications Commission (FCC) are pertinent to resolution of the issues raised in this docket, on June 4, 1996, the Commission requested supplemental memoranda from the parties addressing the impact of the Act. On June 21, 1996, memoranda were received from NYNEX, Union, the Independents, the OCA, and Staff.

II. BACKGROUND

Mednet Services (MedNet) is a subsidiary of Capital Corporation, which is also the parent company of Concord Hospital. MedNet manages telecommunications services for all of the parent company's subsidiaries, including Concord Hospital.

In DR 94-058, the Commission approved an amendment to a NYNEX special contract for Centrex services to Concord Hospital. The amended contract, between NYNEX and MedNet, allowed for expansion of Centrex service to locations served by Remote Switching Modules and described restrictions regarding the resale of certain Centrex services. The cover letter that accompanied the special contract filing at the Commission indicated that rates for toll service would remain under standard tariffs.

MedNet purchases Centrex and Customized NetSaver (CNS) for Concord Hospital and doctors affiliated with the Capital Corporation. Customized NetSaver (CNS) is a standard toll product offered by NYNEX at a significant discount to customers with high volume usage. Aggregating the toll usage of MedNet's individual customers in the Centrex group qualifies MedNet to purchase CNS and thereby obtain a significant discount off toll rates. MedNet also receives a significant discount off Centrex service in the special contract resulting from the aggregated volume of its customers. By a provision in the Centrex special contract, however, MedNet does not make a profit on Centrex. Some portion of the toll discount is passed on to MedNet's customers (the doctors and hospital), making the arrangement satisfactory to both parties.

When Staff became aware that MedNet was acting as a switchless aggregator, purchasing and reselling CNS, it raised several issues. First, NYNEX's tariff specifically prohibits such resale of retail products and therefore it appeared to Staff that NYNEX seemed to be in violation of its own tariff. Second, MedNet's resale of toll conceivably made MedNet a public utility acting without Commission authorization. Lastly, it was arguable that groups similar to MedNet deserve a similar opportunity for discounted toll service. Staff therefore asked the Commission to commence a proceeding to address these issues; this docket ensued.

III. POSITIONS OF THE PARTIES AND STAFF

A. *NYNEX*

Throughout its testimony and brief, NYNEX stressed the importance of considering multiple factors with regard to the issue

presented, including any effects on contribution, universal service, carrier of last resort obligations, and opportunity for rate-regulated carriers to earn a reasonable rate of return.

NYNEX argued against permitting switchless aggregators to resell toll services other than under current tariff provisions and rates, and with restrictions similar to those under which MedNet operates. In practice, that would mean reselling at low volume rates to low volume users only, reselling at high volume rates to high volume users only, and selling CNS to single locations only, as defined by the NYNEX tariff. As support for its argument, NYNEX averred that permitting switchless aggregators to resell toll services outside the current tariff conditions would harm NYNEX, interexchange carriers, current CNS customers, and competition generally.

In its contention that it would suffer harm, NYNEX argued that the CNS tariff was designed as a response to toll providers who could bypass the switched toll network by terminating special access lines directly from the customer's Centrex or PBX to an Interexchange Carrier's (IXC's) Point of Presence. NYNEX's CNS service attempts to mirror in price the toll providers' offering, providing a high volume rate to a single location, without violating the price floors agreed to in the DE 90-002 Stipulation. NYNEX argued that diverting the use of CNS to low volume users at multiple locations who have been aggregated by switchless resellers removes NYNEX's opportunity to compete with bypassers without violating the Stipulation. NYNEX claims it would also result in a loss of up to $34,000,000 in revenues. In addition to the harm to NYNEX, the lost revenues could reduce contribution to a point where, according to NYNEX, rates would have to be increased. This likely rate increase would harm the public interest.

NYNEX also argued IXCs would be harmed because switchless resellers could price below IXC costs of access. Hence, IXCs would be forced to lower their prices to compete with the switchless resellers, or lose customers.

Current CNS customers would also be harmed by permitting unrestricted switchless resale, NYNEX claimed, because a potential CNS rate increase would occur without notice to the CNS customers. NYNEX would be harmed further if CNS customers terminated contracts with NYNEX because of the higher rates.

NYNEX also argued that telecommunications competition in New Hampshire would be harmed because switchless resale is not true competition since it is not based upon the relative network efficiencies of the competitors. Switchless resellers depend entirely on the network provided by other carriers, whether Local Exchange Carriers (LECs) or IXCs. Promoting competition that is not based on actual efficiencies would promote mere price arbitrage, NYNEX argued, and would not bring the benefits of true competition. NYNEX pointed out that New Hampshire is already gaining the benefits of competition through switched competition, e.g., declining prices and increased Optional Calling Plan offerings.

Arguing in the alternative to its claims that resale of toll by switchless aggregators would create harm, NYNEX averred that MedNet did not resell toll. NYNEX maintained that MedNet merely operated under a restrictive contract as an end-user of Centrex service. MedNet, the end-user, exists at a single location, according to NYNEX, consistent with the NYNEX tariff; the single location, again according to NYNEX, is the Centrex switch location within the NYNEX Central Office. Inextricably part of Centrex service are capabilities for local, toll, interexchange services and call management features. The fact that those capabilities are all present and used by MedNet's "member" doctors and hospital does not make Mednet a reseller, according to NYNEX.

Lastly, NYNEX argued that the issue of resale of toll by switchless aggregators belongs in a broader docket better suited to considering policy. The appropriate docket to consider this issue, NYNEX suggested, is a docket in which the Commission evaluates the two year trial of facilities-based competition established in the DE 90-002 Stipulation.

B. *The Independents*

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The Independents joined NYNEX in recommending that the Commission defer consideration of the issue to a generic review of the two year trial of competition established in the Stipulation. The Independents referred to the Stipulation as a comprehensive framework for resolving the many complex issues associated with long distance competition. The effects of unrestricted resale have implications for long distance competition which were covered in the Stipulation and therefore should be considered together.

As an example of the interaction between the Stipulation and unrestricted resale, the Independents discussed CNS. Unrestricted resale of CNS would go beyond the intent for which CNS was introduced, which the Independents contend was to provide a service competitive with service by IXCs utilizing Special Access (one of the forms of access central to the Stipulation's pricing rules). Including Special Access as part of the relevant form of access caused CNS to be priced a certain way, in accordance with the pricing rules set out by the Stipulation. However, according to the Independents, unrestricted resale of CNS could change the relevant form of access from special access to switched access for switchless resellers. The Independents concur with NYNEX that the switchless resellers would have costs as low as seven cents per minute while IXCs' costs would be closer to eight cents a minute pursuant to the Stipulation.

In their brief, the Independents urged that the Commission define the terms "End User" and "Reseller" if it is going to address resale. Disagreeing with NYNEX, the Independents assert that MedNet is not an end-user in that the doctors' offices have no affiliation with MedNet other than for obtaining less expensive telecommunications service. Thus, MedNet is purchasing toll for resale and not for ultimate consumption. The key, the Independents argued, is crafting an accurate definition of end-user.

The Independents proposed to define end-user based on whether the use is for personal and administrative purposes by the customer, its employees, guests and affiliates or for sale to others. Under the Independents' definition, because MedNet's use is for sale to others, it would be a reseller. Adoption of the proposed definition, the Independents averred, would remove artificial incentives to create shell organizations to resell toll.

If the Commission were to permit resale, the Independents argued against any requirement that resale of toll be restricted to use from a single location, or any other use restriction which may create artificial incentives to bypass independent telephone company switched access services. A single location restriction thus becomes problematic because it eludes precise definition, permitting MedNet's single location to include offices located throughout Concord, Pittsfield and Pembroke.

Finally, the Independents recommended that switchless resellers of toll, if permitted, should

meet Commission certification standards. The Independents claim that, by certification processes, the Commission can provide consumers with basic regulatory protections similar to the ones provided by the Commission's supervision of entry for interexchange carriers.

C. *Union*

Union argued against considering this issue until after evaluation of the trial period established by the Stipulation. The Stipulation, according to Union, governs all toll competition and, therefore, issues affecting toll competition must be deferred until after the Trial Period's completion. Varying the requirements of the Stipulation can occur only by consent of all the parties to the Stipulation, according to Union.

Union maintained that several impediments exist which prohibit resale of toll by switchless aggregators. First, permitting such resale, other than under tariff provisions, would constitute an unreasonable preference for switchless resellers, violating RSA 378:10 and 378:11. Second, permitting such resale would coerce NYNEX into violating the Stipulation.

D. *AT&T, Telephone Resellers Association*

Both At&T and the Telephone Resellers Association (TRA) submitted written comments in support of permitting resale of retail toll.

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Neither appeared at the hearing.

E. *OCA*

The OCA argued that the benefits of competition have arrived in the high volume toll markets where the effects of DE 90-002 can be seen in declining prices and increased choices. The Commission can bring the same benefits to low volume, i.e. residential toll markets, the OCA averred, by permitting aggregation. In the OCA's view, permitting aggregation would correct the failure of the DE 90-002 competition experiment with regard to low volume toll customers, a failure that is evidenced by the high rates and few choices experienced by residential customers. The Commission recognized this failure, claimed the OCA, in its Order No. 21,728, wherein the Commission noted the "lack of significant reductions in standard MTS rates available to the low volume customer."

According to the OCA, the NYNEX-MedNet Centrex operation is the only non-employee and non-geographically adjacent Centrex network existing in New Hampshire. Linked with NYNEX's peculiar definition of single location, the MedNet arrangement allows NYNEX to overcome competition in the high-volume market, while retaining control and continuing to deny the advantage of the discounted toll rates to low volume customers.

The OCA asserted that the above-described situation is fundamentally unfair to residential customers, given that the technical support and structure is the same for both multi-location and NYNEX's so-called single location Centrex. Thus, other organizations should be permitted to duplicate the MedNet arrangement on a multi-location basis. The OCA concluded NYNEX unfairly extracts higher prices from smaller customers for the same service, discriminating by manipulating the definition of single location based upon who the potential customer is. In

support of its argument, the OCA pointed out that although the doctors themselves did not move their offices, NYNEX treated the location of the doctors, after they joined MedNet, as being a new, single location. The definition of single location is, argued the OCA, the lever for NYNEX's ability to get high contribution from small customers while giving discounts to high volume customers in response to competition in the high volume market. This leverage could be overcome by allowing smaller customers to aggregate their usage.

The OCA proposed that NYNEX's CNS tariff should exclude reference to any single location requirement because NYNEX is not abiding by the plain meaning of the current language. Alternatively, the OCA proposed redefining the current language to include MedNet-like arrangements by organizations including neighborhood associations within a limited geographic area. Without having performed a technical or accounting assessment, the OCA argued that NYNEX could furnish a billing and collection system for multi-location systems similar to that it provides to MedNet, despite NYNEX's claim to the contrary.

The OCA also disputed NYNEX's claim that because of its social contract burdens, NYNEX should be treated differently than interstate IXCs. While shifting Non-Traffic Sensitive costs to the state jurisdiction may have permitted aggregation of minutes on a multi-location basis at the interstate level, the OCA argues that NYNEX does not have a right to maintain its pricing disparities between high volume and low volume toll.

Lastly, the OCA argued that the New Hampshire Legislature, by mandating competition for its telecommunications market in Senate Bill 106, decided that the benefits of competition are worth the discomforts of change experienced by current monopolist telecommunications providers. Thus, the specter of increasing basic rates in order to make up for lost contribution, which the OCA argued is a false alarm, should not affect the outcome of this docket.

F. *Staff*

Staff argued in favor of permitting switchless aggregation of customers to purchase toll services for resale because the benefits of such an expansion would outweigh the possible loss to contribution. Staff cited lower prices, increased choices, increased efficiency, improved quality, and increased demand for toll

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services.

Staff argued that the New Hampshire Legislature has decided that increasing competitive pressures will bring benefits to New Hampshire. Staff claimed that no evidence was produced to prove that universal service, rate stability, economic efficiency, or carrier of last resort concerns would be adversely affected by going forward now. Staff also exhorted the Commission to allow the forces of competition to set the prices for the service, rather than attempting to regulate a price.

Staff concentrated on the lack of a firm definition of the term resale, pointing out that NYNEX considered resale to be sale to the public at large for profit while Staff considers resale to be any resale, thereby including MedNet. Staff agreed with the OCA that NYNEX has used idiosyncratic definitions to circumvent the tariff prohibition on resale of retail. Staff

recommended that the prohibition be eliminated from NYNEX's tariff. Staff also recommended that, until such time as the tariff prohibition is removed, MedNet's services should be grandfathered.

Staff also agreed with the OCA's position regarding NYNEX's definition of single location. Staff cited testimony by a NYNEX witness that the only difference between multi- and single location provision of toll is a different price and packaging.

Staff averred that regulation of switchless aggregators is not directly mandated by statute but that, if the Commission chose to, the Commission could require NYNEX to limit sales of retail services for resale to those resellers who agree to abide by particular Commission regulations.

G. *Post-Hearing Memoranda on the Effect of the Act*

NYNEX agrees that Section 251(c)(4)(B) prohibits unreasonable restrictions on resale. NYNEX argues that its tariff condition of a single location is not a restriction but is a defining limitation of the service as it exists. NYNEX argued that the Commission should defer any further action in this docket until after the FCC issued its implementing order[1(141)] and regulations. In particular, NYNEX pointed to the FCC Notice of Proposed Rulemaking of April 19, 1996, as support for its contention that the FCC intended to resolve the questions raised in this docket.

The post-hearing memorandum filed by Union and concurred in by the Independents asserted that CNS customers constitute a category or class of customers, categorized by location. Union and the Independents then cited Section 251(c)(4)(b), which allows the prohibition against reselling a service, available only to a specific category of customers, to a different category of customers. Union and the Independents conclude that the single location restriction, a categorizing factor, is permissible.

The OCA's memorandum put forth the argument that CNS is a retail product subject to resale at wholesale prices and that permitting its resale by aggregators will create pressure on intrastate toll rates, a positive effect of competition encouraged by the New Hampshire Legislature. The OCA also argued that NYNEX's tariff language restricting resale is no longer valid because it sold retail toll to MedNet for resale. In addition, the OCA raised a concern over value of service pricing, a method of pricing which is prohibited by the Act, according to the OCA, because it does not consist of retail price minus avoided costs.

Staff cited Section 251(c)(4) for the proposition that toll service is now available for resale. Staff then referred to portions of the FCC's Notice of Proposed Rulemaking as prohibiting all but two very narrow restrictions on resale. In Staff's opinion, enlarging those narrow restrictions to include NYNEX's peculiar definition of single location would be unreasonable and discriminatory.

IV. COMMISSION ANALYSIS

We have reviewed the testimony, exhibits, and memoranda submitted in this proceeding. We appreciate the time and efforts of the parties and Staff in addressing an issue which was complicated by the fact that the telecommunications industry is in an era of rapid regulatory change.

[1] We find that the Telecommunications

Act of 1996 is conclusive in resolving the first part of the first issue, namely, whether switchless aggregations of customers (aggregators) can purchase toll services for resale. The plain meaning of Section 251(c)(4)(A) creates a duty for 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. Since toll service, and Centrex for that matter, is a telecommunications service provided at retail to subscribers who are not telecommunications carriers, toll service must be offered by NYNEX for resale. The Act provides no prohibition or restriction that the offering shall be available only to non-aggregators. Therefore, we find that switchless aggregators must be permitted to purchase toll services for resale.

[2] We now address the second part of the first issue, namely, whether the switchless aggregator must be a public utility. Although switchless aggregators provide telecommunications service, it is arguable that they are not squarely within the statutory definition of a public utility found at RSA 362:2 because they do not own, operate or manage any plant or equipment. Nonetheless, we believe that in keeping with the spirit of the statute, toll aggregators should be approved by the Commission as resellers consistent with our current practice. We will therefore require Commission approval of switchless toll aggregators. MedNet, which acts as an aggregator for health professionals, should therefore file as soon as possible for approval as a reseller. In addition, Staff is currently preparing for our review a simplified and streamlined reseller approval process.

[3] Having decided that switchless aggregators must be permitted to purchase LEC toll services for resale, we turn to a question of whether NYNEX can restrict the resale of CNS to single locations in the manner NYNEX proposes, that is, defining single location differently in different instances. This question, too, is guided by the Act. Section 251(c)(4)(B) forbids incumbent LECs from imposing unreasonable or discriminatory conditions or limitations on resale, with certain narrow exceptions. In Paragraphs 935 through 971 of its First Report and Order in Docket No. 96-325, the FCC interpreted pertinent sections of the Act. The FCC concluded that restrictions on resale of volume discounts are presumptively unreasonable as long as the reseller, in the aggregate, meets the minimal level of demand. In Paragraph 953, the FCC stated: "We believe restrictions on resale of volume discounts will frequently produce anticompetitive results without sufficient justification." We concur in the FCC's belief and we find that NYNEX has not overcome the presumption that its single location restriction is unreasonable. We will order the single location restriction to be removed.

[4] The next issue, as articulated in our Order of Notice, examines what tariff is appropriate to govern resale. We will not enunciate a specific tariff here. The better approach is to require the parties to this docket to jointly file a recommendation as to the appropriate tariff for resale of retail toll, including the terms and conditions necessary for billing such service.

Based upon the foregoing, it is hereby

ORDERED, that switchless aggregations of customers (aggregators) may purchase toll services for resale; and it is

FURTHER ORDERED, that switchless aggregators that purchase toll services for resale must obtain prior approval from the Commission in order to offer resold toll services; and it is

FURTHER ORDERED, that MedNet shall file a petition for Commission approval as a reseller; and it is

FURTHER ORDERED, that MedNet is granted interim authority to serve its customers until the Commission rules on its petition for approval as a reseller; and it is

FURTHER ORDERED, that NYNEX shall remove the single location restriction from its CNS tariff by filing a tariff revision within 60 days; and it is

FURTHER ORDERED, that the parties to this docket shall jointly file a proposed tariff for resale of retail toll within 60 days of the date of this order.

By order of the Public Utilities Commission of New Hampshire this ninth day of December, 1996.

Page 1002

FOOTNOTES

[1]The FCC issued its order implementing the local competition provisions of the Act on August 8, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New England Teleph. & Teleg. Co. dba NYNEX, DR 95-161, Order No. 21,728, 80 NH PUC 430, June 30, 1995.

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NH.PUC*12/09/96*[89445]*81 NH PUC 1003*Northern Utilities, Inc.

[Go to End of 89445]

81 NH PUC 1003

Re Northern Utilities, Inc.

DE 95-345, 95-346
Order No. 22,436

New Hampshire Public Utilities Commission

December 9, 1996

ORDER approving a natural gas local distribution company's proposed special service agreement for the provision of transportation service for Portland Natural Gas Transmission System (PNGTS), as revised to reduce minimum transportation commitments. The commitment

terms in the original proposal had caused the Maine Public Utilities Commission to disapprove the PNGTS arrangement and the New Hampshire Commission had followed suit in Order No. 22,288 (81 NH PUC 648, *supra*), but the new terms are deemed reasonable.

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1. SERVICE, § 332

[N.H.] Gas — Transportation service — Special service agreement — To facilitate construction of interstate pipeline — Factors affecting approval — Revision of minimum commitment terms — Consistency with least-cost planning principles — Local distribution company. p. 1003.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On August 26, 1996, the New Hampshire Public Utilities Commission (Commission) issued Order No. 22,288, accepting in part a settlement agreement filed by the parties to dockets DE 95-345 and DE 95-346 relevant to precedent agreements entered into between Northern Utilities, Inc. (Northern), Granite State Gas Transmission, Inc. (Granite), and Portland Natural Gas Transmission System (PNGTS). In Order No. 22,288, the Commission withheld approval of the PNGTS agreement due to the decision of the Maine Public Utilities Commission (Maine PUC) to reject it. The Commission advised Northern to re-file the agreement in the event Maine were to reach a different conclusion regarding PNGTS.

On October 3, 1996, Northern filed a revised precedent agreement with PNGTS for Transportation Service. In its filing, Northern states that the revised agreement contains the same terms as the previous agreement dated March 12, 1996, with one exception: the transportation commitment has now been reduced to reflect optimal needs.

On September 30, 1996, Northern filed the revised agreement with the Maine PUC. On November 13, 1996, in a report filed by the Maine PUC Hearing Examiner in Docket No. 96-558, the Examiner recommended that the Commission approve the revised agreement. The Maine PUC has not yet acted on the recommendation.

II. COMMISSION ANALYSIS

[1] An extensive record has been developed in the course of this and other proceedings which identifies the optimal future resources that Northern needs to supply its customers. Upon review of this record, it is evident that the revised agreement alleviates previous concerns in both jurisdictions. Northern has an obligation to serve its firm customers with a reliable source of natural gas and, to do so, must evaluate

Page 1003

potential resources and make commitments to the developers of those resources for future

deliveries. Our approval of this revised agreement is not an endorsement of the PNGTS project, but a recognition that Northern's process in evaluating and selecting PNGTS as a supply resource is consistent with least cost planning.

Based upon the foregoing, it is hereby

ORDERED, that the revised precedent agreement between Northern and PNGTS is consistent with the public good and is APPROVED.

By order of the Public Utilities Commission of New Hampshire this ninth day of December, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Northern Utilities, Inc., DE 95-345, DE 95-346, Order No. 22,288, 81 NH PUC 648, Aug. 26, 1996.

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NH.PUC*12/09/96*[89446]*81 NH PUC 1004*GTE Card Services, Inc., dba GTE Long Distance

[Go to End of 89446]

81 NH PUC 1004

Re GTE Card Services, Inc., dba GTE Long Distance

DS 96-358
Order No. 22,437

New Hampshire Public Utilities Commission

December 9, 1996

ORDER authorizing an interexchange telephone carrier to introduce new "easy savings" flat-rate plans for business customers, with billing increments depending on usage and contract term commitments.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — New service plans — Business customers — "Easy savings" flat-rate plans — Differences in billing increments — Factors — Usage volumes — Term of service commitment — Interexchange carrier. p. 1004.

BY THE COMMISSION:

ORDER

[1] On November 1, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from GTE Card Services Inc., d/b/a GTE Long Distance (GTE) requesting authority to introduce GTE Easy Savings Flat Rate Plan for Business and GTE Easy Savings Flat Rate Plus Plan for Business, for effect December 2, 1996.

GTE Easy Savings Flat Rate Plan for Business allows customers the option of a month-to-month or a 1, 2, or 3 year contract which includes a monthly recurring charge. Calls under this plan will be billed in 60 second increments.

GTE Easy Savings Flat Rate Plus Plan for Business offers a flat rate pricing available 24 hours a day, with billing options available on a 1 year or 3 year contract. Calls under this plan will be billed an initial 18 second minimum with the offering of volume discounts based on usage.

We find the proposed changes to be in the public good. New services expand the choice of telephone services and foster competition in the New Hampshire intrastate toll market which allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize GTE to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of GTE's tariff, NHPUC No. 2 are approved for effect as filed:

Page 1004

lst Revised Page 2

1st Revised Page 17

Original Page 47.1

Original Page 47.2

1st Revised Page 48

1st Revised Page 49

1st Revised Page 55

1st Revised Page 56

Original Page 56.1;

and it is

FURTHER ORDERED, that GTE file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this ninth day of December, 1996.

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NH.PUC*12/10/96*[89447]*81 NH PUC 1005*ACC Long Distance of New Hampshire Corporation

[Go to End of 89447]

81 NH PUC 1005

Re ACC Long Distance of New Hampshire Corporation

DS 96-356
Order No. 22,438

New Hampshire Public Utilities Commission

December 10, 1996

ORDER authorizing an interexchange telephone carrier to clarify certain tariff provisions, increase the surcharge applicable to customer-dialed calling card calls, and designate November 29, 1996, as a promotional discount day.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Special discount plans — New promotional offerings — Designation of certain day as promotional discount day — Interexchange telephone carrier. p. 1005.

2. RATES, § 582

[N.H.] Telephone rate design — Toll service — Calling card service — Increase in associated surcharge — For customer- dialed calling card calls — Interexchange telephone carrier. p. 1005.

BY THE COMMISSION:

ORDER

[1, 2] On October 30, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from ACC Long Distance of New Hampshire, Inc. (ACC) requesting authority to make corrections to "Timing of Calls" language, add promotional language, increase the surcharge for Customer Dialed Calling Card calls, and announcing a promotional Discount Day for effect November 29, 1996.

ACC's proposed revisions to its "Timing of Calls" clarify that calls to busy numbers will be billed after 30 seconds, calls to unanswered numbers will be billed after 90 seconds and calls to silent default numbers will be billed after 60 seconds.

The promotional language that has been inserted is consistent with similar promotional language approved in other tariffs.

The proposed increase in the surcharge for Customer Dialed Calling Card calls is an operator dialed surcharge.

ACC's Discount Day promotion will be offered to all subscribers to ACC's Superline III residential rate program.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize ACC to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of ACC's tariff, NHPUC No. 1, are approved for

Page 1005

effect as filed:

2nd Revised Page 1

2nd Revised Page 2

2nd Revised Page 3

1st Revised Page 12

1st Revised Page 30

2nd Revised Page 66

Original Page 67;

and it is

FURTHER ORDERED, that ACC file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this tenth day of December, 1996.

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NH.PUC*12/10/96*[89448]*81 NH PUC 1006*AT&T Communications of New Hampshire, Inc.

