

DE 99-099

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

PROPOSED RESTRUCTURING SETTLEMENT

Prehearing Conference Order

O R D E R N O. 23,299

September 16, 1999

APPEARANCES: Robert A. Bersak, Esq. for Public Service Co. Of New Hampshire; James K. Brown, Esq. Of Foley, Hoag & Eliot, LLP and Wynn E. Arnold, Esq. of the New Hampshire Attorney General's Office for the Governor of New Hampshire, the Governor's Office of Energy and Community Services and the New Hampshire Attorney General; Mark W. Dean, Esq. of Dean, Rice & Kane, for New Hampshire Electric Cooperative; David A. Garfunkel, Esq. and Lisa Shapiro of Gallagher, Callahan & Gartrell, for Wausau Papers; Jeb Bradley, member of the Legislature, pro se; Connie Rakowsky, Esq. of Orr & Reno for the Granite State Hydro Association and individual hydroelectric facilities; David W. Marshall, Esq. for the Conservation Law Foundation; John Ryan, Esq. for the Community Action Program; Alan Linder, Esq. of New Hampshire Legal Assistance, for the Save Our Homes Organization; James Rubens for THINK - New Hampshire; Pentti Aalto for PJA Energy Systems Designs; Peter H. Grills, Esq. of O'Neill, Grills & O'Neill, for the City of Manchester; Susan Geiser, Esq. Of LeBoeuf, Lamb, Greene & MacRae, for the Unitil Companies; Jay L. Hodes, Esq. Of Bossie, Kelly, Hodes & Buckley, for Wheelabrator Concord Co.; Carlos A. Gavilondo, Esq. for Granite State Electric/New England Power Company; Robert A. Olson, Esq. Of Brown, Olson, and Wilson representing six wood-fired power plants; Steven, V. Camerino, Esq. of McLane, Graf, Raulerson & Middleton, for Great Bay Power Corp. and the City of Claremont; Harold Turner for the Business & Industry Association of N.H.;

James A. Monahan for Cabletron Systems; Joshua L. Gordon, Esq. and Robert A. Backus, Esq. For the Campaign for Ratepayers' Rights; Michael W. Holmes, Esq. and Kenneth Traum of the Office of Consumer Advocate representing Residential Ratepayers; and Lynmarie Cusack, Esq. of the NH Public Utilities Commission for PUC Settlement Staff.

I. PROCEDURAL HISTORY¹

On June 17, 1999, a Memorandum of Understanding ("MOU") and "Motion to Stay Proceedings" in the above-captioned dockets was filed by Northeast Utilities and Public Service Company of New Hampshire (collectively, "PSNH") with the concurrence of the Governor of the State of New Hampshire ("Governor"), the Office of the New Hampshire Attorney General ("Attorney General"), the Governor's Office of Energy and Community Services ("GOECS"), and the certain members of the Staff of the New Hampshire Public Utilities Commission (Settlement Staff) (collectively, "the Settling Parties"). The MOU purported to contain a framework to resolve all matters in the above-referenced dockets. The Motion requested a stay of further proceedings in the above-referenced dockets pending the negotiation of a definitive agreement that embodied the understandings contained in the MOU entered into by PSNH and the Settling Parties on June 14, 1999, and during any subsequent proceeding wherein that agreement would be considered

¹ The substantive positions contained in the various filings listed below are discussed in the sections which follow.

by the Commission. The motion also contained a proposed procedural schedule and stated that the signatories to the MOU intended to file a definitive Settlement with the Commission by August 2, 1999.

Two days earlier, on June 15, 1999, a motion was filed on behalf of Cabletron Systems, Inc. ("Cabletron"), Enron, the Campaign for Ratepayer Rights ("CRR"), the Office of Consumer Advocate ("OCA"), EnerDev Inc. and Granite State Taxpayers, Inc. ("GST"), to designate Thomas B. Getz, Michael Cannata and Liberty Consulting, Inc., as "staff advocates" and bar designated Staff from engaging in *ex parte* communications with members of the Commission in Docket Nos. 96-150, 97-059 and any docket wherein the MOU or anticipated settlement would be considered.

On June 16, 1999, a letter was sent to all parties in the above-noticed dockets by the Commission General Counsel, on behalf of the Commission, requesting that any party wishing to respond or comment upon the Motion To Designate Staff Advocates do so in writing filed with the Commission by 4 p.m. on June 25, 1999, and that in the meantime the Commission would conduct its administration of its Staff in the affected proceedings as though the designation had been made.

On June 18, 1999, a letter was received from Peter H. Grills, Esq., dated June 17, 1999, that the City of Manchester concurs in the Motion to Designate.

On June 21, 1999, a letter was received from Scott J. Muller, Esq., dated June 18, 1999, advising the Commission that the Until Companies do not object to the Motion to Stay filed by PSNH as it pertains to the Commission's consideration of matters related to PSNH. Unitil, however, respectfully requested that any stay not be extended to the Commission's consideration of other settlements, nor to the working groups and other ongoing voluntary initiatives.

On June 21, 1999, a letter was received from Elizabeth I. Goodpaster, Esq., dated June 21, 1999 on behalf of the City of Manchester, advising the Commission of the City's objection to the Motion to Stay Proceedings. The City stated that it intended to file a formal objection within the 10 day period permitted under NH Admin. Rules Puc 203.04(g).

On June 21, 1999, the Commission's General Counsel issued a letter stating that the Commission requests that any party wishing to respond or comment on the Motion to Stay Proceedings filed by NU and PSNH on June 17, 1999 do so in writing filed with the Commission by 4 p.m. on June 25, 1999.

On June 23, 1999, a letter was received from Steven V. Camerino, Esq., on behalf of the City of Claremont, dated June 22, 1999, commenting to the Motion to Stay. The City stated that if it is the Commission's intention to consider a stay that would affect the proceedings relating to CVEC, the City requests an opportunity to be heard.

On June 24, 1999, a letter was received from Assistant Attorney General Wynn E. Arnold, on behalf of GOECS commenting on the Motion to Designate indicating partial concurrence.

On June 25, 1999 the City of Manchester's filed its Objection to Motion to Stay Proceedings.

On June 25, 1999, the New Hampshire Electric Cooperative ("NHEC") filed its Memorandum in Support of Motion to Designate Staff Advocates.

On June 25, 1999, NHEC filed its Memorandum in Opposition to Motion to Stay Proceedings.

On June 25, 1999, the OCA, on behalf of itself and the "Active Intervener's," filed its Objection to Motion to Stay Proceeding.

On June 25, 1999, Cabletron filed its Motion to Compel PSNH and Commission Staff to provide parties with "Financial Assumptions Document" referred to in the June 14, 1999 Memorandum of Understanding.

