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September 17, 1979

L. S. Rubenstein, Branch Chief
Light Water Reactors, Branch #4
Division of Project Management
United States Nuclear Regulatory
Commission
Washington, D. C. 20555

Re: Public Service Company of New Hampshire,
Docket Nos. 50-443 and 50-444; Staff
Request for Additional Financial Information
dated July 17, 1979.

Dear Mr. Rubenstein:

I enclose twenty-five copies of material which Public Service Company of New Hampshire furnished directly to the Staff at its request.

Very truly yours,

John A. Ritsher

John A. Ritsher

JAR:vml
Enclosures

cc: Attached List

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Copies to:

Alan S. Rosenthal, Chairman
Atomic Safety and Licensing
Appeal Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dr. John H. Buck
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Appeal Board
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PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Enclosures

1 - NHPUC Order No. 13,555 in DF 79-53, dated March 29, 1979.

2 - Statement regarding current status, nuclear fuel financing.

3 - Further response to question 5, in request for further information dated July 17, 1979.

4 - NHPUC Order No. 13,799 in DR 79-107, dated August 29, 1979.

5 - Status of Revolving Credit Agreement

6 - Revision 1, to attachment 8

7 - Preliminary prospectus, dated September 6, 1979 covering the sale of $50,000,000 of General and Refunding Bonds. (Forwarded under letter dated September 12, 1979 to L. S. Rubenstein.)

DF 79-53

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Petition of Public Service Company of New Hampshire for certain authority with respect to the issuance and renewal of short-term notes.

..00..

Appearances: for the Petitioner, Ralph H. Wood, Esquire; for the LUCC, Harold T. Judd.

..00..

By this unopposed petition filed March 13, 1979, Public Service Company of New Hampshire (the "Company"), a corporation duly organized and existing under the laws of the State of New Hampshire and operating therein as an electric public utility under the jurisdiction of this Commission, seeks authority pursuant to the provisions of RSA 369 to issue and sell for cash, and from time to time to renew, notes payable less than twelve months after the date thereof (hereinafter referred to as Short-term Notes) in such amounts that short-term notes outstanding at any time may aggregate up to but not exceed the maximum short-term unsecured indebtedness the Company may at any time issue or assume without a favorable vote of its preferred stockholders. That maximum is set forth in subdivision 8(b) of Article V of the Company's Articles of Agreement, as follows:

> "Twenty per centum (20%) of the total of (i) the total principal amount of all bonds or other securities representing secured indebtedness issued or assumed by the corporation, and then to be outstanding and (ii) the capital and surplus, less the amount, if any, by which Electric Plant Adjustments exceed reserves provided therefor, as then stated on the books of account of the corporation."

A public hearing was conducted on March 26, 1979 at the Commission. Company witness Harrison testified that at January 31, 1979, using the above formula, the maximum allowable amount of Short-term indebtedness was approximately $121,700,000. The maximum will increase from time to time in

proposed as to the increase in the Company's secured indebtedness, capital and surplus. Harrison further testified that the Short-term Notes currently outstanding amount to $95,100,000, and that the current projections would change this figure to $98,100,000, at March 31, 1979, and to $114,100,000, on April 30, 1979.

The proceeds of the sale of the Short-term Notes will be expended in the purchase and construction of property reasonably requisite for present and future use in the conduct of the Company's business and for other proper corporate purposes and will primarily be used to finance the Company's construction program on an interim basis. The Company stated that the construction program for the years 1979 - 1984 would include principally the following listed items estimated to cost about one billion forty-six million five hundred thousand dollars ($1,046,500,000).

Facilities	Estimated Construction Expenditures 1979-84 (Millions of Dollars)
Generation facilities	
Company's share of Seabrook Nuclear Plant	$ 751.5
Participation in Other Plants	70.6
Other Generation	8.4
Total Generating Facilities	830.5
Transmission Facilities	106.4
Distribution and General Facilities	109.6
TOTAL	$1,046.5

The Company presently has lines of credit with banks aggregating $100,350,000. All of the banks without the State of New Hampshire are presently loaning monies on a "Revolving Credit Agreement". This group has

indicated a willingness to increase their credit extension to the Company by another $20,000,000.

A balance sheet as of January 31, 1979, a statement of estimated cash flow for the period of February through April, 1979, and a copy of authorizing votes of the Company's Board of Directors were filed as Exhibits.

The LUCC had no objection to an extension of short-term debt limits and consented to waive any rights of appeal to the granting of the petition by the Commission based on the evidence submitted.

The Commission is aware of RSA 369:1 which requires any utility to seek our approval concerning the issuance and sale of stocks, bonds, notes and any other evidence of indebtedness. The Commission has a duty pursuant to RSA 369:1 and 369:4 to consider the public interest in each financing arrangement contemplated by a utility. As a consequence, the Commission is hesitant to issue an open-ended order that would tie the Commission to an automatic formula.

However, the Commission is firmly convinced that the maximum allowable amount of short-term indebtedness should be extended to $121,700,000 at this time since this order is being issued three days after the public hearing. The Company is aware that quick regulatory action is possible if necessary.

Based upon all of the evidence, the Commission finds that the maximum short-term debt limit should be raised to $121,700,000. The proceeds from the Short-term notes will be reasonably necessary for present and future use in the conduct of the petitioners business and for other corporate purposes. The issuance and sale of Short-term notes will be consistent with the public good. Our order will issue accordingly.