[Go to End of 89448]

81 NH PUC 1006

Re AT&T Communications of New Hampshire, Inc.

DS 96-364
Order No. 22,439

New Hampshire Public Utilities Commission

December 10, 1996

ORDER authorizing an interexchange telephone carrier to institute a special pricing arrangement for MEGACOM 800 service.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — MEGACOM 800 service — Special pricing arrangement — Interexchange telephone carrier. p. 1006.

BY THE COMMISSION:

ORDER

[1] On November 6, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from AT&T Communications of New Hampshire, Inc. (AT&T), requesting approval of a Special Pricing Arrangement, pursuant to its tariff, for effect December 6, 1996.

The rate and term of the Special Pricing Arrangement for MEGACOM 800 Service are specified on the proposed tariff page pursuant to Section 1, paragraph 1.13 of AT&T's effective tariff.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize AT&T to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following page of AT&T's tariff, NHPUC No. 1 is approved for effect as filed:

Section 25

Original Page 3;

and it is

FURTHER ORDERED, that AT&T file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rule Puc 1601.05(k).

By order of the Public Utilities Commission of New Hampshire this tenth day of December, 1996.

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NH.PUC*12/10/96*[89449]*81 NH PUC 1007*Dial and Save of New Hampshire, Inc., dba Dial and Save

[Go to End of 89449]

81 NH PUC 1007

Re Dial and Save of New Hampshire, Inc., dba Dial and Save

DS 96-360
Order No. 22,440

New Hampshire Public Utilities Commission

December 10, 1996

ORDER authorizing an interexchange telephone carrier to make various tariff revisions so as to eliminate provisions for advance payments, develop policy for deposits and late payment fees, and restructure debit card rates and sweepstakes promotion rules.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Special sweepstakes promotion — Debit calling card offering — Restructuring of associated rules and rates — Interexchange carrier. p. 1007.

2. PAYMENT, § 2

[N.H.] Company rules — Elimination of advance payment requirements — Substitution of deposit requirements — Implementation of late payment fee schedules — Interexchange telephone carrier. p. 1007.

BY THE COMMISSION:

ORDER

[1, 2] On November 1, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from Dial & Save of New Hampshire, Inc., d/b/a Dial & Save (Dial & Save) requesting authority to make various revisions to its tariff, for effect December 1, 1996.

The proposed revisions included regulations for the collection of advance payments, deposits and late payment charges. Rates were revised for Debit Card and Dial & Win Sweepstakes services and Affinity Association Program is being introduced.

Since the N.H. Admin. Rules allow deposits and late payment charges rather than advance payments, Dial & Save agreed to revise the proposed pages to eliminate advance payments. In addition, Dial & Save revised its late payment charge to 18 percent annually for business customers and 10 percent annually for residential customers consistent with late payment charges approved for other companies.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize Dial & Save to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of Dial & Save's tariff, NHPUC No. 1 are approved for effect as filed:

5th Revised Page 2 in lieu of 4th Revision 2nd Revised Page 2.1 in lieu of 1st Revision 2nd Revised Page 23 in lieu of 1st Revision 1st Revised Page 23.1 in lieu of Original 1st Revised Page 23.2 in lieu of Original 1st Revised Page 46 1st Revised Page 47 Original Page 55;

and it is

FURTHER ORDERED, that Dial & Save file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this tenth day of December, 1996.

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NH.PUC*12/10/96*[89450]*81 NH PUC 1008*Sprint Communications Company of New Hampshire, Inc.

[Go to End of 89450]

81 NH PUC 1008

Re Sprint Communications Company of New Hampshire, Inc.

DS 96-348
Order No. 22,441

New Hampshire Public Utilities Commission

December 10, 1996

ORDER authorizing an interexchange telephone carrier to make minor revisions to its "Sprint Sense" tariffs, for clarification purposes only.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Tariff revisions — For clarification only — "Sprint Sense" offerings — Interexchange telephone carrier. p. 1008.

BY THE COMMISSION:

ORDER

[1] On October 25, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from Sprint Communications Company of New Hampshire, Inc. (Sprint)

requesting authority to make minor text changes to Sprint Sense and introduce Sprint Sense Day for effect November 26, 1996.

The textual changes to Sprint Sense are for clarifying purposes only. Sprint introduces Sprint Sense Day which includes flat rated options for outbound, inbound, calling card and operator assisted calls.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize Sprint to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

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

6th Revised Page 47

1st Revised Page 47.1

6th Revised Page 73-C

2nd Revised Page 73-D

Original Revised Page 73-E

Original Revised Page 73-D;

and it is

FURTHER ORDERED, that Sprint file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this tenth day of December, 1996.

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NH.PUC*12/10/96*[89451]*81 NH PUC 1008*MCI Telecommunications Corporation

[Go to End of 89451]

81 NH PUC 1008

Re MCI Telecommunications Corporation

DS 96-347
Order No. 22,442

New Hampshire Public Utilities Commission

December 10, 1996

ORDER authorizing an interexchange telephone carrier to make certain changes in its "MCI

MASTERS" service, which is a one-way dial-in/dial-out multipoint service for students, faculty, and administrators at educational institutions, as well as government employees, who are engaged in a business relationship with other entities.

Page 1008

1. RATES, § 582

[N.H.] Telephone rate design — Toll services — Tariff revisions — As to "MCI MASTERS" service — Multipoint service for certain educational and governmental subscribers — Interexchange carrier. p. 1009.

BY THE COMMISSION:

ORDER

[1] On October 25, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from MCI Telecommunications Corporation (MCI) requesting authority to make a change to its MCI MASTERS rate, for effect November 24, 1996.

The proposed revision to MCI MASTERS makes a change to allow administrators involved in a business relationship with other entities to become eligible customers of the service. MCI MASTERS is a one-way dial-in dial-out multipoint service. It is offered to students, faculty, and administrators of educational institutions, to students, faculty, and administrators involved in a business relationship with other entities, and to employees of government agencies.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize MCI to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of MCI's tariff, NHPUC No. 1, are approved for effect as filed:

61st Revised Page No. 1

8th Revised Page No. 3.2

3rd Revised Page No. 59.10;

and it is

FURTHER ORDERED, that MCI file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

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

1996.

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NH.PUC*12/10/96*[89452]*81 NH PUC 1009*Granite State Electric Company

[Go to End of 89452]

81 NH PUC 1009

Re Granite State Electric Company

DR 96-322
Order No. 22,443

New Hampshire Public Utilities Commission

December 10, 1996

ORDER noting interventions and adopting a procedural schedule for addressing an electric utility's proposed 1997 conservation and load management programs.

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1. CONSERVATION, § 1

[N.H.] Annual conservation and load management program filing — Electric utility — Procedural schedule — Issues to be addressed — Combining of residential programs — Cost-effectiveness — Budgetary and participation goals — Streamlining of reporting requirements — Transfers of funds between residential and commercial portfolios. p. 1010.

APPEARANCES: Carlos A. Gavilondo, Esq. for Granite State Electric Company 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 or the Company) filed with the New Hampshire Public Utilities Commission (Commission) its Conservation & 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.

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.

At the prehearing conference, Granite State 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 Requests December 3, 1996
Propounded at the 1st
Technical Session

Data Requests by Staff and      December 6, 1996
Intervenors

Company Data Responses          December 13, 1996

Technical Session               December 18, 1996

Testimony by Staff and          January 3, 1997
Intervenors

Data Requests by the Company    January 9, 1997

Data Responses by Staff and     January 16, 1997
Intervenors

Settlement Conference           January 23, 1997

Filing of Settlement Agreement, January 30, 1997
if any

Hearing                         February 6, 1997.
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Also at the prehearing conference, in accordance with the Order of Notice, Granite State and Staff stated their positions with regard to the filing. Granite State stated that the 1997 C&LM filing reflects the second year of the two-year program which was approved by the Commission in Order No. 21,968 (January 9, 1996) in Docket DR 95-276 and contains minor program refinements made to enhance the efficiency of the programs. The Company was hopeful that the Parties and Staff would reach resolution on the issues in the docket.

[1] Staff stated that it believed the significant issues to be addressed in this proceeding are: 1) the effect of combining certain residential programs; 2) the cost-effectiveness of the programs; 3) the Company's proposal to modify the recapture of payment provisions in the terms and conditions of its Multifamily Retrofit, Energy Initiative and Design 2000 programs; 4) the budgetary and participation goals of the Energy Initiative and Design 2000 programs; 5) the Company's request for the ability to transfer monies within the residential program portfolio and the commercial and industrial program portfolio; and 6) the streamlining of reporting requirements.

The CLF and OCA were not present at the Prehearing Conference.

II. COMMISSION ANALYSIS

We will approve the CLF's Motion to Intervene and deny the CLF's Motion to Reschedule

Technical Conference. Because of the Commission's full calendar of scheduled hearings, rescheduling the technical conference is not workable. Given a second technical

session within the delineated procedural schedule and Granite State's and Staff's intent to provide CLF with the oral data requests propounded at the first technical session, we believe that the rights and interests of the CLF are adequately protected.

We find the proposed procedural schedule to be reasonable with one exception and will approve the schedule subject to the following modification. Because of our statutorily imposed deadline to complete the Electric Utility Restructuring Plan by February 28, 1997, we are making an effort not to schedule new hearings during February. For that reason, the hearing in this docket is tentatively set for March 5, 1997. Any party who is unable to appear on this date should contact the Executive Director and Secretary. Should the parties reach a settlement in this case, we will schedule an earlier settlement hearing, before a hearings examiner, in February, 1997.

The C&LM filing contained Granite State's 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. Anticipating that this docket will not be resolved before the proposed effective date of the tariff pages, the Commission will suspend the tariff pages and direct the Company to continue its C&LM programs as approved in Commission Order No. 21,968 at existing surcharge rates until the Commission's final order in this proceeding at which time any over/under-recoveries shall be reconciled.

Based upon the foregoing, it is hereby

ORDERED, that the proposed procedural schedule delineated above is APPROVED subject to modification regarding the hearing date; and it is

FURTHER ORDERED, that the Conservation Law Foundation's Motion to Intervene is GRANTED and its Motion to Reschedule Technical Conference is DENIED; and it is

FURTHER ORDERED, that the following tariff pages of Granite State are SUSPENDED:

NHPUC No. 16 - Electricity - First Revised Page 93 and

NHPUC No. 16 - Electricity - Third Revised Page 94;

and it is

FURTHER ORDERED, that Granite State continue to offer its C&LM programs and to bill the DSM surcharges as approved in Commission Order No. 21,968 until this docket is resolved and a final order is issued.

By order of the Public Utilities Commission of New Hampshire this tenth day of December, 1996.

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.

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NH.PUC*12/10/96*[89453]*81 NH PUC 1011*WorldCom Network Services, Inc., dba WilTel Network Services

[Go to End of 89453]

81 NH PUC 1011

Re WorldCom Network Services, Inc., dba WilTel Network Services

DS 96-366
Order No. 22,444

New Hampshire Public Utilities Commission

December 10, 1996

ORDER authorizing an interexchange telephone carrier to institute a surcharge applicable to those customers who are not billed directly by the carrier but nevertheless use the carrier's network to complete calls.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Billed measured service — Institution of surcharge — Applicability — To those customers using the network but not billed directly by the carrier — Interexchange carrier. p. 1012.

BY THE COMMISSION:

Page 1011

ORDER

[1] On November 7, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from WorldCom Network Services, Inc., d/b/a WilTel Network Services (WilTel) requesting authority to revise LEC Billed Measured Service for effect December 9, 1996.

Local exchange carrier (LEC) Billed Measured Service is being revised to add a surcharge for calls placed by customers who have not contacted WilTel to provide a billing address but use the WilTel network to complete calls. These customers are billed by the LEC for WilTel.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition.

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

Based upon the foregoing, it is hereby

ORDERED, that the following pages of WilTel's tariff, NHPUC No. 1 are approved for effect as of the date of this order:

5th Revised Page 1

2nd Revised Page 85.1;

and it is

FURTHER ORDERED, that WilTel file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this tenth day of December, 1996.

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NH.PUC*12/10/96*[89454]*81 NH PUC 1012*MCI Telecommunications Corporation

[Go to End of 89454]

81 NH PUC 1012

Re MCI Telecommunications Corporation

DS 96-374
Order No. 22,445

New Hampshire Public Utilities Commission

December 10, 1996

ORDER authorizing an interexchange telephone carrier to eliminate "Friends and Family" discounts associated with calling card calls and to reduce other "Friends and Family" discounts.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll services — Tariff revisions — As to "Friends and Family" discounts — Inapplicability to calling card calls — Reductions in other "Friends and Family" discounts — Interexchange carrier. p. 1012.

BY THE COMMISSION:

ORDER

[1] On November 12, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from MCI Telecommunications Corporation (MCI) requesting authority to

revise Friends & Family for effect December 16, 1996.

The proposed revisions include elimination of the Friends & Family discount for calling card calls and a reduction of the discount offered, effectively increasing the rate.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize MCI

Page 1012

to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of MCI's tariff, NHPUC No. 1 are approved for effect as filed:

63rd Revised Page 1

35th Revised Page 2

9th Revised Page 25.2

10th Revised Page 25.3

2nd Revised Page 25.3.1;

and it is

FURTHER ORDERED, that MCI file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this tenth day of December, 1996.

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NH.PUC*12/10/96*[89455]*81 NH PUC 1013*American Business Alliance, Inc., dba Commercial Phone Group

[Go to End of 89455]

81 NH PUC 1013

Re American Business Alliance, Inc., dba Commercial Phone Group

DS 96-373
Order No. 22,446

New Hampshire Public Utilities Commission

December 10, 1996

ORDER approving tariff revisions to provide notice of an additional name under which an

interexchange telephone carrier would be doing business.

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1. CORPORATIONS, § 1

[N.H.] Corporate names — Trade names — Changes and additions — Notation of additional name under which business would be conducted — Associated tariff revisions — Interexchange telephone carrier. p. 1013.

BY THE COMMISSION:

ORDER

[1] On November 8, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from American Business Alliance, Inc., (ABA) requesting authority to revise its tariff to do business as Commercial Phone Group (CPG) for effect December 7, 1996.

The proposed tariff is identical to the approved ABA tariff NHPUC No. 1, except that Commercial Phone Group has been added to reflect that ABA is also doing business as CPG. ABA submitted documentation from the New Hampshire Secretary of State's Office that ABA is registered to do business as Commercial Phone Group.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize ABA to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

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

FURTHER ORDERED, that ABA file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this tenth day of December, 1996.

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NH.PUC*12/10/96*[89456]*81 NH PUC 1014*Touch 1 Communications, Inc.

[Go to End of 89456]

81 NH PUC 1014

Re Touch 1 Communications, Inc.

DS 96-367
Order No. 22,447

New Hampshire Public Utilities Commission

December 10, 1996

ORDER authorizing an interexchange telephone carrier to make various tariff revisions, including incorporation of "888" dialing within the carrier's "800" toll-free service plans and inclusion of Hawaii and the District of Columbia within travel card coverage.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — "800" toll-free service — Expansion to include "888" dialing — Travel card services — Expansion to include Hawaii and the District of Columbia — Interexchange carrier. p. 1014.

BY THE COMMISSION:

ORDER

[1] On November 5, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from Touch 1 Communications, Inc., (Touch 1) requesting authority to make administrative changes to its tariff.

The proposed changes include spelling corrections and the addition of 888 to Touch 1's 800 toll-free services. Touch 1 Travel Card is clarified to include calls to the contiguous 48 states, the District of Columbia and Hawaii.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize Touch 1 to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of Touch 1's tariff, NHPUC No. 2 are approved for effect as of the date of this order:

1st Revised Title Page

2nd Revised Page 1

1st Revised Page 3

1st Revised Page 6

2nd Revised Page 18

1st Revised Page 19

1st Revised Page 23

1st Revised Page 24;

and it is

FURTHER ORDERED, that Touch 1 file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this tenth day of December, 1996.

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NH.PUC*12/10/96*[89457]*81 NH PUC 1014*LDDS Communications, Inc.

[Go to End of 89457]

81 NH PUC 1014

Re LDDS Communications, Inc.

DS 96-355
Order No. 22,448

New Hampshire Public Utilities Commission

December 10, 1996

ORDER authorizing an interexchange telephone carrier to implement a special promotion for new "WorldCom Advantage" customers and to institute a surcharge applicable to those customers who are not billed directly by the carrier but nevertheless use the carrier's network to complete calls.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Special promotional discounts — For new subscribers to "WorldCom Advantage"

Page 1014

service — Minimum commitment period as a factor — Interexchange carrier. p. 1015.

2. RATES, § 582

[N.H.] Telephone rate design — Toll service — Billed measured service — Institution of surcharge — Applicability — To those customers using the network but not billed directly by the carrier — Interexchange carrier. p. 1015.

BY THE COMMISSION:

ORDER

[1, 2] On October 29, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from LDDS Communications, Inc., (LDDS) requesting authority to add a WorldCom Advantage Plus II promotional rate and revise LEC Billed Measured Service.

The WorldCom Advantage Plus II Promotion offers new customers who sign a one or two year term commitment discounted rates for switched or special access.

Local exchange carrier (LEC) Billed Measured Service is being revised to add a surcharge for calls placed by customers who have not contacted LDDS to provide a billing address but use the LDDS network to complete calls. These customers are billed by the LEC for LDDS.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize LDDS to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of LDDS' tariff, NHPUC No. 2 are approved for effect as of the date of this order:

13th Revised Page 1 13th Revised Page 1.1 5th Revised Page 1.2 4th Revised Page 55 Original Page 109.7 1st Revised Page 109.8 in lieu of Original Original Page 109.9 Original Page 109.10;

and it is

FURTHER ORDERED, that LDDS file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this tenth day of December, 1996.

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NH.PUC*12/10/96*[89458]*81 NH PUC 1015*LCI International Telecom Corporation

[Go to End of 89458]

81 NH PUC 1015

Re LCI International Telecom Corporation

DS 96-340
Order No. 22,449

New Hampshire Public Utilities Commission

December 10, 1996

ORDER authorizing an interexchange telephone carrier to revise various of its calling plans, including "Integrity," "Simply Guaranteed," and "Simply Business" options.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Tariff revisions — Grandfathering and restructuring of existing options — Introduction of new plans and promotions — "Integrity," "Simply Guaranteed," and "Simply Business" options — Interexchange telephone carrier. p. 1016.

Page 1015

BY THE COMMISSION:

ORDER

[1] On October 22, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from LCI International Telecom Corporation (LCI) concerning several tariff revisions. LCI requests authority to add language which would grandfather its Integrity service, restructure the rates for Simply Guaranteed and Integrity, add new promotions, and introduce Option D.

LCI proposes that customers who have subscribed to Integrity, Option A and B, prior to November 21, 1996, be allowed to continue to take that service but that no additional subscribers to that service be allowed.

LCI introduces Simply Business, Option D, which offers customers outbound toll or inbound toll-free service with rates dependent on the customer's choice of a term commitment or monthly option.

Simply Guaranteed and Integrity Option C rates are being restructured to introduce IntraLATA pricing.

LCI introduces three new promotions. Simply Guaranteed IntraState Promotion offers new customers discounted rates for one year. Fee Waiver waives the monthly subscription fee associated with Option 2 of Simply Guaranteed and/or Integrity Option C. PIC Change Promotion reimburses customers of Simply Guaranteed and/or Integrity Option C the amount charged by the Local Exchange Carrier (LEC) to switch or reimburses customers up to $10 of the amount charged by the LEC to switch from a previous intraLATA carrier to LCI.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize LCI to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of LCI's tariff, NHPUC No. 3 are approved for effect as of the date of this order:

7th Revised Page 3.1

Section 2, 3rd Revised Page 10

Section 2, Original Page 13.1

Section 4, 2nd Revised Page 12

Section 4, 1st Revised Page 12.1

Section 4, 2nd Revised Page 18

Section 4, 1st Revised Page 19

Section 4, 3rd Revised Page 20

Section 4, 3rd Revised Page 22

Section 4, 2nd Revised Page 23

Section 4, 3rd Revised Page 24

Section 4, 2nd Revised Page 25

Section 4, 2nd Revised Page 26

Section 8, Original Page 1

Section 8, Original Page 2

Section 8, Original Page 3;

and it is

FURTHER ORDERED, that LCI file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this tenth day of December, 1996.

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NH.PUC*12/10/96*[89459]*81 NH PUC 1016*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 89459]

81 NH PUC 1016

Re New England Telephone and Telegraph Company dba NYNEX

DS 96-371
Order No. 22,450

New Hampshire Public Utilities Commission

December 10, 1996

ORDER suspending a local exchange telephone carrier's proposed restructuring of the local transport aspect of intrastate switched access service.

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1. SERVICE, § 467

[N.H.] Telephone — Switching — Switched access service — Proposed restructuring of associated local transport component — Suspension of proposed tariffs — Local exchange carrier. p. 1017.

2. RATES, § 248

[N.H.] Schedules and procedure — Suspension — Of proposed restructuring of existing service offering — Local transport for intrastate switched access service — Suspension as allowing for adequate investigatory period — Local exchange telephone carrier. p. 1017.

BY THE COMMISSION:

ORDER

[1, 2] On November 12, 1996, New England Telephone and Telegraph Company d/b/a NYNEX (NYNEX) filed proposed tariff pages providing for the restructure of the manner in which local transport for intrastate Switched Access Service is provided and billed, for effect December 12, 1996. As part of its filing, NYNEX provided a Tariff Filing Support Package. This filing is a refiling of Local Transport Restructure filing which was filed August 1, 1996 for effect August 31, 1996 but which was withdrawn on August 23, 1996. In addition, NYNEX states that this proposed filing utilizes the same structure as is provided in the NYNEX FCC No. 1 tariff. NYNEX states further that this proposed filing is revenue neutral.

Staff requires time to investigate the filing and supporting materials and, therefore, requests that the proposed tariff pages be suspended.

We have reviewed Staff's request and will suspend the proposed tariff pages to allow a thorough review of the filing and supporting materials.

Based upon the foregoing, it is hereby

ORDERED, that the following tariff pages of New England Telephone and Telegraph Company d/b/a NYNEX are SUSPENDED:

NHPUC - No. 79 Access Services Section 1 - Original of Pages 9.1 and 11.1 Section 1 - Third Revision of Pages 6, 9 and 11 Canceling Second Revision Section 1 - Original of 1st Supplement of Pages 7 and 7.1 Section 1 - 1st Supplement of Page 10.1 In Lieu of Original

Section 2 - First Revision of Page 17 Canceling Original Section 2 - Second Revision of 1st Supplement of Page 16 In Lieu of First Revision Canceling Original

Section 3 - Original of Page 4.1 Section 3 - First Revision of Page 4 Canceling Original

Section 4 - First Revision of Page 9 Canceling Original

Section 6 - Original of Pages 4.1, 5.1, 16.1, 18.1 and 22 Section 6 - First Revision of Page 4 Canceling Original Section 6 - Fourth Revision of Page 5 Canceling Third Revision Section 6 - Original of 1st Supplement of Pages 16 and 18 Section 6 - Second Revision of 1st Supplement of Pages 17 and 21 In Lieu of First Revision Canceling Original

Section 30 - Original of Pages 7.2, 7.3, 7.4, 7.5 and 7.6 Section 30 - First Revision of Page 4 Canceling Original Section 30 - Second Revision of 1st Supplement of Pages 7 and 7.1 In Lieu of First Revision Canceling Original Section 30 - Third Revision of 1st Supplement of Page 6 In Lieu of Second Revision Canceling First Revision

By order of the Public Utilities Commission of New Hampshire this tenth day of December, 1996.

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NH.PUC*12/10/96*[89460]*81 NH PUC 1018*Northern Utilities, Inc.

[Go to End of 89460]

81 NH PUC 1018

Re Northern Utilities, Inc.

DR 96-334
Order No. 22,451

New Hampshire Public Utilities Commission

December 10, 1996

ORDER adopting a procedural schedule as to a natural gas local distribution company's most recent demand-side management (DSM) program filing, under which the utility plans to keep largely intact its last approved DSM program, except that wall insulation projects would be eliminated as being noncost-effective.

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1. CONSERVATION, § 1

[N.H.] Demand-side management plans — Updated filing — Proposed retention of most residential and commercial program components — But elimination of wall insulation projects — Procedural schedule — Local gas distribution company. p. 1018.

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

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) Programs proposal for the period November 1, 1996 through October 31, 1997. Northern essentially proposes continuing to offer its currently approved DSM programs, with one modification, for an additional year. On October 23, 1996, Northern filed schedules providing the benefit-cost ratios for each program along with supporting workpapers.

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 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 and first technical session, Northern 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	December 6, 1996
Data Requests by Staff and Intervenors	December 11, 1996
Company Data Responses	December 20, 1996
Technical Session	December 30, 1996
Testimony by Staff and Intervenors	January 9, 1997
Data Requests by the Company	January 16, 1997
Data Responses by Staff and Intervenors	January 22, 1997
Settlement Conference	January 29, 1997
Filing of Settlement Agreement, if any	February 5, 1997
Hearing	February 12, 1997.

[1] Also at the prehearing conference, in accordance with the Order of Notice, Northern and Staff stated their positions with regard to

Page 1018

the filing. Northern stated that it proposes essentially continuing the same programs as approved by the Commission in Order No. 21,881 (October 30, 1995) in Docket DR 95-101

except that wall insulation, which does not appear to be a cost-effective measure, would no longer be offered to residential customers. Northern also stated that the filing contained updated conservation charges.

