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CONCORD ELECTRIC COMPANY AND EXETER & HAMPTON ELECTRIC COMPANY

**Fuel Adjustment Clause and Purchased Power Adjustment Clause,
Short-Term Power Purchase Rates for Qualifying Facilities, and
Administrative Service Charge**

**Order Approving Charges and Denying Motion for Rehearing and
Reconsideration**

O R D E R N O. 23,635

February 9, 2001

APPEARANCES: LeBoeuf, Lamb, Greene & MacRae by Scott J. Mueller, Esq. for Concord Electric Company and Exeter & Hampton Electric Company; Pierce Atwood by Kevin F. Gordon, Esq. for Osram Sylvania Products, Inc.; Michael Holmes, Esq. for the Office of Consumer Advocate; and Tracy Guyette, Henry Bergeron, and Paul Tessier for the Staff of the New Hampshire Public Utilities Commission.

I. PROCEDURAL HISTORY

On December 1, 2000, Unitil Service Corporation 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) proposed tariff pages, supporting testimony and exhibits to revise the Companies' retail fuel adjustment clause (FAC) charges, purchased power adjustment clause (PPAC) charges, and short-term power purchase rates for Qualifying Facilities for the period January 1, 2001 to July 1, 2001. The petition proposes an increase of \$0.02502 from the current FAC and PPAC rate for CEC; and an

increase of \$0.02485 for E&H. The petition indicates that a residential CEC customer using 500 kWh per month would see an increase of \$12.63 or 25.15 percent on a monthly bill, and a E&H residential customer also using 500 kWh per month would see an increase of \$12.55 or 26.05 percent.

On December 1, 2000, the Companies also submitted a petition to change their Administrative Service Charge. The new tariffs are proposed to recover \$14,042 in 2000 administrative costs associated with the pilot program. CEC is proposing an Administrative Service Charge of \$0.00003 per kilowatt-hour, which is not a change from the current charge. E&H is proposing an increase in its Administrative Service Charge of \$0.00004 from its current charge of \$0.00001.

An Order of Notice was issued on December 5, 2000 scheduling a hearing for December 19, 2000. On December 6, 2000, the Office of Consumer Advocate informed the Commission it would be participating in this docket on behalf of residential ratepayers. On December 12, 2000, the Companies, OCA, and Commission Staff (Staff) held a technical session. At the hearing on December 19, 2000, Osram Sylvania Products, Inc. (Osram), a large industrial customer located in E&H's distribution territory, petitioned for intervention which was

granted. On December 28, 2000, the Commission issued Order No. 23,611, approving the rates as filed except for the qualifying facility (QF) short-term avoided capacity rate. The Commission stated that a more extensive order would follow its December 28, 2000 order.

On January 26, 2001, Osram filed a Motion for Rehearing and Reconsideration of the interim order. Osram argued that the interim order was issued in violation of RSA 91-A and that the order also violated Osram's due process rights. On February 1, 2001, the Unitil Companies filed their Opposition to the Motion for Rehearing. Unitil argues that the Motion failed to state good cause for rehearing, is procedurally deficient, and the assertions therein are contrary to the record evidence.

II. POSITIONS OF THE PARTIES AND STAFF

A. Concord Electric Company and Exeter & Hampton Electric Company

The Companies presented the testimony of two witnesses, Linda S. Hafey, Project Leader of Regulatory Operations for Unitil Service Corporation, and David K. Foote, President, Unitil Power Corporation, and Vice President, Unitil Service Corporation. Mr. Dileep Prabhakar, who pre-filed testimony jointly with Mr. Foote, is no longer with Unitil and not presented as a witness.

The pre-filed direct testimony of Ms. Hafey was presented to explain the Companies' calculation of the PPAC and FAC and the impact on customers. Her testimony also addressed the calculation of the proposed Administrative Service Charge which is designed to collect the 2000 Pilot Program administrative costs.