J. Michael Love
Chairman

Malcolm J. Stevenson, Commissioner

Francis J. Riordan, Commissioner

Concurring:
March 29, 1979

DF 79-53

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

..oo..

ORDER NO. 13,555

Upon consideration of the foregoing report, which is made a part hereof; it is

ORDERED, that Public Service Company of New Hampshire, be, and hereby is, authorized to issue and sell, and from time to time renew, for cash its Notes or Notes Payable less than twelve (12) months after the date thereof in an aggregate principal amount not exceeding one hundred twenty-one million seven hundred thousand dollars ($121,700,000); and it is

FURTHER ORDERED, that interest on bank borrowings will be at the prime rate or a rate of rates based on the prime rate; and it is

FURTHER ORDERED, that on or before January first and July first of each year, Public Service Company of New Hampshire shall file with this Commission a detailed statement, duly sworn to by its Treasurer or an Assistant Treasurer, showing the disposition of the proceeds of the Notes herein authorized until the expenditures of the whole of said proceeds shall have been fully accounted for.

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of March 1979.

Vincent J. Iacopino
Executive Director and Secretary

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

STATUS OF NUCLEAR FUEL FINANCING

The Company is currently negotiating with a group of three banks for the sale of $25,000,000 of Secured Notes, such notes to be secured by the Company's ownership of nuclear fuel. The banks involved are as follows:

Marine Midland Banks, Inc.
Union Bank of Switzerland
Credit Lyonnais

Current plans call for closing on the sale of Secured Notes in early - to mid-October. A hearing on this matter was held before the New Hampshire Public Utilities Commission on September 7, 1979.

In addition to the above banks, the Company has entered into discussions with a fourth bank, which could lead to such fourth bank being included in the sale of Secured Notes, bringing the total amount to $32,000,000.

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Further Response to Question No. 5
Of July 17, 1979 Request
For Information

The negative internal cash in 1979, 1981 and 1982 is, in each case, substantially less than the total AFDC, as follows:

	Internal Cash	AFDC
	(millions)	
1979	$(19)	$(32)
1981	(4)	(55)
1982	(11)	(65)
	$(34)	$(152)

In the normal regulatory model (i.e. AFDC is accrued so that investors in facilities may be compensated when such facilities are used in the public service) an implicit assumption is that dividends and interest payments associated with funds acquired to construct facilities will be added to the cost of such facilities; consequently the funds required to make such payments are construction costs, and like all construction costs, must be raised in a financing program. In the specific instances above, the shortfall ($34,000,000) is substantially less than what might have been expected ($152,000,000) using the normal regulatory model. These funds will be raised as a part of the Company's ongoing construction program.

State of New Hampshire
PUBLIC UTILITIES COMMISSION
Concord 03301
Telephone Area Code 603
271-2452

PRESS RELEASE

August 30, 1979

The New Hampshire Public Utilities Commission issued a Report and Order regarding the Exclusion of Construction Work In Progress from the rate base.

The Commission found that the Statute RSA 378:30a requires that the Public Service Company of New Hampshire remove CWIP from its rates as of May 7, 1979.

The Commission ordered that a complete investigation of the electric rate charged by Public Service begin in an effort to establish a just and reasonable rate of return for the Company and a fair rate for the consumer.

The above investigation shall include all pending requests by the Company and the Legislative Utilities Consumers' Council for increases or decreases in the present rates.

The Commission ordered the hearings to begin as soon as possible and has scheduled September 7, 1979 to review and establish the procedural aspects of the case.

The Order established existing rates as temporary rates during the duration of the investigation or the further Order of the Commission.

DR 79-107

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Exclusion of Construction Work in Progress from the Rate Base

..OO..

Appearances: Martin Gross, Esquire, for Public Service Company of New Hampshire; for the Legislative Utility Consumers' Council, Harold T. Judd, Esquire and for the Community Action Program, Gerald Eaton, Esquire.

..OO..

REPORT

On May 7, 1979 the Governor of the State of New Hampshire signed into law House Bill 155 amending RSA 378:30. This law precludes the inclusion of construction work in progress (CWIP) into rate base and thereby ultimately in rates and charges paid by consumers. The law became effective as of May 7, 1979.

In Public Service Company of New Hampshire DR 77-49 (1978) this Commission found in favor of the inclusion of CWIP in rate base. The Commission's decision was upheld on appeal by the New Hampshire Supreme Court LUCC v. PSCNH III, 119 N.H. ____ (1979). Therefore, as of May 7, 1979 rates and charges collected from ratepayers in Public Service Company's (hereinafter referred to as PSC) service territory reflected the inclusion of CWIP in the rate base.

The Commission pursuant to RSA 378, Sections 1 through 31, was compelled to initiate a formal docket as to the question whether the new statute required the immediate removal of CWIP from existing rates as of May 7, 1979. If the new statute was found not to apply to existing rates, then the aforementioned Commission decision would continue to be the law the Commission would be bound to uphold. No further inquiry would be necessary. If, however, the new statute was found to supercede our order as of May 7, 1979, then the Commission would have to embark upon an investigation as to what were just and reasonable rates for both PSC and its consumers.

