NEW HAMPSHIRE PUBLIC UTLITIES COMMISSION

STAFF REPORT ON RATE CASE EXPENSES

June 30, 2010

I. Purpose of Report and Scope of Research Review

On January 15, 2010, the Commission issued Order No. 25,064 in Docket No. DG 08-009, involving EnergyNorth Natural Gas, Inc. d/b/a National Grid NH (EnergyNorth) and its request to increase its general rates. In the order, the Commission directed Staff:

> "to review the level of rate case expenses in New Hampshire on an industry-by-industry basis over the past decade, with attention to factors such as use of inside versus outside counsel and experts, use of competitive bidding practices, and possible models in use elsewhere that could be informative for determining whether there are any identifiable trends in the rate impacts on utility customers."

This report is in response to that directive. Staff conducted a review of rate case dockets involving the electric, gas, telephone, and electric industries adjudicated by this Commission over the past ten years. A spreadsheet of those dockets is attached as Appendix A. Staff reviewed the Commission's administrative rules, as well as administrative rules and orders from other utility commissions across the country. Staff also reviewed state court orders discussing the issue of rate case expenses.

II. Authority to Recovery Rate Case Expenses

Before discussing models and trends in rate case expense recovery, it is helpful to review the authority by which the Commission has to authorize a utility to recover in rates its expenses associated with bringing a general rate case.

Pursuant to RSA 378:7, Fixing of Rates by Commission, the Commission "shall determine the just and reasonable or lawful rates, fares and charges" demanded or collected by a public utility for service rendered. This provision applies to all rates charged by public utilities. Thus rate case expenses recovered by public utilities must also be found by the Commission to be just and reasonable.

Pursuant to RSA 365:38-a, Proceeding Costs, "the Commission may allow recovery of costs associated with utility proceedings before the commission, provided that recovery of costs for utilities and other parties shall be just and reasonable and in the public interest." "...If an award of costs is granted in a proceeding involving a change in a utility's rates, the entire amount of the award shall be recovered by the utility in that proceeding." Thus, recovery of rate case expenses is specifically authorized by statute.

Pursuant to Section X of RSA 365:8, Rulemaking Authority, the Commission has authority to adopt rules relative to the "standards and procedures for determination and recovery

of rate case expenses." As yet, the Commission has not adopted comprehensive rules relative to the determination and recovery of rate case expenses.

Additionally, the issue of rate case expenses appears twice in New Hampshire's courts:

1) *Chicopee Mfg. Co. et al. v. Public Service Co.*, 98 N.H. 5, 7 (1953)
The Court noted that the Commission allowed Public Service Company to recover its rate case expenses through a monthly surcharge on customer bills.
2) *State v. Hampton Water Works, Co.*, 91 N.H. 278, 18 A.2d 765, 776 (1941)
The Court found Commission's denial of rate case expenses based on the difficulty in determining a reasonable allowance, was an insufficient reason to deny recovery of rate case expenses.

III. What Expenses are Recoverable

As stated earlier, the Commission has not specifically adopted comprehensive administrative rules pertaining to rate case expenses, however, other administrative rules (PART Puc 1604, Full Rate Case Requirements) set standards for what a utility must file with the Commission in a general rate case and thus offer examples of what type of expenses may be recovered as rate case expenses.

Expenses for cost of service studies are generally permissible expenses since, pursuant to Puc 1604.01(a)(7), the utility must include in its rate filing the utility's most recent cost of service study.

Expenses for depreciation studies are generally permissible expenses since pursuant to Puc 1604.01(a)(12), a utility must include in its rate filing a list of depreciation studies performed within the last five years.

Expenses related to lead-lag studies appear to be permissible expenses pursuant to Puc 1604.07, Contents of Filing Requirement Schedules, as follows:

...
(t) A utility shall describe on "Schedule 3A - Working Capital", its working capital, based on a detailed lead-lag study or a formula based on the length of 1/2 of the utility's billing cycle plus 30 days.
(u) If a utility uses a lead-lag study as allowed in (t) above, the utility shall provide working papers showing the computation of working capital.

Expenses for cost of equity studies are generally permissible since Schedule 8 under Puc 1604.08(c)(8) utilities are required to identify on a schedule entitled "Cost of Common Equity Capital, its rate of return on common equity.

IV. Rate Cases by Industry

Over the past ten years, the majority of general rate cases have been filed by water utilities. See Appendix A. There were thirty-four water utility dockets where rate case expenses were authorized for recovery, eleven gas utility rate cases, five sewer utility rate cases, four steam utility rate cases, one telephone utility rate case, and one electric utility rate case.

A. Water Utility Rate Cases

Rate case expenses ranged from a few thousand dollars to close to $200,000 depending on the size of the company, whether it hired outside legal counsel, and whether it hired outside experts for issues such as Cost of Equity, Cost of Service, or Depreciation. A number of cases resulted in rate case expenses exceeding $100,000 and they are as follows:

1) Aquarion Water Company of NH (serves 8,592 customers) filed a case in 2008 and incurred $108,637 in expenses and used outside counsel as well as an outside expert for depreciation.
2) Pennichuck Water Works, Inc. (PWW) (serves 26,007 customers) filed a case in 2008 and incurred $119,043.17 in expenses and used outside counsel as well as an outside expert for cost of equity.
3) PWW's 2006 rate case resulted in $198,770.71 in expenses and PWW used outside counsel as well as an outside expert for rate of return.
4) PWW's 2004 rate case resulted in $130,437 in rate case expenses and it used outside counsel as well as an outside expert for cost of equity.
5) Pittsfield Aqueduct Company, Inc. (serves 1,773 customers) filed a case in 2008 and incurred $105,779.72 in expenses and used outside counsel but no outside experts.

B. Sewer Utility Rate Cases

The five sewer utility rate cases filed over the past ten years involved Bodwell Waste Service Company, which filed in 2001 and 2004. Bodwell serves 45 0 customers. Bodwell's approved rate case expenses were $11,576.27 in 2001 and $10,115.58 in 2004. Bedford Waste Services Company, which filed in 2004, had rate case expenses totaling: $12,630.71. Bedford serves 78 customers. Atkinson Area Waste Water LLC, which filed in 2007, had $8,673.23 in rate case expenses. Atkinson serves one customer, a homeowners' association. Eastman Sewer, Company, which filed in 2008, had $10,589 in rate case expenses. Eastman serves 535 customers. These sewer utilities did not retain legal counsel. They did, however, utilize the services of an outside accountant who regularly performs services for a number of small regulated public utilities. When compared to other, comparably-sized water utilities in Appendix A, these sewer company rate case expenses appear within the norm.

C. Gas Utility Rate Cases

Gas utility rate cases were filed by Northern Utilities, Inc. in 2000, 2001; EnergyNorth Natural Gas in 2000, 2008, and 2010; and New Hampshire Gas Corporation in 2002. Northern serves 27,249 customers - which is about the size of Pennichuck Water Works, Inc.; EnergyNorth serves 87,440 customers; and New Hampshire Gas serves 1,100 customers. With the exception of EnergyNorth, the size of these gas utilities is similar to the sizes of the regulated water utilities listed in Appendix A.