Staff stated that it believed the significant issues to be addressed in this proceeding are: 1) the budgetary and participation goals of the programs; 2) how Northern intends to move forward with its Commercial and Industrial (C&I) financing option; 3) whether there is a need to disaggregate small and large C&I surcharges based on participation rates and benefits and costs of the C&I programs; and 4) that the costs of Northern's DSM pilot program have been reconciled and that any over/under-recoveries have been included in the calculation of the conservation charges.

The OCA was not present at the prehearing conference.

We find the proposed procedural schedule, as modified by Northern and Staff, to be reasonable with one exception and will, therefore, approve it subject to the following modification. Because of our statutorily imposed deadline to complete the Electric Utility Restructuring Plan by February 28, 1997, we are making an effort not to schedule new hearings during February. For that reason, the hearing in this docket is tentatively set for March 11, 1997. Any party who is not able to appear on this date should contact the Executive Director and Secretary. Should the parties reach a settlement in this case, we will schedule an earlier settlement hearing, before a hearings examiner, in February.

Based upon the foregoing, it is hereby

ORDERED, that the proposed procedural schedule delineated above is APPROVED as modified regarding the hearing date.

By order of the Public Utilities Commission of New Hampshire this tenth day of December, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Northern Utilities, Inc., DR 95-101, Order No. 21,881, 80 NH PUC 682, Oct. 30, 1995.

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NH.PUC*12/10/96*[89461]*81 NH PUC 1019*Statewide Electric Utility Restructuring Plan

[Go to End of 89461]

81 NH PUC 1019

Re Statewide Electric Utility Restructuring Plan

DR 96-150
Order No. 22,452

New Hampshire Public Utilities Commission

December 10, 1996

ORDER revising the procedural schedule relative to the submission of testimony and data responses by various electric utilities in the course of a proceeding examining a proposed restructuring of the state's electric utility industry. Commission also announces that an outside consultant, LaCapra Associates, will make a public presentation as to its analysis of the stranded cost issue.

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1. PROCEDURE, § 2

[N.H.] Commission authority to govern procedural direction — In proceeding addressing restructuring of electric utility industry — Revision of procedural schedule — As to submission of testimony and data responses — So as to accommodate need for additional discovery time. p. 1020.

2. ELECTRICITY, § 1

[N.H.] Industry restructuring proceeding — Procedural schedule — Revision — As to submission of testimony and data responses — So as to accommodate need for additional discovery time. p. 1020.

3. EXPENSES, § 120

[N.H.] Electric utilities — Industry restructuring proceeding — Cost issues — Stranded costs associated with the sale or divestiture of generating assets — Analysis of issue by outside consultant — Notice of public presentation of results. p. 1020.

BY THE COMMISSION:

ORDER

[1-3] This order establishes a revised procedural schedule with respect to the hearings previously scheduled by the New Hampshire Public Utilities Commission (Commission) in order to establish interim stranded cost charges for each jurisdictional electric utility in this proceeding. The impetus for this revised schedule is a November 26, 1996 letter from Public Service Company of New Hampshire (PSNH) requesting additional time to conduct discovery and prepare for its interim stranded cost proceeding. To date, PSNH is the only jurisdictional utility to make such a request.

After considering PSNH's request and reviewing the entire schedule, we will revise the procedural schedule in order to provide PSNH and the other electric utilities in this proceeding with a greater opportunity to conduct discovery in the event that any intervenors file testimony in advance of such hearings. The revised procedural schedule is attached to this order as Appendix A.

We also take this opportunity to announce our intention to call one or more members of the consulting firm of LaCapra Associates to make a presentation on the record of its analysis regarding interim stranded cost issues.[1(142)] Although we do not believe that we are required to provide such a public presentation of LaCapra Associates' analysis, our intention is to facilitate an open dialogue among the parties, the Commission and its advisors. We have determined that it is in the public good to conduct an investigation relative to the interim stranded cost claims of each jurisdictional electric utility, even though RSA 374-F does not require that this be conducted as a rate proceeding. *See*, RSA 374-F:4,VI.(a). LaCapra Associates is assisting us in this investigation. We believe that allowing the parties to hear a presentation on the record of LaCapra Associates' advice to us will help promote an open and public debate over this contentious issue.

We anticipate receiving a written report from LaCapra Associates on or about January 2, 1997. We will make this report available to the parties in sufficient time for reasonable discovery before related testimony is presented according to the schedule in Appendix A.

Based upon the foregoing, it is hereby

ORDERED, that the procedural schedule in this matter is revised as set forth herein.

By order of the Public Utilities Commission of New Hampshire this tenth day of December, 1996.

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

APPENDIX A

UNITIL POWER CORPORATION

INTERIM STRANDED COST HEARINGS

Intervenor Testimony	December 16, 1996
Company Data Requests	December 23, 1996
Intervenor Data Responses	December 30, 1996
Hearings	January 6* & 7, 1997

GRANITE STATE ELECTRIC COMPANY
INTERIM STRANDED COST HEARINGS

Intervenor Testimony	December 19, 1996
Company Data Requests	December 27, 1996
Intervenor Data Responses	January 3, 1997
Hearings	January 8 & 9, 1997

NEW HAMPSHIRE ELECTRIC COOPERATIVE
INTERIM STRANDED COST HEARINGS

Intervenor Testimony	December 20, 1996
Company Data Requests	December 27, 1996
Intervenor Data Responses	January 3, 1997
Hearing	January 10, 1997

CONNECTICUT VALLEY ELECTRIC COMPANY
INTERIM STRANDED COST HEARINGS

Intervenor Testimony	December 27, 1996
Company Data Requests	January 3, 1997
Intervenor Data Responses	January 10, 1997
Hearings	January 15, 16, 1997

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE
INTERIM STRANDED COST HEARINGS

Intervenor Testimony	December 30, 1996

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Company Data Requests                        January 6, 1997
Intervenor Data Responses                   January 13, 1997
Hearings                 January 17, 21 & January 22, 1997
           COMMISSION CONSULTANT'S PRESENTATION
Commission Releases                          January 3, 1997
Consultant's Report
Data Requests                               January 10, 1997
Data Responses                              January 17, 1997
Commission Consultant's               January 27*, 28, 1997
  Presentation
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*Hearings on January 6 and January 27 will begin at 11:00 a.m. All other hearings are scheduled to begin at 10:00 a.m.

FOOTNOTES

[1]LaCapra currently serves as a consultant to the Commission and was designated as a decisional employee pursuant to RSA 363:30-36. *See*, Order No. 22,419 (November 25, 1996)

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.

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NH.PUC*12/11/96*[89462]*81 NH PUC 1022*Tioga River Water Company

[Go to End of 89462]

81 NH PUC 1022

Re Tioga River Water Company

DR 96-300
Order No. 22,453

New Hampshire Public Utilities Commission

December 11, 1996

ORDER suspending and scheduling prehearing conferences relative to a water utility's petition for a 58% 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. 1022.

2. RATES, § 595

[N.H.] Water rate design — Proposed rate increase — Of over 50% — Necessity of suspension — To allow for adequate investigatory period — Issues to be addressed — Plant additions — System management — Metering — Rate case expense. p. 1022.

BY THE COMMISSION:

ORDER

[1, 2] On September 13, 1996, Tioga River Water Company (Tioga) filed with the New Hampshire Public Utilities Commission (Commission) a Notice of Intent to File Rate Schedules and, on November 13, 1996, filed revised schedules and supporting testimony. Tioga proposes an overall revenue increase of $3,964 or 58%. Pursuant to RSA 378:28 the new rates would become effective on January 1, 1997.

The filing raises issues concerning but not limited to, plant additions, metering, 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 Tioga's Tariff No. 1 Water First Revised Page No. 1 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 proceeding be held before the Commission at its offices at 8 Old Suncook Road, Concord, New Hampshire on January 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, Tioga, staff and the Intervenors hold a First Technical Session to review the Petition and allow Tioga 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 Tioga 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 December 29, 1996; and it is

FURTHER ORDERED, that Tioga 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 Belmont by first class U.S. Mail, postmarked no later than December 29, 1996; 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

Tioga and the Office of Consumer Advocate on or before January 21, 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 January 24, 1997.

By order of the Public Utilities Commission of New Hampshire this eleventh day of December, 1996.

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NH.PUC*12/11/96*[89463]*81 NH PUC 1023*Public Service Company of New Hampshire

[Go to End of 89463]

81 NH PUC 1023

Re Public Service Company of New Hampshire

DE 96-370
Order No. 22,454

New Hampshire Public Utilities Commission

December 11, 1996

ORDER authorizing an electric utility to construct and maintain electric lines and fiber optic cables using existing transmission lines crossing over public waters at 10 sites around the southeastern part of the state.

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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. 1024.

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. 1024.

BY THE COMMISSION:

ORDER

On November 8, 1996, Public Service Company of New Hampshire (PSNH) filed with the New Hampshire Public Utilities Commission (Commission) a petition pursuant to RSA 371:17 for licenses to construct and maintain electric lines and fiber optic cable at existing electric transmission line public water crossings over public waters at ten locations in the Cities of Dover, Manchester, Nashua, and Portsmouth, and in the Towns of Hooksett and Hudson, 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 that of the ten existing transmission line crossings, nine have been previously licensed by the Commission, and one crossing, due to an oversight, has not been previously licensed. The unlicensed crossing was found during PSNH's preparation for upgrading the reliability and capacity of the communications system used in its electric system operations.

A summary listing of the subject crossings is attached to the Petition as Appendix A, which includes for each crossing the PSNH line number and voltage, crossing location, and docket and order numbers for each crossing previously licensed. Additionally, Appendices B through K detail the location, clearance, distances and design of the proposed fiber optic cable and existing transmission structures. 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.

On three 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. The three crossings at which OPGW cable will be installed are the two Line 307 crossings of the Piscataqua River in Dover and Portsmouth, and the Line 0-161 crossing of the Merrimack River in Hooksett. The OPGW cable will be installed above the existing phase conductors and will not affect the existing clearance between the water and the lowest existing cable.

On the other seven existing crossings, PSNH proposes to install an underbuilt all-dielectric self-supporting fiber optic (ADSS) cable. These crossings consist of: Line K165 and Line G192 crossings of the Nashua River in Nashua; Line G192 crossing of the Merrimack River between Nashua and Hudson; Line 372 crossing of the Merrimack River in Manchester; two Line 3891 crossings of the Nashua River in
Nashua, which PSNH considers as a single crossing; two Line R169 crossings of the Cocheco River in Dover, which PSNH also considers as a single crossing, and Line M183 crossing of the Cocheco River in Dover.

The Line G192 crossing of the Nashua River in Dover is the one crossing not previously licensed by the Commission. PSNH has stated that it owns the land in fee on both sides of the Nashua River in the location of this crossing.

[1, 2] PSNH has attested and Staff agrees that the existing 115 vK, Line G192 crossing of the Nashua River in Nashua, and the construction of the fiber optic cables will meet or exceed the requirements of the 1993 National Electrical Safety Code. 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 following table summarizes information regarding these crossings:

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

Summary of PSNH Petition Information

Line No.	*Line Voltage*	*Location*	*NHPUC Docket*	*NHPUC Order*	*Appendix*
307	345 kV	Piscataqua River	D-SF6213	10,625	B
(1)		Dover			
307	345 kV	Piscataqua River	D-SF6213	10,625	C
(1)		Portsmouth			
0-161	115 kV	Merrimack River	DE 74-153	11,580	D
(1)		Hooksett			
K165	115 kV	Nashua River	DE 74-224	11,691	E
(2)		Nashua			
G192	115 kV	Merrimack River	DE 76-22	12,219	F
(2)		Nashua/Hudson			
372	34.5 kV	Merrimack River	DE 76-22	12,219	G
(2)		Manchester			
3891	34.5 kV	Nashua River	D-E6448	10,945	H
(2)		Nashua			
(3)					
R169	115 kV	Cocheco River	DE 76-22	12,219	I
(2)		Dover			
(3)					
M183	115 kV	Cocheco River	DE 76-22	12,219	J
(2)		Dover			
G192	115 kV	Nashua River	Not licensed		K
(2)		Nashua			

(1) OPGW
(2) ADSS
(3) Two 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 in the Cities of Dover, Manchester, Nashua and Portsmouth, and the Towns of Hooksett and Hudson, New Hampshire, as well as associated plant depicted in Appendices A through K and other documentation on file with this Commission 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 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 aforementioned Towns and Cities, such publications to be no later than December 18, 1996 and to be documented by affidavit filed with this office on or before December 25, 1996; 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 December 25, 1996; and it is

FURTHER ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or file a written request for a hearing on this matter before the Commission no later than January 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 January 8, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective January 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 eleventh day of December, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DE 6448, Order No. 10,945, 58 NH PUC 28, May 15, 1973. [N.H.] Re Public Service Co. of New Hampshire, DE 74-153, Order No. 11,580, 59 NH PUC 287, Sept. 30, 1974. [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*12/16/96*[89464]*81 NH PUC 1026*Consumers New Hampshire Water Company

[Go to End of 89464]

81 NH PUC 1026

Re Consumers New Hampshire Water Company

DR 96-227
Order No. 22,455

New Hampshire Public Utilities Commission

December 16, 1996

ORDER finding it premature to rule on the accounting and/or rate-making treatment of costs incurred by a water utility pursuant to a municipally initiated action in eminent domain.

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1. EMINENT DOMAIN, § 8

[N.H.] Compensation issues — Expenses incurred by target of condemnation action — Litigation expense as possible component of compensatory damages — Assessment as of end of proceeding — Water utility and municipality. p. 1027.

2. EXPENSES, § 89

[N.H.] Rate case expense — Assessment of — As of end of proceeding — Same policy for condemnation-related expenses — Water utility and municipality. p. 1027.

BY THE COMMISSION:

ORDER

The Town of Hudson (Hudson or the Town) petitioned the New Hampshire Public Utilities Commission (Commission), on July 11, 1996, pursuant to RSA 38, 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.

In its Motion, Consumers indicates that its legal expenses in this proceeding may well be in the range of $250,000 to $300,000. This estimate is derived from Consumers' expectation of responding to Hudson's data requests, reviewing and analyzing Hudson's case, conducting discovery on that case, preparing testimony and exhibits in response, as well as hearing days, briefing, and any appellate activity. Consumers further indicates that if it is required to account for such expenses on a current basis, *i.e.* applied to current operations, it would significantly impact its operating results, possibly requiring rate relief.

After consultation with the Commission's Finance Department, Consumers has begun to accumulate its case expenses in a deferred account, pending subsequent action by the Commission as to appropriate recovery of these expenses. However, Consumers has been informed by its auditors that Generally Accepted Accounting Principles will not permit deferral of these costs in the absence of a Commission order providing a method for the recovery of these costs. Accordingly, Consumers' Motion requests that the Commission provide for recovery of these costs in one of two ways: 1) if Hudson successfully acquires Consumers' property as a result of this docket, Consumers be entitled to recover its case expenses as part of the damages to be paid by Hudson in connection with such acquisition; or 2) if Hudson is unsuccessful, Consumers be entitled to recover its case expenses in a surcharge on rates to be charged to Consumers' customers within the Town of Hudson, over a period of time to be determined by the Commission.

On October 9, 1996, the Town of Hudson filed an Objection to Consumers New Hampshire

Water Company's Motion. In its Objection, Hudson notes that RSA 38 does not provide for a utility to receive its legal costs in such a proceeding, and indicates that RSA 38:9 provides only that Commission expenses be "paid by the parties involved, in the manner fixed by the Commission." The Town further indicates that Consumers could mitigate its case expenses by negotiating with the Town, that Consumers seems to suggest that it cannot be asked to bear any of the costs of such a proceeding, and that, by potentially burdening the Town with all of the costs of the proceeding, it

removes any incentive for Consumers to negotiate, settle, or to otherwise minimize and resolve issues in dispute. The Town, in its Objection, asks the Commission to deny Consumers's Motion or, in the alternative, adopt an Order specifying that case expenses "shall be borne by Consumers and its shareholders."

[1, 2] Based upon our review of RSA 38, we find no specific guidance for making a determination as to the manner in which such costs are to be recovered by a utility subject to such a condemnation proceeding. Given the lack of express authority to grant the relief requested by Consumers, our preliminary view is that Consumers should absorb its share of the attendant costs pending the outcome of the proceeding, at which time we will determine what, if any, recovery is appropriate. This approach is consistent with our traditional treatment of rate case expenses. We believe, therefore, that Consumers' Motion is premature and that it is inappropriate for the Commission to grant the requested relief at this stage of the proceeding.

Based upon the foregoing, it is hereby

ORDERED, that Consumer's Motion for accounting treatment and recovery is DENIED.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of December, 1996.

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NH.PUC*12/16/96*[89465]*81 NH PUC 1027*MFS Intelenet of New Hampshire, Inc.

[Go to End of 89465]

81 NH PUC 1027

Re MFS Intelenet of New Hampshire, Inc.

DS 96-383
Order No. 22,456

New Hampshire Public Utilities Commission

December 16, 1996

ORDER authorizing an interexchange telephone carrier to make various tariff revisions as to customer responsibilities for answer supervision and payment of taxes on toll-free calling using special access.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll services — "800" toll-free services — Tariff revisions — As to customers requiring special access — Customer responsibility for associated answer supervision — Customer responsibility for associated taxes — Interexchange carrier. p. 1027.

BY THE COMMISSION:

ORDER

[1] On November 18, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from MFS Intelenet of New Hampshire, Inc., (MFS) requesting authority to revise terms and conditions in its tariff, for effect December 18, 1996.

The proposed revisions specify that toll-free (800) customers who use special access are responsible for providing answer supervision so that MFS may properly time calls. In addition, revisions clarify that the customer is responsible for all local, state and federal taxes assessed on MFS' provision of service.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize MFS to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of MFS' tariff, NHPUC No. 1 are approved for effect as filed:

12th Revised Page 1 3rd Revised Page 8 in lieu of 2nd Revision 2nd Revised Page 17;

and it is

FURTHER ORDERED, that MFS file properly annotated tariff pages in compliance

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with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this sixteenth day of December, 1996.

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NH.PUC*12/16/96*[89466]*81 NH PUC 1028*OneStar Direct Access, Inc.

[Go to End of 89466]

81 NH PUC 1028

Re OneStar Direct Access, Inc.

DS 96-365
Order No. 22,457

New Hampshire Public Utilities Commission

December 16, 1996

ORDER approving changes to more than 50% of an interexchange telephone carrier's tariffs, inclusive of the introduction of new flat-rate outbound and inbound calling plans and provision for sharing of an "800" number service for similar customers located within the same geographical area.

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1. RATES, § 584

[N.H.] Telephone rate design — Toll service — Flat-rate options — Introduction of new "Interlink" outbound and inbound toll products — Interexchange carrier. p. 1028.

2. RATES, § 582

[N.H.] Telephone rate design — Toll service — "800" toll-free calling arrangements — Introduction of shared number option — For similar customers in same region — As distinguished by personal identification numbers — Interexchange carrier. p. 1028.

BY THE COMMISSION:

ORDER

[1, 2] On November 6, 1996, the New Hampshire Public Utilities Commission (Commission) received a petition from OneStar Direct Access Inc., (OneStar) requesting authority to revise more than 50 percent of the existing tariff pages and thus, pursuant to NH Admin. Rules, Puc 1601.05(b) (2), introduce NHPUC Tariff No. 6.

The proposed tariff introduces new services which include OneStar Interlink One, a flat outbound calling service, and OneStar Interlink One 800, a flat inbound calling service. A Shared 800 Number Program has also been added which allows similar customers within the same geographical location to share an 800 service by using an assigned 4-digit Personal Identification Number (PIN). In addition, customers may choose to have their 800 numbers listed in a National 800 Electronic Service Directory. The new tariff also adds incentives to the current Coupon Program and Employee Advantage Program along with a Customer Appreciation promotion and discounts on International Service.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire

intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize OneStar to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that OneStar's tariff, NHPUC No. 6, is approved for effect as filed, as of the date of this order; and it is

FURTHER ORDERED, that OneStar file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this sixteenth day of December, 1996.

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NH.PUC*12/23/96*[89467]*81 NH PUC 1029*New Hampshire Electric Cooperative, Inc.

[Go to End of 89467]

81 NH PUC 1029

Re New Hampshire Electric Cooperative, Inc.

DR 96-382
Order No. 22,458

New Hampshire Public Utilities Commission

December 23, 1996

ORDER approving a power cost adjustment rate of 0.440 cents per kilowatt-hour for an electric cooperative. A short-term energy rate payable to small power producers likewise is approved.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 13

[N.H.] Direct energy costs — Power cost adjustment rate — Factors affecting reduction in charge — Changes in wholesale supplier rates — Nuclear-related outage and refueling costs — Partial deferral of refueling costs — Electric cooperative. p. 1030.

2. COGENERATION, § 28

[N.H.] Rates — For purchases of power by electric cooperative from qualifying facilities — Avoided-cost basis — Energy rate component — Short-term rates. p. 1030.

APPEARANCES: Dean, Rice and Howard, by Mark W. Dean, Esq. on behalf of New Hampshire Electric Cooperative, Inc.; Patrick J. Moast and James J. Cunningham, Jr. on behalf of the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On November 21, 1996, the New Hampshire Electric Cooperative, Inc. (NHEC) filed with the New Hampshire Public Utilities Commission (Commission) a petition and supporting testimony and exhibits requesting tariff changes to its Power Cost Adjustment (PCA) rate and its Short-Term Avoided Cost rates for effect January 1, 1997 through June 30, 1997. At a duly noticed hearing on December 12, 1996, NHEC Rate Analyst, Heather K. Lucas, testified in support of NHEC's proposed PCA factor.

II. POSITIONS OF NHEC AND STAFF

A. *NHEC*

NHEC proposed a PCA factor of $0.00440 per kWh effective for all meters read on and after January 1, 1997 through June 30, 1997. The proposed PCA factor represents a decrease of $0.00394 per kWh when compared to the current PCA factor of $0.00834 per kWh. For a typical customer using 500 kWh per month under Residential Rate D, the customer's bill would decrease by $1.99 from $68.57 per month to $66.58. Further, the Company stated that if its proposed PCA is approved, the combination of the approved PCA and the temporary base rate increase as ordered by the Commission in DR 96-213 (Order No. 22,422), would result in a zero net effect on NHEC's average revenue per kWh.

NHEC's proposal includes deferring recovery of one-half of the costs associated with the fifth Seabrook refueling outage, which is scheduled for the spring of 1997, until the PCA rate scheduled to take effect for the period of January 1, 1998 through December 31, 1998. NHEC is charged the full cost associated with the Seabrook refueling through the current wholesale Fuel and Purchased Power Adjustment Clause (FPPAC), but proposed this deferral mechanism to reflect the fact that another refueling outage will not occur for approximately 20 months. Thus, for purposes of rate stability, NHEC proposes to reflect the cost of the outage over the period when the fuel will be

Page 1029

used.

NHEC also proposed Commission approval of its Short-Term Avoided Costs which will be made available to Qualifying Facilities.

B. *Staff*

Staff did not file testimony in the proceeding but submitted data requests and conducted follow-up discussions with the NHEC on a number of issues regarding NHEC's actual and forecasted power costs.

At the hearing, Staff questioned NHEC relative to its share of the PSNH joint dispatch savings because of the Millstone outages. NHEC indicated that it will receive its share of PSNH's joint dispatch savings and that these savings will reflect the outages at Millstone 1,

Millstone 2, Millstone 3 and Connecticut Yankee. Specifically, the Company indicated that the current filing reflects the following outage periods: Millstone Unit 1 outage ends on December 1, 1997; Millstone Unit 2 outage ends on August 1, 1997; and, Millstone Unit 3 outage ends on April 1, 1997. The Company confirmed that these outage dates are consistent with the outage dates that are used in the proposed PSNH Wholesale FPPAC recently filed at the Federal Energy Regulatory Commission (FERC) and the proposed PSNH Retail FPPAC recently filed at the New Hampshire Public Utilities Commission. NHEC indicated that if the outages are longer than PSNH assumptions, then greater savings will accrue to NHEC.

III. COMMISSION ANALYSIS

[1, 2] The Millstone outage periods incorporated in the Company's proposed PCA factor are consistent with the outage dates that are incorporated in the proposed PSNH Wholesale FPPAC recently filed at the Federal Energy Regulatory Commission (FERC) and the proposed PSNH Retail FPPAC recently approved by this Commission. Furthermore, we find it reasonable to allow NHEC to partially defer recovery of the costs of the scheduled refueling outage at Seabrook. Finally, we note that NHEC's proposed PCA factor reduction of $0.00394 per kWh, when combined with the recently approved temporary base rate increase in our Order No. 22,422, will result in a zero net effect on NHEC's average revenue per kWh.

Based on the above and based on our review of the record in this case, we find that NHEC's proposed PCA factor of $0.00440/kWh and the proposed Short-Term Avoided Cost are appropriate, just and reasonable for the period January 1, 1997 through June 30, 1997.

Based upon the foregoing, it is hereby ORDERED, that the Power Cost Adjustment factor for NHEC for the period January 1, 1997 through June 30, 1997 shall be $0.00440 per kWh, effective on all meters read on and after January 1, 1997; and it is

FURTHER ORDERED, that the Short-Term Avoided Cost rates paid to qualifying facilities shall be as shown in NHEC 3rd Revised Page 43 for the period January 1, 1997 through June 30, 1997; and it is

FURTHER ORDERED, that NHEC shall file tariff pages in compliance with this order no later than 15 days from the issuance date of this order.