On June 25, 1999, the Members of the Science, Technology and Energy Committee of the Legislature submitted comments concerning the Motion to Stay.

On June 25, 1999, Thomas B. Getz, on behalf of Settlement Staff submitted comments with respect to the Motion to Stay Proceedings.

On June 25, 1999, Thomas Getz, on behalf of Settlement Staff, submitted comments to the Motion to Designate.

On June 25, 1999, Timothy W. Fortier, on behalf of the Business and Industry Association ("BIA"), advised the Commission that the BIA does not concur with the Motion to Stay as it pertains to the Commission's consideration of matters related to base rate case proceedings.

On June 28, 1999, Scott Mueller, Esq. submitted a letter to the Commission advising that the Util Companies do not object to the Motion to Designate.

On June 29, 1999, NHEC's submitted its Memorandum in Support of Cabletron's Motion to compel Production of Financial Assumptions Document.

On July 30, 1999, the Commission's General Counsel, on behalf of the Commission, issued a letter setting forth the manner in which the Commission would proceed with ruling on the outstanding motions. Among other matters, the letter indicated that: assuming the Settling Parties file a definitive Settlement Agreement by August 2, 1999, the Commission would address the

Motion to Stay at a hearing to be held on August 10, 1999; treatment of Staff subject to the Motion to Designate would continue as stated in the General Counsel letter of June 16, 1999.

On June 30, 1999, Rep. Lawrence J. Guay submitted comments on the Motion to Stay Proceedings.

On July 6, 1999, Stephen J. Judge, Associate Attorney General, submitted GOECS' Response to Motion to Compel to Provide Parties with Financial Assumptions Document.

On July 8, 1999, PSNH filed its Objections to Staff's (George McCluskey's) Motion to Compel.

On July 9, 1999, Stephen J. Judge, Associate Attorney General, filed a Petition to Initiate Docket and Establish Procedural Schedule for Consideration of PSNH Restructuring Settlement, on behalf of the Governor, the Attorney General, the GOECS, the Settlement Staff and PSNH.

On July 9, 1999, the Commission's General Counsel, on behalf of the Commission, issued a letter enclosing a copy of an internal Commission Ethics Board report regarding allegations of prejudgment and bias against Commissioner Brockway. The Commission requested that any party wishing to file any applicable pleading or comments do so by July 21, 1999.

On July 14, 1999, Petitions for Intervention were submitted on behalf of the Campaign for Ratepayers Rights, by

Rep. Jeb E. Bradley on behalf of members of the House Science, Technology and Energy Committee.

On July 16, 1999, a letter requesting intervention status was submitted by Rep. Thomas A. Varrell.

On July 21, 1999, the OCA, on behalf of itself and GST, submitted its Motion for Disqualification of Commissioner Brockway from Hearings or Deliberations on the PSNH Settlement, the PSNH Interim Stranded Cost Case and the PSNH Rate Case.

On July 26, 1999, Rep. John R. M. Alger submitted a request for intervention status.

On July 28, 1999, Rep. Bill Rose submitted a request for intervention.

On August 2, 1999, PSNH submitted for filing the executed Agreement to Settle PSNH Restructuring entered into by the Governor's Office of Energy and Community Services, the Office of the Attorney General, Staff of the NHPUC, PSNH and NU, and accompanying testimony and exhibits of PSNH.

On August 2, 1999, the Commission issued an Order of Notice that a Prehearing Conference, pursuant to N.H. Admin. Rules Puc 203.05, be held before the Commission located at 8 Old Suncook Road, Concord, New Hampshire on Tuesday, August 10, 1999 at 10:00 a.m.

On August 6, 1999, Commissioner Brockway issued Order No. 23,277, denying the motion of OCA and GST seeking

Commissioner Brockway's disqualification from certain of the above-captioned dockets.

On August 9, 1999 Wausau Papers of NH, Inc., submitted its petition to intervene.

On August 10, 1999, Mr. James M. Rubens, on behalf of Think-New Hampshire, submitted a petition to intervene.

On August 10, 1999 CRR filed its Motion to Decline Consideration of Securitization.

On August 10, 1999, a Motion to Intervene of New England Power Company and Granite State Electric Company was filed, as was an Assented to Motion for Limited Intervention of PG & E Generating Company, and Jac Pac Foods, Ltd. petition to intervene.

On August 10, 1999, the duly noticed prehearing conference in the above-referenced dockets was held.

On August 11, 1999 the OCA submitted a letter containing the procedural schedule that the OCA had originally prepared for the Settlement proceeding.

On August 12, 1999, the OCA submitted a proposed procedural schedule.

On August 12, 1999, Commission Counsel issued a letter to all parties stating the Commission's ruling regarding the Motion to Stay Proceedings, setting forth the procedural schedule, and addressing certain other matters.

On August 13, 1999, the Acting Commission Secretary issued a letter to all parties stating that the Commission has assigned Docket No. DE 99-099 to consideration of the PSNH Settlement filed on August 2, 1999, and requesting an update of the current service and intervention lists.

On August 16, 1999, a letter was received from James K. Brown, Esq. dated August 11, 1999, enclosing a proposed schedule for the Phase I and Phase II of the proceeding as agreed to by various parties after the prehearing conference.

On August 18, 1999, the Commission provided notice to all parties that it filed with the NH Supreme Court a Request for Ruling on Question of Law Pursuant to RSA 365:20. This Request for ruling concerned Commissioner Brockway's decision denying the OCA and GST's Motion to Disqualify Commissioner Brockway.

On August 18, 1999, Commission Settlement Staff and GOECS submitted its Objection to Motion of Campaign for Ratepayers' Rights to Decline Consideration of Securitization. PSNH and NU joined in the objection.

On August 18, 1999, a Petition to Intervene on behalf of the Towns of Bow, Hillsborough and Gorham was filed.

On August 19, 1999 a letter request was received to add Richard Norman, Granite State Hydropower Association to the service list.

On August 20, 1999, the Attorney General submitted a response to the record request from the CRR pertaining to the party status of the Attorney General in the proceedings.

On August 20, 1999, Rep. Robert E. Glegg submitted a letter seeking to preserve the right to submit comments in the course of this proceeding.

On August 26, 1999, the Commission's General Counsel issued a letter to all parties on his rulings on pending discovery motions and clarification of other discovery related questions.

On August 26, 1999 the OCA submitted a Motion to Reconsider Stays, Motion to Clarify Procedural Schedule and Motion to Establish Separate Dockets Submitted on behalf of itself and CRR, GST, THINK-NH, Cabletron, and the City of Manchester.

On August 30, 1999, Cabletron submitted its comments on the Motion to Designate certain Staff and consultants associated with the partial settlement filed by PSNH.

On August 30, 1999, Clean Water Action ("CWA") and the Seacoast Anti-Pollution League ("SAPL") each submitted a Motion to Intervene.