EnergyNorth's (now owned by National Grid) 2000 rate case resulted in $217,864 in rate case expenses and used outside counsel and outside experts. EnergyNorth's 2008 rate case resulted in $788,416 in rate case expenses and EnergyNorth used outside counsel, a lead-lag and rate design expert, a depreciation expert, and cost of capital expert.

Northern's 2000 rate case resulted in $229,086 in expenses and its 2001 rate case resulted in $410,017 in expenses. In both cases, Northern used outside counsel and limited outside experts.

D. Steam Utility Rate Cases

New Hampshire has one steam utility, Concord Steam Company, Inc., and this utility has sought increases to its general rates in 2002, 2004, 2007, and 2009. Concord Steam serves 80 customers. Its rate case expenses totaled: $16,228.07; $22,686; and $8,067.18 for the years 2002, 2004, and 2009. Concord Steam's 2007 rate case expenses were presumably addressed in its annual Cost of Gas proceeding since no rate case expense filing was made in that 2007 docket.

E. Telephone Utility Rate Case

Granite State Telephone's 2005 rate case resulted in approximately $91,500 in expenses being recovered, however, no definitive amount was ever sought or approved by the Commission.

F. Electric Utility Rate Case

Unitil Energy Systems' 2005 rate case resulted in $646,830 in rate case expenses and it used in-house and outside counsel as well as an outside expert for cost of equity, attrition, depreciation, and cost of service. Unitil serves approximately 76,000 customers. For relative size, Unitil Energy Systems is slightly smaller than National Grid/EnergyNorth and it is three times larger than the largest regulated water utility, Pennichuck Water Works, Inc.

G. Trends among Utilities in New Hampshire

Authorized rate case expenses over the past decade vary wildly among the industries and even within utility industries. Not surprisingly, trends that emerge are that smaller utilities tend to have lower rate case expenses; they also tend to not hire outside legal counsel. If they hire outside experts, it is generally just one: an accountant familiar with the Commission's ratemaking process.

Overall, the trend among utilities over the past decade has been to hire outside legal counsel. Use of in-house counsel was the exception rather than the rule. One rate case discussed the existence of a utility's procurement policy that covered legal and other experts, Docket No. DG 08-009, National Grid (EnergyNorth), but that the policy was not entirely adhered to. There does not appear to be a trend among the regulated utilities reviewed for this report to have procurement policies. Nor does there appear to be a trend to conduct competitive bidding of outside legal counsel or outside experts.

Rate cases with high rate case expenses tend to be those cases involving large regulated public utilities and the use of outside experts and outside counsel. Those large utilities were also either publicly-traded or had a parent that was publicly traded. In publicly-traded utilities, issues such as having an approved Cost of Equity becomes more of an important issue than it would otherwise be to a small, family-owned regulated utility and thus Staff can see some justification for the trend to hire experts in that field. But even among large utilities, the rate case expenses can vary by hundreds of thousands of dollars and there does not appear to be an objective reason for it, not even the number of customers the utility serves.

Another observed trend is that water utilities file rate cases more than any other industry. This trend may be due to the fact that there are more regulated water utilities than there are electric, telephone, and gas utilities. It could also be due to the fact that gas and electric utilities have access to other rate adjustment mechanisms such as the semi-annual Cost of Gas adjustment proceedings and water utilities do not.

As illustrated in Appendix A, the Commission routinely disallows from recovery as rate case expenses, expenses incurred by the utility in responding to audit inquiries. The theory being that responding to such inquiries is an ongoing obligation of the utility pursuant to RSA 374:18 and thus the expenses associated with this obligation are already recovered from customers in the utility's general, permanent rates pursuant to RSA 378:28. Appendix A illustrates that Staff's review of rate case expenses is thorough, detailed, and includes a review of every invoice. In instances where rate case expenses were considered too high by Staff, such as in Docket No. DG 00-046, Northern Utilities, Inc., the parties presented a much lower, settled amount to the Commission, which the Commission approved. Other disallowances of interest are in Docket No. DG 09-038 where affiliate expenses were not deemed rate case expenses since they resembled services regularly provided by the affiliate. In Docket No. DG 08-009, National Grid/EnergyNorth, the settlement amount presented to the Commission included an agreement to

not recover for legal fees that had increased in the hourly rate as the case progressed as well as an agreement not to recover expenses for a motion for rehearing.

There does not appear to have been a case in the past decade where rate case expenses were litigated before the Commission. When there has been a dispute among Staff and the parties and the dispute has been settled, the reasons for the agreed-to disallowance are consistent with standards of proof that are more expressly articulated in decisions and administrative rules of other states and is discussed below.

V. Treatment of Rate Case Expenses Nationally

Staff conducted a search of agency decisions, caselaw, administrative rules, and statutes pertaining to 'rate case expenses' and came up with the below-listed treatments. Some states are similar to New Hampshire in that there are no express statutes or administrative rules determining what expenses are allowable as rate case expenses and how they should be recovered while other states have specific rules setting forth what is recoverable, when estimates must be provided, and what documentation must be filed.

Staff directs the Commission's attention to Massachusetts and its agency decisions requiring competitive bidding as well as Texas and its administrative rules identifying allowable rate case expenses. Massachusetts' requirement of competitive bidding and Texas' administrative rules offer objective standards and standards of proof which the Commission may find useful. Such requirements would facilitate and streamline how rate case expenses are documented, reviewed, and approved among the Commission's utility industries.

Additionally, many larger utilities have procurement policies that require competitive bidding of projects of a certain magnitude. These procurement policies also function as an objective measure of whether a utility's costs are reasonable. The establishment of such procurement policies such as through administrative rules, might be a viable alternative to the path Massachusetts has taken, i.e. establishing requirements through decisions.

The following cases, decisions, and rules illustrate that treatment of rate case expenses varies among states:

Maine:

Pine Tree Telephone & Telegraph Company v. Public Utilities Commission, 634 A.2d 1302 (Me. 1993) (Court reviews allowances and disallowances of utility expenses for an abuse of discretion and if the Commission acted in an arbitrary manner or if it exceeded the scope of its orders. Court upheld Commission's denial of proceeding costs in a non-rate case docket.) *Maine Water Company v. Public Utilities Commission,* 388 A.2d 493 (Me. 1978) (Commission permitted the utility all of its rate case expenses but announced that expenses associated with 'superfluous relitigation' would not be allowed in future cases.)

Delaware:

Delaware has, as a minimum filing requirement in general rate cases, "...analysis of actual and project rate case expenses...". See 26 Del. Admin. Code 1002A-5.3.13.

Kansas:

Home Telephone Company, Inc. v. State Corporation Commission of State of Kansas, 31 Kan.App.2d 1002, 1013-1014 (2004). *Home* sought recovery of additional rate case expenses after the cut off date and objected to amortization period being spread over 6 years.

> "Rate case expenses are typically amortized for a period reflecting the frequency of rate case filings." In this case, it had been 20 years since *Home's* last rate case.
>
> "[p]rudently incurred rate case expenses are among the reasonably necessary expenses that public utilities are entitled to recover in a rate-making proceeding. *Columbus Telephone Co. v. Kansas Corporation Comm'n,* 31 Kan.App.2d 828 (2003). That panel also acknowledged the Commission was within its authority to establish a cut-off date-the order determining the company's revenue requirement-after which expenses would no longer be treated as 'rate case' expenses."