Consequently, the Commission in its Order No. 13,617 specifically limited the scope of the initial stage of this docket to the legal question of whether or not RSA 378:30-a required the removal of CWIP from existing rates. The Commission refused to allow the inclusion of testimony presented by the Company as to the various economic factors affecting the Company. It was the Commission's position that such inquiry would lead to a full rate investigation which would be unnecessary if the law did not change the existing rates. While RSA 378:7 allows for a rate investigation prior to the expiration of a two-year period following a previous decision, the Commission attempts to adhere to the general rule of waiting the two years unless there are unusual circumstances or a possible confiscation of property. It was these aforementioned concerns that were of consequence to the Commission when it embarked on formal hearings on June 5, 1979. The Commission later requested memorandum from all parties which were received by the Commission on June 12, 1979.

Before reaching the merits of the proceeding, the Commission must address the procedural question raised by the Granite State Alliance (hereinafter referred to as the "Alliance"). The Alliance contends that the newly passed statute is clear as to its intention to remove CWIP from electric rates as of May 7, 1979. The Alliance further contends that the statute is unambiguous and, therefore, no hearing is required. The Alliance concludes its arguments with a request that ratepayers be spared any expenses incurred by the Company or the Commission because of the alleged unnecessary hearing.

The Alliance's contentions, however, flounder when placed on the shoals of New Hampshire statutes which govern the operation of the Commission.

New Hampshire RSA 378:7 was used by the Commission to initiate these proceedings because the Commission was concerned with the possibility that the continued billing of rates based on the inclusion of CWIP in rate base after May 7, 1979 was contrary to the provisions of RSA 378:30-a. New Hampshire RSA 378:7 states:

> Whenever the Commission shall be of the opinion, after a hearing, had upon its own motion or upon complaint that the rates, charges demanded or collected or proposed to be demanded or collected by any public utility in service rendered or to be rendered are...in any wise in violation of any provision of law...the Commission shall determine the just and reasonable or lawful rates, fares and charges to be thereafter observed and in force as the maximum to be charged for the service to be performed and shall fix the same by order to be served on all public utilities by which such rates, fares and charges thereafter to be observed. (Emphasis Supplied)

The West Virginia Public Service Commission recently was confronted with a similar problem where the West Virginia Legislature amended its statutes and thereby decreased the state business and occupation tax on domestic sales of electricity, VEPCO v. West Virginia Public Service Commission ___ W. Va. ___ 248 SE2d 322, 28 PUR 4th 12 (1978). The West Virginia Commission's response to the legislative initiative was to order VEPCO to immediately reduce rates and provide refunds so as to pass through to the utility's customers this reduction in the utility's cost of doing business. The Commission in that proceeding chose not to have a hearing.

The West Virginia Supreme Court reversed the Commission's decision because of the failure of the Commission to conduct a hearing. The West Virginia Statute 24-2-3 (1923) is very similar to RSA 378:7 both as to language and intent. Both clearly delineate that the Commission can only act "after hearing". As the West Virginia Supreme Court stated:

> Laudable as the Commission's goals may be in attempting to reduce the burden on utility consumers in this age of inflation, there is no question that a significant reduction in a utility's tariff is a taking of property which must be accompanied by some fair procedure to preclude an unlawful taking. The business and occupation tax is but one element of a utility's cost and before the Commission can pass through a reduction in that cost to consumers by changing the effective tariff, it must permit the utility to demonstrate that on its side overall costs have increased which would imply that a timely tariff reduction will effectively reduce the utility's rate of return below the constitutionally mandated fair rate of return. 28 PUR4th at p. 15.

The New Hampshire Supreme Court has likewise found the necessity of a hearing in any proceeding in which the Commission is involved in an investigation of rates. New England Telephone and Telegraph Co. v. State, 95 NH 353, 64 A.2d 9 (1949).

The recently passed Administrative Procedure Act, RSA 91-A also, requires that meetings or hearings be open to the public. The spirit of this law, as well as the statutes governing the operations of this Commission, are designed to encourage rather than discourage the hearing process. These considerations have recently been part of the rationale behind the Commission's rejection of attempts by certain New Hampshire utilities to negate the procedural due process afforded in a hearing on temporary rates. Manchester Gas DR 78-100 (1979), Pennichuck Water Co. DR 79-3 (1979) and Hampton Water Works DR 79-51 (1979). As the Commission stated in the latter proceeding:

> "The Commission while exercising its quasi-judicial capacity must observe the traditional safeguards against arbitrary action. Furthermore, the fundamental requisites of due process of law and procedural due process require that notice and a timely and reasonable opportunity to be heard be given to people whose rights will be affected by the Commission's decision."

Those people whose rights will be affected by a Commission decision can be either shareholders or consumers, and neither will be denied due process by arbitrary action.

The Alliance also raises the question of whether or not it is a party to this proceeding. At the public hearings this issue was addressed from the bench. In that ruling the Commission stated that the Alliance's status was one of a limited appearance and not a party. The rationale for this ruling is the failure by the Alliance to sufficiently notify the Commission of the desire to actively participate or to state why its interests are affected by the overall proceeding, or that its interests were necessary for a fair evaluation of the issues and that their interests were not represented by other parties to the proceeding.