On September 1, 1999, the OCA, on behalf of itself and GST, submitted a clarification on its position regarding the motion it filed on August 26, 1999, with respect to rate design.

On September 2, 1999, Great Bay Power Corporation submitted its Partial Concurrence with the OCA, CRR, GST, THINK-NH, Cabletron Systems and City of Manchester's Motion to Reconsider Stays, Motion to Clarify Procedural Schedule and Motion to Establish Separate Docket.

On September 7, 1999, Settlement Staff submitted a letter to clarify its position regarding the bifurcation of Liberty Consulting Group.

On September 7, 1999, PSNH submitted its Objection to the August 27, 1999 Motion of the Office of Consumer Advocate, et al.

On September 7, 1999 OCA submitted its Motion for Rehearing.

On September 7, 1999, the Settling Parties submitted their Response to Motion to Reconsider Stays, Motion to Clarify Procedural Schedule and Motion to Establish Separate Docket.

II. INTERVENTIONS

At the prehearing conference, the Commission stated it had received requests for intervention from David A. Garfunkel, Esq. on behalf of Wausau Papers of NH, Inc., James M. Rubens on behalf of "THINK-New Hampshire," and Carlos A Gavilondo, Esq. on behalf of New England Power Co. Mr. Gavilondo noted that he also represents Granite State Electric Co., which has already been granted intervenor status in a number of the noticed dockets.

There were no objections to these requests, which the Commission granted. The petition to intervene of Jac Pac is also granted.

Any person who was previously granted intervenor status in any of the aforementioned noticed dockets, and whose status and interests has not changed since that intervention was granted, shall be deemed an intervenor in this docket.

Subsequent to the prehearing conference, petitions or motions to intervene were submitted on August 18, 1999, on behalf of the Towns of Bow, Hillsborough and Gorham, and on August 30, 1999, on behalf of CWA and SAPL. No objections to these motions have been filed. The Commission shall grant these motions, subject to the movants' acceptance of the current status of the procedural schedule. In addition, the Commission requests that CWA and SAPL, to the extent that their interests and concerns are similar, attempt to consolidate their participation in this proceedings.

The Campaign for Ratepayers Rights sought clarification of the party status of the Attorney General and Thomas B. Getz, Executive Director and Secretary to the Commission, and those members of the Commission Staff who are advocating the proposed Settlement with PSNH.

It is not the practice of the Commission to grant formal intervenor status to its Staff members who advocate substantive positions in Commission proceedings, and we will not do so here. The Commission's determination with respect to the

outstanding Motion to Designate Staff is discussed below, but we note here that we interpret the designation of employees provisions of RSA 363:32 to mean that the Commission assigns a Staff member to advocate and participate in a proceeding, the Staff member is treated as *though* it were a party. It does not provide that such designated employee actually submit a formal motion to intervene and gain party status. Nor does it imply that such a designated Staff member thereby acquires all the rights that a non-staff party-intervenor would have.

With regard to the Attorney General, CRR noted that he is an individual signatory to the PSNH Settlement. CRR's primary concern is whether it can seek discovery from the Attorney General in light of his position as a party to the Settlement Agreement. After some discussion, the Commission requested that the Attorney General submit a written clarification of its position on this matter.

On August 20, 1999, the Attorney General submitted a letter to the Acting Secretary of the Commission, wherein it is stated that the "Attorney General would be pleased to facilitate appropriate discovery to ensure a complete and adequate record. Any unprivileged information in the possession of the Attorney General which would be obtainable from the Attorney General were he a party, is obtainable in this proceeding via the Governor's Office of Energy and Community Services and its counsel, the Attorney General." The letter does not state, however, whether

or not the Attorney General considers himself a party to this proceeding or a party to the Settlement Agreement.²

The Commission notes that the Rate Agreement dated November 22, 1989, was signed by the Attorney General on behalf of the State of New Hampshire, and that paragraph no. 17 of that Agreement provides that the Attorney General "is the person designated to act for the State with respect to modifications" thereof. It is the Commission's understanding, therefore, that to the extent the Settlement Agreement purports to modify the Rate Agreement, the Attorney General signed it in his capacity as the designated representative of the State. Further, it is our understanding, and consistent with RSA 7 and RSA 21-M, that the Attorney General is appearing in this proceeding as the representative of the State, and as counsel to the Governor and

² The Commission notes that on July 9, 1999, the Attorney General's Office submitted a Petition to Initiate Docket on behalf of the Governor, the GOECS and the Attorney General, all of whom it collectively referred to as "*Parties*." (Emphasis supplied.)

the GOECS.³ Thus, the Attorney General will not be treated as a party to this proceeding and will not be subject to discovery.

III. STAFF DESIGNATIONS

The Commission next considered the June 15, 1999 motion of Cabletron, CRR, OCA, EnerDev and Granite State Taxpayers to designate certain Commission Staff members as advocates pursuant to RSA 363:30 *et seq.*, RSA 541-A:36, and RSA 363:12. The motion seeks the designation of Staff Executive Director and Secretary Thomas Getz, Chief Engineer Michael Cannata and Liberty Consulting Group as "staff advocates." The motion also requests that the Commission determine if any other member of the Commission Staff has participated, either directly or indirectly, in the negotiations and/or development of the MOU and designate such Staff accordingly.

The motion is supported by NHEC and the City of Manchester. Unitil does not object to the motion, but requests that it not extend to other settlements that may be proposed in

³ The Attorney General's authority to bind the State to any modification of the Rate Agreement is expressly subject to the approval of the Commission. The Rate Agreement provides that "any modification made after enactment of the legislation contemplated in paragraph 14 will also be subject to the approval of the NHPUC." (Rate Agreement at 24.) See also, RSA 362-C:6 and 362-C:9. Though the Attorney General may have determined to separately sign the Settlement Agreement because of the requirements of the Rate Agreement regarding modifications thereof, the Commission does not interpret that action as an admission on the part of the State that the Rate Agreement remains in effect or is binding upon the State at this time.

DR 96-150. The GOECS partially supports the motion insofar as it requests the designation of Staff members Getz and Cannata and Liberty Consulting Group member John Antonuk. GOECS does not agree that the entire Liberty Group need be designated, noting that only one Liberty employee, Mr. Antonuk, participated substantively in the negotiations. Similarly, Mr. Getz, on behalf of the Settlement Staff believes that the designation is an appropriate action, but would limit it to apply to himself, Mr. Cannata and only Mr. Antonuk of Liberty.

During the hearing, Cabletron voiced its opposition to the proposal of GOES and Staff that only certain employees of Liberty Consulting be designated as advocates with others remaining free to advise the Commission, contending that it would be impractical to enforce such a bifurcation in connection with outside consultants.