In this case, the Commission rejected *Home's* request to recover expenses it was continuing to incur to comply with the Commission's orders addressing the on-going income tax expense issue on the basis that the on-going expenses were directly due to *Home's* unjustified failure to provide the necessary information during the initial proceeding. The Commission later allowed a second request from *Home* to recover other expenses on the basis that the circumstances justified 'special consideration.' The Court found the Commission's extension of the amortization period by one year was "not so arbitrary to be outside the zone of reasonableness."

Illinois:

Illinois requires rate case expense information when a utility files for a general rate increase. 83 Ill. Adm. Code 285.3085 Schedule C-10: Rate Case Expense:

> a) Provide detail of the total projected expenses associated with the instant rate case as to those expenses that the utility is seeking to recover *in its proposed rates*. The detail shall include the expenses of the instant rate case and the amount included in test year jurisdictional operating expense at proposed rates on Schedule C-1 for the following categories:
>
> 1) Outside consultants or witnesses;
> 2) Outside legal services;
> 3) Paid overtime;
> 4) Other expenses; and
> 5) Total expense.

b) The information provided for each outside consultant or witness and each outside legal service shall include:
1) Name;
2) Estimated fee;
3) Basis of charge;
4) Travel expenses;
5) Other expenses;
6) Projected total expenses of instant rate case;
7) Type of service rendered;
8) Specific service rendered; and
9) Amount included in test year jurisdictional operating expense at proposed rates on Schedule C-1.

c) Provide by footnote:
1) A description of the costs associated with the category, other expenses; and
2) An explanation of the calculation of the costs associated with the category, paid overtime.

d) If amortization of previous rate case expenses are included within test year jurisdictional operating expense at proposed rates on Schedule C-1, provide the amount of amortization expense associated with each rate case by docket number.

Indiana:

Pursuant to 170 IAC 1-5-8 (a)(24), electric utilities filing for an expedited rate case must provide "[a] schedule of estimated rate case expenses, including supporting detail, for the following: (A) Outside services to be rendered. (B) The expected costs of those services."

Kentucky:

Kentucky also requires rate case expense information to be filed at the outset of a general rate filing. 807 KY ADC 5:0001, Section 10, Applications for General Adjustments in Existing Rates, states that all applications requesting a general adjustment in existing rates shall be supported by:

(a) a twelve-month historical test period which may include adjustments for known and measurable changes; or

(b) a fully forecasted test period and shall include:

(10)(f) states that all applications seeking a general adjustment in rates supported by a forecasted test period shall include...: (f) [s]ummary schedules for both the base period and the forecasted period (the utility may also provide a summary segregating those items it proposes to recover in rates) of organization membership dues; initiation fees; expenditures at country clubs; charitable contributions; marketing, sales, and advertising expenditures; professional

service expenses; civic and political activity expenses; expenditures for employee parties and outings; employee gift expenses; and *rate case expenses*."

Utility Regulatory Commission v. Kentucky Water Service Company, 642 S.W.2d 591 (1982) (Court of Appeals held Commission violated due process rights and Court affirmed Franklin Circuit Court's holding that denial of rehearing was improvident. Kentucky Water argued Commission, among other things, failed to adjust for the full amount of the estimated overrun of rate case expenses.)

Massachusetts:

Petition of Massachusetts Electric Company and Nantucket Electric Company, Docket No. D.P.U. 09-039, Order dated November 30, 2009, 2009 WL 4543112 (Mass.D.P.U.).

> "The overall level of rate case expense among utilities has been, and remains, a matter of concern for the Department." "It is standard practice for gas and electric utilities appearing before the Department to hire outside law firms to handle legal services in rate case proceedings." "[T]he Department does not want to encourage companies to increase permanent legal staffing levels where rate case proceedings are infrequent and the proceeding is for a limited duration." WL at page 133.
> "The Department has consistently emphasized the importance of competitive bidding for outside services in a company's overall strategy to contain rate case expense." "If a company elects to secure outside services for rate case expense, it must engage in a competitive bidding process for these services." "If a company decides to forego the competitive bidding process, the company must provide an adequate justification for its decision to do so." WL at page 134.

This standard language also appears in *New England Gas Company,* D.P.U. 08-35, Order dated February 2, 2009, 271 P.U.R. 4th 1 (Mass. D.P.U. 2009).

Additional relevant analysis of rate case expenses from the *New England Gas Company* case is as follows:

> "The Company followed Department precedent by employing a competitive bidding process for each of its rate case expense outside service providers. While the Department requires companies to maintain contemporaneous documentation on cost-benefit analyses for capital projects, this requirement does not necessarily apply to the solicitation process for rate case expense. Nevertheless, the Company has the burden or must demonstrate that its selection of service providers was prudent and appropriate. This burden is especially great where the Company did not choose the lowest bidder, and the best evidence to aid the Company in satisfying its burden is contemporaneous documentation of its well-analyzed decision making."

In 2008, the Department considered Fitchburg Gas and Electric Company dba Unitil's failure to engage in a competitive bidding process for any of its outside consultants used in its rate case. The Department did not, as the Attorney General had suggested, reject Unitil's rate case expenses since the rate case expenses were comparable to those in similar rate proceedings and that any gain resulting from competitive bidding may have been slight. The Department, instead, considered Unitil's failure to utilize a competitive bidding process in its determination of Unitil's return on common equity. Excerpts from the decision are as follows:

> "We agree with the Attorney General that the Company was on notice that it was required to engage in a competitive bidding process. Contrary to Fitchburg's interpretation that a long-term relationship and institutional knowledge are sufficient to obviate the need for any competitive bidding process, the Department noted in D.T.E. 05-27, at 158-159, that 82 percent of that company's outside services were obtained as the result of a structured competitive bidding process. In the instant proceeding, Fitchburg did not hire any outside consultants as a result of a structured bidding process, and instead relied solely on the long-standing relationship and institutional knowledge that each consultant had with Fitchburg." *Fitchburg Gas and Electric Company dba Unitil,* 263 P.U.R.4th 165 (Mass.D.P.U. 2008).

Boston Gas Company dba KeySpan Energy Delivery New England, 2003 WL 22964772 (Mass.D.T.E. 2003):

> "Hereafter, however, as means to evaluating each company's efforts to control costs, if a company elects to secure outside services for rate case expense, it must engage in a structured, objective competitive bidding process for these services. If a company engages an outside consultant or legal counsel who is not the lowest bidder in the competitive bidding process, the company must provide adequate justification of its decision to do so."
>
> "In seeking recovery of rate case expenses, companies must in the future provide an adequate justification and showing, with contemporaneous documentation, that their choice of outside services is both reasonable and cost-effective." "A company that seeks to recover rate case expense when it has failed to conduct any competitive bidding will be hard-pressed to adequately justify its decision and will put such recovery at risk."