Support for these requirements can be found in a recently rendered decision by the Ohio Supreme Court. Office of Consumers Council v. Public Utilities Commission, 56 Ohio St. 2d 220, 383 N.E. 2d 593 (1978). In that proceeding, the Ohio Supreme Court upheld the Commission's decision to restrict intervention of a participant when that participant: (1) filed its appearance that day; (2) failed to file objections prior to the hearing; or (3) failed to seek prior approval of its leave to intervene. To do otherwise fails to give adequate notice of the parameters of the proceeding to those parties who respect the rules and regulations of the Commission as well as fair play by filing appearances and objections sufficiently in advance of the initiation of the proceedings.

The Commission, therefore, continues to uphold its decision that the Alliance is a limited participant rather than a party to this proceeding.

PSNH Position

PSNH's position is that nothing in RSA 378:30-a either expressly or impliedly voids the Commission's rate order of May 25, 1978 nor requires the Commission to disturb the order. PSNH provides an additional argument that the legislative history of the debate on this statute supports PSNH's contention that existing rates can continue to be based on the inclusion of CWIP in rate base.

In addition, PSNH argues that if RSA 378:30-a is used to exclude existing CWIP from rate base, such a result would be a retroactive application of a statute and thereby void. Finally, PSNH argues that even if RSA 378:30-a requires the removal of existing CWIP from the rate base, there is no factual basis on the record for revising the rate order of May 25, 1978 or tariff #22.

Community Action Program Position

The Community Action Program (CAP) supports the Commission's order #13,617 that existing rates must be based on a rate base exclusive of CWIP. CAP asserts that the Commission is a delegation of the legislature and is thereby bound to comply with its direction which CAP argues is embodied in RSA 378-30-a. CAP contendsthat while previous statutes governing the operation of the Commission were devoid of any prescribed methodologies, RSA 378:30-a specifically prescribes such a methodology.

As to statutory construction, CAP relies on prior Supreme Court decisions for the proposition that RSA 378:30-a is plain and unambiguous and that its plain meaning must be upheld. CAP asserts that compliance with the statute's plain meaning requires existing rates to be based on a rate base absent any inclusion of CWIP.

LUCC Position

The LUCC's position is that RSA 378:30-a does not provide any discretion to the Commission as to compliance with the statute. LUCC argues that the statute is clear on its face and absolutely prohibits any continued inclusion of CWIP in the rate base. Consequently, the LUCC contends that the passage of the statute requires the Commission to alter the rates presently in effect.

The LUCC also contends that the Commission is a delegation of the legislature's power to regulate and that the legislature can impose conditions upon exercise of such delegated authority.

As to the recent case of LUCC v. PSNH, 119 N.H.___(1979), the LUCC argues that it should be given a very minor role in our decision process due to the focus of the opinion being prior to the passage of the statute.

Ambiguity Question

The first question to be addressed is whether or not RSA 378:30-a is unclear or subject to more than one interpretation. In performing that analysis, the Commission must attempt to apply the hierarchy established by decisions of our Supreme Court to statutory interpretation.

At the pinnacle of this hierarchy is the language of the statute itself. Plymouth School District v. State Board of Education, 112 N.H. 74, 289 A.2d 73 (1972); Ahern v. Laconia Country Club Inc., 118 N.H.___,392 A.2d 587 (1978). The New Hampshire Supreme Court placed the rule in the following context in its Ahern decision.

> "Thus we must look to the language of the statute itself as the prime determining factor in its interpretation. Where the language of the statute is plain and unambiguous the statute must be given effect according to its plain and obvious meaning.

> 82 C.J.S. Statutes §322 (1953). The legislature must be presumed to know the meaning of words, and to have used the words of a statute advisedly. 73 Am. Jur. 2d Statutes §196 (1974)." 119 N.H. at

While the legislative intent of a section in question is to be determined from its language as a whole and not from a particular word or phrase, Costoras v. Noel, 100 N.H. 81, 83, 119 A.2d 705, 706 (1956), the statute will not be construed unless the meaning of the statute words contained therein are unclear. State v. Wilton, 89 N.H. 59 (1937).

In examining the language of a statute, significant words are not to be rejected or rendered ineffectual by construction, but the statute is to be so read "as to give every part its due weight." Jewell v. Wainer, 35 N.H. 176, 186. Furthermore, a statute should be construed so that "no clause, sentence or words shall be superfluous, void or insignificant." Tilton v. Tilton, 35 N.H. 430, 432.

RSA 378:30-a states the following:

> "378:30-a Public Utility Rate Base; Exclusions Public utility rates or charges shall not in any manner be based on the cost of construction work in progress. At no time shall any rates or charges be based upon any costs associated with construction work if said construction work is not completed. All costs of construction work in progress, including but not limited to, any costs associated with constructing, owning, maintaining or financing construction work in progress, shall not be included in a utility's rate base nor be allowed as an expense for rate making purposes until and not before, said construction project is actually providing service to consumers.
>
> 2. Effective Date. This act shall take effect upon passage."

This statute does not lend itself to ambiguity. Language such as "shall not in any manner", "at no time" and "all costs" are clearly

terms which any legislator has a full understanding. These terms are not subject to two different interpretations. Furthermore, there are no exceptions, exemptions, or modifications as to either the effective date, the companies involved or the mandate.

PSNH contends that nowhere in the statute does there appear language which requires the Commission to void its order of May 25, 1978. PSNH then sets forth three alternate sets of language that were never discussed in the legislative history, proceeds to discuss them and then arrives at a conclusion that there is no express language in the statute requiring the Commission to void its order.