Cabletron further requested the Commission to make a formal determination as to which members of its Staff participated in the negotiation of the Settlement Agreement with PSNH so that those persons can be designated as advocates under RSA 363:32,I. Cabletron indicated that its chief concerns relate to General Counsel Gary Epler and Director of Finance Mark Naylor. Chairman Patch invited Mr. Epler and Mr. Naylor to clarify, on the record, the extent of each's involvement in the negotiating process.

Mr. Epler indicated that he attended several meetings in August 1998, at the invitation of Mr. Getz, that involved other Staff members, representatives of Liberty Consulting, GOECS and the Attorney General. No representatives of PSNH were present. Mr. Epler stated that he had no further involvement with the negotiations and that he did not believe he had "commit[ed] to a highly adversarial position" such that he "may not be able to fairly and neutrally advise the [C]ommission on all positions advanced in the proceeding," the standard for designating Staff members as advocates under RSA 363:32,I.

Mr. Naylor reported that he and Chief Engineer Michael Cannata attended a series of meetings with PSNH officials beginning in May 1998. According to Mr. Naylor, these meetings centered on PSNH's then-current operations and the potential for saving money on those operations in ways that might ultimately facilitate resolution of outstanding issues relating to restructuring. Mr. Naylor reported that these discussions were expanded during the summer of 1998 to include representatives of GOECS and the Attorney General, and that as the discussions continued into the fall of 1998 each side presented what he characterized as a framework for possible negotiations. According to Mr. Naylor, he ceased participating in these discussions in the late fall of 1998, when the Commission announced it would reopen Docket No. 97-059, the PSNH ratemaking proceeding. Mr. Naylor stated that his understanding is that the

substance of the Settlement proposal now before the Commission was developed in 1999, after he terminated his participation in the discussions.

Mr. Monahan requested, and was granted, an opportunity to consider these remarks and advise the Commission in writing of Cabletron's position with respect to Messrs. Epler and Naylor. In a letter addressed to Acting Secretary Howland, dated August 26, 1999, Mr. Monahan indicated that, at this time, Cabletron will not expand its initial motion to include Mr. Epler or Mr. Naylor, though it may want to revisit this issue with respect to Mr. Naylor once the Settlement Staff's testimony is filed. In addition, Cabletron reserved its right to raise designation issues as the case develops.

Ms. Cusack, on behalf of Settlement Staff, argued in favor of bifurcating the Liberty Consulting Group, with John Antonuk of Liberty and certain of his associates designated as advocates and Mike McFadden of Liberty designated as an advisor to the Commission. By letter dated September 2, 1999, addressed to Acting Secretary Howland, Ms. Cusack represents that Liberty has internally bifurcated its Staff, consistent with the requirements of RSA 363:30, *et seq.*, such that all of Liberty Consulting Group may be designated as "staff advocates" with the exception of Mr. McFadden and Dr. Robert Parente, who may remain undesignated in this proceeding.

Mr. Monahan, on behalf of Cabletron, and Mr. Holmes, on behalf of OCA, urged the Commission to defer making a decision about designations for Liberty employees until a point when Liberty Consulting's ultimate role becomes more clear. Mr. Grills, on behalf of the City of Manchester, asked the Commission to designate Liberty Consulting Group as a whole as advocates in light of the consultancy's involvement in the Settlement negotiations.

Commission Ruling: Upon consideration of the parties' positions and arguments and the requirements of RSA 363:30, *et seq.*, the Commission has determined the following with respect to the designation of its Staff:

The Commission, pursuant to the discretion afforded it in RSA 363:33, will only act upon the request for designations in this proceeding, Docket No. 99-099, wherein the Settlement Agreement is to be considered. As discussed below, the proceedings in Docket Nos. 97-059, 96-150 and other matters are stayed during the initial phase of this docket. Should proceedings in those Dockets be revived, the Commission will consider any requests to designate its Staff therein.

Mr. Getz and Mr. Cannata of Staff, and Liberty Consulting Group, with the exception of Mr. McFadden and Dr. Parente are designated as "Staff Advocates" in this proceeding. Mr. McFadden and Dr. Parente will remain undesignated at this

time. The Commission will designate only part of its consultants pursuant to its authority under RSA 363:30,VII and RSA 363:32. We accept the Settlement Staff's representation that Liberty has internally bifurcated its staff, and believe that Mr. McFadden and Dr. Parente, if needed could "fairly and neutrally advise the Commission on all positions advanced in the proceeding."

The Commission notes that Staff member George McCluskey has submitted his resignation, effective within the next month. As Mr. McCluskey had been designated "staff advocate" in Docket No. 96-150 (ISC Rehearing) the Commission has and will continue to treat Mr. McCluskey as though he were designated in this proceeding.

The Commission has also made the following Staff attorney assignments in this proceeding:

Ms. Lynmarie Cusack is assigned as Staff counsel to the Settlement Staff. Pursuant to this assignment, Ms. Cusack is designated as "staff advocate."

Mr. Larry Eckhaus is assigned as Staff counsel to all remaining Commission Staff who have been assigned to review and analyze the Settlement Agreement.

IV. MOTION TO STAY

The Commission next considered the Motion of PSNH and the Settling Parties to stay further proceedings in the subject dockets. This motion was filed on June 17, 1999, along with the MOU. The moving parties submit that the Settlement Agreement, if

approved by the Commission, would resolve all matters at issue in those dockets.

A. Positions of the Parties

1. PSNH

PSNH took the position that granting its motion would effectuate the policy, reflected in both the state Administrative Procedures Act and the Commission's enabling statute, that favors negotiated settlement of disputes. According to PSNH, the parties who oppose the motion have taken that position purely to enable them to "comparison shop" between the proposed Settlement and the decisions the Commission would reach in the subject dockets. PSNH also took the position that a stay is consistent with Laws of 1999, Chapter 289:4 (the relevant provision of House Bill 464), which provides that participants in any PSNH Settlement proceeding "should file" in connection with that proceeding any factual record developed in connection with the dockets relating to the Fuel and Power Adjustment Clause, the PSNH base rate and statewide electric industry restructuring. The Legislature determined that such data "would contribute to a factual record against which to compare the terms of a settlement." Id.

Chairman Patch asked PSNH to clarify its request in light of its representation in federal Court that the Commission cannot stay its stranded cost proceeding in Docket No. 96-150

without leave of the Court. PSNH stated that it has asked the federal court to modify its outstanding order but that the court had not yet acted on the request.⁴ According to PSNH, moving forward with the Settlement process would be fully consistent with court's most recent order as it has already been entered, requiring the Commission to move forward with a process that would develop a stranded-cost charge for PSNH. PSNH also expressed support for the Governor's request that the Commission create a new docket to hear the Settlement proceeding.