New Jersey:

New Jersey administrative code referenced rate case expenses in one section of its rules. Pursuant to N.H.A.C. 14:9-7.6, Purchased Water and Wastewater Adjustment Clauses - Petition Contents, Section (b)(9): "[a] list of expenditures that a utility must make to conduct a rate case in accordance with Board procedures, including, but not limited to, consulting, legal and

accounting fees; costs of the public notice, room rental, court reporter and transcripts for the public hearing; the cost of any necessary changes to customer invoices; *and other traditional rate case expenses*;..."

Texas:

Texas has a detailed rule governing what a utility ought to supply for documentation when seeking recovery of rate case expenses. These expenses also must be identified at the outset of a general rate case. Also, recovery is of actual, known and measurable rate case expenses, not estimates. Texas also utilizes a surcharge recovery mechanism, without interest. See, e.g. *Centerpoint Energy Houston Electric, LLC,* Docket No. 30706, Pages 12-13 of Order dated July 14, 2005, 2005 WL 1668034 (Tex. P.U.C.). In that case, *Centerpoint* requested recovery of approximately $5 million in estimated legal and non-legal consultant fees and expenses and non-legal other expenses that the company expected to incur after February 2005. The company contended the expenses were reasonable and necessary expenses. The Commission found that the company should not be able to recover these estimated fees because the expenses have not yet been incurred. The Commission stated "they are neither known nor measurable, and the Commission has no way of evaluating whether the estimated expenses are reasonable." "Parties have presented no authority that supports allowing utilities to recover estimated future rate case expenses."

See also, *Cities of Port Aurthur, Port Neches, Nederland and Groves, v. Railroad Commission of Texas,* 886 S.W.2d 266, 268-269 (Texas 1994):

> "In any proceeding, any utility and/or municipality claiming reimbursement for its rate case expenses pursuant to Texas Civil Statutes, Article 1446c, shall have the burden to prove the reasonableness of such rate case expenses by a preponderance of the evidence."
>
> "Each shall detail and itemize all rate case expenses and allocations and shall, in addition, provide evidence showing the reasonableness of the cost of all professional services, including, but not limited to, the amount of work done; the time and labor required to accomplish the work ; the nature, extent, and difficulty of the work done; the originality of the work; the charges by others for work of the same or similar nature; and any other factors taken into account in setting the amount of the compensation."
>
> "In determining the reasonableness of the rate case expenses, the commission will consider all relevant factors including, but not limited to, those set out previously, and will also consider whether the request for a rate change was warranted, whether there was duplication of services or testimony, whether the work was relevant and reasonably necessary to the proceeding, and whether the complexity and expense of the work was commensurate with both the complexity of the

issues in the proceeding and the amount of the increase sought as well as the amount of any increase granted."

Texas' relevant administrative are as follows:

16 TX ADC § 7.5530, Allowable Rate Case Expenses:
"(a) In any rate proceeding, any utility and/or municipality claiming reimbursement for its rate case expenses pursuant to Texas Utilities Code, § 103.022(b), shall have the burden to prove the reasonableness of such rate case expenses by a preponderance of the evidence. Each gas utility and/or municipality shall detail and itemize all rate case expenses and allocations and shall provide evidence showing the reasonableness of the cost of all professional services, including but not limited to:

(1) the amount of work done;
(2) the time and labor required to accomplish the work;
(3) the nature, extent, and difficulty of the work done;
(4) the originality of the work;
(5) the charges by others for work of the same or similar nature; and
(6) any other factors taken into account in setting the amount of the compensation.

(b) In determining the reasonableness of the rate case expenses, the Commission shall consider all relevant factors including but not limited to those set out previously, and shall also consider whether the request for a rate change was warranted, whether there was duplication of services or testimony, whether the work was relevant and reasonably necessary to the proceeding, and whether the complexity and expense of the work was commensurate with both the complexity of the issues in the proceeding and the amount of the increase sought as well as the amount of any increase granted."

30 TX ADC § 291.26, Suspension of Rates:
"(a) The executive director or the commission may suspend the rate change if the utility has failed to properly complete the rate application, has included in the cost of service for the noticed rates rate case expenses other than those necessary to complete and file the application, or has failed to comply with the notice requirements and proof of notice requirements." Thus, it is apparent that a utility filing for a general rate increase must disclose rate case expenses at the outset of the utility's rate case.

30 TX ADC § 291.28, Action on Notice of Rate Change Pursuant to Texas Water Code § 13.187(b) actively discourages protracted litigation and states:

....“(7) A utility may recover rate case expenses, including attorney fees, incurred as a result of a rate change application only if the expenses are reasonable, necessary, and in the public interest.”
“(8) A utility may not recover any rate case expenses if the increase in revenue generated by the just and reasonable rate determined by the commission after a contested case hearing is less than 51% of the increase in revenue that would have been generated by a utility’s proposed rate.”
“(9) A utility may not recover any rate case expenses incurred after the date of a written settlement offer by all ratepayer parties if the revenue generated by the just and reasonable rate determined by the commission after a contested case hearing is less than or equal to the revenue that would have been generated by the rate contained in the written settlement offer.”

Pursuant to 30 TX ADC § 291.31, Cost of Service, rate case expenses are not to be included in a cost of service study as follows:

“The following expenses are not allowed as a component of cost of service:...(I) any expenditure found by the commission to be unreasonable, unnecessary, or not in the public interest, including, but not limited to, executive salaries, advertising expenses, rate case expenses, legal expenses, penalties and interest on overdue taxes, criminal penalties or fines, and civil penalties or fines:...”

VI. Conclusion

Staff’s review of the past decade of rate cases and utilities’ seeking recovery of rate case expenses has shown that rate case expenses vary from a few thousand dollars to a high of $788,416 in 2008 for EnergyNorth and $646,830 in 2005 for Unitil. Rate case expenses tend to increase when outside legal counsel and outside experts are used. Utility retention of outside legal counsel and outside experts does not usually involve competitive bidding but other states such as Massachusetts have set competitive bidding as a requirement before rate case expenses will be deemed reasonable. In New Hampshire, the water utility industry tends to seek general rate increases far more frequently than any other utility industry but that may be due to the existence of rate change mechanisms such as the semi-annual Cost of Gas adjustments available to gas utilities. Staff has supplied a summary of the Commission’s rate case dockets in Appendix A. Staff is available if the Commission has any questions or wishes to discuss this report and Appendix.