By order of the Public Utilities Commission of New Hampshire this twenty-third day of December, 1996.

EDITOR'S APPENDIX

Citations in Text

[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*12/23/96*[89468]*81 NH PUC 1031*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 89468]

81 NH PUC 1031

Re New England Telephone and Telegraph Company dba NYNEX

DR 96-274
Order No. 22,459

New Hampshire Public Utilities Commission

December 23, 1996

ORDER suspending and scheduling hearings on 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 — Suspension of proposal — To allow for hearings on marketing practices — Local exchange carrier. p. 1031.

2. RATES, § 248

[N.H.] Schedules and procedure — Suspension — As to proposed offering of prepaid calling card service — Factors — Necessity of holding hearings on marketing practices — Local exchange carrier. p. 1031.

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 requests a hearing be held on the issues. OCA states that the NYNEX proposal raises concerns about unfair marketing practices of providers of Prepaid Calling Services and requests that the Commission impose, if necessary, regulations on all providers of Prepaid Calling Services. On September 23, 1996, the Commission issued Order No. 22,328 which suspended the proposed tariff pages pending a more thorough review of NYNEX's proposal.

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 January 29, 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 3, 1997, in a newspaper of general circulation in that portion of the State in which operation are conducted, publication to be documented by affidavit filed with the Commission on or before January 29, 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 24, 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

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FURTHER ORDERED, that any party objecting to a Petition to Intervene file said Objection on or before January 29, 1997.

FURTHER ORDERED, that the following tariff pages of NYNEX remain suspended pending the outcome of the hearing:

NHPUC No. 77 Exchange and Network Services Part A: Section 5 Page 17 First Revision Cancelling Original Section 8 Page 3 First Revision Cancelling Original Section 9 Page 16 Original Section 9 Page 17 Original

NHPUC No. 77 Rates and Charges Part M: Page 31 Second Revision Cancelling First Revision

By order of the Public Utilities Commission of New Hampshire this twenty-third day of December, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New England Teleph. & Teleg. Co. dba NYNEX, DS 96-274, Order No. 22,328, 81 NH PUC 711, Sept. 23, 1996.

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NH.PUC*12/23/96*[89469]*81 NH PUC 1032*Public Service Company of New Hampshire

[Go to End of 89469]

Re Public Service Company of New Hampshire

DR 96-068
Order No. 22,460

New Hampshire Public Utilities Commission

December 23, 1996

ORDER agreeing to hold hearings on the viability of an industrial electric customer's cogeneration alternatives for purposes of determining the reasonableness of an associated special rate contract the customer had negotiated with the utility but which the commission had rejected in Order No. 22,373 (81 NH PUC 795, *supra*). In support of its request for a hearing, the customer, Isaacson Structural Steel, Inc., argued that the commission had mistakenly excluded from its cogeneration analysis at least two valid input assumptions.

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1. RATES, § 166

[N.H.] Factors affecting reasonableness — Solicitation or retention of business — Load retention tariffs versus special rate contracts — Customer qualification for — Alternative power capability — Electric utility. p. 1033.

2. RATES, § 211

[N.H.] Special rate contracts — Factors affecting necessity of — Threat of bypass or loss of load — Customer's power alternatives — Hearings on viability of customer's cogeneration capability — Electric service. p. 1033.

BY THE COMMISSION:

ORDER

On March 12, 1996, Public Service Company of New Hampshire (PSNH) filed with the New Hampshire Public Utilities Commission (Commission) Special Contract No. NHPUC-129 (NHPUC-129), a ten-year special contract with Isaacson Structural Steel Inc. of Berlin, New Hampshire. In support of NHPUC-129, PSNH filed testimony and a technical statement. PSNH asserted in its petition that it believes Isaacson has both the experience and the ability to install and run a cogeneration facility at its fabricated structural steel manufacturing facility and that a cogeneration study

Page 1032

performed for Isaacson as well as PSNH's own cogeneration study supports Isaacson's claim, that absent approval of NHPUC-129, Isaacson would proceed with installation of cogeneration.

On October 18, 1996, after review of the special contract and supporting materials conducted pursuant to RSA 378:18 and in consideration of recently passed legislation, Laws of 1996, Chapters 129 and 186, the Commission denied approval of NHPUC-129. *See* Order No. 22,373.

The Commission found that the ten-year term of NHPUC-129 was incompatible with the legislative directive to implement full customer choice as expeditiously as possible. The Commission also questioned the viability of Isaacson's cogeneration option based on the payback period and certain input assumptions used in the cogeneration analysis submitted by PSNH in support of NHPUC-129. The Commission further indicated that the better alternative to NHPUC-129 would be service under PSNH's load retention Rate ("LR") if Isaacson is eligible.

On October 22, 1996, Isaacson filed a letter with the Commission requesting expeditious approval of PSNH Rate LR. On November 15, 1996, Isaacson filed a letter with the Commission requesting a hearing on its special contract with PSNH. In support of its request, Isaacson stated its continued commitment to pursue cogeneration at its facility. Isaacson contends that two of the input assumptions used in the cogeneration analysis cited by the Commission in Order No. 22,373, i.e., the assumed cost of oil and Isaacson's opportunity cost of capital are appropriate inputs in the model.

[1, 2] We have reviewed Isaacson's request for a hearing and believe there is a legitimate factual question concerning the results of the cogeneration analysis. Accordingly, we will grant Isaacson a hearing. Isaacson should be prepared at the hearing to present evidence demonstrating that the inputs used in the cogeneration model are still valid and why Isaacson considers cogeneration a viable option for its manufacturing facility. Additionally, we will direct PSNH to have a witness present at the hearing to address whether Isaacson qualifies for Rate LR, PSNH's load retention rate.

Based upon the foregoing, it is hereby

ORDERED, that a Hearing on the merits of Special Contract No. NHPUC-129 between Public Service Company of New Hampshire and Isaacson Structural Steel, Inc. be held at 1:30 p.m. on January 13, 1997 at the New Hampshire Public Utilities Commission, 8 Old Suncook Road, Concord, New Hampshire; 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 no later than January 3, 1997, in newspapers of general circulation throughout the State, publication to be documented by affidavit filed with the Commission on or before January 13, 1997; and it is

FURTHER ORDERED, that PSNH serve this notice directly on all customers on the service list of DR 96-068; 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 additional copies sent to PSNH, Isaacson and the Office of Consumer Advocate on or before January 8, 1997 such Petition stating the facts demonstrating how its rights, duties, privileges, immunities or other substantial interests may be affected by this 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 January 13, 1997.

By order of the Public Utilities Commission of New Hampshire this twenty-third day of December, 1996.

EDITOR'S APPENDIX

Citations in Text

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

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NH.PUC*12/24/96*[89470]*81 NH PUC 1034*Public Service Company of New Hampshire

[Go to End of 89470]

81 NH PUC 1034

Re Public Service Company of New Hampshire

DR 96-285
Order No. 22,461

New Hampshire Public Utilities Commission

December 24, 1996

ORDER addressing Clean Air Act Amendment cost components and authorizing an electric utility to implement its fuel and purchased power adjustment clause rate as proposed, inclusive of the costs of certain emissions (sulfur dioxide) allowances purchased and used from May 1995 to May 1996. Issues relating to the sale of Seabrook Unit II steam generators and the use of selective noncatalytic reduction versus selective catalytic reduction technologies at Merrimack Unit II are deferred for future consideration.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 17

[N.H.] Indirect energy costs — Fuel and purchased power adjustment clause — Costs of compliance with Clean Air Act Amendments — Inclusion of emissions trading allowances — Deferral of issue of selective noncatalytic reduction (SNCR) versus SCR technology at Merrimack Unit II — Deferral of issue of the sale of Seabrook Unit II steam generators — Electric utility. p. 1036.

2. EXPENSES, § 122

[N.H.] Electric utility — Costs of compliance with Clean Air Act Amendments — Inclusion of emissions trading allowances — Deferral of issue of selective noncatalytic reduction (SNCR) versus SCR technology at Merrimack Unit II — Deferral of issue of the sale of Seabrook Unit II steam generators — Fuel cost adjustment clause proceeding. p. 1036.

3. ELECTRICITY, § 4

[N.H.] Generating plant — Operating practices — Clean Air Act Amendment requirements — Emissions trading allowances — Selective noncatalytic reduction (SNCR) versus SCR

technology — Sale of Seabrook Unit II steam generators — As issues in fuel cost adjustment clause proceeding. p. 1036.

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.; McLane, Graf and Raulerson by Steven V. Camerino, Esq. for EnerDev, Inc.; Office of the 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 August 13, 1996, the New Hampshire Public Utilities Commission (Commission) issued an Order of Notice opening this proceeding regarding Public Service Company of New Hampshire's (PSNH) Fuel and Purchased Power Adjustment Clause (FPPAC) for the period December 1, 1996 through May 31, 1997, and set a prehearing conference for September 17, 1996. On September 12, 1996, PSNH filed testimony and exhibits supporting an FPPAC credit of $0.00347 per kWh for this period.

By Order No. 22,331 (September 23, 1996), the Commission granted the New Hampshire Electric Cooperative, Inc. (NHEC) and the Campaign for Ratepayer Rights (CRR) full intervenor status and granted EnerDev, Inc. limited intervenor status. On October 15, 1996, PSNH filed a Motion for Protective Order related to purchase prices for sulfur dioxide

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credits in response to a data request from Staff. On November 12 through 14, 1996, the Commission heard testimony from the parties and Staff concerning the Clean Air Act Amendments of 1990 (CAAA) at Merrimack Station, Unit II and the sale of four steam generators from Seabrook Unit II, which was cancelled before becoming operational. Though full intervenors, NHEC and CRR did not file testimony.

II. POSITIONS OF THE PARTIES AND STAFF

A. *PSNH*

PSNH argued that the amount it would be entitled to collect for the costs it would have incurred to construct and operate selective non-catalytic reduction (SNCR) at Merrimack Station, Unit II pursuant to Order No. 22,192 (June 17, 1996) and Order No. 22,363 (October 16, 1996) exceeded the actual costs incurred in constructing and operating the selective catalytic reduction (SCR) system during the relevant FPPAC periods. In that light, PSNH requested that its recovery of CAAA costs be capped at the actual costs of operating SCR technology in the instant FPPAC period.

PSNH further contended that the Commission had misinterpreted N.H. Admin. R., Env-A 1203, which resulted in an erroneous conclusion that SCR costs exceeded SNCR costs. In

addition, during the hearings, PSNH provided a letter from the Director of the Department of Environmental Services, Air Resources Division (Air Resources) stating that the Commission had misinterpreted the daily emissions limits requirement of Env-A 1211.03(d).

Regarding the sale of the Unit II steam generators, PSNH argued that because Unit II parts are solely the property of the shareholders of North Atlantic Energy Company (North Atlantic), another affiliate of Northeast Utilities, the Commission had "no duty to analyze, document and support rigorously the decision to sell Unit II parts" under a prudence or used and useful analysis. Post hearing Memorandum at 7.

PSNH also argued that, even if such a prudence or used and useful standard were applied to the sale of the Unit II steam generators, there is ample evidence to conclude that the decision to sell Unit II parts was prudent. PSNH relied on the fact that the Unit I steam generators are comprised of materials that have not experienced the type of deterioration experienced in steam generators at plants constructed prior to Seabrook. PSNH further contended that, if in fact the Unit I steam generators required replacement during the operating life of the plant, the operators would have ample warning allowing time for the fabrication of new, more advanced, steam generators.

B. *OCA*

The OCA argued that, under the Rate Agreement, PSNH was not allowed to collect hypothetical costs under the Rate Agreement and, therefore, should not be allowed to pass on to ratepayers production penalty and operating costs that have not actually been incurred at Merrimack Unit II.

With regard to the sale of Unit II steam generators, the OCA asserted that North Atlantic had not conducted the type of risk analysis necessary for such a decision. The OCA testified that, if such an analysis had been conducted, North Atlantic would have concluded the sale was imprudent.

The OCA based its conclusion on the possibility of a "catastrophic" occurrence resulting in the immediate need to replace the steam generators without the necessary lead time of 30 to 36 months required for the fabrication of new generators. The OCA concluded that, although the probability of such an occurrence was low, the harm to ratepayers due to 30 to 36 months of replacement power costs was so great that the sale of the steam generators was imprudent. The OCA recommended that the Commission hold PSNH responsible for all replacement power costs should the steam generators require replacement or, in the alternative, find that North Atlantic violated RSA 374:30, which requires Commission approval of a utility transfer or lease of its works or systems, thereby breaching the Seabrook Power Contract.

C. *Staff*

Staff contended that PSNH had not adequately supported the hypothetical production penalty costs of SNCR operation at Merrimack II, and that the Commission should not allow PSNH to recover hypothetical costs. With regard to the sale of the Seabrook Unit II steam generators, Staff supported the position of PSNH relative to the prudence of the sale.

III. COMMISSION ANALYSIS

[1-3] On December 4, 1996, we issued an order of notice in DR 95-068 scheduling a further hearing for January 23, 1997 at 10:00 a.m. to re-examine the evidence relative to the costs of SCR and SNCR technology at Merrimack II pursuant to RSA 365:28. That proceeding will determine whether our decisions in Order No. 22,192 and Order No. 22,363 should be modified, altered or amended pursuant to RSA 365:28 based on the new evidence presented by PSNH in this proceeding. Thus, we make no findings relative to CAAA cost recovery in this docket, and will allow PSNH to recover its proposed CAAA costs as submitted until resolution of all issues in DR 95-068.

As we reviewed the record in this case, we found that within PSNH's actual and forecasted costs of CAAA compliance for which it now seeks recovery are $782,000 of costs associated with purchases PSNH made of sulfur dioxide allowances that were used from May 1995 through May 1996. *See*, Revised Exhibit 5-a. Those costs should, therefore, have been a component of the two relevant FPPAC filings. Because this was not addressed on the record, rather than disallow $782,000 from the FPPAC calculations as being out of time, we will approve the amount in this FPPAC period subject to adjustment pending further analysis in the June 1997 through November 1997 FPPAC as to why it was not included in the May 1995 through November 1995 FPPAC and December 1995 through May 1996 FPPAC filings.

With regard to the sale of the Seabrook Unit II steam generators, having considered all of the evidence presented, we find no basis to take action at this time. If a catastrophe such as OCA describes should occur, requiring the purchase of replacement power, responsibility for replacement power costs should be addressed at that time.

Furthermore, our authority to review the prudence of Seabrook's operation does not end with FPPAC in 2001 as argued by the OCA. The length of the Commission's authority to review Seabrook's operations was raised by the Commission Staff in DR 89-244. In order to address Staff's concerns, Northeast Utilities stipulated that the Commission retained the authority to review the prudence of Seabrook's operations over the 40 year life of the plant. *Re Public Service Company of New Hampshire/Northeast Utilities*, 114 PUR4th 385, 75 NH PUC 396, 440-441 (1990). Therefore, if New Hampshire ratepayers continue to be obligated to purchase Seabrook power or to compensate Northeast Utilities for that power in some other manner under, or because of the terms of the Rate Agreement, this Commission retains the authority to review the prudence of Seabrook's operation. Thus, we have concluded that this issue need not be addressed until it is ripe.

Regarding the decision to sell Unit II steam generators, we have noted the representations made by PSNH regarding the benefits of spare parts made in two recent cases: a) DR 94-172, the FPPAC proceeding in which PSNH with Staff proposed a Mitigation Fund to reflect in part the value of spare parts, including steam generators, that could be used at Unit I; and b) NDFC 93-1, the most recent fully litigated analysis of the nuclear decommissioning plans for Seabrook in which the availability of Unit II steam generators was described as a basis, among others, for reassurance that Seabrook will not become economically obsolete. We have asked the Executive Director to ensure that the complete files in those two dockets as well as the instant docket be stored at the Commission for review in the event that PSNH seeks recovery for replacement

power or new generators should the generators now in use need replacement.

Regarding PSNH's request for protection from disclosure of the purchase price of sulfur dioxide credits, we are concerned that the circumstances justifying protection when these credits were first an issue may have changed.

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Over the years a vigorous market in sulfur dioxide credits has developed, with considerable information in the public domain. While we will grant PSNH's request for protection in this case, consistent with past practice, we instruct PSNH that in the event it seeks protection for such credits in the future, it must present a detailed justification of the basis on which protection is appropriate, pursuant to RSA 91-A and N.H. Admin.Rules, Puc 204.08.

Based upon the foregoing, it is hereby

ORDERED, that PSNH may collect its proposed FPPAC charge as provided in Order No. 22,430 issued December 2, 1996; and it is

FURTHER ORDERED, that the $782,000 of costs associated with PSNH purchases of sulfur dioxide allowances used from May 1995 through May 1996 are approved subject to further analysis in a succeeding FPPAC period; and it is

FURTHER ORDERED, that the issue of the prudence of the sale of Seabrook Unit II steam generators will be addressed if and when ratepayers are exposed to greater costs because of the sale; and it is

FURTHER ORDERED, that PSNH's motion for protective treatment of the purchase prices for sulfur dioxide credits is GRANTED pursuant to RSA 91-A, subject to the rights of any party or the Commission to reconsider protection in light of changed circumstances.

By order of the Public Utilities Commission of New Hampshire this twenty-fourth day of December, 1996.

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 96-285, Order No. 22,331, 81 NH PUC 714, Sept. 23, 1996. [N.H.] Re Public Service Co. of New Hampshire, DR 95-068, Order No. 22,363, 81 NH PUC 766, Oct. 16, 1996. [N.H.] Re Public Service Co. of New Hampshire, DR 96-285, Order No. 22,430, 81 NH PUC 916, Dec. 2, 1996.

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NH.PUC*12/24/96*[89471]*81 NH PUC 1037*Least-cost Planning for Water Utilities

[Go to End of 89471]

Re Least-cost Planning for Water Utilities

DE 93-029
Order No. 22,462

New Hampshire Public Utilities Commission

December 24, 1996

ORDER adopting recommended principles for least-cost planning practices specific to water utilities. The least-cost planning requirements will apply only to those utilities serving 6,000 or more customers, and thus currently are applicable only to Consumers New Hampshire Water Company, Pennichuck Water Works, Hampton Water Works, and Manchester Water Works. Each utility is to develop a four-year plan taking into account such factors as supply, demand, capital budgets, main extensions, overdevelopment, environmental concerns, and local or regional master plans.

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1. WATER, § 13

[N.H.] Utility operations — Least-cost planning requirements — Applicability — To utilities serving 6,000 or more customers — Four-year planning cycle — Plan components — Demand forecasts — Both supply- and demand-side resources — Main extension policies and treatment of excess capacity — Local governmental plans — Environmental requirements — Capital limits. p. 1039.

2. CONSERVATION, § 1

[N.H.] Least-cost planning — Water utilities — Applicability — Utilities serving 6,000 or more customers — Four-year planning cycle — Plan components — Demand forecasts — Both supply- and demand-side resources —

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Main extensions and excess capacity — Local governmental plans — Environmental requirements — Capital limits. p. 1039.

APPEARANCES: John B. Pendleton, Esq. on behalf of Pennichuck Water Company; Dom S. D'Ambruoso, Esq. on behalf of Hampton Water Works and Consumers New Hampshire Water Company; Steven V. Camerino, Esq. of McLane, Graf, Raulerson & Middleton on behalf of Manchester Water Works; Thomas S. Lyle on behalf the Office of Consumer Advocate; 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

The impetus for this investigation was a 1989 rate petition by Southern New Hampshire Water Company, currently known as Consumers New Hampshire Water Company (hereinafter Consumers), requesting full recovery of the cost of facilities oversized in anticipation of future growth, and other planning issues that arose as part of the petition to increase rates. In that proceeding, the Commission Staff and the Office of the Consumer Advocate (OCA) requested that the Commission either disallow recovery of all oversized facilities until the anticipated growth for which it was constructed actually materialized or in the alternative implement some other form of risk allocation between shareholders and ratepayers. On July 31, 1991, the Commission issued Order No. 20,196 which, *inter alia*, allowed Consumers to recover on these oversized facilities but initiated a generic investigation into least cost resource planning for water utilities to address these planning issues on an industry-wide basis. *Re Southern New Hampshire Water Company, Inc.* 76 NH PUC 521, 529 (1991).

In October of 1992, the Supreme Court affirmed Order No. 20,196. *Appeal of the Office of the Consumer Advocate*, Supreme Court Docket # 91-463, unpublished Order (October 21, 1992). The Supreme Court based its affirmance of Order No. 20,196 on the Commission's commitment to proceed with a generic investigation into least cost planning for water utilities including the issues of oversized facilities.

In June of 1993, the Staff commenced its investigation into the planning practices of New Hampshire's four largest water utilities subject to the Commission's jurisdiction. Staff issued interrogatories inquiring into the resource planning currently conducted by these utilities for internal purposes. Staff's interrogatories also inquired into the water utilities' ability to perform least cost planning in accordance with the Commission's electric utility least cost planning standards and principles as developed pursuant to RSA 378:37 *et. seq. See also, Re Public Service Company of New Hampshire & a.*, 73 NH PUC 117 (1988).

The investigation was re-initiated in 1995 with the filing of another petition to increase rates by Consumers. Using the data compiled in 1993 and 1994, Staff developed a discussion paper to provide a framework for a dialogue. During technical sessions and in written responses to the discussion papers, the water utilities expressed concerns relative to the applicability or transferability of the least cost integrated resource planning processes developed for electric utilities. The water utilities pointed out that they were significantly smaller than electric utilities and had smaller customer bases as well as significantly limited in-house resources and capabilities. Thus, the water utilities argued that the incremental costs for performing least cost integrated planning would be significantly outweighed by the upward pressure on customers' rates caused by such extensive planning and regulatory requirements. Finally, the utilities argued that the demand side management principles employed in the electric industry were either ineffective or unnecessary for water utilities.

As a result of this input, Staff developed a set of recommendations for least cost planning

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reflecting these concerns. The recommendations were presented to the Commission at a hearing held on October 28, 1996. Consumers, Pennichuck Water Works (Pennichuck), Hampton Water Works (Hampton), Manchester Water Works (Manchester) and the OCA

appeared at the October 28, 1996 hearing to object to, or raise certain concerns with, Staff's recommendations.

II. STAFF'S RECOMMENDATIONS FOR WATER UTILITY LEAST COST PLANNING

1. General Recommendations

A. Filing Frequency

[1, 2] Utilities shall submit least cost integrated planning documents to the Commission every four years. Each year, one utility will submit a resource plan to the Commission. Consumers will submit its resource plan to the Commission first, by September 1997; Pennichuck will submit its resource plan to the Commission by September 1998; Hampton will submit its resource plan to the Commission by September 1999; and, Manchester will submit its resource plan to the Commission by September 2000. After one cycle of filings, Staff and the utilities will meet to consider revisions to future filings.

B. Companies Required to Submit Resource Plans

Water companies with more than 6,000 customers (Manchester, Pennichuck, Consumers and Hampton) shall submit capital budgets and associated planning documents to the Commission.

C. Planning Horizon

Each company's planning horizon shall span the duration of the company's capital budget and also provide a "snapshot" outlook of its long term supply and demand situation.

D. Analysis Milestones

The planning documents will address the company's supply, demand, capital, and main extension decisions and issues as identified in its capital budget. The report will also address when the company project resource needs occur in the future.

E. Public Process

The involvement and input of the public and community in this process shall be encouraged and supported by the investor-owned companies. Means for public input could include use of reasonably available city and regional master plans, and other municipal, county or regional resources.

2. Report Content

A. Executive Summary

Each company shall include an executive summary which describes the submittal. The summary shall include an explanation of the impact of the plan on the company's customers. The executive summary shall also include an overview of the company's current and expected supply and demand situations.

B. Demand Forecasts

Projected new customer growth and demand forecasts used in the budgets shall be consistent with the projections of new customer growth and system loads used in the informational planning documents. The forecasts shall represent the company's "most likely" or "most probable" expectations and assumptions. The company's demand forecasts shall also explain the

information on which they are based such as, to the extent appropriate, municipal, county and regional master plans.

C. Demand-Side Management Resources

Each company shall explain how it utilizes conservation options in meeting current and expected customer demands.

D. Supply-Side Resources

Utilities shall explain the basis for their supply projections which are identified in the capital budget plan and associated planning documents. The company shall explain the decision making process it used in making its resource choices.

E. Main Extensions and Over-sizing

Pursuant to Order No. 20,196, the company shall describe its decision process, policies, tariffs, and practices for main extensions, including mains which may be sized in excess of current demand. Each company shall specifically address the time horizon chosen for its planning of such mains. Issues of cost recovery and timing, with respect to excess main capacity shall be addressed.

F. Municipal Fire Protection

Pursuant to Order No. 20,196, each utility shall address its policies on fire protection, and present the company's view on municipal obligations with respect to fire protection.

G. Evaluation of Supply and Demand Resources on a Combined Basis

Companies shall explain why specific supply and demand-side resource decisions are appropriate. Reasons can include, but are not limited to, regulation, environmental factors, reliability, judgment and customer needs.

III. POSITIONS OF THE PARTIES

The record in this matter includes written comments from Pennichuck, Manchester, Consumers, Hampton, the OCA and George Sansoucy.