The Commission cannot find value in speculating as to what additional terms the legislature could have added. If the question could be resolved by this imaginative approach, the Commission would have to consider arguments from the other parties such as 'since the statute fails to state terms like "this statute applies to all further CWIP increases," the existing CWIP charges should be removed.' Such imaginative arguments, as well as those proposed by PSNH, fail to address the actual language of the statute. It simply is not our function to speculate upon any supposed intention not appropriately addressed in the act itself. Ahern v. Laconia Country Club Inc., 119 N.H. ____ (1978).

PSNH miscasts the issue when it argues that the legislature did not intend to "void" the Commission's order of May 25, 1978. The true question presented is whether the legislature has so changed the law that the Commission must change its rate order.

While PSNH claims there is no express requirement in the statute to change or void the order, this interpretation becomes a victim of the plain language of the statute. Each sentence clearly states that rates can neither be based on, nor charged to, customers if they are based on CWIP. The final sentence also states when and only when such

charges can be made to consumers, namely, after the plant is completed. Since the Commission has the statutory authority to supervise utility practices (RSA 374:3) and set just and reasonable rates (RSA 378:7) it is clear that this language is a directive for which the legislature expects compliance. When the legislature enacts a statute involving a public utility ratemaking methodology, it is fair to assume that they know which agency they have entrusted with that power.

If this Commission failed to respond to this clear legislative mandate, the Commission would be in direct violation of RSA 374:2, which states the following:

> "Charges. All charges made or demanded by any public utility for any service rendered by it or to be rendered in connection therewith, shall be just and reasonable and not more than is allowed by law or by order of the public utilities commission. Every charge that is unjust or unreasonable, or in excess of that allowed by law or by order of the commission, is prohibited."

Consequently, the Commission finds that rates or charges based on the inclusion of CWIP in rate base are no longer allowed by State law.

Retroactivity Question

The next question to be addressed is one of retroactivity. If the statute has retroactive application, there becomes an additional consideration of constitutionality under Part I, Article 23 of the New Hampshire Constitution. Before proceeding to answer this question, it is necessary to note that all parties agree that RSA 378:30-a has no impact prior to May 7, 1979. The application of the statute to existing rates beginning on May 7, 1979 is where the divergence in position appears. The question to be answered is whether application of RSA 378:30-a to existing rates is retrospective as maintained by PSNH or prospective as maintained by LUCC and CAP.

The first principle to be applied in determining the retrospective or prospective application of a statute is that all statutes affecting substantive rights are to have prospective effect only unless there is a clear legislative statement that the statute is to have retrospective effect. Lessard v. Manchester Fire Department, 118 N.H. 43, 47 (1978). "The presumption that a statute applies prospectively only is reversed when its purpose is remedial or a contrary intent is shown." Pepin v. Beaulieu, 102 N.H. 84, 89 (1959) citing 82 C.J.S. 993, 50 Am. Jur. 505.

PSNH relies on Pepin decision in stating that if the Commission removes CWIP from the rate base that supports existing rates, the Commission would be applying the statute retrospectively. PSNH argues that to apply the statute in this fashion "will take away or impair vested right acquired under existing laws". Also that such an application would "create a new obligation, imposes a new duty or attach a new disability in respect to transactions or considerations already past", (Pepin at p. 89.) and thereby must be deemed retrospective and in violation of the New Hampshire Constitution, Article I, section 23. PSNH alleges that the award of a rate increase which was based in part on the inclusion of CWIP in rate base has become a vested right and that as such neither the legislature nor the Commission can tamper with this alleged vested right.

The New Hampshire Supreme Court has been reluctant to find vested rights in any instance and has noted that success on these grounds have been infrequent in this state and most other jurisdictions. Vachon & Sons, Inc. v. Concord, 112 N.H. 107, 110 (1972) citing Dumais v. Somersworth, 101 N.H. 111, 115; Annot., 6 A.L.R. 2d 960 as cited in

Arsenault v. Keene, 104 N.H. 356, 358, 18 A.2d 60, 61 (1962).

The question of whether or not a public utility rate or level of rates are vested rights for all practical purposes were resolved in New England Telephone & Telegraph Co., 104 N.H. 229, 183 A.2d 237 (1962). There the Commission found that existing rates were allowing a return on rate base in excess of that found to be a just and reasonable rate of return and ordered a reduction in rates. New England, 104 N.H. at 232. There the Supreme Court upheld the Commission findings by finding "that there is more than one rate that may be a just and reasonable rate of return. The area between the lowest rate that is not excessive and extortionate has been referred to as a zone of reasonableness." 104 N.H. at 232-233 citing Banton v. Belt Line Ry., 268 U.S. 413, 423; Atlantic Coast Line v. Florida, 295 U.S. 301, 317.

The Supreme Court went on to state that rates must be just and reasonable and that the "Commission will make adjustments in the rates of utilities to maintain them at a just and reasonable level. RSA 378:7. This standard is to prevail whether rates are reduced or increased. RSA 378:27, 28". 104 N.H. at 240. If the Commission is to make adjustments into rates to maintain them at a just and reasonable level and that further these adjustments can either raise or lower rates, it is impossible to conclude that a level of rates, let alone a ratemaking methodology, is a vested right.

What PSNH is entitled to is "a just and reasonable rate base and a just and reasonable rate of return thereon". RSA 378:28. Public Service Co. v. State, 113 N.H. 497, 508, 311 A.2d 513, 520 (1973). Nothing in this report deviates from that statutory mandate. As a consequence, PSNH is not prejudiced by this decision.

