

January 18, 1980

SECY-A-79-91A

For: The Commissioners

From: Harold R. Denton, Director
Office of Nuclear Reactor Regulation

Thru: Executive Director for Operations *AR J LVC*

Subject: SECY-A-79-91 - DIRECTOR'S DENIAL OF 2.206 RELIEF (IN THE MATTER OF PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE) - COMMISSIONER ACTION ITEM *

Purpose: To inform the Commission of the NRC staff's assessment of statements reported to have been made by the licensee to the New Hampshire Public Utilities Commission on November 13, 1979, as well as other more recent pertinent information. Also, to evaluate the significance of these events and to indicate whether the Director's decision should be modified. In responding to the Commission's December 27, 1979 request for this information, the staff considered the subject Action Item, SECY-A-79-91.

Discussion: The staff has assessed new facts relevant to the November 16, 1979 Director's denial of relief under 10 CFR 2.206, in the matter of Public Service Company of New Hampshire (PSNH). This assessment has included a review of statements reported to have been made by PSNH to the New Hampshire Public Utilities Commission (NHPUC) on November 13, 1979, as well as other more recent pertinent information.

Some of the statements made to the NHPUC by Robert Harrison, PSNH's financial vice president, were reported in the November 14, 1979 edition of the Boston Globe as follows:

"...[P]ublic Service's finances will reach a critical point next January 3, the due date of a \$25 million Seabrook construction loan from a consortium of seven banks.

[Mr. Harrison] asked the [NHPUC] for an unequivocal statement 'that it supports the Seabrook project,' and action on a long term 8.5 percent rate increase request pending since last spring, as a signal to bankers that the project can proceed.

If the loan cannot be extended, 'we would be in default' Harrison said. 'We would not have sufficient cash to pay our bills and I think that's known as insolvency.'

'...Interim relief of some sort' would be needed for the \$2.6 billion [Seabrook] project to enable the company to meet its debts."

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*SECY NOTE: On December 27, 1979, the Commission responded to SECY-A-79-91 by sending a requirements memorandum to the EDO. This paper responds to that requirements memorandum. A new Commissioner Action Item (numbered SECY-A-79-91B) will be forwarded shortly by OGC.

On November 27, 1979, PSNH filed an application with the NHPUC requesting an emergency rate increase in the amount of \$11.970 million. PSNH contended in the ensuing proceeding that "without an increase in [its] basic rates it will no longer be able to sell long-term securities nor will it be able to finance its construction or day-to-day operations."¹ This inability to meet its obligations was cited as "confronting PSNH with immediate and substantial financial disaster both as to the completion of Seabrook and the continuation of PSNH as a corporate entity."² These, among other statements made during public hearings in the rate proceeding, are similar to those reported in the Boston Globe. These statements all base PSNH's impending encounter with, or aversion of, financial difficulty upon the outcome of the company's requested rate relief. In this context, the company contended that alternatives to the surcharge are neither feasible nor are they an adequate replacement for the rate relief.³

In its Eleventh Supplemental Order No. 13,962 dated December 26, 1979 in Docket No. DR 79-187 (Enclosure 1), the NHPUC allowed PSNH the full \$11.970 million requested rate increase effective on December 28, 1979.⁴ In its Report to the Order (Enclosure 2), the NHPUC found that "it is clear the company qualifies for emergency assistance."⁵ More importantly, the NHPUC stated "...the company has maintained and correctly, we believe, that Seabrook is a valuable project"⁶ and the NHPUC reaffirmed its past and continued endorsement of the construction of the nuclear facility at Seabrook.⁷

In addition, other significant events have subsequently occurred. First, the \$25 million construction loan (referred to by Mr. Harrison above) formerly due on January 3, 1980 to a consortium of seven commercial banks has been extended in maturity to January 5, 1981.⁸ Secondly, one additional commercial bank has agreed to join the consortium of seven commercial banks which extended to PSNH its \$115 million revolving credit agreement.⁹ The effect of this will increase the amount available under the credit to \$130 million,¹⁰ subject to NHPUC approval of an increase in the company's short-term borrowing limit. Thirdly, PSNH is currently in the process of registration with the Securities and Exchange Commission of a \$30 million issue of twenty-year General and Refunding Mortgage Bonds. When issued, these will provide the company with additional capital to both reduce its outstanding short-term debt and apply towards its capital requirements in the construction of Seabrook.