A. Pennichuck Water Works

In a March 22, 1996 letter to the Commission, Pennichuck presented concerns about the need for water utility least cost integrated resource planning and requested that either Pennichuck be excluded from the filing requirements, or that the docket be closed as inexpedient.

On June 6, 1996, Pennichuck reiterated its concerns identified in its March 22, 1996 letter and expressed concern that additional regulations requiring periodic filing of least cost planning documents with 10 to 15 year horizons will have a substantial impact on company personnel, resources and will result in substantial expenses.

B. Consumers New Hampshire Water Company and Hampton Water Works

In an April 8, 1996 letter to the Commission, Consumers and Hampton expressed the belief that this docket is unnecessary and should be discontinued. The companies further expressed

support for Pennichuck's March 22, 1996 recommendation that the proceeding should be closed because it is inexpedient.

In a June 6, 1996 letter to the Commission, Consumers and Hampton restated their belief that the docket is unnecessary and should be discontinued, but reiterated their commitment to cooperate with Staff regarding providing useful capital planning analysis, including Staff's recommendation for the submittal of existing capital budgets.

C. Manchester Water Works

In a March 5, 1996 letter to the Commission, Manchester submitted comments which included concern that Manchester should not be subject to Staff's resource planning recommendations because it has a limited amount of customers which are subject to Commission regulation and that it will be affected differently by Staff's recommendations because it is a municipal utility, not an investor-owned utility.

On May 30, 1996, Manchester submitted additional comments which included reiteration of its March 5, 1996 concerns and expressed additional concern that Staff's least cost integrated planning proposal would apply only to service provided by Manchester outside its city limits and that the costs associated would in turn be borne by those regulated customers only.

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D. Office of the Consumer Advocate

OCA submitted comments on February 28, 1996 supporting Staff's proposal as a reasonable balance between the benefits and costs of performing least cost integrated planning.

On April 2, 1996, OCA submitted comments to the Staff noting that the scope of the DR 93-029 proceeding appropriately should include the issue of affiliate contracts, including management services contracts.

E. George Sansoucy, P.E.

Mr. Sansoucy submitted comments on March 5, 1996 including the belief that least cost integrated resource planning should be the foundation of the mechanism by which future conflicts over prudence and the used and usefulness of capital investments could be avoided.

Mr. Sansoucy's suggestions focused on a recognition of the unique nature of water utility planning, including planning horizons, asset life, local participation in utility planning, municipal fire protection, determination of system deficiencies, filing requirements, demand forecasts, main extensions and over-sizing.

IV. COMMISSION ANALYSIS

We have reviewed the record and considered the recommendations and the testimony offered in support thereof. Based on that analysis, we believe that the least cost planning principles set forth therein reflect a valuable compromise among the expressed concerns of the parties. Accordingly, we will apply these resource planning requirements to the four water utilities participating herein, each of which serves more than 6,000 customers. We also reserve the right to apply these planning principles in the future to water companies with fewer than 6,000 customers.

Based on the foregoing; it is hereby

ORDERED, that the recommendations submitted by Staff as Exhibit 1 are hereby APPROVED in their entirety for application to Pennichuck Water Company, Hampton Water Works, Consumers New Hampshire Water Company and Manchester Water Works.

By order of the Public Utilities Commission of New Hampshire this twenty-fourth day of December, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Southern New Hampshire Water Co., DR 89-224, Order No. 20,196, 76 NH PUC 521, July 29, 1991.

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NH.PUC*12/30/96*[89472]*81 NH PUC 1041*Concord Electric Company

[Go to End of 89472]

81 NH PUC 1041

Re Concord Electric Company

DR 96-393
Order No. 22,463

Re Exeter and Hampton Electric Company

DR 96-394
Order No. 22,463

New Hampshire Public Utilities Commission

December 30, 1996

ORDER approving proposed fuel adjustment clause (FAC) and purchased power adjustment clause (PPAC) rates of two affiliated electric utilities, with FAC credits of 0.531 cents per kilowatt-hour (kwh) and 0.547 cents per kwh for Concord and Exeter, respectively, and PPAC charges of 1.253 cents per kwh and 1.187 cents per kwh for Concord and Exeter, respectively. Although accepting the proposed rates, the commission expresses concern as to the PPAC increases and related underrecoveries of demand costs.

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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 — Underrecoveries of demand costs —

APPEARANCES: Leboeuf, Lamb, Greene & MacRae by Scott J. Mueller, Esq. on behalf of Concord Electric Company and Exeter & Hampton Electric Company; Kenneth E. Traum for the New Hampshire Office of Consumer Advocate for residential ratepayers; and Patrick J. Moast and Henry J. Bergeron for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On December 2, 1996, 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 January 1 through June 30, 1997.

On December 17, 1996, 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 ($0.00531) per kWh and a PPAC rate of $0.01253 per kWh. The combined effect of the two rates will increase a typical 500 kWh residential customer's bill by $3.41 per month. UNITIL also presented calculations in support of E&H's request for a FAC credit of ($0.00547) per kWh and a PPAC rate of $0.01187 per kWh. The combined effect of the two rates will increase a typical 500 kWh residential customer's bill by $2.55 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 Frank Farlik presented the January 1997 through June 1997 UNITIL Power Corporation (UPC) production plan, associated costs, and estimated short term avoided cost rate in his direct testimony. The UPC production plan is the basis for UPC's fuel, purchased power, and transmission service costs, and 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 January through June 1997 are as follows:

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

1/1/97-6/30/97
    Demand Charge      $27.98 per kW/Month
    Base Energy Charge 0.486 cents per kWh
    Fuel Charge Rates  1.983 cents per kWh
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UPC's wholesale rates represent an overall increase in comparison to the last six month period and reflect a 42.7 percent increase in UPC's Demand Charge, a 4.0 percent increase in its Fuel Charge and a partially offsetting 35.6 percent decrease in the non-fuel related UPC Base Energy Charge.

In this proceeding, CEC and E&H propose Demand Charge increases which are due primarily to 1) UPC's reassignment and renegotiation of its Indeck Turner's Falls Purchase Power Contract from base energy to demand in its cost forecast, 2) increased short-term capacity purchases to replace Indeck's short-term capacity and 3) $2.4 million of underrecovered prior period demand charge costs.

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 3.14 cents per kWh
Off Peak             2.57 cents per kWh
All Hours            2.82 cents per kWh
Capacity Rate         $8.99 per kW-year
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B. *OCA*

While OCA did not oppose UNITIL's proposed FAC and PPCA rates, the OCA did question UNITIL witnesses on 1) requirements by CEC and E&H to buy wholesale requirements power services from UPC, 2) the price differentials between UPC's wholesale tariff rates and available market power costs, 3) the seven and one half year termination notice provision requirement for CEC and E&H to give notice for terminating their wholesale power purchase contracts with UPC and 4) whether to spread recovery of the prior period underrecovery over 12 months instead of 6 months.

C. *Commission Staff*

Staff did not oppose the Companies' filings but conducted cross examination on 1) UPC's recent termination of its Indeck Turners Falls Purchase Power Contract, 2) the reclassification of

the Indeck agreement's $6.6 million annual costs to annual demand costs in UPC's production plan and 3) the causes of the UPC's prior period underrecovered demand costs.

At the December 17, 1996 hearing, Staff requested copies of UPC's renegotiated Indeck contract and UPC's economic analysis which was performed by UPC to determine whether the renegotiated Indeck agreement was cost effective. In response to Staff's request, the combined CEC and E&H companies filed a December 19, 1996 request for a protective order to treat the Indeck termination and options agreement as confidential commercial information. By this Order, we approve CEC and E&H's request for confidentiality consistent with confidential treatment afforded the agreement in a previous proceeding.

At the hearing, Staff also identified a mathematical error in UPC's calculation of CEC's and E&H's Qualifying Facility Short-Term Capacity Rates. Company representatives acknowledged the error and agreed to refile new Eighth Revised Pages 47 and 48, Superseding Seventh Revised Pages 47 and 48 for CEC and E&H respectively.

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 December 2, 1996 filings of the Companies with the exception of Short-Term Power Purchase Rates for Qualifying Facilities, which will be corrected and refiled by the companies. We find that the FAC for the January 1 through June 30, 1997 period will be a credit of ($0.00531) per kWh for CEC and a credit of ($0.00547) per kWh for E&H. For the same period, the PPAC for CEC will be $0.01253 per kWh and $.0.01187 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 $3.41 increase to the monthly bill. For a typical E&H residential customer using 500 kWh per month, the net result of the

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PPAC and FAC changes is a $2.55 increase to the monthly bill.

We find that the proposed, corrected short term avoided capacity and energy rates, calculated in accord with the methodology outlined in prior Commission orders, are just and reasonable.

Although we approve the rates in this proceeding, we feel compelled to express to CEC and E&H our concern about the recent increases in their PPAC rates due to increased Demand Charge rates for Firm Service from UPC under the UNITIL System Agreement. On June 30, 1996 this Commission approved PPAC increases to recoup demand charge increase from $15.66 KW-Month to $19.61 KW-Month pursuant to UNITIL's System Agreement for Firm Service. We are now approving another PPAC increase to retail CEC and E&H customers to recoup additional UNITIL System Agreement Demand Charge increases, from $19.61 KW-Month to $27.98 KW-Month. This represents an approximate 79 percent increase in demand charges under the UNITIL System Agreement for Firm Service to CEC and E&H.

Updated information in Exhibit 10 indicates that were we to give CEC and E&H approval to spread these PPAC cost increases over 12 months instead of 6 months, CEC and E&H would require Commission approval to increase their borrowing limits. While we are aware of CEC and E&H's interest in spreading its costs over 12 months instead of 6 months, we do not see a basis

on the facts presented to deviate from our past practice of requiring cost recovery within a 6 month time frame. However, should CEC and E&H foresee continued and exacerbated increases in prospective PPAC costs as they move toward their June filing, we will encourage the companies to approach Staff prior to the next filing to begin discussions on the causes and proposed remedies for these expected changes in rates.

Examples of concerns in this regard are UNITIL's flow through of termination costs to CEC and E&H from the renegotiated terms of the Indeck Contract and the continued increase in PPAC rates due to increased demand charges in the UNITIL System Agreement for Firm Service to CEC and E&H.

To improve the sharing of informational detail and increase Staff and the companies time to address these cost recovery concerns, prior to the expedited need for a Commission Order, we will expect improved and more timely informational submittals on proposed changes to UPC's Federal Energy Regulatory Commission wholesale tariffs, changes/additions or terminations of individual power contracts and plans to reclassify its costs by the companies in the future.

Based on the foregoing, it is hereby

ORDERED, that CEC's FAC rate for the period January 1, 1997 through June 30, 1997, shall be a credit of ($0.00531) per kWh while its PPAC rate shall be $ 0.01253 per kWh; and it is

FURTHER ORDERED that E&H's FAC rate for the period January 1 through June 30, 1997, shall be a credit of ($0.00547) per kWh while its PPAC rate shall be $ 0.01187 per kWh; and it is

FURTHER ORDERED, that UNITIL will file a corrected, Eighth Revised Page 47 Superseding Seventh Revised Page 47 and a corrected Eighth Revised Page 48 Superseding Seventh Revised Page 48 for short-term power purchase rates (avoided capacity and energy rates) for Qualifying Facilities to CEC and E&H as follows:

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

 Energy Rates

On Peak       3.14 cents per kWh
Off Peak      2.57 cents per kWh
All Hours     2.82 cents per kWh

Capacity Rate 4.28 dollars per kW-year;
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and it is

FURTHER ORDERED, that CEC and E&H file revised tariff pages in compliance with this order on or before January 13, 1997.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of December, 1996.

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NH.PUC*12/30/96*[89473]*81 NH PUC 1045*Granite State Electric Company

[Go to End of 89473]

Re Granite State Electric Company

DR 96-391
Order No. 22,464

New Hampshire Public Utilities Commission

December 30, 1996

ORDER approving a fuel adjustment clause rate of 1.026 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 — Past undercollections — Forecasted increases in fuel costs — Unplanned outages at nuclear plants — Electric utility. p. 1046.

2. COGENERATION, § 28

[N.H.] Rates — For purchases of power by electric utility from qualifying facility — Avoided-cost-based pricing — Energy rate component — Short-term rates — Capacity-related pricing standards. p. 1046.

APPEARANCES: Carlos Gavilondo, Esq. for Granite State Electric Company; Thomas C. Frantz and Mark Naylor on behalf of the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On November 26, 1996, Granite State Electric Company (GSEC) filed with the New Hampshire Public Utilities Commission (Commission) a petition and supporting testimony and exhibits requesting tariff changes to its Fuel Adjustment Clause (FAC) rate and its short-term avoided cost rates it pays to Qualifying Facilities (QFs) for the period January 1, 1997 through June 30, 1997. At a hearing on December 17, 1996, GSEC presented testimony of two witnesses, Jose A. Rutger, Senior Rate Analyst for New England Power Services Company (NEPSCo) which provides numerous financial and accounting services to GSEC and other subsidiaries of New England Electric System, and Jeffrey W. VanSant, Vice President and Director of Fuel Supply for GSEC's affiliate, New England Power Company (NEP).

II. POSITIONS OF GSEC AND STAFF

A. *GSEC*

GSEC proposed a FAC factor of $0.01083 per kilowatt-hour (kWh). The proposed FAC

factor is an increase of $0.00089 per kWh over the currently effective FAC rate of $0.00994 per kWh. The change in the FAC will increase the monthly bill of a residential customer consuming 500 kWh per month by $0.45, or 0.8 percent.

GSEC states that the FAC increase is due to the underrecovery from the second half of 1996 and higher forecasted fuel costs for the first half of 1997 than were estimated for the second half of 1996. GSEC's underrecovery is due primarily to the unscheduled outages of the Millstone 1 and Connecticut Yankee nuclear plants. Increased hydroelectric production helped to mitigate the increased fuel costs during the fall of 1996. The unscheduled outages of both nuclear units is the primary reason for the expected high fuel costs for the first half of 1997. Higher than anticipated oil prices are also contributing to the projected increase in fuel costs.

GSEC also states that any effects on the FAC factor from the New Hampshire Retail Wheeling Pilot Program have been eliminated by adjustments made by NEP to the GSEC

Page 1045

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power bill. Adjustments to the GSEC power bill are included as attachments in GSEC's filing.

GSEC filed QF rates based on the short-term value of capacity and the marginal energy costs avoided by GSEC from purchases by GSEC of QF power during the period January 1997 through June 1997. The value of short-term capacity is $28.50 per kilowatt-year. The short-term capacity and energy rates paid to QFs varies depending on the voltage level and whether power is delivered on-peak or off-peak. GSEC proposes the following energy rates by voltage level by period in cents per kWh:

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

Voltage LevelPeak  Off-PeakAverage

Subtransmission 3.469 2.760 3.088
Primary
  Distribution  3.726 2.895 3.279
Secondary
  Distribution  3.858 2.963 3.376
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On December 24, 1996, GSEC filed record requests and revised schedules supporting a proposed FAC factor of $0.01026 per kWh, a reduction $0.00057 per kWh from the FAC factor proposed originally on November 26, 1996. The new FAC factor results from the correction of an error related to the way New England Energy Incorporated (NEEI), an affiliate of NEP and GSEC, had been booking amortization expense associated with its oil and gas properties for the last six years. NEEI intends to make a correction for the error that will reduce NEEI's loss from $30 million to $17 million. The correction will reduce payments NEP makes to NEEI. The resulting savings will flow through NEP to NEP's wholesale customers, including GSEC, as a reduction in power costs on a proportionate basis. The expected reduction in fuel costs will result in a $0.16 increase in the monthly bill of a residential customer using 500 kWh per month. GSEC made no changes to the proposed QF rates.

B. *Staff*

Staff did not file testimony. At the hearing, Staff questioned GSEC on the projection and mitigation of increased fuel costs, the sales forecast, the mitigation of pipeline demand charges associated with gas purchases by NEP, the effects of the Pilot Program on the FAC, and whether one aspect of the NEES restructuring proposal, i.e., the potential sale of NEP's generating assets, is affecting fuel contracts. Based on the information presented at the hearing, Staff did not oppose the FAC factor proposed by GSEC.

III. COMMISSION ANALYSIS

[1, 2] We appreciate the correction of NEEI amortization costs as shown on Revised Schedule 2, page 7 of 8. Because this error was discovered after the hearing had concluded, we will ask GSEC to provide our Finance Department with a thorough explanation of the amortization change proposed by GSEC. If further corrections are required, we will expect those changes to be addressed in the next FAC proceeding. Based on the change in the amortization costs of NEEI as explained in the December 24, 1996 letter and our review of the record in this proceeding, we find that a FAC factor of $0.01026 per kWh is in the public interest and is, therefore, the FAC rate we will approve for the first half of 1997.

Based upon the foregoing, it is hereby

ORDERED, that the Fuel Adjustment Clause factor for GSEC for the period January 1, 1997 through June 30, 1997 shall be $0.01026 per kWh, effective on all meters read on and after January 1, 1997; and it is

FURTHER ORDERED, that the Avoided Short-Term Capacity rates paid to QFs shall be $2.45 per kW-month for sub-transmission, $2.68 per kW-month for primary distribution and $2.81 per kW-month for secondary distribution, and that the Short-Term Avoided Energy Cost rates paid to Qualifying Facilities shall be as follows on a cents per kWh basis:

Page 1046

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

Voltage Level	*Peak*	*Off-Peak*	*Average*
Subtransmission	3.469	2.760	3.088
Primary Distribution	3.726	2.895	3.279
Secondary Distribution	3.858	2.963	3.376;

and it is

FURTHER ORDERED, that GSEC shall file tariff pages in compliance with this order no later than 15 days from the issuance date of this order.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of December, 1996.

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NH.PUC*12/30/96*[89474]*81 NH PUC 1047*Keene Gas Corporation

[Go to End of 89474]

81 NH PUC 1047

Re Keene Gas Corporation

DR 96-401
Order No. 22,465

New Hampshire Public Utilities Commission

December 30, 1996

ORDER approving a natural gas local distribution company's midcourse winter cost-of-gas adjustment filing, resulting in a surcharge of 51.04 cents per therm.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 10

[N.H.] Direct energy costs — Cost-of-gas adjustment — Winter season — Midcourse correction — Factors affecting increase — Significant rise in supply prices — Likelihood of undercollections — Surcharge mechanism — Local distribution company. p. 1049.

APPEARANCES: John F. DiBernardo, General Manager, and Harry B. Sheldon, President, on behalf of Keene Gas Corporation; and Stephen P. Frink, Utility Analyst, on behalf of the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On December 6, 1996, Keene Gas Corporation (Keene), a public utility engaged in the business of distributing and transporting gas within the State of New Hampshire, filed with the New Hampshire Public Utilities Commission (Commission) revised tariff pages reflecting the recalculation of Keene's Cost of Gas Adjustment (CGA) for the period January 1, 1997 through April 30, 1997. The new CGA was recomputed to be a surcharge of $0.6080 per therm. The mid-course increase was deemed necessary to avoid an undercollection, which was estimated at that time to be $166,535.

An Order of Notice was issued setting a hearing for December 23, 1996. Keene informed customers of the impending change by publishing a copy of the Order of Notice in a local newspaper on December 10, 1996.

Subsequent to Keene's December 6, 1996 filing, propane futures prices fell somewhat. Accordingly, on December 23, 1996, Keene re-filed tariff pages for its CGA computation, revising the surcharge to $0.5104 per therm. The revised surcharge is to avoid an undercollection, which at the time of hearing was estimated to be $154,286. The proposed

increase in the cost of gas for the four month period is $0.1172 per therm, compared to the Winter CGA charge of $0.3932 per therm Keene's ratepayers are currently experiencing.

The Commission held a hearing on the merits of Keene's filing on December 23, 1996.

II. POSITIONS THE PARTIES

A. *Keene*

John DiBernardo, General Manager,

Page 1047

explained how the revised cost of gas adjustment was derived and the impact on customer's bills. While Harry B. Sheldon, President, explained the Keene supply portfolio.

1. *Derivation of the Revised Cost of Gas Adjustment*

Mr. DiBernardo calculated the undercollection for November using actual volumes and costs for the month. December's undercollection was calculated using actual volumes (sales based on December 7th meter readings), actual costs through December 20th, and projected costs for the remainder of the month. The estimated undercollections for the remaining winter months, January through April, were based on the projected volumes approved in the original 1996/97 winter CGA filing and costs reflecting the December 19, 1997 futures prices for those months. Transportation costs were also changed to reflect a 2 percent increase in trucking costs and the interest expense was recalculated using the estimated undercollections. The projected undercollection for the 1996/97 winter period is greater than 10 percent of the estimated costs for the period, thereby "triggering" a re-filing pursuant to Order No. 17,929 in DR 85-350.

On December 6, 1996, Keene filed a revised 1996/97 winter CGA when the November monthly reconciliation of known and projected gas costs with the projected costs approved in Order No. 22,392 (DR 96-319) deviated by more 18 percent. The December 6th filing was based on December 4, 1996 propane futures prices, which decreased substantially prior to the December 23 hearing date. Consequently, Keene refiled on December 23, 1996, using the December 19 propane futures prices and reducing the proposed surcharge from $0.6080 per therm to $0.5104 per therm.

2. *Impact On Customer's Bills*

The average residential heating customer's monthly bill using the $0.5104 per therm surcharge proposed in the revised filing compared to the current surcharge of $0.3932 per therm results in an increase of approximately 9 percent.

The above referenced customers paid approximately $900 during the 1995/96 winter period based on a CGA of $0.1112. The current CGA surcharge of $0.3932 will result in a winter gas cost of approximately $1,100, an increase of $200 (26 percent). The proposed CGA surcharge of $0.5104 produces a winter cost of approximately $1,200, an increase of $300 (34 percent) above last winter's costs.

Mr. DiBernardo did not anticipate customers leaving the system as a result of the proposed increase, as it is a well published fact that both oil and propane prices have also increased significantly during this period. The Company offers a budget payment plan and is willing to

work with customers in designing payment plans to meet their needs.

3. *Supply Portfolio*

Mr. Sheldon testified that utility and non-utility propane purchases are approximately 5 million gallons per year, with the utility using 1.25 million. Mr. Sheldon stated he was unaware if the utility would be able to purchase gas at the same rate on a stand alone basis.

Mr. Sheldon testified that firm contracts, tied to a price index, make up approximately 60 percent of the Keene gas supply and 40 percent is purchased on the spot market. The largest firm contract is currently supplying approximately 40 percent of Keene's winter supply and is based on a summer/winter allocation, with the winter allocation tied to the supplies purchased during the summer and determined in early November. To fully meet Keene's winter supply, a 1:4 summer to winter ratio is required. This year the allocation is 1:1.5, the lowest in years.

Upon questioning by Staff, Mr. Sheldon explained that Keene deviated from its normal practice of pre-buying a portion of its winter supply prior to the period due to the unavailability of fixed price contracts. Propane inventories were extremely low throughout the spring and summer months and, therefore, suppliers were uninterested in entering into fixed contracts.

Mr. Sheldon stated that Keene has 5 to 10 days worth of supply on hand and would meet

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the utility's needs under any circumstances, although the market would determine at what cost.

B. *Staff*

Staff did not have the opportunity to review the December 23, 1996 revised 1996/97 winter CGA filing prior to the hearing, but supported the filing subject to review. Following the hearing, Staff reviewed the filing and supports it without qualification.

III. COMMISSION ANALYSIS

[1] Commission Report and Order No. 17,929 (DR 85-350) stated that the Commission would expect Keene to make a mid-course correction when the actual and anticipated costs for the CGA period exceed 10 percent of the original estimates.

The Commission finds that the increase in Keene's gas costs were a direct result of an increase in the gas prices for November and December and an increase in the futures prices for January through April. Accordingly, we will approve the requested revised CGA rate of $0.5104 per therm as just and reasonable and in the public interest.

Based upon the foregoing, it is hereby

ORDERED, that the 20th Revised Page 26, superseding the 19th Revised Page 26 of Keene Gas Corporation Tariff, N.H.P.U.C. No. 1 - Gas, providing for a Revised CGA of $0.5104 per therm for the period of January 1, 1997 through April 30, 1997, is approved, effective for bills rendered on or after January 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 Keene 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 thirtieth day of December, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Keene Gas Corp., DR 85-350, Order No. 17,929, 70 NH PUC 873, Nov. 6, 1985.
[N.H.] Re Keene Gas Corp., DR 96-319, Order No. 22,392, 81 NH PUC 836, Oct. 31, 1996.

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NH.PUC*12/30/96*[89475]*81 NH PUC 1049*EnergyNorth Natural Gas, Inc.

[Go to End of 89475]

81 NH PUC 1049

Re EnergyNorth Natural Gas, Inc.

DR 96-402
Order No. 22,466

New Hampshire Public Utilities Commission

December 30, 1996

ORDER approving a natural gas local distribution company's midcourse winter cost-of-gas adjustment filing, resulting in a surcharge of 14.36 cents per therm.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 10

[N.H.] Direct energy costs — Cost-of-gas adjustment — Winter season — Midcourse correction — Factors affecting increase — Likelihood of undercollections — Sharply rising supply costs — Surcharge mechanism — Local distribution company. p. 1051.

