

DE 93-200

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

**Qualifying Facility Certification/Net Versus Gross
Billing**

**Order Clarifying Applicability of Recent Federal Energy
Regulatory Commission Rulings to
New Hampshire Rate Orders**

O R D E R N O. 23,261

July 26, 1999

On October 27, 1993, the New Hampshire Public Utilities Commission (Commission) issued Order No. 21,003 which required Public Service Company of New Hampshire (PSNH) to bill 59 Qualifying Facilities (QF) on a net rather than a gross sales basis and to develop a schedule within 90 days of the date of the Order to implement the new billing procedure. The Commission based its ruling on the decision of the Federal Energy Regulatory Commission (FERC) in Re Turners Falls Limited Partnership, 124 PUR 4th 377 (1991), interpreting the Public Utility Regulatory Policy act of 1978 (PURPA), and the Energy Policy Act of 1992 (EPAct).

On November 29, 1993, the Granite State Hydropower Association (Association) filed an emergency motion with the FERC requesting clarification of the Turners Falls decision and certain proposed rules relative to net versus gross sales and status as a QF. The Association also requested that this Commission defer implementation of Order No. 21,003 until the

FERC had had an opportunity to address the Association's motion.

By Order No. 21,066 (December 15, 1993) the Commission granted the Association's request and stayed any actions by the Commission or PSNH regarding gross versus net billing by QFs pending a ruling by the FERC on the Association's motion.

On February 11, 1998, the FERC issued an order holding, in pertinent part, that QF's that had received purchase power agreements prior to June 25, 1991, the date of the FERC's decision in Turners Falls, were entitled to gross bill the purchasing utility to the extent the purchase power agreement so provided. The FERC further found that any QFs that had received their purchase power agreements subsequent to June 25, 1991 that had or were engaged in gross billing would lose their QF status absent certain filings with the FERC. See, Connecticut Valley Electric Co., Inc. v. Wheelabrator Claremont Company, L.P., 82 FERC ¶61,116 (1998); See also, Re Connecticut Valley Electric Co., Inc. v. Wheelabrator Claremont Company, L.P., 83 FERC ¶61,136 (1998) (Order on rehearing).

On May 14, 1998 the Association requested clarification from this Commission regarding the applicability of the FERC's rulings in the Connecticut Valley decisions to Commission issued "rate orders", as opposed to the "contract" at issue in Connecticut Valley, in light of the FERC's limited reference to "contracts" and "purchase power agreements" in its decisions.

The Association also requested a declaratory order from

the FERC, finding that the Connecticut Valley decisions applied to New Hampshire "rate orders" and certain hydroelectric rate orders that were renegotiated as contracts pursuant to the so-called Rate Agreement with Northeast Utilities. The FERC found that because the rate orders that resulted in the renegotiated contracts for the facilities named in the FERC petition were obtained prior to Turners Falls, and were renegotiated at the request of the State, they were also grand-fathered. Thus, for the purposes of the FERC's ruling in Connecticut Valley, "rate orders" were indistinguishable from "contracts". Re Granite State Hydropower Association, et. al, 84 FERC ¶61,310 (1998).

We have reviewed the FERC's decisions, and have concluded that for the purposes of these decisions there is no distinction between "rate orders" and "contracts" or "purchase power agreements". As there was no need to make such a distinction, the FERC made none. Thus, we have concluded that the FERC's holdings in its Connecticut Valley decisions regarding net versus gross metering of sales by QFs to utilities, applies equally to rate orders or contracts.

We note that this conclusion is based on our reading of the FERC's decision in this particular case and in no way should be read to imply that this Commission or the FERC consider contracts and rate orders to be synonymous for all purposes as

the issue was not before the FERC and there was, therefore, no need to make such a distinction.

Based upon the foregoing, it is hereby

ORDERED, that based on the Federal Energy Regulatory Commission's rulings in Connecticut Valley Electric Co., Inc. v. Wheelabrator Claremont Company, L.P., 82 FERC ¶61,116 (1998); Re Connecticut Valley Electric Co., Inc. v. Wheelabrator Claremont Company, L.P., 83 FERC ¶61,136 (1998); and Re Granite State Hydropower Association, et. al, 84 FERC ¶61,310 (1998) Order No. 21,003 (October 27, 1993) is VACATED and the docket is closed.

By order of the Public Utilities Commission of New Hampshire this twenty-sixth day of July, 1999.

Douglas L. Patch
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Claire D. DiCicco
Assistant Secretary