RATE CASES FROM 2000 THROUGH 2009
BY INDUSTRY

Appendix A

Doc No.	Company	Description	**Order Authorizing Rate Case Expenses**	Notes
DG 10-017	National Grid (EnergyNorth)	Rate Case Using outside counsel and outside experts		Ongoing Docket Temporary Rate Order 25,104 dtd 5-14-10
DW 09-291	Fryeburg Water Co.	Rate Case		Ongoing Docket
DW 09-184	Lakes Region Water	Rate Case		Ongoing Docket
DG 09-139	Concord Steam Corp.	Rate Case Used outside counsel. No outside experts.	Rate case expenses approved in final order 25,100. $8,067.18 in expenses approved and recovered through surcharge of $0.06 per Mlb until full amount is recovered.	Temporary Rate Order 25,034 dtd 10-20-09. Final Order 25,100 dtd 5-6-10 on rates and rate case expenses.
DG 09-038	New Hampshire Gas Corp.	Rate Case Used outside counsel No outside experts	Rate case expenses approved in final order 25,039. $27,442 in expenses, 12 month surcharge at $0.059 per therm but this also includes a temp-perm rate recoupment of $45,371. Commission disallowed costs for affiliate services that were provided by Berkshire Gas Co to NHGC	Temporary Rate Order 24,964 dtd 04-30-09. Final Order 25,039 dtd 10-30-09 on Settlement/Rates.

			since the services provided during the rate case were essentially the same as those provided during other years and the latter services are already accounted for in NHGC's general rates.	
DW 08-160	Forest Edge Water Co.	Rate Case No counsel Used outside accountant (St Cyr)	25,040 dtd 11-04-09 authorized recovery of rate case expenses/temp rate recoupment. Commission disallowed $787 in expenses relationg to the Company's responses to audit requests. [60 % of $8,867, or $5,320 was allowed as rate case expense. This amount was combined with $2,502 in temp-perm rate recoupment to produce a surcharge of $25.73 that was recovered from customers.]	Temporary Rate Order 24,971 dtd 05-22-09. Final Order 25,017 dtd 09-23-09 on Settlement/Rates.
DW 08-098	Aquarion Water of NH	Rate Case Used outside counsel Used outside expert (Shutt) for depreciation	25,053 dtd 12-21-09 authorized recovery of rate case expenses/temp rate recoupment. [$108,637 spread over 8,951 customers over 12 months = $1.02 per customer per month.] Commission disallowed $922 in expenses since they related to the	Temporary Rate Order 24,942 dtd 02-13-09. Final Order 25,019 dtd 09-25-09 on Settlement/Rates.

			Company's response to audit requests.	
DW 08-086	Eastman Sewer Co.	Rate Case No counsel Used outside accountant (St Cyr)	25,033 dtd 10-29-09 authorized recovery of rate case expenses/temp rate recoupment. [$10,589 spread over customers = $19.79, total that would be collected over 4 quarters.] The Commission disallowed $683 in expenses related to the Company's response to audit requests and disallowed $706 that related to the financing portion of the proceeding.	Temporary Rate Order 24,927 dtd 12-30-08. Order 24,967 approving financing request dtd 05-21-09. Final Order 24,989 dtd 07-24-09 on Stipulation/Rates.
DW 08-073	Pennichuck Water Works	Rate Case Used outside counsel Used outside expert for COE (Walker)	25,018 dtd 09-23-09 authorized recovery of rate case expenses/temp rate recoupment. [$119,043.17 spread among 26,123 customers = $4.56 per customer] The Commission disallowed $472.50 in expenses since they did not relate to the rate proceeding.	Temporary Rate Order 24,926 dtd 12-30-08. Final Order 25,006 dtd 08-13-09 on Settlement/Rates.
DW 08-070	Lakes Region Water	Auth Finance/ Increase Rates No counsel	Order 24,954 dtd 03-27-09 Approved recovery of rate case expenses. [$17,827.64 spread over customers = $11.06 per	Order 24,925 dtd 12/30/08 approving Step increase to rates.

		Used outside accountant (St Cyr)	customer for one billing quarter.] Some invoices that were originally submitted were withdrawn by the company since they related to a different docket.	
DW 08-088	Hampstead Area Water	Financing and step adjustment	Order No. 24,937 dtd 02-06-09 approved a settlement that allowed HAWC to seek recovery of as rate case expenses certain expenses relating to the step adjustment but HAWC did not file any rate case expenses.	
DW 08-065	Hampstead Area Water	Rate Case Inhouse Counsel only Used outside accountant (St Cyr)	Order No. 25,025 dtd 10-09-09 authorized recovery of rate case expenses/temp rate recoupment. [$45,109 = $4.54 per customer over 12 monthly billing periods.] Commission disallowed $3,694 in expenses relating to the Company's response to audit inquiries. Commission cited that responding to audit inquiries is a continuing obligation under RSA 374:18 and that this obligation is already accounted for in general rates pursuant to RSA	Temporary Rate Order 24,932 dtd 01-16-09. Final Order 25,000 dtd 08-04-09 on Stipulation/Rates.

			378:28.	
DW 08-052	Pittsfield Aquaduct Co.	Rate Case Used outside counsel No outside experts used	Order 25,076 dtd 2-24-10. Approved recovery of rate case expenses. $105,779.72 collected via a surcharge of $3.30 per customer over 18 months.]	Temporary Rate Order 24,929 dtd 12-31-08. Final Order 25,051 dtd 12-11-09 on Settlement/Rates/ Transfer of Assets/Assumption of Debt.
DG 08-009	National Grid (EnergyNorth)	Rate Case Used outside counsel Used outside experts. Gary Goble conducted a Lead-Lag study. Paul Normand conducted a Depreciation study. Paul Moul conducted a cost of capital study.	25,064 dtd 01-14-10 authorized recovery of rate case expenses. [$788,416 in rate case expenses recovered through the LDAC charge. The impact of the rate case expenses on the typical residential hearing customers' annual bill, using November 1, 2009 rates, is an increase of 0.4%, or approximately $6.66 for the year.] Commission accepted Staff and the parties' compromise on rate case expenses: $788,416. This figure was $14,219 less then requested by the company. The company agreed not to seek recovery of $36,500 in expenses associated with its motion for rehearing.	Temporary Rate Order 24,888 dtd 08-18-08. Final Order 24,972 dtd 05-29-09 on Partial Setmt/Rates. **For procurements of $10,000 or more, those policies and procedures require the Company to "seek competitive bids (and acceptance of the lowest compliant bid) whenever possible, except where compelling reasons exist for single source action." The policies and procedures further require the Company to justify a non-competitive procurement in writing and to have a person with requisite Delegation of Authority approve the non-competitive procurement in advance. Once single source status is approved, the Company's purchasing agent is to negotiate pricing and other terms. See Company Response to Staff 1-4. **Certain terms of the engagement were set forth in KeySpan Corporation's Guidelines for Outside Counsel: "[e]very engagement . . . of outside counsel in which the fees for the entire matter are expected to exceed $25,000 should be memorialized by a letter setting forth the terms and conditions of the engagement in a form acceptable to KeySpan."