2. The Governor, the Attorney General and GOES

Mr. Brown, on behalf of the Governor, the Attorney General and GOES, expressed support for PSNH's motion. Mr. Brown stated that the Commission lacks the resources to decide a rate case, an interim stranded-cost proceeding, a FFPAC case and a Settlement proceeding simultaneously. He also noted that, because much of the discovery phase of the rate case has already been completed, it can be easily reinstated in the event the Settlement does not receive approval.

⁴ The Commission notes for the record that on August 26, 1999, it was notified that the federal district court had entered an order on August 24, 1999, providing that the litigation with respect to PSNH and NU is stayed until the Settlement Agreement proposed is implemented or until 10 days following notice to the court by either the Commission or PSNH and NU that the Settlement will not be implemented. In addition, the May 5, 1999 order of the court to the Commission to "proceed forthwith" with its determination of an ISC charge for PSNH is stayed, without prejudice to the Commission's ability to conclude its ISC rehearing process if the stay is lifted.

3. Settlement Staff

On behalf of the Staff advocating the Settlement, Ms. Cusack indicated support for the proposed stay with the proviso that the parties to the Settlement docket be permitted to introduce evidence in that docket from the stayed proceedings.

4. Great Bay Power Corp. and City of Claremont

Mr. Camerino indicated that Great Bay Power Corp. does not object to the motion for stay but is concerned about the scope of any new docket opened to consider the Settlement. Great Bay's position is that the issue of PSNH rate design should be included in any such new docket. On behalf of the City of Claremont, Mr. Camerino asked that any stay imposed in Docket No. 96-150 apply to PSNH only (i.e., not to Connecticut Valley Electric Company).

5. Conservation Law Foundation and Save Our Homes

Counsel for the Conservation Law Foundation and Save Our Homes requested that any stay imposed in connection with Docket No. 96-150 not affect the Commission's consideration of the recommendations submitted by the Energy Efficiency Working Group.

6. Community Action Program

Counsel for the Community Action Program supported the motion for stay.

7. Rep. Jeb Bradley

Rep. Bradley contended that it would be premature to stay the pending rate case and interim stranded cost recovery proceeding. According to Rep. Bradley, House Bill 464 compels the Commission to move forward with the rate case but does require the development of a factual record adequate to permit comparison of the Settlement Agreement with other possible outcomes. Rep. Bradley's position was that not granting a stay would be consistent with that objective. He further took the position that staying the "light loading" and "best efforts" dockets would not encourage the objective stated in House Bill 464 of encouraging renegotiation of contracts with the independent power producers involved in those dockets.

8. New Hampshire Electric Cooperative

On behalf of the New Hampshire Electric Cooperative, Mr. Dean urged the Commission to consider the scope of the Settlement-approval proceeding and assure itself that it will have a sufficient evidentiary record from which to make a fully informed decision. He advocated a consolidation of the various dockets already open as the best means to facilitate full record development.

9. City of Manchester

Mr. Grills, on behalf of the City of Manchester, indicated that the City of Manchester opposes any stay. He noted that the restructuring docket is ready for hearing after a

process of more than three years, and that further delays would be unfair to the parties. Mr. Grills also supported OCA's position, as stated in a written memorandum filed with the Commission, that the Commission is legally required to move forward with the proceedings PSNH seeks to stay. He further noted that the implementation of the Settlement, even if approved by the Commission, will be delayed by the required review by federal regulators and the Department of Public Utility Control in Connecticut. Finally, Grills noted that it has been many years since PSNH has been subjected to a full rate case and, thus, a decision in such a proceeding would establish a valuable and needed benchmark for evaluating the Settlement.

10. THINK-New Hampshire

Mr. Rubens, on behalf of THINK-New Hampshire, opposed the motion for stay. He noted that the interim stranded cost docket and the base rate docket are closer to final decision than the Settlement proceeding and would provide valuable benchmarks for evaluating the Settlement.

11. PJA Energy Systems Designs

Mr. Aalto, representing PJA Energy Systems Designs, also expressed support for the view that allowing all proceedings to move forward would afford a useful framework for comparing the Settlement to other possible outcomes.

12. Business & Industry Association of New Hampshire

On behalf of the Business & Industry Association of New Hampshire, Mr. Turner also noted the length of time since the last PSNH rate decision and expressed the view that permitting all proceedings to go forward would permit the Commission to evaluate the risks and rewards of the Settlement fully.

13. Cabletron Systems

Mr. Monahan, on behalf of Cabletron Systems, indicated his agreement with the positions taken by other opponents of the motion. He further contended that not granting a stay would be consistent with what he characterized as a mandate in House Bill 464 for the Commission to develop and gather as much data as possible so as to permit the Legislature to make an informed choice about securitization.

14. Office of Consumer Advocate

On behalf of the Office of Consumer Advocate, Mr. Holmes took the position that granting a stay would prejudice ratepayers and convey a message to the Commission Staff that the Commission regards the Settlement as a preferred alternative to other possible outcomes. Mr. Holmes also took exception to PSNH's argument that a stay promotes the statutory policy objective of achieving negotiated settlements, suggesting that PSNH's position is contradicted by the company's having sought recourse in federal court against the Commission in the first place.

15. Commission Counsel Letter of August 12, 1999

On August 12, 1999, Commission Counsel issued a letter setting forth the following as the determination of the Commission with respect to the Motion to Stay:⁵

The proceeding to consider the Settlement Agreement will be divided into two phases: The first phase will be for the proponents of the Settlement to make their case, including the filing of testimony, exhibits, data requests and data responses, and the holding of hearings to provide a basis for the Commission to compare the settlement to the range of reasonable outcomes in the other noticed dockets. During this phase, non-settling parties will be afforded the opportunity to conduct discovery and cross-examination and to make arguments concerning whether: the Commission should continue hearings on the settlement; litigation of the dockets affected by the settlement should be resumed; or whether both of the aforementioned processes should go forward on a parallel track.

The second phase of the proceeding, assuming that the Commission does not determine after the first phase to discontinue the consideration of the Settlement and proceed with the other dockets separately, will be to allow the non-settling parties the opportunity to file testimony concerning the settlement, allow the Settling Parties the opportunity to conduct discovery, and allow all parties to file rebuttal testimony, and hold such additional hearings as necessary. A decision and order will follow this phase.

16. Motion To Reconsider

On August 26, 1999, the OCA, CRR, GST, THINK-NH, Cabletron and the City of Manchester jointly filed a Motion to Reconsider Stays, Motion to Clarify Procedural Schedule and Motion to Establish Separate Docket. This motion seeks to

⁵ The Commission ratified the General Counsel's August 12, 1999, letter at its public agenda meeting of August 16, 1999.

reinstate the interim stranded cost and base rate dockets, reconsider the procedural schedule set out above, clarify the basis on which it will determine whether to proceed to Phase II, and establish a procedure for issues raised in the August 2 testimony of PSNH that are alleged not to be part of the Settlement Agreement.