Mr. Foote presented testimony detailing the anticipated increases in Unutil Power Corporation's (UPC) wholesale power costs which are the basis for E&H's and CEC's FAC and PPCA. The projected wholesale power costs for the period January through June, 2001 are \$13 million higher than the projection for the period July to December of 2000; \$6.2 million of this increase is attributable to fuel costs in the January to June period, and \$5 million is attributable to prior period fuel costs.

Following the hearing, the Companies filed data responses to questions asked during the hearing and a post-hearing brief. The responses include a list of the proceedings in which Unutil is a participant in order to protect its interests relative to its power suppliers and increasing wholesale power costs, Unutil Companies' right to retroactive adjustments under recent FERC precedent, the Companies' current short-term debt, the inclusion of lobbying costs in UPC's A&G

costs, and a typical bill comparison for the Companies for rate class G-1 (large general service). The Companies state that beginning in 2000, lobbying expenses were charged directly to CEC and E&H and booked "below the line".

In its brief, the Companies argued that the use of the Prime Rate for interest on over- and under-recoveries is appropriate and consistent with Commission precedent and rules. The Companies also argue that implementing the proposed rate changes on the basis of service rendered, as suggested by Staff, is impractical and contrary to Commission rules. The Companies state that if the Commission requires advance notification of rate changes it should take action through existing rules. Although the Companies understand the reasons for Staff's recommendation, according to the Companies such a change in the billing system could not be implemented for at least five weeks. In their brief, the Companies point out that charitable contributions and lobbying expenses will not be included in UPC's current wholesale rates. The removal of charitable contributions for the year 2000 and 2001 is done in cooperation with a Staff audit request and in recognition of a recent change in FERC policy. Following an audit by Staff, Unitil Service Corp. now bills lobbying expenses directly to CEC and E&H which record them

"below the line". The Companies argue that Staff's suggestion to remove lobbying expenses for 1999 from the PPAC is prohibited under the principles of preemption, the filed rate doctrine, and the bar against retroactive ratemaking. According to the Companies, a forty-five day filing is not in the best interest of customers. The Companies state that a longer review period could affect the accuracy of the data used in setting rates, especially at times when markets are volatile. Finally, the Companies argue that the proposed capacity rate of \$0.00 per kW-month is appropriate for the restructured wholesale market and consistent with Commission precedent. According to the Companies, because capacity purchases can now be made at the energy clearing capacity price an avoided capacity rate is no longer applicable or necessary. The Companies argue that because no QF has ever sought to make sales under the Unutil capacity rate, and because the pricing of installed capacity is in a state of flux, the Unutil Companies believe it continues to be reasonable to set the QF capacity price at zero.

B. Staff

Staff did not present testimony, but cross-examined the witnesses on customer notification, rate drivers, the interest rate on over/under-collections, sales forecasts,

UPC's forecasts of energy prices, short-term purchases, lobbying expenses, and expenses for charitable donations. Mr. Foote stated that although the original notification to customers indicated the likelihood of a rate decrease in six months as part of the Companies' next FAC/PPAC filing, that at this time a rate decrease in six months was much less likely. In fact, Mr. Foote stated that recent events could even force the Companies to petition for an additional rate increase prior to the next FAC/PPAC filing expected on June 1, 2001. These events include a longer than anticipated shutdown of Seabrook Station, the FERC's December 15, 2000 order setting the Installed Capacity deficiency charge at \$8.75 per megawatt-month, and the continued increase in oil and gas futures prices since UPC prepared its cost projections in mid-October.

In response to a question about estimates of buyout savings, the Companies' witnesses stated that since unit availability is no longer publicly available, calculating contract-buyout savings or losses is much more difficult and not included as part of the current filing.