			Company also agreed to not seek legal expenses above the 2008 hourly rate. Expenses associated with the company's responses to audit inquiries would not be recovered as rate case expenses. Company agreed to provide evidence of compliance with its own procurement policies in its next rate case.**	
DW 07-131	Atkinson Area Waste Water	Rate Case No counsel Used outside accountant (St Cyr)	24,917 dtd 12-05-08 authorized recovery of rate case expenses/temp rate recoupment. [$8,673.23 from customers $16.81 per quarter per customer for four billing quarters.] The Commission disallowed $11,901.52 in expenses that related to the company's request for financing.	Final Order 24,899 dtd 09-25-08 on Stipulation/Rates.
DW 07-115	Fryeburg Water Co.	Rate Case No counsel No outside experts used	Order 24,890 dtd 08-29-08 authorized recovery of rate case expenses. [$20,921.85 in rate case expenses over 30 months: $32.69 for quarterly billed customers, $10.90 for monthly billed customers and $130.76 for seasonally billed	24,873 dtd 07-09-08 approving settlement.

			customers.] Commission disallowed $53.95 in meal expenses tangentially related to the proceeding.	
DG 07-076	Concord Steam Corp.	Rate Case Used outside counsel No outside experts used	Order 24,866 dtd 06-27-08 Approved settlement which allowed for recoup of rate case expenses. No record in this docket of rate case expenses being submitted and it is presumed that recovery was through a Cost of Gas proceeding – which has normally been the recovery vehicle for this company.	Temporary Rate Order 24,796 dtd 10-24-07.
DW 07-032	Pennichuck East Utilities	Rate Case Used outside counsel No outside experts used	Order 24,840 dtd 04-04-08 approving settlement/rates and rate case expenses. [$47,767.72 recovered from customers over a 12 month period.] Commission disallowed: $297 in legal expenses not related to the rate case; $245 in expenses for a press release; and $216 in expenses relating to responding to audit inquiries.	Temporary Rate Order 24,784 dtd 08-24-07.

DW 07-004	Northern Shores Water Co.	Rate Case No counsel No outside experts used	Order 24,765 dtd 06-22-07 approving settlement/rates and allowing rate case expenses. [$2,136.17 from all customers through a surcharge in the amount of $16.69 per customer over four semi-annual billing periods.]	No expenses disallowed.
DW 06-101	White Rock Water Co.	Rate Case Used outside counsel No outside experts used	Order 24,741 dtd 04-13-07 approving settlement/rates and allowing rate case expenses. [$12,051.50 in rate case expenses through a surcharge to customer bills of $15.86 per customer per quarter for eight quarters.]	No expenses disallowed. Parties agreed to rate case expenses at hearing and presented them to the Commission.
DW 06-099	Hanover Water Works	Rate Case No counsel Used outside accountant (St Cyr)	Order 24,806 dtd 12-17-07 authorizing recovery of rate case expenses/temp rate recoupment [authorized to recover $41,168.69, representing rate case expenses in DW 04-117 (financing) and DW 06-099 (rate case).] Commission disallowed audit-related expenses.	Temporary Rate Order 24,710 dtd 12-15-06. Final Order 24,759 dtd 06-07-07 on Settlement/Rates.
DW 06-073	Pennichuck Water Works	Rate Case	Order 24,771 dtd 06-29-07 approving recovery of	Temporary Rate Order 24,668 dtd 09-22-06.

		Used outside counsel Used outside expert (Walker) for ROR	temp/perm rate surcharge and subsequent step adjustment Final Order 24,751 dtd 05-25-07 on Settlement/Rates/rate case expenses. [Commission authorized recovery of $198,770.71 in rate case expenses from all customers through a surcharge over a 9-month period of time.]	
DE 05-178	Unitil Energy Systems	Rate Case In-house and outside counsel used. Used outside experts: Robert Yardley for attrition study; Samuel Hadaway for cost of equity; Aikman & Normand for Depreciation; and James Harrison for Cost of	Supplemental Order 24,702 dtd 11-22-06 allowing a surcharge for rate case expenses. Unitil sought to recover a total of $809,017 in expenses. "Staff recommended that the Commission approve, for effect November 1, 2006, a temporary surcharge that excludes those expenses with the surcharge rate to be revised later, pending completion of the investigation into the legal and temporary support staff expenses. Excluding the $520,425 of legal and temporary expenses leaves $288,592 of rate case	Temporary Rate Order 24,585 dtd 02-03-06. Order 24,677 dtd 10-06-06 approving settlement which allowed for recoup of rate case expenses

		Service.	expenses which, together with the $2,115,400 of incremental revenue associated with the temporary rate reconciliation, produces a temporary surcharge rate of $0.00186 per kWh." Commission directed Staff to investigate the rate case expenses further and report back no later than January 15, 2007. Order No. 24,726 approved recovery of $646,839 in expenses by means of an adjustment to the currently effective temporary surcharge of $0.00186 per kilowatt-hour. As adjusted, the temporary surcharge would be $0.00223 per kilowatt-hour, effective February 1, 2007 during the remainder of the 12-month temporary surcharge period on a service rendered basis.]	
DW 05-137	Lakes Region Water Co.	Rate Case No counsel Used outside	Order 24,708 dtd 12-08-06. authorized recovery of rate case expenses/temp rate recoupment. [$72,037 collected over eight	Temporary Rate Order 24,624 dtd 05-15-06. Order 24,692 dtd 10-31-06 approving settlement/rates.

		accountant (Sr Cyr)	billing quarters along with temp/perm recoup.] Commission disallowed $593 relating to the printing of a postcard notice to customers that contained font too small to read. The Commission included as a rate case expense, the expense to negotiate the Suissevale water supply contract since the contract was essential to the resolution of the rate case.	
DT 05-133	Granite State Telephone	Rate Case Used outside counsel. Used outside expert (CPA) for revenue requirement.	Order 24,621 dtd 05-12-06 Approved settlement which allowed for recoup of estimated rate case expenses at an estimated surcharge over a period of "approximately 12 months, based on the current number of access lines."	Temporary Rate Order 24,565 dtd 12-15-05. Stipulation at page 6: 7. Rate Case Expense - GST will recover its reasonable and prudent rate case expenses (estimated at $91,500) through a surcharge to basic rates in the amount of an estimated $.76 per month until the entire amount shall have been collected. The final month of the surcharge shall be adjusted to prevent an over-recovery by GST. GST shall submit the details of its rate case expenses for Commission review.
DW 05-119	Aquarion Water Co.	Rate Case Used outside counsel. Used outside expert (Guastella) for	Order 24,665 dtd 09-12-06 Authorized recovery of rate case expenses. [$71,454.89 over twelve months, commencing on or about October 1, 2006, through a surcharge to customers in the amount of	Temporary Rate Order 24,546 dtd 11-18-05. Order 24,648 dtd 07-18-06 approving settlement/rates. Order 24,670 dtd 09-22-06 approv temp rate recoupmt.

		cost of service study	$0.71 per customer per month] Commission disallowed $434 in expenses associated with the company's response to audit-related inquiries. Commission states responding to audit inquiries is an on-going obligation of the company which is already accounted for in permanent rates	
DW 05-112 DW 05-177	Hampstead Water Co.	Rate Case Inhouse counsel only. Used outside accountant (St Cyr)	Order 24,626 dtd 05-26-06 Approved rates/settlement rate case expenses recoup. [$29,992.21 in rate case expenses in a surcharge to customer bills over four billing quarters] Commission disallowed: $247.66 in billing errors; $1,170.10 in audit-related expenses that are already recovered pursuant to RSA 374:18 and 378:28.	Temporary Rate Order 24,556 dtd 12-02-05.
DW 05-072	Pennichuck East Utilities	Rate Case Used outside counsel. Depreciation expert used at a cost of	Order 24,591 dtd 02-24-06 Approved rates/settlement rate case expenses recoup. [$68,447.98 in rate case expenses in a surcharge of $1.15 to customer bills over 12 months] Commission disallowed $1,418.50 in	Temporary Rate Order 24,513 dtd 09-09-05.