As grounds in support of this motion, the Movants state that:

1. The Commission is required, pursuant to RSA 374-F:4 to develop a generic statewide industry restructuring plan and establish the interim stranded cost (ISC) recovery charge for each utility, and is forbidden any delay in undertaking this task other than those beyond the control for the Commission. The Movants assert that ISC charge proceeding cannot be claimed to be delayed by events beyond the control of the Commission because the federal court expressly authorized such proceeding. In addition, the Movants state that the rate case should not be stayed because the obligation on the settling parties to provide testimony on the expected outcome of the base rate case cannot be a fair guide to the actual results of the case.

2. The Movants request that the Commission clarify the standard by which it will determine it should continue hearings on the Settlement Agreement after the first phase is completed. They suggest that the Commission review the evidence in the light most favorable to the proponents of the Settlement in a manner

comparable to a trial court decision on a motion for a directed verdict at the close of the plaintiff's case, and that a decision to proceed to Phase II should not be taken as an endorsement of any party's position.

3. The Movants request that the Commission clarify that data requests with respect to the August 2 testimony and exhibits continue to be considered timely even if not submitted as follow up to the first set of data requests submitted by August 27.

4. The Movants assert that portions of Volume 1 and all of Volume 3 of the material PSNH filed on August 2 are not part of the Settlement Agreement and have not been agreed to by the non-PSNH Settling Parties. Thus, it is argued that unless all the Settling Parties stipulate that all the issues contained in the August 2 PSNH filing have been agreed to, they should not be considered as part of this proceeding, and a separate docket should be established to consider them. Subsequent to the filing of this motion, a letter clarifying the position of the OCA and GST on this specific issue was submitted. OCA and GST state that, "[i]t was never the intention of the OCA and GST that Rate Design be considered separately from the process of approving the Settlement. Indeed it is simply impossible to determine the impact of the Settlement of each class without rate design being an integral part of the proceeding."

Great Bay Partial Concurrence: A Partial Concurrence to this Motion was submitted by Great Bay on September 2, 1999.

Great Bay supports the motion to the extent it seeks modification of the procedural schedule and requests further specification of the non-PSNH Settling Parties of its position on Settlement issues. Great Bay requests that the Commission modify the procedural schedule to allow for data requests on all issues relating to PSNH's initial filing and the Settling Parties' testimony through September 29. Great Bay also requests that the Commission require the non-PSNH Settling Parties to identify which aspects of the August 2 submitted materials it supports and which it does not.

PSNH Objections: PSNH filed its Objection to this Motion on September 7, 1999. PSNH states that the recent amendments to RSA 374-F, including Laws of 1999, Chapter 289, have eliminated the mandate that an ISC charge be established. In addition, PSNH claims that the U.S. District Court has enjoined enforcement of RSA 374-F with respect to PSNH, and that the Court's May 5, 1999 Order with direct the Commission to establish an ISC charge has been stayed by a subsequent Order dated August 23, 1999.

With respect to the base rate case, Docket 97-059, PSNH notes that section 4 of Laws of 1999, Chapter 289 discusses handling that case in the context of consideration of the Settlement Agreement.

PSNH argues that further clarification of the bifurcated hearing process is unnecessary beyond the response

provided to parties questions at the August 10 prehearing conference. Finally, PSNH states that: it is unnecessary to establish separate dockets for consideration of various portions of PSNH's August 2 filing; the Settlement Agreement cannot be implemented without a new retail delivery tariff; the parties interested in such matters are already intervenors in this proceedings; and separate proceedings would add to the administrative burden of considering these matters.

Non-PSNH Settling Parties Response: On September 7, 1999, the non-PSNH Settling Parties (Settlement Staff and GOECS) filed their response to the Motion. The non-PSNH Settling Parties object to the Motion to Reconsider Stays, arguing that RSA 374-F does not mandate the establishment of an ISC charge nor the pursuit of a traditional rate case. They argue that the recent revisions contained in Laws of 1999, Chapter 289 actually encourage a settlement of the restructuring issues, and that litigation of the cases that are intended to be settled is inconsistent with the notion of settlement. Staying the ISC and rate cases are administratively efficient, and note that as they emphasized during the prehearing conference, parties will have an opportunity to present any evidence that they would have in the ISC or base rate proceedings in this proceeding.

With regard to the standard of review at the close of Phase I of this docket, the non-PSNH Settling Parties state that

the test is whether the proponents presented a *prima facie* case during Phase I.

The non-PSNH Settling Parties agree that not all parts of PSNH's August 2 filing are part of the Settlement Agreement, and that they have not agreed on certain rate design and tariff issues. The non-PSNH Settling Parties have agreed only to those rate design principles that are set forth in Section IV of the Settlement, but state that to the extent rate design and tariff approvals are necessary to implement restructuring, they should be considered at this time. To the extent that PSNH's proposed changes are not necessary to implement restructuring, they could be addressed in a separate proceeding. Finally, the non-PSNH Settling Parties state that they are in the same position as all non-settling parties concerning rate design and tariff issues not covered by Section IV of the Settlement Agreement.

General Counsel Letter: On September 9, 1999, the Commission's General Counsel issued a letter addressed to the Settlement Staff and GOECS in which the Commission requested a supplemental response providing:

1. The rate design and tariff approvals you consider "necessary to implement restructuring," including a specific citation and reference to such items as contained in the August 2, 1999 filing provided by PSNH; a statement whether you have agreed upon or not agreed upon the specific rate design and tariff proposals with PSNH; and whether (and if so, where) in your testimony of September 15 such issues are addressed. In addition, please provide your position on whether the submission into evidence of a cost of

service study is necessary in order for the Commission to decide the rate design and tariff approvals necessary to implement restructuring.

2. The rate design and tariff changes proposed by PSNH which you do not believe are necessary to implement restructuring, including specific citation and reference to such items as contained in the filing provided by PSNH. Please also provide, to the extent you have made such determination, the type of proceeding you contemplate wherein such matters would be addressed and when such proceeding would be held.

Commission Ruling: Upon consideration of the positions of the parties as indicated in their written and oral comments, and the motions for reconsideration and clarification, the Commission has determined the following:

The proceeding to consider the Settlement Agreement will be divided into two phases: the first phase will be for the proponents of the Settlement to make their case, including the filing of testimony, exhibits, data requests and data responses, and the holding of hearings to provide a basis for the Commission to compare the Settlement to the range of reasonable outcomes in the other noticed dockets. As we stated during the prehearing conference:

This would include the filing of testimony that supports why the Commission should stay and ultimately drop the other dockets if it is to approve the Settlement. It would also include the filing of testimony by PSNH and the other proponents of the Settlement of benchmark testimony -- in other words, why the Commission should accept the Settlement given the possible outcomes in the other dockets. (Tr. 8-10-99 at 159:16-23.)