Advance notification of the potential rate increase was issued in the form of a news advisory to the media on December 1, 2000, and a letter or fax was sent to Key Account customers. In

addition the Companies will issue public service messages in the Concord Monitor, Portsmouth Herald, the Exeter Newsletter, and the Hampton Union in December and January on the energy price increase, and ways for customers to reduce their bills. Ms. McNamara also stated that the Companies plan to include bill messages concerning the rate increase in the January 2001 bills.

In response to a Staff question, Ms. McNamara clarified that a \$9,784 adjustment related to charitable contributions for 2000 and a \$3,500 adjustment for the first part of 2001 had not yet been subtracted from the proposed filing. The Companies stated that these deductions were voluntary and not required since FERC policy, according the Companies' attorney Mr. Mueller, allows charitable contributions to be included in wholesale rates. Although the Companies' agreed to deduct these expenses for 2000 and 2001 they are not willing to refund customers for 1999 charitable contributions by USC that were passed onto UPC and flowed through E&H's and CEC's PPAC.

At the conclusion of the hearing, Staff asked the Commission to consider lowering the Companies' interest rate on FAC and PPCA over/under-collections; to waive PUC 1203.05(b) and implement bills on a service rendered rather than a bills rendered basis; to removing lobbying expenses from 1999 from the

PPCA along with 2000 expenses, if any are present; to reduce the current PPCA by the 2000 and 2001 donations and charitable contributions; and to order the Companies to file their future FAC/PPCA petitions 45 days prior to a requested rate change rather than the current 30 days. In a letter filed by Staff following the hearing, Staff recommended a \$4.00 per megawatt-month short-term avoided capacity rate for qualifying facilities based upon the short-term bilateral market rate at the time the letter was filed. Staff also withdrew its request that the Commission order bills on a service rendered basis based upon additional information Staff had received from the Companies regarding the time needed to implement such a change.

C. Office of Consumer Advocate

The Office of Consumer Advocate did not present testimony but cross-examined the Companies' and Osram Sylvania's witnesses. Mr. Holmes question the Companies' witnesses on the inclusion of lobbying and charitable contributions included in UPC's costs which are flowed through to Exeter and Hampton and Concord Electric. According to Mr. Mueller, prior to 2000, it was FERC precedent to allow charitable contributions in wholesale rates. The OCA also questioned UPC's efforts to mitigate natural gas costs by those suppliers who utilize natural gas. Mr. Foote

indicated UPC had recently begun that process with Ocean States Power, the supplier in UPC's largest natural gas fired supply contract.

Mr. Holmes also discussed the FERC's ICAP order with Mr. Foote who said that if the order remains unchanged, UPC expects its costs to rise by \$3 million over the period January through June 2001 and an additional under-collection of approximately \$1.5 million for the period August through December 2000.

D. Osram Sylvania, Inc.

Osram Sylvania Products Incorporated (Osram) questioned the Companies' witnesses and presented the direct testimony of Graham J. Wark, Plant Manager for the Osram Sylvania Products Incorporated plant in Exeter, New Hampshire. Osram requested that the Companies provide for the Commission a typical bill comparison comparing the proposed January 1, 2001 rates to the current July 2000 rates for the large general service class. Using a bill representative of the Companies' largest G-1 customers with a high load factor, the increase for a Concord Electric customer would be 35% and the increase for an Exeter & Hampton customer would be 36%. Osram questioned Mr. Foote on the potential for hedging the risks of price spikes. Although UPC

had entered into short-term contracts to cover its additional power need for the last three months of 2000, it has not entered into any short-term arrangements for the first half of 2001. Mr. Foote discussed how unexpectedly high spot market prices in May of 2000, during which UPC did not have short-term contract coverage for its deficiencies, caused higher than expected costs. UPC did enter into short-term contracts to cover deficiencies during June, but lower spot market prices, in hindsight, also caused that to be a costly decision. Osram questioned the Companies' witnesses on why it did not receive notification of a significant rate increase prior to December 5, 2000 if there were cost over-runs going back to May. The Companies indicated that up until September of 2000 they expected a rate increase in the range typically seen in past FAC and PPAC filings.