Nor can the Commission find that our action in this order creates a new obligation, duty or disability in respect to transactions or considerations in the past. The Commission is still obligated to set just and reasonable rates albeit with due respect to RSA 378:30-a. That mandate has not changed. Furthermore, since the Commission is not applying RSA 378:30-a to any rate or charge rendered to consumers prior to May 7, 1979, the Commission is not altering any events prior to May 7, 1979. The Commission is thus applying RSA 378:30-a to events or rates after May 7, 1979 and thereby prospectively.

Legislative Debate

PSNH introduced the House debate on the bill that led to RSA 378:30-a. PSNH relies upon various passages of the debate to support its contention that RSA 378:30-a doesn't apply to rates being rendered daily to consumers after May 7, 1979.

While the Commission finds the statute unambiguous, and therefore finds it unnecessary to examine materials outside the four corners of the statute, the House debate does not disturb the plain meaning of the statute.

To begin with the statute was not changed from its inception. It was filed and passed with the exact same language. As to the legislators who spoke during the debate, only eight legislators can reasonably be determined to have addressed the application of the statute to existing rates.

Those legislators are Representatives Quimby, Morgan, Wight, Wiggin, Snell, Lamy, Chambers and Spirou. Of these eight only the latter two actually spoke in favor of the bill. As a consequence it is these legislators that have any relevance.

Representative Spirou indicated on Page 61 of Exhibit 2 the following: "CWIP charges are not going to be a vehicle for them to conduct their business. It is all over." Representative Chambers, who the Company cites,

addressed the issue on pages 15-16 of Exhibit 2. While her comments are lengthy a key passage is as follows:

> "From the time of passage of this bill CWIP is not a viable way to raise capital." page 15.

These passages together with the plain language of the statute support the decision arrived at by the Commission in this order. Representative Chamber's comments about fair hearings, rebates and present CWIP must be read in conjunction with her early statement that from the day of passage CWIP is no longer a viable way to raise capital. If the Commission were to hold otherwise, the Commission would not be honoring either the specific language of the statute or comments by these two legislators.

The Commission cannot possibly know or understand the motivations of all the legislators that voted either in favor or against the creation of the new statute. Here lies the logic of applying the plain language of the statute and not construing the statute unless the words contained therein are unclear. The Commission finds the words to be clear as to their meaning. For this reason the Commission must now review what factors go into the consideration process of determining just and reasonable rates and thereby the revenue requirement.

As will become evident, the Commission finds the decision by the West Virginia Supreme Court persuasive not only as to the requirement of a hearing but also as to requiring a full investigation as to the present financial needs of the Company balanced against the rights of the public. VEPCO v. West Virginia Public Service Commissio. ___ W. Va. _____ 248 SE2d.332, 28 PUR 4th .12 (1978).

Revenue Involved

The most disturbing aspect of this case is the misstatement by both the LUCC and PSNH as to the revenue involved in this docket. Contrary to the assertions made by both these parties, the amount in contraversy is not $18 million dollars. Both of these parties focus their attention solely on the question of the inclusion of CWIP in rate base. In doing so, both ignore the standard ratemaking practice where rate base is only one factor in determining overall revenue requirements. Although in fairness PSNH at best tried to focus on other aspects through the testimony of witnesses Frain and Harrison. Therefore, the Commission believes it necessary to re-examine the entire revenue question for this Company.

To do so, it is necessary that the parties, as well as others who read this opinion, understand the ratemaking considerations that have an impact on the revenue requirement for a particular utility. The overall revenue requirement is determined by applying the following formula:

R = E + (v-d)r where:

R = Operating Revenues

E = Operating Expenses (such as salaries and taxes)

V = Value of rate base (which includes plant in service, working capital plus intangibles)

d = Accrued or accumulated depreciation

r = Rate of return

Prior to the passage of RSA 378:30-a, the Commission was not bound by any narrow or rigid concepts of ratemaking. LUCC v. PSCNH III, 119 N.H. ____ at Slip Opinion p. 7 and 19 (1979). The statutory scheme dictated that this Commission's ratemaking power was "plenary save in a few specifically excepted instances". State v. New England Tel. & Tel. Co., 103 N.H. 394, 397, 173 A.2d 728, 730 (1961), citing Lorenz v. Stearns,

85 N.H. 494, 506, 161 A. 205, 212 (1932). As of May 6, 1979, the statutory scheme for public utility regulations mandated by the legislature in RSA ch. 378 clearly expresses an intent that the Commission be afforded wide parameters within which to exercise its judgment. RSA ch. 378 was conspicuously devoid of any prescribed methodologies. UCC v. PSCNH III, 119 N.H. at Slip Opinion p. 19. However, as of May 7, 1979, this situation has changed. The legislature by its action has mandated a specific ratemaking methodology on the Commission through its amendment to RSA ch. 378. The plenary power of the Commission while still strong now has one additional specifically excepted practice. Thus when the Commission calculates the "R" it now must be mindful that when a value for the rate base is found ("V") that such value must be absent any inclusion of CWIP.

While this limitation on rate base must be complied with in both existing and future deliberations, the Commission still has the duty to balance the interests of the investor and the consumer through the establishment of just and reasonable rates, the "touchstone" for utility regulation. Therefore, the Commission must embark upon a rate-making proceeding to determine just and reasonable rates given the above formula.