In addition, we note that Laws of 1999, Chapter 289:4 provides that:

[P]articipants should file in a settlement proceeding any testimony, exhibits, data requests, and data responses relevant to the cited dockets in order to provide a basis for the commission and legislature to compare the settlement to other possible outcomes.

During this phase, non-settling parties will be afforded the opportunity to conduct discovery and cross-examination.

At the close of the proponents' presentation of their case, all parties will be afforded an opportunity to argue whether the Commission should continue hearings on the Settlement or litigation of the dockets affected by the Settlement should be resumed. In considering such arguments, the Commission shall apply the standard used by a trial court in a bench trial in ruling on a motion to dismiss or motion for nonsuit: whether the proponents have introduced evidence sufficient to meet the burden of establishing the case. In the context of this proceeding, "establishing the case" will require the proponents prove that they have submitted sufficient evidence upon which the Commission *could* decide that the proposed Settlement Agreement is in the public interest and consistent with all of the legislative requirements concerning electric industry restructuring, including those contained in RSA 374-F:3, 374-F:4 and Laws of 1999, Chapters 289:3, 289:4, 289:6-8.

In making this determination, the Commission will take an unbiased view of all the evidence presented by the proponents,

direct and circumstantial, and accord it such weight as it believes it is entitled to receive. See Renovest Co. v. Hodges Development Corp., 135 NH 72, 77 (1991).⁶

If the Commission determines that the proponents have failed to meet their burden, the hearings regarding the Settlement will end, there will be no need to proceed to the second phase of the case, an order closing this docket will issue, and litigation of the aforementioned dockets shall resume. If the Commission determines that the proponents have met their burden, the case will proceed to its second phase.

The second phase of the proceeding will be to allow the non-settling parties to state their case: the opportunity to file testimony concerning the Settlement, allow the Settling Parties the opportunity to conduct discovery, allow all parties to file rebuttal testimony, and hold such additional hearings as necessary. A decision and order will follow this phase.

The Commission will, pursuant to RSA 541-A:33,V(b), take official notice in this proceeding of the records in the other noticed dockets. In addition, parties will be afforded the opportunity, subject to such limitations as the Commission deems reasonable to allow the proper administration and conduct of this

⁶ As the Court in Renovest explained, the Commission need not review the evidence by the *prima facie* standard of "in the light most favorable to the plaintiff" to see if the proponents *might* meet their burden based on possible findings of fact. As the trier of fact, it can actually determine whether the proponents have met their burden.

proceeding, to present in this docket such relevant evidence and testimony concerning matters in the other noticed dockets necessary to the consideration and analysis of the Settlement Agreement.

The Commission does not agree with assertion that it is required by RSA 374-F to proceed with the ISC rehearing or base rate proceeding at the same time it considers this Settlement Agreement. Laws of 1998, Chapter 191:2 and Laws of 1999, Chapter 289:6,V clearly encourage settlement of these outstanding issues. Furthermore, we believe that by allowing all parties, not just the proponents, the opportunity to present such evidence concerning these dockets in the manner discussed above, the Commission should be provided a sufficient basis, assuming it proceeds to Phase II, on which to judge the Settlement, and that this procedure is consistent with the requirements of Laws of 1999, Chapter 289. While we disagree with PSNH's assertion that the Commission is now stayed from continuing its reconsideration of the ISC charge by the federal district court, we need not decide that question at this time, having determined that the process we have set forth is appropriate, in the public interest, and consistent with our statutory mandate.

With respect to the request for clarification of discovery, we will allow parties to submit data requests to PSNH regarding its August 2, 1999 filing during the second data

request period of September 15-29, not limited to follow-up questions.

As to the Motion to Establish a Separate Docket, the Commission has requested a supplemental response from the Settlement Staff and GOECS in the September 9, 1999 General Counsel's letter. We will continue to take this matter under advisement until we have had an opportunity to review this and other parties' responses.

Pursuant to this determination, the Commission has decided that the following procedural schedule is to be adopted:

PHASE I

Technical Sessions	August 16 & 17
Data Requests on PSNH's initial filing ⁷	August 27
Data Responses	September 17
Settling Parties' Testimony	September 15
Gov/AG/GOECS	
Settlement Staff	
Other	
PSNH (including benchmarking)	
Data Requests on Settling Parties' Testimony, additional and follow-up requests on initial responses from PSNH	September 15-29
Data Responses	October 12
Evening Public Comment Hearings (Evening hearings will begin at 7:00 p.m.)	October 5, 12-14, 19
City Auditorium, Nashua	October 5
Public Library Auditorium, Keene	October 12
City Auditorium, Berlin	October 13
City Hall Auditorium, Dover	October 14
NH Public Utilities Commission, Concord	October 19
Submission of proposed list of order of witnesses to Commission and parties	October 14
Hearings	October 18-29
PUC Decision whether to proceed to Phase II	November 1

⁷ All Data Requests are to be submitted on a "rolling" basis within the time frame indicated. Responses are due 2 weeks after submission, but in no event later than the dates indicated for Data Responses.

PHASE II

Non-Settling Parties' Testimony	November 22
Data Requests	November 22- December 1
Data Responses	December 15
Rebuttal Testimony (by any party in response to any issue in direct testimony)	December 30
Rebuttal Discovery Technical Sessions	January 5-6
Submission of proposed list of order of witnesses to Commission and parties	January 6
Hearings	January 10-14, 18-21
Briefs	Two weeks from end of hearings.

V. CRR's Motion to Decline Consideration of Securitization

On August 10, 1999, CRR submitted a Motion to Decline to Consider Securitization, arguing that if the Commission considers and issues an order with respect to the pending Settlement Agreement which complies with the provisions of House

Bill 464⁸, it will violate several statutes, rules and the New Hampshire Constitution.

First, CRR states that Laws of 1999, Chapter 289:3,I allows the consideration of securitization before it is authorized by the Legislature, and that, in effect, the Commission would be acting as a study committee of the Legislature. CRR argues that by determining whether securitization should be part of a settlement, or whether the bonds would be successfully traded at favorable rates on the securitization market, the Commissioners will have rendered a professional service for a public utility, in violation of RSA 363:8.