In his direct testimony, Mr. Wark described the products manufactured in Osram's Exeter plant and the plant's relationship to other New Hampshire Osram facilities. Osram stated that it has initiated a significant expansion to its ceramics production which will, if completed, increase electric usage 15 to 20 percent. The decision was made prior to notification of the rate increase and, according to Mr. Wark, the price of electricity was a significant factor in Osram's

investment decision. Osram states that as a result of this rate increase they will explore the option of on-site generation, or diverting resources to other facilities. Mr. Wark also pointed out that as the producer of a product whose prices cannot rise as a result of every input price increase, he frequently looks at hedging input prices to actively manage the plants budget.

In follow-up comments submitted after the hearing, Osram states that Unitil provided little substantive information in its filing to permit intervenors the ability to determine whether Unitil has legitimate grounds for a rate increase. Secondly, the late notification to customers of the substantial rate increase eliminated the opportunity for companies to integrate the effects into their financial budgets. Finally, Osram claims that Unitil has taken "minimal steps to mitigate the effects of this increase." Osram states that Unitil has not taken action to hedge against price risks, and that this inaction is due to lack of financial motivation since all fuel and purchase power costs are passed through to customers. Osram believes that Unitil has failed to provide sufficient information that it has taken all reasonable action to mitigate costs. Osram requests that the Commission deny Unitil's petition for a rate increase.

III. COMMISSION ANALYSIS

This analysis supplements that set forth in Order No. 23,611. Since CEC and E&H purchase all of their electric power requirements from Unitil Power Company (UPC), UPC's wholesale power costs are the basis for CEC's and E&H's FAC and PPAC.

Approximately 20% of the Companies' rate increases are attributable to the increase in the PPAC. The largest increase in wholesale costs which flow into the PPAC results from an increase to the transmission charge. Mr. Foote explained that the increase in the transmission charge is primarily due to the termination of a NEPOOL credit which was worth nearly \$1 million over the prior 6-month period.

Eighty percent of the Companies' rate increases are due to an increase in the Companies' FAC charges. UPC's wholesale fuel charges flow directly into the Companies' FAC charges. In total, UPC expects an increase of \$11 million in fuel costs over its forecast. Of that \$11 million, \$5 million is attributable to under-collections over the past 6 months. About half of this under-collection was due to higher than anticipated short-term and or spot-market prices in the May-June, 2000 time frame which we will discuss in greater detail. The remainder of the under-collection is due to higher than anticipated fuel costs in the

period October to December 2000. Colder than normal weather nationally in November helped to drive the significant spike in natural gas prices.

The remaining \$6 million in increased fuel costs is attributable to fuel increases estimated by UPC over the coming 6 month period. When we look at the specific breakdown of the fuel cost increase, most of the increase is being driven by oil and/or gas generator contracts. These are FERC approved contracts. In addition to the increase in long-term contract fuel costs, UPC expects spot market electricity prices to increase by 38 percent over its forecast for the past 6 month period. UPC anticipates purchasing a net 16 percent of its energy needs from the spot market.

Osram Sylvania, as part of its opposition to Unitil's rate increase, states that "Unitil took no action to hedge against any possible significant movements in the electric market." In the past 6 month period, UPC did, as Mr. Foote explained on the stand, enter into hedging arrangements by entering into short-term contracts for some of UPC's power needs. UPC did not enter into bilateral contracts for May 2000 and incurred significant costs for spot market power associated with two days of unexpectedly high temperatures. As protection from

high spot market prices UPC entered into bilateral contracts for the month of June 2000, which turned out to be cooler than expected. This action resulted in UPC incurring short-term contract prices which were higher than the spot market prices would have been. Short-term contracts purchased for the period of October through December 2000 did help to protect customers from high spot market prices due to increasing fuel costs. Given the information available at the time that decisions had to be made, the Commission finds UPC made reasonable decisions in its short-term market purchases.