This task, while always complicated and extremely technical, has increased complexity because of the major changes that have occurred since our May 1978 order. These changes can be better understood by an application of the aforementioned formula to the PSNH situation.

Expenses or "E" have changed but these changes, contrary to the usual situation, have been both upward and downward. For example, while expense items such as salaries and property taxes have increased

due to inflation, federal income taxes have decreased due to the lowering of the effective tax rate from 48 to 46 percent. What the net effect as to expenses is in a comparison between May 1978 and August 1979 is not apparent from the record. However, records filed with the Commission tend to indicate a slight increase but hardly conclusive given the lack of a complete investigation.

The next factor, "V - value of rate base" also has changed. The Commission included $111,258,428 of CWIP in rate base in its May of 1978 opinion. RSA 378:30-a only requires that portion that remains unfinished to be removed. A portion of this CWIP inclusion is related to the Wyman #4 plant, which is now operational and serving the public. Furthermore, the Company's investment in that particular plant has increased over what was allowed into rate base as of May, 1978. Consequently, even as to CWIP the entire amount included in May of 1978 is not excluded by operation of RSA 378:30-a. In addition, new investment in completed transmission and distribution facilities prudently incurred and operational would be included in rate base now whereas they were not even started during the pendency of the last proceeding.

Another element of "V", or the value of rate base, is working capital. The Commission has opted for the balance sheet approach to working capital since the last PSNH proceeding. This approach has been applied in Granite State Electric, DR 77-63 (1978), Concord Electric, DR 77-142 (1978) and Hudson Water Co., DR 78-135 (1979). The balance sheet approach as opposed to the previous 45-day allowance has resulted in a lower working capital allowance for Granite State Electric and Concord Electric and a higher allowance for Hudson Water Co. The effect on PSNH, which had its previous working capital allowance arrived at via the 45-day procedure, is unclear at this time.

With changes in plant, as well as technology, come changes in depreciation or "d". This factor is usually determined by a study, which focuses on considerations of useful life salvage value and the like, and cannot be predicted. However, again it is logical to assume that existing depreciation charges would be higher than those found in DR 77-49, the previous PSNH proceeding, because of increased completed plant.

The most difficult factor as far as evaluation and the one with the greatest impact is the "r", or rate of return. This calculation is the product of the weighted averages of debt, preferred stock, common stock multiplied by their cost rate. The cost rate of debt and preferred stock are generally agreed upon by all experts to a proceeding as they are readily ascertainable. Applying this consideration to PSNH, the debt and preferred costs are more costly than at the time of our last proceeding. All other things being equal, this would increase the required overall rate of return.

However, all things are not equal and a large factor in any new evaluation as to overall rate of return is the return allowed on common equity. The Commission has developed methods to evaluate what this return would be for any given utility. This Commission, as well as the New Hampshire Supreme Court, has applied the test set forth in FPC v. Hope Natural Gas. 320 U.S. 59, 64 S. CA. 281, 51 PURNS 193, 88 L.Ed. 333 (1944) and Bluefield Waterworks v. West VA Public Service Commission 262 U.S. 679, 43 S. Ct. 675; 67 L.Ed. 1176 (1923).

These cases require the Commission to set rates that will:

> "... permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same undertakings which are attended by corresponding risks and uncertainties;" 262 U.S. 679, 692-93 (1923)
>
> "be commensurate with returns to the equity owner in other enterprises having corresponding risks." 320 U.S. 591,603 (1944)

To measure these risks, the Commission has developed criteria (Public Service Company DR 77-49 1978, Pennichuck Water DR 79-3 1979), of which the following are the most important: market-to-book ratio, construction program compared to existing rate base, percentage of AFUDC, yield, average ratios, debt-equity ratios, dividends per share, and earnings per share. As to the first three of these criteria, PSNH is riskier than it was in May of 1978, whereas as to the last five, they are less risky. However, before reaching any conclusion as to a reasonable return on common equity, a comparison would have to be made to other companies and industry composites. Furthermore, the fact that PSNH may no longer include CWIP in rate base may increase their overall risk to investors substantially. It is sufficient to state that at this early stage of investigation that based on information routinely filed with the Commission, PSNH is entitled to an overall rate of return higher than what was allowed in the last proceeding.

This overall revenue situation is complicated by many factors, not the least of which is what percentage of the Company's construction program (as of the last proceeding) is the Company still committed to building. The proposed divestiture of a partial interest in Seabrook and the emergence of RSA 378:30-a, together with other factors such as inflation and the reduced corporate tax level, require this Commission to re-evaluate the entire revenue level of the Public Service Company so as to comply with the statutory mandate of just and reasonable rates.

Further support for this action stems from passage of the Public Utility Regulatory Policy Act of 1978, which requires commissions like this one to develop rates among the various customer classes as well as the usage levels within those classes that will encourage conservation, efficiency and equity.

Consolidation

The Commission would be inefficient if it continued to pursue a revenue level pursuant to DR 79-107 and conducted the same investigation pursuant to DR 79-166, the new rate request by PSNH. As a consequence, the Commission on its own initiative consolidates these two proceedings. This will allow all parties to present their financial evidence as to why rates should be higher than those presently in effect (PSNH) or lower (LUCC & CAP).