APPEARANCES: McLane, Graf, Raulerson, and Middleton by Steven V. Camerino, Esquire, 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 December 9, 1996, EnergyNorth Natural Gas, Inc., (EnergyNorth), a public utility engaged in the business of distributing and transporting natural gas to select cities and towns in New Hampshire, filed with the New Hampshire Public Utilities Commission (Commission) revised tariff pages reflecting the recalculation of EnergyNorth's Cost of Gas Adjustment (CGA) for the period January 1, 1997 through March 31, 1997. The new firm sales CGA was recomputed to be a surcharge of $0.1216 per therm, an increase of $0.1000 per therm over the current rate of $0.0216. The new firm transportation CGA was recomputed to be a surcharge of $0.0149 per therm, an increase of $0.0039 per therm over the current rate of $0.0110. The mid-course increase was deemed necessary to avoid an undercollection of $5,368,083 in firm sales during the current winter period, or 16.5 percent higher than the estimate on which the current firm sales CGA rate is based.

An Order of Notice was issued setting a hearing for December 27, 1996. EnergyNorth informed customers of the impending change by publishing a copy of the Order of Notice in a local newspaper on December 13, 1996.

On December 27, 1996, EnergyNorth re-filed tariff pages for its CGA computation, revising the firm sales surcharge to $0.1436 per therm, an increase of $0.1220 per therm over the current rate of $0.0216. The new firm transportation CGA was recomputed to be a surcharge of $0.0147 per therm, an increase of $0.0037 per therm over the current rate of $0.0110 per therm. The recomputed undercollection for firm sales is $7,127,607, or 22 percent higher than the estimated on which the current firm sales CGA rate is based.

The Commission held a hearing on the merits of EnergyNorth's filing on December 27, 1996.

II. POSITIONS OF 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 CGA; b) factors contributing to the increased cost of gas; and c) the impact on customers.

A. *Calculation of the CGA*

Mr. Savoie calculated the undercollection using the actual results for November and December and projected costs based on the NYMEX futures prices for January through March. Rather than use the futures prices quoted at the close of a single day, EnergyNorth used the average of the futures prices quoted at the close of the most recent 15 business days. Mr. Savoie explained that the futures prices may fluctuate widely from day to day and the use of an average smoothed out those fluctuations. Mr. Savoie testified that the resulting average using 15 business days did not vary significantly from averages using either 10 or 20 days, and the average futures prices used in the filing were very close to those quoted at the close of business on December 26, 1996. The projected volumes remained unchanged from those used in calculating the current CGA surcharge.

B. *Factors Contributing to the Increased Cost of Gas*

The projected increase in the cost of gas is due to higher than anticipated prices in November and December and higher than originally projected prices for the remainder of the winter period. The current CGA rate was based on forecasted price information available to the company when it filed revised tariff pages for its Winter CGA in October, 1996. Included in that filing were projected costs for purchases based on the NYMEX futures prices at that time. Since then, the actual costs for November and the preliminary actuals for December have resulted in significantly greater than forecasted gas costs. Coupled with increased propane costs and a substantial increase in the natural gas

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futures prices for the remaining months of the winter season, EnergyNorth expects to experience a substantial undercollection unless it acts promptly to reflect the additional recoverable costs in a revised CGA rate. Of the proposed increase in the firm sales surcharge of $0.1220 per therm, $0.1106 per therm is attributable to the increase in the actual and projected commodity costs.

C. *Impact on Customers*

The average residential heating customer's monthly bill using the $0.1436 per therm surcharge proposed in the revised filing compared to the current surcharge of $0.0216 per therm results in an increase of approximately 16 percent.

The above-referenced customers paid approximately $484 during the 1995/96 winter period based on a CGA of ($0.0818). The current CGA surcharge of $0.0216 will result in a winter gas cost of approximately $560, an increase of $76 (16 percent). The proposed CGA surcharge of $0.1436 produces a winter cost of approximately $618, an increase of $134 (28 percent) above last winter's costs.

EnergyNorth will notify customers of this rate increase and the reasons for the increase through use of bill inserts. EnergyNorth offers customers a budget payment plan that can be entered into at any time and Mr. Carroll testified that EnergyNorth would work with customers that may have difficulty in paying the increase.

III. POSITIONS OF STAFF

Staff noted that the only changes in calculating the revised CGA from the winter CGA approved in Order No. 22,389 (October 30, 1996) resulted from the use of actuals for November and December and updated futures prices taken from an independent source. Therefore, although Staff did not have the opportunity to review the revised 1996/97 winter CGA filed on December 27, 1996, Staff supported the filing subject to review.

IV. COMMISSION ANALYSIS

[1] Commission Report and Order No. 22,387 (October 30, 1996) stated that the Commission would expect EnergyNorth 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 filings of September 17, 1996.

The Commission finds that the increase in EnergyNorth's gas costs were a direct result of an increase in the gas prices for November and December and an increase in the NYMEX futures prices for January through March. Accordingly, we will approve the requested revised CGA rate of $0.1436 per therm as just and reasonable and in the public interest.

The Commission recognizes the hardship such rate increases may cause customers, and encourages EnergyNorth to notify customers as to the reasons for the increase and any means of assistance that may be available in meeting those costs.

Based upon the foregoing, it is hereby

ORDERED, that EnergyNorth's Fifth Revised Page 32 issued in lieu of Fourth Revised Page 32, providing for a Revised Firm Sales Winter CGA of $0.1436 per therm for the period of January 1, 1997 through March 31, 1997, is approved, effective for bills rendered on or after January 1, 1997; and it is

FURTHER ORDERED, that EnergyNorth's Fourth Revised Page 32 issued in lieu of Third Revised Page 33, providing for a Revised Firm Transportation Winter CGA of $0.0147 per therm for the period of January 1, 1997 through March 31, 1997, is approved, effective for bills rendered on or after January 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 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

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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 thirtieth day of December, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re EnergyNorth Natural Gas, Inc., DR 96-301, Order No. 22,387, 81 NH PUC 821, Oct. 30, 1996. [N.H.] Re EnergyNorth Natural Gas, Inc., DR 96-214, Order No. 22,389, 81 NH PUC 827, Oct. 31, 1996.

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NH.PUC*12/30/96*[89476]*81 NH PUC 1052*EnergyNorth Natural Gas, Inc.

[Go to End of 89476]

81 NH PUC 1052

Re EnergyNorth Natural Gas, Inc.

DR 96-402
Order No. 22,467

New Hampshire Public Utilities Commission

December 30, 1996

ORDER granting protective treatment as to the identities of a natural gas local distribution company's suppliers and certain terms of their respective supply agreements which might otherwise be disclosed in the company's winter cost-of-gas adjustment filing.

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1. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective treatment — In winter cost-of-gas adjustment proceeding — As to supplier identities — As to commerically sensitive contract terms and trade secrets — Benefits of nondisclosure as outweighing those of disclosure — Local gas distribution company. p. 1052.

BY THE COMMISSION:

ORDER

On December 27, 1996, EnergyNorth Natural Gas, Inc., (ENGI) filed with the New Hampshire Public Utilities Commission (Commission) a request for protective treatment for information that would identify ENGI's gas suppliers and certain terms of the gas supply agreements negotiated by ENGI with its 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.

ENGI states that its 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. ENGI also states that it does not disclose the identity of its suppliers or the terms of its gas supply contracts 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 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.

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

Page 1052

pending CGA proceeding; and it is

FURTHER ORDERED, that with regard to the CGA identifying information and contractual 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 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 thirtieth day of December, 1996.

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NH.PUC*12/31/96*[89477]*81 NH PUC 1053*Connecticut Valley Electric Company, Inc.

[Go to End of 89477]

81 NH PUC 1053

Re Connecticut Valley Electric Company, Inc.

DR 96-362
Order No. 22,468

New Hampshire Public Utilities Commission

December 31, 1996

ORDER suspending and adopting a procedural schedule for an electric utility's 1997 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 —

1997 budget and programs — Continuation of existing plans — Procedural schedule — Issues to be addressed — Reconciliation of residential undercollections and commercial overcollections — Franchise taxes as cost component. p. 1054.

APPEARANCES: Kenneth C. Picton, Esq. for Connecticut Valley Electric Company, Inc. and Michelle A. Caraway 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 or the Company) filed with the New Hampshire Public Utilities Commission (Commission) its Conservation & Load Management (C&LM) Program proposal for the program year January 1, 1997 through December 31, 1997 along with supporting testimony and proposed C&LM Percentage Adjustment (C&LMPA) charges. CVEC essentially 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 for the record their positions with regard to the filing. No party filed for intervention.

At the Prehearing Conference, CVEC and Staff made substantial changes to the proposed procedural schedule as outlined in the Order of Notice 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 Propounded at the 1st Technical Session	January 10, 1997;
Data Requests by Staff and Intervenors	January 16, 1997;
Company Data Responses	January 27, 1997;
Technical Session	February 3, 1997;
Testimony by Staff and Intervenors	February 10, 1997;
Data Requests by the Company	February 18, 1997;
Data Responses by Staff and Intervenors	February 28, 1997;
Settlement Conference	March 10, 1997;

Filing of Settlement Agreement, if any	March 20, 1997;
Hearing	March 27, 1997.

Also at the Prehearing Conference, in accordance with the Order of Notice, CVEC and Staff stated their positions with regard to the filing. CVEC stated that it was proposing a package of C&LM programs for 1997 similar to those currently being provided by the Company.

Staff stated that it believed the significant issues to be addressed in this proceeding are: 1) the consistent treatment of issues in CVEC's current rate case which affect the Company's C&LM filing; 2) the appropriateness of including the franchise tax in the Company's C&LMPA calculation; and 3) how CVEC's C&LM programs and surcharges should be treated in the interim between when the current program year ends December 31, 1996 and when the programs and surcharges are approved by the Commission in 1997.

II. COMMISSION ANALYSIS

[1] The procedural schedule, as modified by CVEC and Staff, provides sufficient opportunity for a thorough analysis of the Company's filing and, therefore, we find it to be reasonable and will approve it for the duration of the case.

The C&LM filing contained tariff pages that outline the rate schedules for CVEC's C&LMPA charges. Since this docket will not be resolved before the proposed effective date of the tariff pages, the Commission will suspend the tariff pages. In the Company's October 1996 C&LMPA Variance Report filed December 19, 1996, CVEC anticipates a Residential year-end undercollection of $1,439 and a Commercial/Industrial year-end overcollection of $65,548. Continuation of CVEC's approved C&LM programs at existing C&LMPA charges ensures that beneficial programs are not interrupted and are adequately funded at a rate that mitigates the Residential underrecovery and the Commercial/Industrial overrecovery without presupposing the final decision in this docket. Therefore, we shall direct the Company to continue its C&LM programs as approved in Commission Order No. 22,038 at existing C&LMPA charges until the Commission's final order in this proceeding at which time any over/underrecoveries shall be reconciled.

Based upon the foregoing, it is hereby

ORDERED, that the proposed procedural schedule delineated above is APPROVED; and it is

FURTHER ORDERED, that the following tariff pages of CVEC are SUSPENDED:

NHPUC No. 5 - Electricity 9th Revised Page 20; NHPUC No. 5 - Electricity 2nd Revised Page 53; NHPUC No. 5 - Electricity 1st Revised Page 56; NHPUC No. 5 - Electricity 1st Revised Page 58; NHPUC No. 5 - Electricity 1st Revised Page 61; NHPUC No. 5 - Electricity 1st Revised Page 63; and NHPUC No. 5 - Electricity 1st Revised Page 65;

and it is

FURTHER ORDERED, that CVEC continue to offer its C&LM programs and to bill the C&LMPA charges as approved in Commission Order No. 22,038 until this docket is resolved

and a final order is issued.

By order of the Public Utilities Commission of New Hampshire this thirty-first day of December, 1996.

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.

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NH.PUC*12/31/96*[89478]*81 NH PUC 1055*Connecticut Valley Electric Company

[Go to End of 89478]

81 NH PUC 1055

Re Connecticut Valley Electric Company

DR 96-392
Order No. 22,469

New Hampshire Public Utilities Commission

December 31, 1996

ORDER approving the fuel adjustment clause (FAC) and purchased power cost adjustment (PPCA) rates proposed by an electric utility, resulting in an FAC rate of 0.59 cents per kilowatt-hour (kwh) and a PPCA charge of 1.27 cents per kwh. The proposed rates are accepted despite concerns as to the increasing costs and capacity allocations of hydropower imported from Quebec, and the commission again warns the utility to sharpen its forecasting skills and adhere to least-cost principles.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 13

[N.H.] Direct energy costs — Purchased power cost adjustment rate — Factors affecting need for charge — Increasing costs and capacity allocations of imported hydropower — Under contracts executed by parent company — Electric utility. p. 1057.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 11

[N.H.] Direct energy costs — Fossil fuels — Fuel cost adjustment clause rates — Factors affecting reduction in charge — Past overcollections — Necessity of improvements in fuel forecasting — Electric utility. p. 1057.

3. ELECTRICITY, § 4

[N.H.] Operating practices — Fuel and purchased power cost adjustment clauses —

Necessity of improvements in fuel forecasting — Wholesale contracts executed by parent company as not negating need for least-cost planning — Electric utility. p. 1057.

APPEARANCES: Kenneth C. Picton, Esquire, for Connecticut Valley Electric Company; Michael W. Holmes, Esquire for the New Hampshire Office of Consumer Advocate and Patrick J. Moast and James J. Cunningham, Jr. 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 or Company) filed tariff pages, testimony and exhibits supporting changes to its fuel adjustment clause (FAC), purchased power cost adjustment (PPCA), and the short-term power purchase rates for qualifying facilities (QFs). The changes in the FAC, PPCA, and the rates CVEC pays to QFs are proposed to be effective January 1, 1997 through December 31, 1997.

On December 19, 1996, the New Hampshire Public Utilities Commission (Commission) held a duly noticed public hearing to review CVEC's proposed changes to the FAC, PPCA and the rates paid to QFs. At the hearing,

CVEC presented the testimony of C.J. Frankiewicz, Director of Revenue Requirements for Central Vermont Public Service Company (CVPS), CVEC's parent company; Scott R. Anderson, Rate Analyst with CVPS; Charles A. Watts, Senior Power Marketing Analyst; and Dr. Peter D. Lena, Manager for Forecasting and Marketing.

II. POSITIONS OF THE PARTIES AND STAFF

A. *CVEC*

The Company proposes to decrease the FAC factor from $0.0060 per kWh to $0.0059 per kWh and to increase the PPCA factor from $0.0032 per kWh to $0.0127 per kWh on bills rendered on or after January 1, 1997. The proposed PPCA factor would increase overall revenues by $1,623,417 or 8.3%. The proposed decrease in the FAC rate would reduce the overall revenue increase by $17,089 or 0.1%. The combined effect of the FAC and PPCA is to increase rates by 8.2% or approximately $1.6 million.

Under CVEC's proposed FAC and PPCA rates, a typical residential Rate D customer's 500 kWh per month bill of $68.19 (which includes CVEC's general rate case temporary increase of 5.4%) would increase by 8.2%, or $4.76, to $72.95 per month.

Mr. Frankiewicz provided testimony on the primary components of CVEC's FAC filing: 1) reconciliation of the 1995 FAC, 2) reconciliation of the 1996 FAC and 3) calculation of the proposed 1997 FAC effective January 1, 1997. Mr. Frankiewicz also testified on the calculation of the RS-2 rate and the expected filing by CVPS of the RS-3 rate to replace the RS-2 rate for

CVEC.

CVEC currently purchases capacity which includes production, transmission and distribution, and energy under the RS-2 rate. The energy portion attributable to CVEC purchases is passed through the FAC; the capacity related costs are recovered in the PPCA. CVPS estimates the cost of capacity for the service year and those estimated costs are allocated to CVEC based on the ratio of the monthly loads of CVEC coincident with the monthly reserve requirement loads of CVPS using the NEPOOL 70/30 formula. The estimated RS-2 capacity charges are billed monthly to CVEC and then reconciled to actual capacity costs.

In CVEC's FAC calculation for 1997, CVEC forecasts its 1997 RS-2 cost to be $2,655,080 and its small power producer (SPP) energy costs to be $4,203,800. Interest, franchise taxes and 1996 overrecoveries result in a net estimated recovery fuel requirement of $6,910,577 from which CVEC subtracts the base energy revenues of $5,905,004 which results in $1,005,573 of fuel costs to recover through the FAC factor. The additional fuel costs over base energy revenues are divided by forecasted sales to yield the proposed FAC rate of $0.0059 per kWh to be effective on bills rendered on or after January 1, 1997.

CVPS uses a similar methodology to recover 1997 PPCA costs. The total 1997 RS-2 costs are forecasted to be $8,741,132, which reflects a net $918,003 increase over 1996 RS-2 costs. Combined with interest, franchise tax and an estimated $612,286 year end 1996 undercollection, a net estimated purchased power cost recovery of $9,487,057 is calculated. Subtraction of base capacity revenues and stranded cost charge revenues results in $2,165,896 to be collected through the 1997 PPCA. This translates into a PPCA rate of $0.0127 per kWh which represents a $0.0095 per kWh increase over CVEC's 1996 PPCA rate of $0.0032 per kWh.

CVEC also requests approval to change its PPCA tariff to allow costs in the PPCA to reflect the billing of capacity costs to CVEC under a proposed RS-3 tariff and transmission costs under a proposed RS-6 tariff. The RS-3 and RS-6 tariffs would replace the currently effective CVPS RS-2 tariff which reflects bundled power and transmission costs.

B. *OCA*

OCA did not file testimony. At the hearing, OCA questioned CVEC on what actions CVEC has taken to decide whether it should decide to terminate its wholesale arrangement with CVPS. Mr. Frankiewicz responded that the issue of CVEC giving notice to CVPS and

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terminating its wholesale purchase agreement with CVPS had already been addressed by the Commission in CVEC's 1994 Conservation and Load Management Program proceeding, DR 93-151. (Tr. at 44-49, 85-88) Mr. Frankiewicz further testified that Staff and the Company came to a stipulated agreement in DR 93-151 and that the Commission issued orders approving changes to the RS-2 rate schedule to embody marginal cost pricing. Exhibit 5 was reserved for CVEC's documentation of Order No. 21,142 and Order No. 21,715, and George McCluskey's February 13, 1995 memo to the Commission regarding *Redesign of Central Vermont Public Service's RS-2 Wholesale Rate*.

OCA believes that the Commission should consider clarifying whether it has waived its

authority to determine prudence pursuant to the *Sinclair* Doctrine in New Hampshire, in its own proceedings and under the *Pike County* Doctrine through the Commission orders in DR 93-151. OCA also suggests that the Commission may want to clarify in this proceeding the ramifications of its orders in DR 93-151 with respect to whether the Commission has waived its right to evaluate CVEC's efforts and decisions concerning the exercise of the termination notice contained in the CVPS wholesale tariff.

C. *Staff*

Staff did not provide testimony in this proceeding. Staff focused on the reasons underlying CVPS' flowing through of increased RS-2 capacity costs and increased RS-2 capacity (MW) quantities to CVEC.

In response to Staff questions, Mr. Watts stated that the increases in CVPS's MW capacity and capacity costs were due primarily to a full year's purchase requirements by CVPS from Hydro-Quebec under Schedule C-4, which obligates CVPS to its proportionate share of power and costs in the Hydro-Quebec/Vermont Joint Owners contract (VJO contact).

Further cross examination by Staff focused on CVPS' decreasing capacity sales in the open market and Hydro-Quebec's decreasing obligations to purchase capacity back from CVPS under sell-back arrangements. Both the reduced capacity sales and the decrease in capacity sell-back with Hydro-Quebec have contributed to the increased capacity and capacity cost allocations to CVEC.

Staff also focused on the purpose of CVPS's RS-3 and RS-6 tariffs. In particular, Staff questioned whether CVPS' RS-3 and RS-6 tariffs satisfy the Commission's Orders in DR 93-151 and whether a filing by CVPS of RS-3 and RS-6 tariffs and associated service to CVEC by CVPS under the RS-3 and RS-6 tariffs would preclude CVEC from performing an economic analysis to evaluate the costs and benefits of giving termination notice to CVPS.

On another matter, Staff addressed the purpose of the revised Pilot Program tariffs in this proceeding. Mr. Anderson responded that the revised tariff rates maintain the approximate ten percent incentive given to those Pilot participants via the Pilot Incentive Credit as compared to customers who are not participating in CVEC's Retail Wheeling Pilot Program.

III. COMMISSION ANALYSIS

[1-3] The Commission has reviewed the record in this proceeding and finds that the proposed FAC, PPCA and QF rates are just and reasonable. A number of important wholesale power related issues have been raised by OCA and Staff which we will address below.

CVEC apparently believes that the filing of RS-3 and RS-6 tariffs pursuant to Order No. 21,142 and Order No. 21,715 satisfy its obligation to assess the prospective benefits and costs of giving termination notice to CVPS for wholesale service. We disagree. It was not the intent of our Orders in CVEC's C&LM filing in DR 93-151 to release CVEC from its obligation to monitor and evaluate the potential costs and benefits of terminating its wholesale relationship with its parent CVPS. It was and remains the obligation of the State's franchised electric utilities, including CVEC, to continually assess how best to bring electric service to its customers at the lowest cost consistent with maintaining safe and reliable service.

While we affirm the benefits of using marginal cost pricing for growth related costs in CVPS'

wholesale rates as identified on pages 7 and 8 of Order No. 21,715, we did not intend

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our orders in DR 93-151 to release CVEC from its obligation to assess opportunities for lowering its costs and retail electricity prices, including providing termination notice to CVPS. Consistent with this clarification, we also did not intend to waive our right to evaluate CVEC's decision-making process for opportunities to lower customer's costs, including its option to tender termination notice to CVPS.

Wholesale power purchase obligations, such as CVEC's wholesale purchase relationship with its parent, CVPS, can better be addressed in DR 96-150, our generic docket on electric industry restructuring, or in subsequent company specific compliance plan dockets.

With respect to CVEC's rising cost allocations under the Hydro- Quebec contracts entered into on its behalf by CVPS, we share Staff's concerns about the flow-through of increasing costs and capacity allocations to CVEC customers. We expect CVPS to undertake all prudent actions to mitigate these costs on behalf of CVEC's customers.

Finally, it has taken more than a year to file the RS-3 tariff, a tariff that was intended to more closely tie wholesale prices to marginal power costs. At this point, we must question whether the benefits we expected from such a filing will be realized under a restructured electric utility industry. We will direct CVEC to submit a letter to the Commission within 30 days explaining why CVEC still believes there are benefits to CVEC's customers associated with implementation of the anticipated RS-3 tariff.

Based upon the foregoing, it is hereby

ORDERED, that the Fuel Adjustment Clause factor for CVEC for all meters read on and after January 1, 1997, shall be $0.0059 per kWh; and it is

FURTHER ORDERED, that the Purchased Power Cost Adjustment factor for all meters read on and after January 1, 1997, shall be $0.0127 per kWh; and it is

FURTHER ORDERED, that rates paid to QFs are approved as filed by CVEC; and it is

FURTHER ORDERED, that CVEC file tariff pages in compliance with this order by January 13, 1997.

By order of the Public Utilities Commission of New Hampshire this thirty-first day of December, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Connecticut Valley Electric Co., Inc., DR 93-151, Order No. 21,142, 79 NH PUC 115, Feb. 28, 1994. [N.H.] Re Connecticut Valley Electric Co., Inc., DR 93-151, Order No. 21,715, 80 NH PUC 403, June 28, 1995.

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NH.PUC*12/31/96*[89479]*81 NH PUC 1058*Holiday Acres Water and Wastewater Services

[Go to End of 89479]

81 NH PUC 1058

Re Holiday Acres Water and Wastewater Services

DR 96-242
Order No. 22,470

New Hampshire Public Utilities Commission

December 31, 1996

ORDER adopting settlement as to permanent rates for a water utility newly franchised to serve several mobile home parks near Allenstown. The rates represent a flat monthly charge of $10.40 for water service and $30.39 for sewerage service.

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1. FRANCHISES, § 25

[N.H.] Grant and acceptance — Settlement agreement — Service to mobile home parks — Reduction in tenant rents as a factor — Water utility. p. 1059.

2. RATES, § 595

[N.H.] Water rate design — Inception rates — Flat rate structure — Separate monthly charges for water and sewerage service — Service to mobile home parks — Reduction in tenant rents as a factor — Settlement agreement. p. 1059.

Page 1058

APPEARANCES: Larry S. Eckhaus, Esq. for Holiday Acres Water & Wastewater Services; Backus, Meyer, Solomon and Rood by Robert A. Backus, Esq. for Rocky Road Tenants Association; Amy L. Ignatius, Esq. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On July 26, 1996, Holiday Acres Water & Wastewater Services (Holiday Acres) filed with the New Hampshire Public Utilities Commission (Commission) a petition for franchise and permanent rates, along with supporting testimony and exhibits. Holiday Acres requested temporary rates but later withdrew its request. Holiday Acres will serve 320 water customers and 311 sewer customers in an area of Allenstown, New Hampshire.

By order of notice, the Commission sought intervenors. The Office of Consumer Advocate

(OCA) is a statutorily authorized intervenor but did not appear. Rocky Road Tenants Association (Tenants Association) requested limited intervention status, though it later sought and received full intervention status. The Mobile/Manufactured Home Tenants Association also sought and was granted limited intervenor status. *See*, Order No. 22,346 (October 8, 1996) and the December 11, 1996 letter of Executive Director Thomas B. Getz.