		$39,600.	audit-related expenses.	
DW 05-070	Hampstead Area Water	Operate Well, Approval of Financing, Acquisition of Assets and Permanent Rates for Waterford Vil. No outside counsel. No outside experts	Order 24,581 dtd 1/20/06 Approved recovery of rate case expenses. [$3,168.92 in rate case expenses with a maximum amount to be recovered from each of the current or future customers of the Waterford Village system of $79.22 via a quarterly surcharge of $9.90 over eight billing quarters commencing on or about January 2006, and collected until such time that the total authorized amount of rate case expenses is recovered.]	Order 24,545 dtd 11/18/05 approving stipulation agreement.
DW 05-063	Hampstead Area Water	Operate Well, Approval of Financing, Acquisition of Assets and Permanent Rates for Mill Woods No outside counsel. No outside experts.	Order 24,580 dtd 1/20/06 Approved recovery of rate case expenses. [$3,272.90 in rate case expenses with a maximum amount to be recovered from each of the current or future customers of the Mill Woods system of $86.13 via a quarterly surcharge of $10.76 over eight billing quarters commencing on or about January 2006.] Company sought $3,837.50 in expenses and the Commission	Order 24,544 dtd 11/18/05 approving stipulation agreement.

			disallowed $564.60 since it related to the preparation of continuing property records that should have been kept in the normal course of business per Puc 607.07.	
DW 05-054	Saco Ridge Water Co.	Rate Case No counsel. No outside experts used.	Order 24,561 dtd 12-09-05 Approved settlement which allowed for recoup of rate case expenses. [$3,575 = surcharge of $13.54 per customer per quarter for 8 quarters.]	
DW 04-196	Hampstead Area Water	Approval of Permanent Rates for Camelot Court, Cornerstone, Lamplighter and Cricket Hill No outside counsel. Used outside accountant (St Cyr)	Order 24,490 dtd 7/19/05 Approved recovery of rate case expenses. [$7,393.95 in rate case expenses sought and approved. Recovery over four billing quarters commencing on or about August 15, 2005 through a surcharge to the customers of Camelot Court, Cornerstone Estates, Lamplighter Estates and Cricket Hill/Maplevale in the amount of $7.06 per customer per quarter.]	Order 24,470 dtd 5/27/05 approving stipulation agreement.
DG 04-156	Concord Steam Corp.	Rate Case	Order 24,547 dtd 11/18/05 Approved recovery of rate	Temporary Rate Order 24,421 dtd 01/07/05. Order 24,472 dtd 06/02/05 approving settlement/rates.

		Outside counsel used. No outside experts used.	case expenses. [$22,686 in rate case expense recovered by a surcharge of $.12 per Mlb for the period November 1, 2005 through October 31, 2006, effective on a service rendered basis.] Company sought recovery of $22,756 in expenses but Staff audit could only confirm $22,686 in expenses.	
DW 04-145	Bodwell Waste Services Co.	Rate Case No counsel. Used outside accountant (St Cyr)	Order 24,480 dtd 07/01/05 Approved rates/settlement rate case expenses recoup. [$10,115.58 in rate case expenses recovered by a surcharge to customer bills over four billing quarters.] Commission disallowed $926.25 in audit-related expenses.	Temporary Rate Order 24,430 dtd 02/11/05.
DW 04-144	Bedford Waste Services Co.	Rate Case No counsel. Used outside accountant (St Cyr)	Order 24,479 dtd 07/01/05 Approved rates/settlement rate case expenses recoup. [$12,630.71 in rate case expenses in a surcharge to customer bills over twelve quarters.] Commission disallowed $665 in audit-	Temporary Rate Order 24,429 dtd 02/11/05.

			related expenses.	
DW 04-117 DW 06-099	Hanover Water Works	Authority to Issue Securities and to Increase Rates Used outside counsel. Outside experts included accountant (St Cyr) and engineer.	Order 24,806 dtd 12/17/07 Approved recovery of rate case expenses. [$2,827.53 in expenses related to HWW's financing and step adjustment in Docket No. DW 04-117; $21,990.68 in rate case expenses associated with Docket No. DW 06-099. Surcharge over 4 billing quarters.] In DW 06-099, the Commission disallowed $1,643.99 based on corrected invoices from the company's consultant for actual hours incurred as well as for costs regarding the company's responses to audit inquiries.	Order 24,393 dtd 10/29/04 approving stipulation for financing and rate recovery.
DW 04-056	Pennichuck Water Works	Rate Case Used outside counsel Used outside experts (Mulle-COE)	Order 24,469 dtd 05/27/05 Approved recovery of rate case expenses. [$130,437.00 in rate case expenses over a 12-month period in a surcharge amount of $0.45 per customer per month.] Company originally requested recovery of $133,990.98 in expenses but	Temporary Rate Order 24,377 dtd 09/30/04. Order 24,465 dtd 04/29/05 approving settlement/rates.

			the Commission disallowed recovery of audit-related expenses.	
DW 04-001	Atkinson Woods Water	Financing Approval and Rates No counsel. Used outside accountant (St Cyr)	Order 24,418 dtd 12/30/04 Approved recovery of rate case expenses. [$12,900.89 recovered from customers over 16 billing quarters.]	Temporary Rate Order 24,335 dtd 6/11/04. Order 24,404 dtd 11/19/04 approving financing and permanent rates.
DW 03-107	Pittsfield Aqueduct Co.	Rate Case Used outside counsel. No outside experts used.	Order 24,261 dtd 12/31/03 Approved rates/settlement rate case expenses recoup. [$6,398.68 recovered through a surcharge of $0.83 per customer per month for twelve months.] Company originally sought recovery of $6,510.59 but the Commission disallowed audit-related expenses.	
DW 02-156	Lakes Region Water Co.	Rate Case Used outside counsel. No outside experts used.	Order 24,196 dtd 07/29/03 Approved rates/settlement rate case expenses recoup. [$33,026.31 in rate case expenses and that they be collected as follows: 1) for the Consolidated Tariff Systems, a surcharge of $7.22 per customer for four	Temporary Rate Order 24,131 dtd 03/03/03.

			quarters; 2) for 175 Estates, a surcharge of $3.61 per customer for eight quarters.] Company sought recovery of $36,996.71 but Commission disallowed $3,970.40 relating to the company's responses to audit-related inquiries.	
DW 02-128	Hampstead Area Water Co.	Rate Case In-house counsel used. No outside experts used.	Order 24,362 dtd 08/19/04 [Due to circumstances of rate case, HAWC agreed to not seek rate case expenses.]	Temporary Rate Order 24,119 dtd 01/31/03.
DG 02-125	Concord Steam Corp.	Rate Case Outside counsel used. No outside experts used.	Order 24,186 dtd 06/19/03 Approved recovery of rate case expenses. [$16,228.07 in expenses recovered through a surcharge of $0.07 per Mlb for the period July 1, 2003 through June 30, 2004.] Company sought recovery of $15,951.91. Audit staff verified $16,228.07. Company had failed to include a legal invoice in its total and had misstated another expense.	Temporary Rate Order 24,073 dtd 10/25/02. Order 24,147 dtd 03/28/03 approving settlement/rates.
DW 02-094	Tioga River Water Co.	Rate Case No counsel.	Order 24,097 dtd 12/16/02 Approved rates/settlement rate case expenses recoup.	