During cross examination, Mr. Foote stated that UPC's contract with Ocean States Power, which supplies approximately 22 megawatts of gas-fired generation from Units 1 and 2 combined, incorporated a prior fuel supply contract no longer in effect. UPC is in the process of obtaining information to ensure that Ocean State acted prudently in its actions under this contract, including determining whether profits Ocean State may be receiving from the sale of natural gas when its units are not running are proportionately flowing through UPC's contract. We direct UPC to include an update on this matter and all other supplier negotiations in its monthly FAC/PPCA filings with the Commission. The Commission is concerned as to whether UPC had an

opportunity to exercise control and direction in the management of the Ocean State gas supply contract and whether it failed to do so, and whether CEC and E&H similarly exercised prudence in its contract with UPC by requiring UPC to take all reasonable steps available to ensure the provision of the lowest cost gas service commensurate with secure and adequate supplies. These questions require further review, and we direct the Staff to investigate and report to the Commission. At this time, however, we do not believe that there is a sufficient basis to deny recovery of these costs.

As summarized above, the requested rate increase is driven, to a large degree, by rising fuel costs which flow through UPC's long term wholesale power purchase contracts. We are not unsympathetic to the hardships that this increase may impose on ratepayers, but note that it is symptomatic of events in the energy markets throughout the nation, and when such increases occur in the wholesale markets, they may be beyond the ability of the Commission to control. We do believe, however, that the Companies must do a better job of communicating much earlier with their ratepayers as to the direction of energy costs in order to allow ratepayers the opportunity to take cost-effective measures to moderate usage where possible.

The effort to mitigate the effect of this increase by spreading it over a longer period of time would not be prudent under current circumstances because the extended Seabrook outage and fuel price increases since the Companies prepared their filings in October 2000 may lead to additional upward pressure on FAC costs during the next filing cycle. In addition, although the FERC order for an ICAP deficiency charge of \$8.75 per kW-month has been stayed, the issue remains pending, and may provide more pressure for future rate increases.

With regard to Osram's assertion that the Commission's interim order violated the public notice and meeting requirements of RSA 91-A, we note that, as discussed above, the source of much of the increase approved in that order and explained in more detail today is fuel adjustment charges in wholesale power contracts subject to the jurisdiction of the Federal Energy Regulatory Commission (FERC). Pursuant to RSA 378:3-a, III, a public utility, as here, which does not generate its own electric power ". . . is not required to secure the approval of the Commission by public hearing prior to passing on the fuel adjustment charge in the cost of purchased electric power to its customers." Further, pursuant to RSA 378:3, the Companies were entitled to implement the requested change in rates upon

satisfaction of the required 30 days notice to the Commission and the additional notice by publication ordered by the Commission. The effect of these provisions is that the Companies were entitled to implement the proposed changes on January 1, 2001. The requested changes, however, remain subject to Commission review for reasonableness under RSA 378:5. If the Commission were to determine that the increases were unreasonable, it has the ability to order that an increase not take effect or order decreases to rates already in effect. In today's order, we reaffirm that the increases are reasonable. However, we note that we make no finding concerning the prudence of the Companies' purchasing or hedging practices for the upcoming period.

Finally, we note that the PPCA and FAC are based upon deferred accounts, meaning that the cumulative effect of past over- or under-collections is recorded and flowed through to ratepayers in order to balance the accounts. Thus, the practical effect of delaying the increase in rates to the date of this order rather than allowing them to be effective as of January 1, 2001 would be to compress the time within which such rates may be recovered and require an even larger increase to customers.

In its brief, Unitil affirms that charitable contributions and lobbying expenses are not included in UPC's

current wholesale cost rates and will not be included in the future. We note though that during cross-examination by Staff, Ms. McNamara affirms that two adjustments, one for \$9,784 and another for \$3,500 have not yet been made. The Commission directs the Companies to provide documentation that these costs have been removed. If the policy of not including lobbying and/or charitable contributions in UPC's wholesale cost rate changes in the future, the Companies are directed to provide this information to the NHPUC auditing staff.