It is impossible to perform this evaluation with the record as presently compiled. Only through a careful re-examination of all factors can the observations made by this Commission in the previous section of the opinion be tested and just and reasonable rates be found. See 28 PUR4th 12 (1978)

Time Period

The Commission has set September 7, 1979 for a hearing in DR 79-166. That hearing will now be the focus of the consolidation of dockets DR 79-107 and DR 79-166. Any final order eventually rendered will date back to May 7, 1979. Since in our original order the Commission placed the Company and the public on notice that as of May 7, 1979 rates were subject to alteration, the Commission pursuant to RSA 378:3, 7, and 27 designate the Company's rates as of May 7, 1979 as temporary rates.

Revenue From Other Jurisdictions

The Commission also strongly suggests that PSNH continue to pursue the appropriate level of rates in other jurisdictions where it serves. Records of the Company filed with the Commission show the following rates of return as of March 31, 1979:

NH Retail	11.77%
ME Retail	6.71%
VT Retail	3.84%
NH Wholesale	8.89%
Unit Sales	8.12%

Our order will issue accordingly.

J. Michael Love
Chairman

Francis J. Riordan, Commissioner

Malcolm J. Stevenson, Commissioner

Concurring

August 29, 1979

DR 79-107

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

O R D E R N O. 13,799

Upon consideration of the foregoing report which is made a part hereof; it is

ORDERED, that the rates of the Public Service Company of New Hampshire as of May 7, 1979, shall no longer include an amount for CWIP in the rate base; and it is

FURTHER ORDERED, that there will be an extensive investigation into revenue requirements to establish a just and reasonable rate of return for PSNH and for a fair and reasonable rate for its consumers; and it is

FURTHER ORDERED, that the Dockets DR 79-107 and DR 79-166 are hereby consolidated with a hearing scheduled for September 7, 1979 at 9:30 A. M.; and it is

FURTHER ORDERED, that the rates of PSNH are made temporary as of May 7, 1979; and it is

FURTHER ORDERED, that the elderly discount presently provided for in the existing tariffs shall be considered in a future supplemental order.

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of August, 1979.

Vincent J. Iacopino
Executive Director and Secretary

984065

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

STATUS OF REVOLVING CREDIT AGREEMENT

The Company has a Revolving Credit Agreement with seven commercial banks, calling for the extension of up to $115,000,000 of short-term credit. The agent banks for this credit, the maturity of which had been scheduled for October 15, 1979, informed the Company on August 31, 1979 that they had agreed to extend the maturity to July 1, 1980.

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

ADDITIONAL[1] CASH REQUIREMENTS FOR BUYING ENTITIES
FOR 22% OWNERSHIP INTEREST IN SEABROOK PURCHASES
(000 OMITTED)

	PLANT ONLY	NUCLEAR FUEL	TOTAL	CUMULATIVE	BUYERS PAY FOR INCREASE SHARES (2)	PSNH PAYS (2)	PSNH $	SHARE %	BUYERS $	SHARE %
Dec. 31, 1978	$478,938	$21,097	$500,035	$ 500,035	$ -	$ -	$250,018	50 %	$ -	- %
January-March 1979	73,017	9,660	82,677	582,712	-	-	291,356	50	-	-
Cumulative, March 31, 1979	551,955	30,757	582,712	582,712	-	-	291,356	50	-	-
April	19,900	7,853	27,753	610,465	-	13,877	305,233	50	-	-
May	20,000	1,750	21,750	632,215	-	10,875	316,108	50	-	-
June	26,800	465	27,265	659,480	-	13,632	329,740	50	-	-
July	22,700	1,452	24,152	683,632	-	12,076	341,816	50	-	-
August	22,700	(1,517)	21,183	704,815	-	10,591	352,407	50	-	-
September	21,500	4,195	25,695	730,510	-	12,848	365,255	50	-	-
October	24,700	15,095	39,795	770,305	-	19,898	385,153	50	-	-
November	24,400	1,834	26,234	796,539	-	13,117	398,270	50	-	-
December	26,800	1,673	28,473	825,012	-	14,236	412,506	50	-	-
						$121,150				
Regulatory Approvals On December 31, 1979										
January, 1980	25,100	4,830	29,930	854,942	14,965	-	412,506	48.2	14,965	1.8
February	23,300	1,818	25,118	880,060	12,559	-	412,506	46.9	27,524	3.1
March	23,000	3,973	26,973	907,033	13,487	-	412,506	45.5	41,011	4.5
April	29,633	2,488	32,121	939,154	16,061	-	412,506	43.9	57,072	6.1
May	29,633	2,488	32,121	971,275	16,061	-	412,506	42.5	73,133	7.5
June	29,634	2,488	32,122	1,003,397	16,061	-	412,506	41.1	89,194	8.9
July-September	91,000	7,472	98,472	1,101,869	49,236	-	412,506	37.4	138,430	12.6
October-December	77,100	7,480	84,580	1,186,449	42,290	-	412,506	34.8	180,720	15.2
January-November 1981(3)	258,280	28,507	286,787	1,473,236	143,393	-	412,506	28.0	324,113	22.0

1. Over and above requirement associated with April 1, 1979 ownership.
2. Total monthly cash x 50%.
3. Assumes linear distribution of 1981 expenditures, on a monthly basis; $286,787 expended through November 10, 1981.