		Used outside accountant (St Cyr)	[$9,185.81 in expenses recovered over a two-year period encompassing eight billing quarters. Based on 85 customers, the surcharge would be $13.51 surcharge per quarter.] Company originally sought to recover $10,566.31 but Commission disallowed audit related expenses.	
DG 02-003	New Hampshire Gas Corp.	Rate Case Used outside counsel. No outside experts used.	Order 24,102 dtd 12/23/02 Approved rates/settlement rate case expenses recoup. [$0.0200 per therm is APPROVED, effective January 1, 2003 through April 30, 2003, pending final approval of rate case expenses as part NHGC's 2003 Summer Cost of Gas filing] NHGC's Summer Cost of Gas Order 24,166 in DG 03-074: The Commission Audit Staff reviewed the $42,603.14 of rate expenses for which NHGC is seeking recovery and recommended approval in a memo dated January 17, 2003. Exh. 3 at 1. A reconciliation of the rate case expenses and revenues	Temporary Rate Order 24,003 dtd 06/28/02.

			collected through March 31, 2003 indicates an outstanding balance of $32,088 remains to be recovered over the next two years. Based on projected sales for that period, NHGC proposed a Rate Case Expense surcharge of $0.0214 per therm. Exh. 2 at 8. Staff also recommended approval of the proposed Rate Case Expense surcharge and did not oppose NHGC's request to implement rates on a bills-rendered basis.] 24-month recovery period.	
DW 01-193	White Rock Water Co.	Rate Case Used outside counsel. No outside experts used.	Order 24,033 dtd 08/09/02 Approved settlement on permanent rates and rate case expenses recoup. [$9,000 to be collected through a customer surcharge of $11.72 per customer per bill over a period of eight billing quarters.]	
DG 01-182	Northern Utilities, Inc.	Rate Case Used outside counsel. Unknown if	Order 24,075 dtd 10/28/02 Approved rates/settlement rate case expenses recoup. [We direct Northern to file with the Commission an	Temporary Rate Order 23,920 dtd 02/13/02. Order No. 24,267 dtd 1-30-04 approved rate case expenses totaling $410,017 and authorized recovery in the 2003-2004 Revised LDAC.

		outside experts used.	accounting of the amount of the rate case expenses as well as an DG 01-182 accounting of the difference between permanent and temporary rates, for Commission review and approval. The approved reconciliation and rate case expenses will be recovered through the LDAC and reconciled as part of Northern's next winter's COG proceeding.]	
DW 01-081	Pennichuck Water Works	Rate Case Used outside counsel Used outside expert for COE (Mulle)	Order 23,923 dtd 03/01/02 Approved rates/settlement rate case expenses recoup. [$91,667 originally sought less $1,366 in audit-related expenses = $90,301 in expenses approved and recovery from customers was over 12 months.]	Temporary Rate Order 23,770 dtd 08/31/01.
DW 01-030	Bodwell Waste Services Co.	Rate Case No counsel. Used outside accountant (St Cyr)	Order 23,789 09/28/01 Approved recovery of rate case expenses. [$11,576.27 in rate case expenditures via a quarterly rate case expense surcharge of $2.31 per customer for 12 quarters, commencing with	Order 23,778 dtd 09/20/01 approving settlement/rates.

			bills issued on or after October 1, 2001.] Company sought $12,851.27. Commission disallowed: $467.50 in expenses regarding the development of amortization schedules that were incomplete and incorrect; $170 regarding a dispute with a main replacement contractor; and $340 regarding continuing property records/plant records that lacked detail.	
DG 00-063	EnergyNorth Natural Cas	Rate Case Used outside counsel. Used outside experts	Order 23,692 dtd 04/30/01 Approved recovery of rate case expenses. [$217,864 in rate case expenses via a per therm surcharge through KeySpan's LDAC and that the surcharges are as follows: $0.0009 per therm from Residential rate classes and $0.0025 per therm from Commercial and Industrial rate classes, both for a period of one year, effective with service rendered on or after May 1, 2001.]	Commr. Brockway dissented on final order. Final Order No. 23,675 dtd 04/05/01 approving settlement/rates.

DG 00-046	Northern Utilities, Inc.	Rate Case Used outside counsel. No outside experts used.	Order 23,691 dtd 04/30/01 Approved recovery of rate case expenses. [$229,086 in rate case expenses via a per therm surcharge through Northern's LDAC and that the surcharges are as follows: $0.0020 per therm from Residential rate classes and $0.0048 per therm from Commercial and Industrial rate DG 00-046 classes, both for a period of one year, effective with service rendered on or after May 1, 2001.] Company sought $299,909. Staff stated legal expenses totaling $141,648 were excessive. Company and Staff settled on $70,824. Commission did not authorize carrying costs as company had requested.	Commr. Brockway dissented on final order. Final Order No. 23,674 dtd 04/05/01 approving settlement/rates.
DW 99-113	Hanover Water Works Company	Rate Case Unkown if used outside counsel or outside experts	Order No. 23,932 dtd 3-8-02 Authorized recovery of $3,294.83 in rate case expenses at a surcharge of $0.57 per customer for 3 quarters.	
DR 98-128	Central Water Company, Inc. (635 customers in Locke	Rate Case	Order No. 23,455, dtd 11-5-99, Approved recovery of	In Order 23,567, the Commission denied $17,748.87 in rate case expenses. The Commission cited: *State v.*

	Lake Colony, Barnstead)	Used outside counsel. No outside experts used.	$41,377 in rate case expenses but offset by overcollection of temporary rates. Thus, remaining $3,540.36 was allowed for recovery over 8 months via a surcharge of $.70 per customer. Order No. Order No. 23,567, dtd 10-9-00, granted recovery of additional rate case expenses of $3,681.23. Order denied $17,748.87 in expenses for motion for rehearing and appeal to Supreme Court. Surcharge of $0.70 per customer for an additional nine months.	*Hampton Water Works,* 91 NH 278, 296 (1941) "if unreasonably incurred, if undue in amount, if chargeable to other accounts, they may to that extent be reduced." The Commission stated that its "review of a utility's request to recover the expenses of litigating a rate case requires the balancing of the utility's right to and opportunity to collect its legitimate costs with the Commission's responsibility to ensure as the reasonableness of the expenses and that the utility is sufficiently motivated to control those expenses." The Commission denied expenses associated with the motion for rehearing since although the original was filed within 30 days, the 8 copies were filed 5 days late and no waiver of Puc 202.06 was requested and thus the filing date of the motion for rehearing was when the original AND copies were filed. Commission denied expenses associated with Supreme Court filing requesting order be suspended because filing of a suspension cannot occur unless an appeal is filed and as of the date of the filing, no motion for rehearing, let alone an appeal, had been filed.

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