Holiday Acres purchased the Holiday Acres Mobile Home Park (Park) in 1995 and now seeks utility status to provide water and sewer service on a separately charged basis. Until now water and sewer service were provided to Park tenants as part of the services received in exchange for rent payments.

Commission Staff (Staff) prefiled testimony of James L. Lenihan, Tracy E. Brocks, Douglas L. Brogan and Thomas M. Sculley.

On December 19, 1996 Holiday Acres and Staff filed a Settlement Agreement resolving all issues in the franchise and rate case petition (Settlement). The Tenants Association did not sign the Settlement. The Commission heard testimony on the Settlement on December 20, 1996.

II. SETTLEMENT AGREEMENT AND POSITION OF TENANTS ASSOCIATION

The Settlement details all terms agreed to between Holiday Acres and Staff, which are summarized herein.

Holiday Acres and Staff agreed to: 1) cost of capital of 9.18% (for a company that is 45% equity and 55% debt); 2) revenue requirement of $39,918 for the water division and $113,397 for the sewer division; 3) rate base of $72,957 for the water division and $282,295 for the sewer division; 4) rates set on a flat fee basis, issued monthly in arrears; 5) provision for rate adjustment upon completion of a new well and storage tank, sewer infiltration and inflow reduction and individual customer metering; 6) reduction in Park rent of $25 per month; and 7) issuance of a permanent franchise for Holiday Acres.

The permanent rates, if approved by the Commission, would be effective for service rendered as of January 1, 1997. Because billing is in arrears, the first bill to reflect the rates would be issued on or after February 1, 1997.

The Tenants Association did not sign the Settlement, primarily on the basis that it would like to see a greater rent reduction and a specified duration of time in which the reduction would remain in effect. The Tenants Association acknowledged, however, that the Commission has no jurisdiction over mobile home park rents. The Tenants Association also requested input at the time of the request for recovery of capital improvements regarding the type of proceeding the Commission should undertake.

III. COMMISSION ANALYSIS

[1, 2] We have reviewed the Settlement and testimony presented at the December 20, 1996 hearing. Although we recognize the

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Tenants Association's concerns that net costs of living within the Park will increase as a

result of the Settlement, we nevertheless believe it appropriate to approve the Settlement as filed. Holiday Acres has made prudent investments to significantly improve the system, for which it is entitled to be compensated. The terms will result in just and reasonable rates while providing Holiday Acres a reasonable opportunity to earn a fair return on its investment. 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 prudently incurred.

Pursuant to the Settlement, customers will be charged $10.40 per month for water service and $30.39 per month for sewer service for a combined total of $40.79 per month for the 311 customers who take both forms of utility service. There will be no rate case surcharge as legal and accounting costs to establish the utility have been included in the operating expenses of the utility.

The Settlement also addressed projects for future improvement of the system, including completion of a new well and storage tank, sewer infiltration and inflow reduction and individual customer metering. We await Holiday Acres' filing regarding those improvements and will determine at that time the appropriate procedure to evaluate the request for increased rates, whether through a full rate case, a step adjustment or streamlined proceeding pursuant to N.H. Admin. Rules, Puc 611. We welcome the comments and recommendations of the Tenants Association, OCA and Staff as well as Holiday Acres regarding the appropriate method of proceeding at that time.

Based upon the foregoing, it is hereby

ORDERED, that the Settlement entered into between Holiday Acres and Staff is APPROVED; and it is

FURTHER ORDERED, that Holiday Acres is granted a permanent franchise for water and wastewater services in accordance with the terms of the Settlement; and it is

FURTHER ORDERED, that Holiday Acres 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 thirty-first day of December, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Holiday Acres Water & Wastewater Services, DR 96-242, Order No. 22,346, 81 NH PUC 736, Oct. 8, 1996.

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NH.PUC*12/31/96*[89480]*81 NH PUC 1060*Public Service Company of New Hampshire

[Go to End of 89480]

81 NH PUC 1060

Re Public Service Company of New Hampshire

DR 95-114
Order No. 22,471

New Hampshire Public Utilities Commission

December 31, 1996

MOTION by Cabletron Systems, Inc., for rehearing of Order No. 22,355 (81 NH PUC 746, *supra*), in which the commission had approved, as modified, an electric utility's proposed special rate contract with an industrial mill customer, Crown Vantage, Inc.; denied. Commission finds no procedural improprieties in its handling of the modifications and revisions to the special contract.

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1. ORDERS, § 2

[N.H.] Effective date — *Nisi* orders — Implementation only after period for comment and hearing — Final orders — Implementation as of date of order or other date specified. p. 1062.

2. STATUTES, § 11

[N.H.] Construction and interpretation —

Page 1060

Ambiguities as to different laws — Specific statute as prevailing over general statute. p. 1062.

3. COGENERATION, § 1

[N.H.] Self-installation by electric customers — Effect of such lost load — Effect on competitive markets — Cogeneration capability as warranting special load-retention rate contracts — But no finding that cogeneration is not in the public interest per se. p. 1063.

4. RATES, § 166

[N.H.] Factors affecting reasonableness — Solicitation or retention of business — Special rate contracts — For purposes of load retention — To forestall customer cogeneration efforts — Electric utility. p. 1063.

5. RATES, § 211

[N.H.] Special rate contracts — For load retention purposes — To discourage customer cogeneration initiatives — Electric utility. p. 1063.

6. RATES, § 322

[N.H.] Electric rate design — Load factors — Special rate contracts — For load retention purposes — Load lost to customer cogeneration efforts as causing higher rates for other ratepayers — Impending competition and industry restructuring as factors. p. 1063.

BY THE COMMISSION:

ORDER

On April 25, 1995, Public Service Company of New Hampshire (PSNH) filed with the New Hampshire Public Utilities Commission (Commission), pursuant to RSA 378:18, a request for approval of a special contract, Special Contract No. NHPUC-112 (NHPUC-112), between PSNH and James River Corp., now Crown Vantage, Inc. (Crown Vantage). By Order No. 22,225, issued July 8, 1996 on a *nisi* basis, the Commission found that special circumstances justified approval of NHPUC-112. The Commission also found, however, that certain terms of NHPUC-112 were not in the public interest. The Commission rejected certain provisions of *Article 12 - Additional Generation* and *Article 14 - Early Termination.*

PSNH filed a timely request for hearing on some of the Commission's conditions on NHPUC-112. PSNH's request was granted and a hearing was held on September 6, 1996. On October 15, 1996, the Commission issued Order No. 22,355 which approved NHPUC-112 as modified by PSNH and Crown Vantage and removed the prior condition that NHPUC-112 be modified to allow either party to terminate the special contract 84 months from the effective date or upon the advent of retail competition as approved by the Commission. *See* Order No. 22,355 at 10 and 11. As modified by PSNH and Crown Vantage, and approved by the Commission, NHPUC-112 now contains an early termination clause effective after five years and a clause under which the parties agree to review the benefits that each party is receiving under the contract after four years to determine whether to modify or terminate the contract early. *Article 14 - Early Termination.* The contract no longer contains a prohibition against Crown Vantage installing or allowing third party generation to be installed as originally contained in *Article 12 - Generation*.

On November 14, 1996, a Motion for Rehearing was filed on behalf of Cabletron Systems, Inc. (Cabletron), in which the Campaign for Ratepayers Rights (CRR) concurred. On November 19, 1996, PSNH filed an Objection to Cabletron's Motion for Rehearing (Objection) and a Motion to Strike the Cabletron Motion for Rehearing. The Commission also received a letter on behalf of Wausau Papers of New Hampshire (Wausau) on November 20, 1996 stating that Wausau objects to any re-evaluation of its special contract with PSNH, Special Contract No. NHPUC-133 (NHPUC-133). On November 21, 1996, Cabletron filed an Objection to PSNH's Motion to Strike Cabletron's Motion for Rehearing as well as a

response to the Wausau letter.

Cabletron claims that Order No. 22,355 is both unlawful and unreasonable because the standard for reconsidering and modifying an existing order had not been met. In Cabletron's opinion, the party seeking to change or set aside a Commission order must demonstrate that the Commission's decision is unlawful or, by a clear preponderance of the evidence, that the Commission's decision is unjust or unreasonable. Cabletron Motion at 3. Cabletron further states

that the Commission erred by not complying with RSA 541-A:35, which requires final decisions to include findings of fact and conclusions of law, separately stated. Cabletron concludes that the Commission's decision does not contain specific findings of fact and does not clearly describe or support how it came to "understand" that cogeneration deferral was the underlying rationale for NHPUC-112.

Cabletron also believes Order No. 22,355 is flawed because it lacks specific findings of fact on particular points, such as CRR's position that cogeneration is not contrary to the public good. It contends that the Commission was wrong to consider the recommendations of legislators, despite concerns from the Commission Staff. Cabletron states the Commission should not have allowed the unsworn testimony of legislators and that by doing so the Commission violated RSA 541-A:35. Cabletron also states that if, *arguendo*, specific findings are in Order No. 22,355, there is no way for Cabletron to know whether the findings are based exclusively on the evidence, as required by RSA 541-A:31,VIII. We disagree for the reasons below.

[1] Cabletron argues that the Commission's modifications to Order No. 22,255, which originally set conditions on the Crown Vantage special contract, must be made within the bounds of due process and the law. While this may be a correct statement of the law, the conclusion Cabletron draws, i.e., that Order No. 22,355 is unlawful and unreasonable, is completely without merit. Cabletron fails to recognize that the original Crown Vantage order, Order No. 22,255, was issued on a *nisi* basis, with the explicit provision that it would not become effective until a period of time for comment and request for hearing had expired. The very nature of a *nisi* order is that it may be changed after comments are received, and it does not become final until the period of time expires or the Commission issues a subsequent order, as it did with the second Crown Vantage order, Order No. 22,355.

[2] Cabletron's allegations regarding the sufficiency of Order No. 22,355 are based on the erroneous assumption that RSA 541-A:35 applies to Commission orders. RSA 363:17-b, which does not require findings of fact and conclusions of law *per se*, governs the content of Commission orders. Under longstanding principles of statutory construction, in the case of conflicting statutory provisions, the specific statute controls over the general statute. *In re Laurie B.*, 125 NH 784 (1984). Order No. 22,355 meets the requirements of RSA 363:17-b. Further, we find no requirement to ascribe a particular statement on the record to each Commission finding, as Cabletron would suggest, and find no basis to accept Cabletron's assertion that Order No. 22,355 is procedurally flawed. The Commission is "under an obligation to set forth its methodology and findings fully and accurately in order that this court may undertake meaningful judicial review of its methods, findings, and order." *L.U.C.C. v. Public Service Co. of New Hampshire*, 119 N.H. 332, 341 (1979). The Commission meets this obligation through issuance of detailed orders that describe the positions advanced and Commission findings on each issue, including the reasoning behind the decision.

Cabletron also alleges that the Commission should not have considered unsworn statements provided in the record by certain state legislators. We disagree. As we stated in Order No. 22,355 at page 12, "it is inappropriate to rely on the views of individual legislators to substantiate legislative intent..." We found it appropriate, as a matter of public policy, however, to consider the statements of certain legislators who have been deeply involved in restructuring efforts. Pursuant to N.H. Admin. Rule, Puc 203.03, we often accept unsworn statements at our hearings

from ratepayers, representatives from business and state agencies, and legislators, and we welcome the perspective

they bring to a case. Cabletron is incorrect in asserting that the perspective of the legislators served to provide us with legislative intent. We interpreted the governing statutes consistent with standards of statutory construction and did not rely exclusively on legislators' statements in making our decision.

Cabletron also argues that Order No. 22,355 is deficient because it did not "deal effectively" with CRR's contention that cogeneration is not contrary to the public good and because the order does not cite specific evidence to support the view that cogeneration would undermine a sizeable competitive market. Though we find Cabletron's assertion to be without merit, for the sake of clarity, we will state in greater detail our position regarding cogeneration.

[3-6] We have never stated, and do not believe, that cogeneration in and of itself is contrary to the public interest. Our concern is that the loss of load due to cogeneration will result in higher rates because fixed costs will be spread among a smaller number of ratepayers. We have approved special contracts in those instances in which we found the threat of cogeneration and increased costs to other ratepayers to be a credible one, as in the case of Crown Vantage. Moreover, we are also concerned that cogeneration will diminish the customer base available to competitive suppliers in the future, a concern which was expressed at the hearing. For example, Representatives Below and Bradley stated that cogeneration in this instance would lead to "loss of load to all suppliers, alternative or incumbent ... " Exhibit 4, page 2.

In addition to the evidence of the consequences of a customer investing in cogeneration, the Commission relied upon its knowledge of the electricity industry when stating that loss of electric load to a utility as a result of cogeneration would also mean the loss of that load to competitive suppliers. It is entirely logical to assume that once a customer invests in facilities to generate its own power, it no longer would buy electricity from an existing utility or competitive supplier when retail competition becomes a reality. As the Court has recognized, the Commission is entitled to consider and rely on its "own expertise and that of its staff" when evaluating evidence and reaching conclusions. *New England Telephone and Telegraph Co. v. State*, 113 N.H. 92, 102 (1973). Moreover, there was testimony regarding the position that if one invests in cogeneration facilities it will no longer purchase electricity or will do so to a lesser degree. Cabletron, therefore, is erroneous in asserting that Order No. 22,355 is flawed on the issue of cogeneration's effect on the competitive market.

Cabletron also argues that because Crown Vantage did not take the stand to testify that the special contract is necessary to retain the Crown Vantage load, the Commission finding is flawed. While it is true that Crown Vantage did not testify, PSNH did testify to the point, both in prefiled testimony and on the stand. In addition, Wausau's representative noted that without the Crown Vantage and Wausau contracts, these loads would be lost to the competitive market. Exhibit 5 at page 6. Cabletron's argument that there is no basis for the Commission's findings regarding the loss of load due to cogeneration is, therefore, without merit.

Our decision to deny Cabletron's Motion for Rehearing renders moot PSNH's Motion to

Strike.

Based upon the foregoing, it is hereby

ORDERED, that the Motion for Rehearing is DENIED.

By order of the Public Utilities Commission of New Hampshire this thirty-first day of December, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Network Long Distance, Inc., DE 96-172, Order No. 22,255, 81 NH PUC 586, July 30, 1996. [N.H.] Re Public Service Co. of New Hampshire, DR 95-114, Order No. 22,225, 81 NH PUC 518, July 8, 1996. [N.H.] Re Public Service Co. of New Hampshire, DR 95-114, Order No. 22,355, 81 NH PUC 746, Oct. 15, 1996.

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Endnotes

1 (Popup)

[1]In Order No. 21,812, the Commission approved special contracts between NHEC and four member ski areas: Mt. Attitash Lift Corp., Loon Mountain Recreation Corp., Mt. Cranmore, and Waterville Company.

2 (Popup)

[1]CVEC does not cite to federal or State law relative to "undue discrimination." Given the conclusions it reaches relative to federal jurisdiction over all transmission services we will assume the reference is to §206 of the FPA. *Cf*. RSA 378:10.

3 (Popup)

[2]PSNH asserts that the Commission's reliance on *Radkay v Confalone* is inappropriate because the facts of the case are distinguishable from the case at hand. We do not agree with such a narrow analysis of the applicable law set forth in the case. The Court in *Radkay v Confalone* specifically stated that in order to render its decision on the discrete issue in that case it was necessary to understand the "character and purpose of declaratory judgments ... ." *Radkay v Confalone*, 133 N.H. at 296. The Court then went on to expound upon the general principles of law underlying declaratory judgments. Thus, to the extent we relied on the Court's statements of general principles underlying the analyses of declaratory judgments our reliance on those general principles is, and was, appropriate.

4 (Popup)

[3]Senator Brown also indicated from the Senate floor that there were

> extensive hearings on this bill. The committee room was overloaded with people. The Governor's Office was represented, Public Utilities Commission, the people that own small hydro plants and others and the sponsors. We had all kinds of amendments, many amendments submitted to us. The Governor's Office came down and supported the bill. The Public Utilities Commission were down and were very much against the bill, all three commissioners but there was one intent which seemed to be among everybody, that something should be done to help the small energy producers. So we all got our heads together, the Governor's Office, the PUC, *the electric companies*, the sponsor, and the committee and we came up with this amendment that apparently pleases everybody and the amendment is the total bill. (emphasis added).

Senate Journal, June 6, 1979 at 1419 (statement of Senator Brown)

Given this statement on the Senate Floor, we find the electric utilities' current position on the constitutionality of the law rather perplexing.

5 (Popup)

[1]By letter of the Executive Director of the

6 (Popup)

[1]By letter of the Executive Director of the Commission, dated November 9, 1995, PSNH was directed to file supplemental information on the Wyman-Gordon special contract, NHPUC-122. Specifically, the Commission requested information on the land affected by NHPUC-122, including whether the land affected had generation potential. On December 1, 1995, PSNH filed a two-page summary of the information requested. PSNH stated the Franklin facility is located on 12.37 acres in an industrial park. The site does not have existing generation, but is serviced by a natural gas line with a propane tank in reserve. PSNH concludes that generation could be installed at the Franklin facility, but that it is unlikely as Wyman-Gordon has no interest in installing generation and would prefer to use the land for expansion. PSNH also evaluated the generation potential at Wyman-Gordon's Northfield facility which is served by PSNH under special contract NHPUC-94. The Northfield facility occupies most of the 6.72 acre site and though PSNH believes generation is possible, it is unlikely.

7 (Popup)

[2]PSNH has filed rates for economic development and business retention which are currently under review by the Commission in docket number DR 95-180.

8 (Popup)

[1]In order to clarify the scope of the Collateral Assignment, River bend entered into two amendments to the Collateral Assignment. The first amendment clarified that the Collateral Assignment included River Bend's Interconnection Agreement with PSNH. The second amendment clarified that the Collateral Assignment included the Rate Order which subsequently replaced the 1983 contract. *Re River Bend Mill*, 71 NH PUC 576 (October 1, 1986)

9 (Popup)

[1]The Rates proposed by Staff are as follows: "In the most energy intensive first tier, [customers] receive 25% for years 1996-2000, 20% in year 2001 and 15% in year 2002. For the

middle tier, we would propose 20% for years 1996-2000 and for years 2000 and 2001, we would change to 15%. Finally, we would only change the third tier customer group discounts by making the discounts for years 1996-2000 ... 15% ...."

10 (Popup)

[2]The places in the proposed tariffs which need to be changed to reflect these purposes are as follows: on 1st revised page 73 under the heading "Availability" in lines 6 and 7 and again in lines 18 and 19 the phrase "in the Company's service territory" must be changed to "in the State of New Hampshire"; on 1st revised page 74 under the heading "Definitions — New Customer" in line 2 the phrase "from the Company" must be changed to "from a New Hampshire electric utility"; on 1st revised page 74 under the heading "Definitions — Expanding Customer" in line 4 the phrase "in the Company's service territory" must be changed to "in the State of New Hampshire"; on 1st revised page 77 under the heading "Confirmation of Customer's Need for Discount" in line 5 the phrase "within the Company's service territory" must be changed to "within the State of New Hampshire."

11 (Popup)

[1]We believe it would be unwise to risk the success of the Pilot on the assumption that suppliers will intentionally sell at or below cost in order to acquire market share.

12 (Popup)

[2]Changes to the market prices incorporated in the Recommendation will have no impact on actual market prices, and hence Freedom's ability to sell, since those prices will be determined by the forces of supply and demand. We do, however, share Freedom's concern that any reduction in customer bill savings makes it more difficult for competitors to enter retail electric markets.

13 (Popup)

[1]Appendix C lists the organizations which submitted comments on the Preliminary and Revised Guidelines.

14 (Popup)

[1]By letter of the Executive Director of the Commission, dated November 9, 1995, PSNH was directed to file supplemental information on the KSC special contract. Specifically, the Commission requested information on the land affected by NHPUC-117, including whether the land affected had generation potential. On November 29, 1995, PSNH filed a one-page summary of the information requested. PSNH stated that Keene State College owns approximately 150 acres of land in the City of Keene with smaller acreage in two nearby towns. The Keene land is a mix of rural and urban property. The campus does not have generation, but a small wood burning

generator was used in the past. PSNH by the nature of its filing and the material presented on November 22, 1995, has concluded that KSC has the land, thermal load and infrastructure to install generation. PSNH notes that any generation installed by PSNH would have to meet the non-attainment air pollution standards contained in ENV-A-622.

15 (Popup)

[1]By letter of the Executive Director of the Commission, dated November 9, 1995, PSNH was directed to file supplemental information on the UNH special contract. Specifically, the Commission requested information on the land affected by NHPUC-116, including whether the land affected had generation potential. On November 22, 1995, PSNH filed a two-page summary of the information requested. PSNH stated that the University of New Hampshire, Durham campus, occupies approximately 1,000 acres spread over a complex mix of rural and town property. The campus does have generation — a 500 kW NORESCO generator operated under a lease with option by UNH to purchase in 1998. The entire output of the NORESCO generator is bought at prices fixed in 1985. PSNH by the nature of its filing and the material presented on November 22, 1995, has concluded that UNH has the land, thermal load and infrastructure to install generation. PSNH notes that any generation installed by PSNH would have to meet the non-attainment air pollution standards contained in ENV-A-622.

16 (Popup)

[1]CVEC suggests replacing Attachment 1 to the filing with one of two documents contained in Exhibit CVEC-1, i.e, Attachment 1 — Alternate, which separately identifies the unbundled transmission, distribution and C&LM charges; or Attachment 1 — Replacement, which rebundles CVPS charges together with CVEC transmission and distribution charges to produce wires charge for each class.

17 (Popup)

[1]On June 26, 1995, PSNH filed with the NHPUC a petition for approval of its Economic Development Energy Service Rate (Rate ED) and Business Retention Energy Service Rate (Rate BR) tariff sheets. On February 23, 1996 the NHPUC issued Order No. 22,027 Conditionally approving Economic Development and Business Retention Rates ordering PSNH to file tariff pages in conformance with Order No. 22,027. On March 7, 1996, PSNh filed Business Retention Service Rate BR pages with the NHPUC in accordance with the Commission's Tariff Filing Rules.

18 (Popup)

[1]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).

19 (Popup)

[2]We note that the Attorney General's Office did not waive any rights relative to an investigation into best efforts at the Bridgewater facility. Thus, regardless of our decision herein "best efforts" in regard to that facility is an open issue.

20 (Popup)

[1]All of these special contracts had initially been rejected by the Commission because they contained anti-competitive provisions that were inappropriate in an emergingly competitive market. PSNH revised and refiled the special contracts without those anti-competitive provisions.

21 (Popup)

[2]The "Motion to Join" includes those contracts CRR asked for Commission Reconsideration.

22 (Popup)

[3]This finding comports with the manner the OCA styled its Motion to Join.

23 (Popup)

[1]We fail to see the applicability of RSA 365:8 to the Standard of review, and, therefore our analysis herein. RSA 365:8 is merely a recitation of the Commission's rulemaking authority. We will assume this was a typographical error and the intended reference was RSA 365:28 which authorizes the Commission to alter orders after notice and hearing.

Page 254

24 (Popup)

[1]Most of the information collected is confidential information received under protective orders issued pursuant to RSA 91-A and N.H. Admin. Rule Chapter Puc 204.08.

25 (Popup)

[2]Each company provided information for a 30-day period in 1993 or 1994, chosen by the company as a representative period.

26 (Popup)

[3]See Section E below for a discussion of these recent enactments.

27 (Popup)

[1]That wholesale contract is known as the Amended Partial Requirements Agreement (APRA).

28 (Popup)

[2]In that case we approved competitive bidding as an appropriate methodology for NHEC to set its long-term avoided costs for QF purchases. We rejected an approach which would utilize PSNH's avoided costs as a proxy for those of NHEC. We found such an approach "inappropriate and analytically unsound" and concluded that "there was no testimony or other evidence submitted which would support a finding that the avoided costs of NHEC's wholesalers has any real relation to the long-term avoided costs of NHEC." Order No. 21,398 (October 25, 1994), p 9-10.

29 (Popup)

[1]This filing is an SEC Form U-1 Application/Declaration with Respect to Diversification Activities. *See*, Exhibit PSNH-29.

30 (Popup)

[2]The Unitil companies made the necessary filings with the Commission and the FERC on March 28, 1996.

31 (Popup)

[3]Utilities should submit time-of-use data, if available, for the most recent 12 months.

32 (Popup)

[4]Under no circumstances will a franchised utility be allowed to advertise the services of its marketing affiliate in the mailing which includes the application form.

33 (Popup)

[1]As stated above, we have conditionally approved the Joint Recommendations submitted by PSNH and Granite State.

34 (Popup)

[2]As will become more clear below, the proposed unbundled rates do not include charges to recover the cost of transmitting power across PSNH's transmission system.

35 (Popup)

[3]Although the Joint Recommendation does not expressly require Unitil to file such transmission tariff(s) here with the Commission, Staff requested such filings during the hearing and Unitil thereafter appropriately filed those tariffs with the Commission. See, Exhibit 8.

36 (Popup)

[4]We did find it appropriate to collect the incremental administrative costs associated with the Pilot from both participating and non-participating customers. Also, in Order No. 22,098 we authorized utilities to recover lost revenues associated with market price assumptions established by this Commission which turn out to be incorrect. But we have not authorized any utility to collect Pilot-related stranded costs from non-participants.