In its closing statement, Staff requested that we consider lowering the interest rate on the Companies' under-collections. We recommend that Staff pursue this request through a generic docket which would address all of the electric utilities in order to maintain consistency.

In the interim order issued in this docket on December 28, 2000, we ordered that the short-term avoided capacity rate for E&H and CEC would be \$4.00 per KW-month and directed the Companies' to file their own calculations of short-term capacity rates. On January 16, 2001 E&H and CEC filed a letter recommending that the Companies' short-term avoided capacity rate be set at \$4.50 per kW-month for the period February 1, 2001 to December 31, 2001 based upon a purchase UPC made for capacity on

December 29, 2000. The Commission will approve this rate until the Companies' next FAC/PPAC filing.

In our order issued December 28, 2000, we ordered the Companies to begin work on their computer systems in order to implement future FAC/PPCA rate changes on a service-rendered rather than a bills-rendered basis. We reaffirm that decision here. The Commission believes this change will alleviate some of the customer notification problems noted by Staff and Osram. On February 5, 2001, the Companies filed a letter and a petition indicating that they have completed the work to convert their billing systems to a service rendered basis. We will consider that filing in a separate docket.

The PUC Staff in its closing remarks also asked the Commission to require the Companies to file their FAC/PPACs 45 days prior to a requested rate change. In addition, during cross-examination of the Companies' witness there was discussion of moving the bi-annual rate changes to a February 1/August 1 schedule rather than the current January 1/July 1 schedule, due to the difficulty UPC would have in getting supplier information for a November 15 filing. In order to allow additional time for review, we will order the Companies to file their FAC/PPCA rate requests 45 days prior to the requested rate change. In

addition, we direct the Companies to change their FAC/PPCA cycles to a February 1/ August 1 cycle. Moving the filing back should allow for earlier notification of technical sessions and hearings and provide more opportunity for participation by intervenors.

Based upon the foregoing, it is hereby

ORDERED, that the tariff NHPUC No. 12, Twenty-second Revised Page 20, Nineteenth Revised Page 20A, Fourteenth Revised Page 20B, Sixteenth Revised Page 22, Seventeenth Revised page 24, and Fourth Revised Page 26-I as filed on December 1, 2000 for Concord Electric Company are approved; and it is

FURTHER ORDERED, that the Tariff NHPUC No. 17, Twenty-second Revised Page 20, Nineteenth Revised Page 20A, Fourteenth Revised Page 20B, Sixteenth Revised Page 22, Seventeenth Revised Page 24, and Fourth Revised Page 26-I, as filed on December 1, 2000 for Exeter and Hampton Electric Company are approved; and it is

FURTHER ORDERED, that Tariff NHPUC No. 12, Sixteenth Revised Page 47 as filed on December 18, 2000 is approved for Concord Electric Company except that the Qualifying Facility Short-Term Capacity Rate shall be \$4.50 per kW-month effective February 1, 2001; and it is

FURTHER ORDERED, that Tariff NHPUC No. 17 sixteenth revised page 48 as filed on December 18, 2000 is approved for Exeter & Hampton Electric Company except that the Qualifying Facility Short-Term Capacity Rate shall be \$4.50 per kW-month effective February 1, 2001; and it is

FURTHER ORDERED, that Exeter and Hampton Electric Company and Concord Electric Company file future Fuel Adjustment and Purchase Power Adjustment Clauses 45 days prior to a requested rate increase, and change the six month cycle to February 1 and August 1; and it is

FURTHER ORDERED, that Osram Sylvania's Motion for Rehearing and Reconsideration is denied.

By order of the Public Utilities Commission of New Hampshire this ninth day of February, 2001.

Douglas L. Patch
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Thomas B. Getz
Executive Director and Secretary