Second, CRR argues that in the event the Commission expresses approval of the securitization portion of the Settlement and the Legislature then passes a securitization statute, the Commission could not be impartial if it is requested to consider the securitization portion of the Settlement again to test it against the new legislation. According to CRR, this would violate: RSA 363:12,I requiring the avoidance of

⁸ The provisions of House Bill 464 (Laws of 1999, Chapter 289:3,I) require the Commission to review any Settlement proposal that includes securitization, determine whether the implementation of securitization as part of a utility's restructuring plan will result in benefits to customers consistent with the requirements of RSA 374-F:3 and RSA 369-A:1,X and XI, determine whether any bonds issued pursuant to a securitization proposal would be successfully traded at favorable rates, and may issue a conditional securitization order for legislative review.

impartiality; RSA 363:12,IV requiring abstention from public comment on any pending matter; RSA 363:12,VII and Sup.Ct.R.38, Canon 3(C) of the code of judicial conduct requiring disqualification from proceedings where impartiality might be reasonably questioned; RSA 363:19 requiring application of the juror standard to the Commissioners; and N.H. Const., Pt. I, Art. 15 and 35 guaranteeing the right of due process and right to an impartial decision-maker.

On August 18, 1999, an Objection to CRR's Motion was filed by GOECS and the Commission's Settlement Staff. In their objection, GOECS and Settlement Staff state that CRR misconstrues the nature of the Commission's authority and the meaning of House Bill 464. They argue that the regulation of utilities and the setting of rates is the unique province of the Legislature; that the Legislature has delegated substantially all of such regulation to the Commission; and that, accordingly, the delegation of authority to the Commission to use its expertise is entirely appropriate and lawful. Thus, they assert that the Legislature properly authorized the Commission to investigate and make findings with respect to any securitization proposal contained in a settlement agreement with a utility before final authorizing legislation is enacted. GOECS and Settlement Staff also argue that CRR is incorrect in its assertion that after the Legislature completes its review of the Commission's approval and authorizes securitization, the Commission would once again have

to adjudicate the matter. They claim that the Legislature has reserved for itself the power to review the Commission's action, and any remand to the Commission for further findings or to apply different criteria would pertain to those new matters and would not give rise to prejudgment concerns.

Commission Ruling: The Commission finds that CRR's first contention, that we would be rendering a professional service to PSNH were we to determine whether the securitization proposal contained in the Settlement Agreement met the conditions contained in Laws of 1999, Chapter 289:3, I and issue an order on the proposal containing a conditional securitization order for legislative review, is incorrect. RSA 363:8, which prohibits any member of the Commission from rendering any professional service for any public utility, is not implicated where the Commission is performing its duties as prescribed by the Legislature. RSA 363:8 does not apply to situations, as here, where the Commission, in fulfilling a statutory duty, would be exercising its judgment in a manner consistent with the prerequisite of RSA 363:17-a to act as "the arbiter between the interests of the customer and the interests of the regulated utility."

CRR's second contention is without merit. Under Laws of 1999, Chapter 289:3, the Legislature has reserved for itself the power to review a Commission order concerning securitization. Chapter 289:3 makes no provision for further Commission proceedings after such legislative review is completed. Also,

whether the Legislature will promulgate additional securitization legislation, and if it does so, the nature of any Commission review it will require of a specific securitization proposal is uncertain at this time. Even if further proceedings were required by future legislation, CRR has made no persuasive argument that any determination made by the Commission would constitute a prejudgment of those hypothetical proceedings. CRR's motion is therefore denied.

VI. OTHER MATTERS

1. The Commission has determined that this proceeding shall be given a new docket number: **DE 99-099**.
2. Due to the designation of Commission Secretary and Executive Director Thomas Getz as "staff advocate," all correspondence to the Commission with respect to this docket are to be addressed to Debra A. Howland, Acting Executive Director and Secretary.
3. Due to the designation of Commission Staff members, parties are reminded to specifically label all correspondence with Commission Staff and Staff counsel as appropriate and indicate confidentiality as necessary to prevent inadvertent distribution of such material.
4. The Commission's administrative staff is in the process of confirming the intervention list for this docket, and verifying names, addresses, telephone and fax numbers and e-mail addresses if available.

5. Daily transcripts of the hearings will be available.
6. All exhibits submitted into evidence are to have their pages sequentially numbered at either the top right-hand corner or bottom center. This means that if multiple documents are bound into a single exhibit volume, each page in the volume should be consecutively numbered.
7. The Commission's General Counsel is assigned as Presiding Officer in this matter, with authority limited to decide all discovery and schedule disputes, with right of appeal to the Commission.
8. Objections to data requests are to be made within five business days of the receipt of such requests, with copies filed with the General Counsel and the Acting Executive Director and Secretary. Responses to Objections are to be submitted within five business days of receipt of Objections with copies also provided as indicated.
9. All pleadings, petitions, letters, or similar filings with the Commission wherein the filing party requests the Commission take any action shall be considered "motions" and must comply with the requirements of N.H. Admin. Rule, Puc 203.04(d)(1) and (2).
10. The requirements of N.H. Admin. Rule, Puc 203.04(b), which requires parties to seek the concurrence of all other parties relative to any motion that is filed, are hereby waived in this docket unless and until we order otherwise. We encourage

parties, however, to attempt to continue their practice of filing joint motions, or motions that state any concurrences, where, because of a particular party's stated position, it is apparent that it will support a moving party's pleading.

11. The requirements of N.H. Admin. Rule, Puc 203.04(c) which provide that objections to motions be filed within 10 days of the date the motion is filed shall be enforced except in cases in which good cause exists to shorten or extend the objection period.

12. During the Prehearing Conference, the Commission directed Commission Counsel Gary Epler to hear and rule upon certain discovery motions that were pending Docket Nos. 96-150 and 97-059. Mr. Epler issued a letter on August 26, 1999, memorializing the rulings he made at the hearing, and addressing certain other discovery matters. The Commission hereby ratifies this letter and adopts the rulings therein, except as otherwise discussed above with respect to the scope of the second round of data requests.

Based upon the foregoing, it is hereby

ORDERED, that the various motions to intervene are granted, and the motion to clarify the party standing of the Attorney General and Thomas Getz are resolved as discussed herein; and it is

FURTHER ORDERED, that the motion to designate Staff is granted in part and expanded upon as discussed herein; and it is

FURTHER ORDERED, that the motion to stay is granted in part as discussed herein; and it is

FURTHER ORDERED, that the Motion to Reconsider Stays is denied, the Motion to Clarify Procedural Schedule granted in part and denied in part as discussed herein, and the Motion to Establish Separate Docket remains under advisement; and it is

FURTHER ORDERED, that CRR's Motion to Decline Consideration of Securitization is denied; and it is

FURTHER ORDERED, that the procedural order set forth above is adopted; and it is

FURTHER ORDERED, that PSNH shall provide adequate notice of the proceedings in this docket and the procedural schedule set forth above by publication in a manner and time as determined necessary and reasonable in consultation with the Commission's Division of Consumer Affairs and General Counsel; and it is

FURTHER ORDERED, that the "Other Matters" set forth above are hereby adopted.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of September, 1999.

Douglas L. Patch
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Debra A. Howland
Acting Secretary