37 (Popup)

[1]We must emphasize that the Commission may or may not allow the recovery of such lost revenues by PSNH in some future rate proceeding. That is, we

are under no legislative mandate to allow PSNH recovery of any revenue shortfall resulting from special contracts. Further, such an analysis presumes the continued application of traditional ratemaking methodologies in the future (subsequent to the fixed rate period of the Rate Agreement) which may not be the case. *See*, HB 1392 (1996). Finally, even if we were to allow the recovery of any revenue shortfall resulting from special contracts in a future rate proceeding, such revenue recovery may be restricted to the customer classes that received the special contracts.

38 (Popup)

[1]On April 23, 1996, GSEC filed a letter with attachments that included, among other things, revised tariff pages for its proposed New Hampshire Growth Rate Discount program and its New Hampshire Jobs Rate Discount program that GSEC believes conforms with Commission Order No. 21,895. GSEC also removed language in its tariff pages that refers to whether

electricity is a significant portion of a customer's total operating costs.

39 (Popup)

[1]We will adopt the use of Staff1 to designate the Commission Staff who did not participate in the settlement negotiations and Staff2 for the Commission's Chief Economist Thomas C. Frantz who, with Assistant Attorney General Wynn E. Arnold, participated in the negotiations on behalf of the State of New Hampshire.

40 (Popup)

[1]On March 15, 1996 Unitil filed a Recommended Plan relative to their participation in the Pilot. On March 20, 1996, Unitil filed a Joint Recommendation with the Office of the Consumer Advocate (OCA) which superseded the Recommended Plan filed March 15.

41 (Popup)

[2]Unitil raised this concern in testimony which accompanied its revised compliance filing submitted May 6, 1996 in response to Order 22,119.

42 (Popup)

[1]In Order No. 22,142 we required PSNH to file a list of the names, company affiliation(s) and titles all employees who are working on Pilot marketing activities.

43 (Popup)

[1]Specifically, PSNH objects to any requirement that it offer power to all market suppliers on the terms and conditions, and at the same price, as any power it transfers to its affiliate. See, Attachment 1, ¶ 3.0.

44 (Popup)

[2]We offer no opinion at this time on the propriety of unregulated entities using trade names which suggest an association with the activities of a regulated monopoly service during or after full industry restructuring.

45 (Popup)

[1]This would occur if NHEC's wholesale requirements decrease as a result of its Pilot customers

procuring power from competitive suppliers. NHEC and PSNH disagree over who bears the revenue impact of these decreased wholesale purchases under the parties' Amended Partial Requirements Agreement (APRA).

46 (Popup)

[2]These filings were made immediately after NHEC filed its Motion with this Commission.

47 (Popup)

[3]Although the Commission is unaware of the substance of any prior negotiations, it would seem obvious that NHEC and PSNH should endeavor to disengage their differences over the APRA from those associated with the Pilot. In our view, the parties should seek a practical outcome to permit NHEC's customers to participate in the Pilot; their pre-existing, more global differences are already the subject of separate litigation pending at the FERC.

48 (Popup)

[4]We note that if NHEC prevails at the FERC, its non-Pilot customers would likely receive a refund of any such surcharges.

49 (Popup)

[1]The Commission granted this information confidential treatment pursuant to RSA 91-A and N.H. Admin. Rules, Puc 204.08.

50 (Popup)

[1]NUSCO filed transmission tariffs on behalf of PSNH.

51 (Popup)

[2]*See*, 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 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036 (1996).

52 (Popup)

[3]We note that two of the state's electric utilities, Granite State Electric Company and Connecticut Valley Electric Company, have fully implemented the Pilot.

53 (Popup)

[4]PSNH also raises an issue concerning transmission to the UNITIL Companies (Concord Electric and Exeter & Hampton Companies). We address this issue separately in an order addressing those companies.

54 (Popup)

[5]We have joined the Michigan Public Service Commission in a Motion for Rehearing relative to the FERC's assertion in Order 888 that it has exclusive jurisdiction over the rates, terms and conditions of unbundled retail transmission service.

55 (Popup)

[6]In its final Open Access Rule, FERC stated that it strongly supports the efforts of states to pursue pro-competitive policies and that these jurisdictional issues call for "heightened cooperation" among federal and state regulators.

56 (Popup)

[1]That level shall not exceed the revenue losses resulting from power sales by UPC at prices less than the assumed retail market prices previously established by the Commission, less $100,000.

57 (Popup)

[1]In August 1995, the Berlin/Gorham facilities became part of the new spin-off company, Crown Vantage, Inc. James River Corp. had sold its Groveton facilities to Wausau Paper Mills Company of Wausau, Wisconsin in 1993. Crown Vantage will be used in place of James River-Berlin/Gorham for the remainder of this order.

58 (Popup)

[2]Pursuant to a telephone conversation with Staff, Mr. Baillargeon agrees to have certain portions of his technical statement and PSNH's technical statement be amended to include information that can not be considered confidential. This order includes descriptions that reflect those changes.

59 (Popup)

[3]By letter of the Executive Director of the Commission, dated November 9, 1995, PSNH was directed to file supplemental information on the James River (Crown Vantage) special

contract. Specifically, the Commission requested information on the land affected by NHPUC-112, including whether the land affected had generation potential. On November 27, 1995, PSNH filed a two-page summary of the information requested. PSNH also included with the summary a map showing the generating facilities of Crown Vantage. PSNH stated that NHPUC-112 is partly a direct result of the substantial generating potential of Crown Vantage.

60 (Popup)

[1]The Commission is finalizing a detailed order fully addressing the issues and Commission holdings for this FPPAC period.

Page 524

61 (Popup)

[1]Also scheduled to go into effect on June 1, 1996 is the last of the seven annual 5.5% increases to base rates authorized in the Rate Agreement between PSNH's parent company Northeast Utilities Service Company and the State of New Hampshire.

62 (Popup)

[2]The Rate Agreement is the agreement defined in RSA 362-C:2, I and the amended plan of reorganization described in RSA 362- C:2,IV.

63 (Popup)

[3]The settlement agreement specifically states that "[t]he issues resolved in this settlement may not be used as an admission by any party as to the merits of the resolved issues or as precedent in a future proceeding."

64 (Popup)

[4]Rate Agreement, D-103. Thus, in order to recover these deferrals after the Fixed Rate Period PSNH must prosecute a full rate proceeding demonstrating earnings below a reasonable level.

65 (Popup)

[5]The $300 million is used to calculate the ceiling of the Return on Equity collar during the Fixed Rate Period. It does not apply to the collar floor. Thus, NU is allowed to lower its overall Return on Equity by adding $300 million to rate base in the analysis of its level of earnings.

66 (Popup)

[1]See e.g., the joint objection to PSNH's Motion filed by Retail Merchants Association of New Hampshire, Granite State Taxpayers Association, Enerdev, Inc., and the City of Claremont.

67 (Popup)

[2]We note that most of the affected jurisdictional utilities allege that adjudicative processes must be used to establish the interim stranded cost charge contemplated by RSA 374-F:4(II). For instance, Granite State Electric Company points out that the setting of interim stranded cost charges requires the Commission to examine the "unique circumstances of each utility."

68 (Popup)

[3]The statute upon which PSNH relies to designate staff as advocates or decisional employees supports this conclusion. RSA 363:33 contemplates that proceedings may be "phased" into adjudicative and non-adjudicative parts.

69 (Popup)

[4]Under the APA, if agency action meets the definition of rulemaking, it must follow certain procedures. Thus, consistent with the above analysis, even if we characterize this docket as adjudicatory, a reviewing court is not bound by that characterization.

70 (Popup)

[5]Specifically, those aspects of this proceeding which require us to "implement, interpret or make specific" RSA 374-F. See, RSA 541-A:1, XV.

71 (Popup)

[6]This obviously does not apply to the electric utilities which will be required to submit compliance filings in future proceedings.

72 (Popup)

[1]Mr. Getz is now employed by the Commission as a Utility Analyst. He is not participating in this docket and has stated he will not divulge to the Commission any information on SPP negotiations which he obtained while at PSNH.

73 (Popup)

[1]Without intraLATA presubscription, customers must dial a five digit code in order to access an intraLATA toll carrier other than NYNEX.

74 (Popup)

[2]Dixville has 568 access lines, of which over 400 serve the Mount Washington Hotel. Dixville takes the position that ILP is uneconomic and impractical for a company of its size and seeks a waiver of any requirement to implement ILP.

75 (Popup)

[3]0- calls are calls to the operator by dialing 0. Software which would allow ILP implementation on these calls is currently anticipated to be available in the second quarter of 1998.

76 (Popup)

[4]Pub.L.No. 104-104, 110 Stat. 56 (1996)(to be codified at 47 U.S.C. section 151, *et seq.*)

77 (Popup)

[5]The FCC's rules require an interexchange carrier, prior to releasing an authorized PIC change request to the LEC, to obtain verification from the customer in one of four ways. The IXC must either (1) obtain the customer's written authorization, (2) obtain the customer's electronic authorization by use of an 800 number, (3) obtain the customer's oral authorization verified by an independent third party, or (4) send an information package, including a prepaid returnable postcard, within three days of the customer's request, and wait 14 days before

submitting the customer's order to the LEC in order to allow sufficient time for receipt of the postcard denying or canceling the order. *See*, Matter of Policies and Rules Concerning Unauthorized Changes of Consumer's Long Distance Carriers, Report and Order, 10 F.C.C. Rcd. 9560, 9563 (1995).

78 (Popup)

[6]The charge is identical to that currently charged for interLATA PIC changes in NECA Tariff F.C.C. No. 5.

79 (Popup)

[7]DACC announcements, which are those offering to complete a call after the customer received Directory Assistance, shall indicate the carrier completing the call. This will provide the customer with additional pertinent information when making the choice to use DACC. We will order this type of branding for DACC.

80 (Popup)

[8]NYNEX's Implementation Plan, dated May 29, 1996, at page 25, proposed statewide ILP by June 2, 1997 in all exchanges except Hampton and Salem. Hampton and Salem would be capable of ILP by July and September 1997, respectively.

81 (Popup)

[1]The TRC ratio is calculated by dividing the total monetary value of a program's benefits by the total monetary value of its costs. The TRC is the traditional methodology used by the

Commission. It differs from the benefit-cost ratio methodology employed by Unitil in that the B/C ratio only includes the direct costs incurred by the Company and ignores the costs paid by program participants.

82 (Popup)

[2]Staff further recalculated Unitil's program ratios, using a 10 year program period rather than 20 years as Unitil had done. As Staff stated in its memo, use of 20 years was inappropriate given Unitil's testimony in an earlier phase of this docket that one could not plan meaningfully beyond 10 years.

Page 672

83 (Popup)

[1]The individual dockets are: 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), and Pinetree Power, Inc. and Pinetree Power-Tamworth, Inc. (DR 95-246).

84 (Popup)

[1]*See*, PSNH's Initial Motion, p.1-2.

85 (Popup)

[2]The Commission also denied PSNH's request to designate Staff as either advisory or adjudicative pursuant to RSA 363:32 at this early stage of the proceeding, but indicated that it would consider any such requests when it undertook an adjudication relative to specific issues. For instance, the Commission indicated that it was inclined to grant a request to bifurcate Staff relative to setting interim stranded cost charges. Order No. 22,244 at 13.

86 (Popup)

[3]Granite State Taxpayers, Inc., the City of Claremont and EnerDev, Inc., joined in RMA's Objection.

87 (Popup)

[4]PSNH requests that if the Commission grants its rehearing request relative to the nature of this proceeding, that the Commission also designate Staff pursuant to RSA 363:33.

88 (Popup)

[5]In its legislative findings, the General Court observed that "New Hampshire has the highest average electric rates in the nation and ... electric rates for most citizens may further

increase during the remaining years of the (PSNH) rate agreement ... "

Chapter 129:1, I. (HB 1392)

89 (Popup)

[6]That portion of the restructuring legislation provides that "no utility shall be required to implement its compliance filing resulting from the provisions of this chapter, until compliance filings representing at least 70 percent of retail electric rates (measured in kilowatt hours per year) have been or are being implemented." RSA 374-F:4,IV.

90 (Popup)

[7]Throughout the Motion, PSNH refers to New Hampshire Supreme Court decisions without citing to the official reporter for such decisions, New Hampshire Reports. Because the Commission library does not maintain Atlantic Reports, in the future we would prefer citations to New Hampshire Reports. *Concord Steam Corp.* is located at 130 N.H. 422 (1988).

91 (Popup)

[8]Those procedures are set forth in RSA 541-A:31-36. They include, *inter alia*, the opportunity for parties to present evidence and argument on all issues, cross examine witnesses, and require agencies to make separate findings of fact and rulings of law.

92 (Popup)

[9]In that case the Court determined that a validly chartered bank has a legally protected right to engage in the business of banking even though its charter did not entitle the plaintiff to be free from competition. Similarly, in this case PSNH has been granted a franchise to provide electric service as a public utility, even though it does not have a legally protected right to be free from competition. See, Appeal of Public Service Co. of New Hampshire, N.H. (1996), 676 A2d. 101 (N.H. 1996).

93 (Popup)

[10]This is a fundamental principle of administrative law that is derived from the concept of summary judgment in civil procedure. Davis & Pierce, supra, at § 9.5. In addition, the U.S. Supreme Court distinguishes between contested "adjudicative" facts and those which are "legislative" in character. *Id.* Adjudicative facts pertain to parties and their conduct. Legislative facts involve general facts that help a tribunal decide questions of law, policy and discretion. Id. A trial-type hearing is only required for the determination of adjudicative facts.

94 (Popup)

[1]As stated in Order No. 22,281, the area served by Dixville Telephone Company is excluded from intraLATA presubscription.

95 (Popup)

[1]The Commission stated that because the Crown Vantage special contract was filed before June 3, 1996, the effective date of the new legislation, SB 533, Laws of 1996, Chapter 186, it was, arguably, not subject to the newly enacted terms. It concluded, however, that the directives contained in the new legislation "were tantamount to criteria for determining whether the contract is just and consistent with the public interest" under RSA 378:18. The Commission would, therefore, include the new standards in its public good analysis.

96 (Popup)

[2]The question arose as to whether the Commission had the authority to order PSNH to enter into a particular contract. Without conceding the issue entirely, we are inclined to believe that the special contract law was designed to allow the Commission to approve a special contract between a willing utility and a willing customer if special circumstances exist and the Commission believes that such a contract is in the public interest. There is nothing in the law to suggest that we could order a utility to enter into a contract, which we must keep in mind when reviewing this contract. Though some of us might prefer different provisions and though we might condition our approval on certain conditions being met, it is ultimately the utility and the customer's decision as to whether to proceed under the contract, if conditioned or modified by the Commission. This is much like the economic development and business retention rates, which the utilities have an option, but not an obligation, to offer.

97 (Popup)

[3]One could reduce the impact on remaining ratepayers and the risk to shareholders for stranded costs by use of an exit fee imposed on the customer leaving the grid. The Legislature has expressed its reluctance to use exit fees to reduce potential stranded costs, a view which we share. RSA 374-F:3, XII (d).

98 (Popup)

[1]At the rehearing on Order No. 22,225 in DR 95-114, Special Contract No. NHPUC-112 between PSNH and Crown Vantage, PSNH testified that it considered retention of loads such as Crown Vantage and Wausau to be a mitigation of stranded costs as well.

99 (Popup)

[1]At the hearing on Order No. 22,225 in Docket No. DR 95-114, Special Contract No. NHPUC-112 between PSNH and Crown Vantage, PSNH testified that the use of special

contracts to retain loads from customers with viable cogeneration options such as Crown Vantage also is a mitigation of stranded costs.

100 (Popup)

[1]In Order No. 22,316 (September 17, 1996), 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. Order at 15. Also, the Commission noted that other procedures, such as written comments and briefs, would be reserved for issues of law or policy. In response to the Commission's Order, several parties submitted requests for formal adjudication; these requests are summarized below.

101 (Popup)

[2]We reiterate that by "formal adjudication," we mean evidentiary hearings with trial-like procedures provided for by RSA 541-A:31-36, including the right to present evidence and testimony, and to cross-examine witnesses. Policy matters will be addressed during the non-adjudicative phase of this docket.

102 (Popup)

[3]We also requested comments on whether functional unbundling, which is required by RSA 374-F:3, III, is sufficient to address these concerns. Thus, the Preliminary Plan is consistent with the policy decisions made by the Legislature on this issue and we are bound.

103 (Popup)

[4]As we indicated on several previous occasions, we intend to conduct utility-specific proceedings after compliance filings are made pursuant to RSA 374-F:4, III.

104 (Popup)

[5]To the extent that time permits during the upcoming hearings, we intend to permit parties to present oral comments which summarize and expand upon their written comments relative to policy questions.

105 (Popup)

[6]In its recently issued Open Access Rule, the FERC asserted its belief that it had exclusive jurisdiction over transmission facilities and that states had jurisdiction over distribution facilities. It also established 7 indicators to guide the demarcation between transmission and distribution. We listed the 7 indicators in the Preliminary Plan and sought comments relative to the FERC's proposed approach. *See*, Preliminary Plan, p.24-25.

106 (Popup)

[7]These issues include (a) the "Origin of Stranded Costs," (b) "Definition and Measurement." (c) "Stranded Cost Recovery," (d) "Mitigation of Stranded Costs," (e) Recovery Mechanisms," and (f) "Interim Stranded Cost Charges." *See*, Preliminary Plan, § VI.

107 (Popup)

[1]We note that Unitil sent a copy of its motion by facsimile on October 4, 1996. This did not meet the Commission's filing deadline; nonetheless, due to the importance of the issues raised by Unitil's motion, we will accept the filing, albeit late.

108 (Popup)

[1]At the hearing on Order No. 22,225 in DR 95-114, Special Contract No. NHPUC-112 between PSNH and Crown Vantage, PSNH testified that the use of special contracts to retain loads such as Crown Vantage and Isaacson also is a mitigation of stranded costs.

109 (Popup)

[2]The actual payback period was filed pursuant to a protective order.

110 (Popup)

[1]Since PSNH filed Special Contract No. NHPUC-130, the Commission has conducted hearings in DR 96-216, PSNH's petition for approval of newly filed economic development and business and load retention tariffs filed pursuant to new legislation, SB 533. *See* Laws of 1996, Chapter 186 (effective June 3, 1996). Unitrode filed for intervention in DR 96-216 and in DR 95-114, PSNH's filing for approval of Special Contract No. NHPUC-112, a special contract between PSNH and Crown Vantage, Inc. In its filings, Unitrode stated, *inter alia*, it had requested approval of NHPUC-130 based on the economic development and business retention rates of PSNH. An order in DR 96-216 is forthcoming.

111 (Popup)

[1]The Welshes have indicated no interest in participating in the ownership or operation of the system. The Welshes were unaware, however, of the formation of BRUC.

112 (Popup)

[1]Electronic text files must be compatible with WordPerfect Version 5.1 + or 6.0.

113 (Popup)

[1]These new precedent agreements have been filed with the Maine and New Hampshire Public Utilities Commissions.

114 (Popup)

[1]New Hampshire's Right to Know Law, RSA 91-A:5 exempts from public disclosure "confidential, commercial or financial information." *See also*, N.H. Admin. Rules, Puc 204.08.

115 (Popup)

[2]GSEC's Motion relates only to its interim

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stranded cost proceeding.

116 (Popup)

[3]The condition in this case is that parties must execute non-disclosure certifications.

117 (Popup)

[4]Obviously, this directive only applies if a utility has received a request for the data at issue.

118 (Popup)

[1]Although PSNH characterized this filing as "load development," at the hearing on Order No. 22,225 in DR 95-114, Special Contract No. NHPUC-112 between PSNH and Crown Vantage, PSNH testified that the use of special contracts to retain loads such as Crown Vantage is also, in its view, a mitigation of stranded costs.

119 (Popup)

[1]At the hearing on Order No. 22,225 in DR 95-114, Special Contract No. NHPUC-112 between PSNH and Crown Vantage, PSNH testified that the use of special contracts to retain loads such as Crown Vantage and Heidelberg is also, in its view, a mitigation of stranded costs.

120 (Popup)

[1]Throughout this Order we will refer to representations made by RES on behalf of Loon Mountain as simply being the position of Loon Mountain, unless there is a particular reason to note RES' role in a given situation.

121 (Popup)

[1]As of August 5, 1996, there were seven customers under the existing Rate BR.

122 (Popup)

[2]A hearing on Commission Order No. 22,225, conditioning approval of the special contract proposal between PSNH and Crown Vantage, Special Contract No. NHPUC-112, was heard in a separate proceeding, i.e. DR 95-114. Many of the issues addressed in this docket were applicable to our decision in Crown Vantage and we took administrative notice of the record in this proceeding in our reconsideration of NHPUC-112. *See*, Order No. 22,355.

123 (Popup)

[1]The information at issue relates only to forecasted cost and revenue data which the Commission requires in order to calculate each utility's interim stranded cost charges pursuant to RSA 374-F:4, VI.

124 (Popup)

[2]Although not expressly stated in previous Commission orders, only full intervenors in this proceeding are eligible to receive protected information. Limited intervenors, having no right to cross-examine witnesses or present testimony, do not need such data for their limited participation in this proceeding.

125 (Popup)

[3]We acknowledge herein that Order No. 22,393 incorrectly stated that PSNH did not file a response to Granite State Electric Companies's (GSEC's) Motion for Entry of Protective Order. PSNH did in fact file a letter dated October 31, 1996 regarding GSEC's Motion. Notably, the letter did not propose an alternative protective order in the case of PSNH. Nothing in that letter causes us to reconsider the directives of Order 22,393.

126 (Popup)

[1]Panelists will be expected to be familiar with NEPOOL's latest reform proposals.

127 (Popup)

[1]"Designation of Staff" refers to the statutory obligation of the New Hampshire Public Utilities Commission (Commission) under certain circumstances to designate its Staff as decisional employees or advocates. *See*, RSA 363:30 *et seq.*

128 (Popup)

[2]RSA 363:33 recognizes that proceedings may be conducted in adjudicative and non-adjudicative phases. For purposes of designating Staff, only the adjudicative phase(s) of such proceedings are subject to the designation standards set forth in RSA 363:32.

129 (Popup)

[3]Commission Staff Attorney, Robert Frank, filed a November 7, 1996 letter that responded to PSNH's allegations regarding Mr. McCluskey. Mr. Frank contends that PSNH has misapplied the law on this issue and that Mr. McCluskey may be designated as either Staff advocate or advisor, whichever the Commission deems appropriate.

130 (Popup)

[4]The interim stranded cost charges must be based on our preliminary determination of what is equitable, appropriate, balanced and in the public interest. RSA 374-F:4,IV.

131 (Popup)

[5]These employees comprise the Commission's Electric Utility Restructuring Division.

132 (Popup)

[1]In that order, the Commission concluded that its statutory duty to develop a statewide restructuring plan was "clearly legislative in character." Order 22,244 at 9.

133 (Popup)

[1]On behalf of those who attended the technical session.

134 (Popup)

[1]We note that Staff has raised another valid issue relative to the availability of the rate.

135 (Popup)

[1]By Order No. 21,812, the Commission approved special contracts between NHEC and four member ski areas: Mt. Attitash Lift Corp., Loon Mountain Recreation Corp., Mt. Cranmore, and Waterville Company. Black Mountain was offered a special contract at the same time as the other four, but did not respond to NHEC. NHEC testified in DR 94-258, *et al.*, that should Black Mountain want to enter into a similar arrangement with NHEC as the other ski areas, NHEC would offer Black Mountain a similar agreement. Tr. at 42, June 1, 1995. Black Mountain later did enter into a special agreement with NHEC under the same terms and conditions as the other four ski areas. That special contract was filed with, and subsequently approved by, the Commission. *See*, Order No. 21,965 in DR 95-327.

136 (Popup)

[1]The jurisdictional electric utilities are Public Service Company of New Hampshire (PSNH), New Hampshire Electric Cooperative (NHEC), Granite State Electric Company (GSEC) and Unitil Service Company (for Concord Electric Company and Exeter & Hampton Electric Company).

137 (Popup)

[1]Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, to be codified at 47 U.S.C. sections 151 *et seq.*

138 (Popup)

[2]The premises of the local exchange carrier, for purposes of this discussion, will be referred to as the Central Office (CO). The First Report and Order defines premises in Paragraph 573, finding that "In light of the 1996 Act's procompetitive purposes, we find that a broad definition of the term premises is appropriate in order to permit new entrants to collocate at a broad range of points under the incumbent LEC's control ... . We therefore interpret the term premises broadly to include LEC central offices, serving wirecenters and tandem offices, as well as all buildings or similar structures owned or leased by the incumbent LEC that house LEC network facilities."

139 (Popup)

[3]The Act uses the terms "interconnection" or "access"; at our hearings the parties referred to the same function as "transmission."

140 (Popup)

[1]Staff noted other dockets which might be used for this investigation, though it argued this docket would be most appropriate, for instance, DR 96-165, involving Freedom Ring's petition to be authorized to operate as a competitive LEC, and a docket Freedom Ring has asked to be opened to take a "fresh look" at telephone special contracts in light of the Act and growing competitive opportunities.

141 (Popup)

[1]The FCC issued its order implementing the local competition provisions of the Act on August 8, 1996.

142 (Popup)

[1]LaCapra currently serves as a consultant to the Commission and was designated as a decisional employee pursuant to RSA 363:30-36. *See*, Order No. 22,419 (November 25, 1996)