¹ NHPUC Report dated December 21, 1979 to Eleventh Supplemental Order No. 13,962 in Docket No. DR 79-187, at 2.

² Ibid.

³ Id., at 3.

⁴ See also id., at 15-16.

⁵ Id., at 10.

⁶ Id., at 9.

⁷ Id., at 15.

⁸ Preliminary Prospectus of PSNH, p.7, filed December 28, 1979 with Securities and Exchange Commission under Form S-7, Registration No. 2-66334.

⁹ Id.; see also Director's decision at 12.

¹⁰ Id.

Based upon the foregoing most recent information, the staff concludes that the requisite reasonable assurance exists that PSNH is presently able to finance the Seabrook facility. The staff's conclusion is consistent with the Commission's Seabrook decision, CLI-78-1, 7 NRC 1 (1978). As the Director's decision noted (at page 10), the Commission stated in Seabrook that:

"Anticipated difficulties in raising funds are relevant to the reasonable assurance determination, but a showing of some potential difficulty would not necessarily preclude that determination, all other relevant factors being taken into account."¹¹

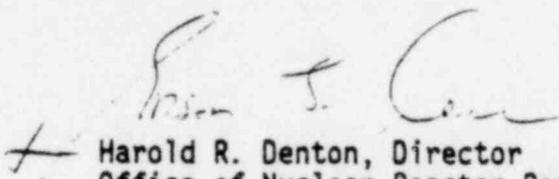
The staff believes the Commission's analysis is applicable here. PSNH's management stated to the NHPUC that it anticipated financial difficulty in the absence of rate relief and continued support by the NHPUC of the construction of the Seabrook facility. However, this potential difficulty does not preclude a finding of "reasonable assurance" in view of the other "relevant factors" here consisting of the NHPUC's actions in granting PSNH emergency rate relief and endorsement of Seabrook's construction and PSNH's continued access to financing. Accordingly, the staff does not believe that a different or modified result is appropriate in the Director's November 16, 1979 10 CFR 2.206 denial.

Also pertinent to the Commission's request is the staff's assumption of a "rational regulatory environment" in the setting of an applicant's rates for utility service. This assumption is fundamental to the staff's financial qualifications findings on regulated public utilities in proceedings for both construction permits and operating licenses. Unless facts of a particular case dictate otherwise, the staff incorporates this assumption in its financial analyses. Generally, state public utility commissions are required by federal and state law to allow the utility company to charge reasonable rates that will enable it to provide reliable and adequate service to the public. By this requirement, commissions must also permit the company to earn a return on investment sufficient to assure confidence in its financial integrity and to allow the company the ability to attract capital. Federal and New Hampshire court decisions addressing this matter are cited on pages 18 and 19 of the Director's decision. The staff assumes that these principles will be adhered to and accordingly does not normally base its findings on the statements or pleadings in any particular rate case. Moreover, dire statements by investor-owned, regulated utilities are common (especially during periods of high inflation and record-high costs of capital) in their quest for rate relief from their utility commissions to maintain their financial integrity and continue their ability to attract capital. Instead of relying on the statements made by parties before utility commission proceedings, the staff relies on the end result of these proceedings.

¹¹ Seabrook, at 21.

The staff also notes that the Director's decision takes into account (pp.7-9, 20) PSNH's current efforts to transfer a portion of its ownership interest to other utilities. Upon receipt and after evaluation of the financing plans of the proposed new co-owners, the staff will issue a Safety Evaluation Report (SER) which will accompany any approval of ownership transfer. The SER will address the financial qualifications of those utilities to assume their respective requested amounts of ownership interest in the facility.

Coordination: This paper has been concurred in by the Office of the Executive Legal Director.


Harold R. Denton, Director
Office of Nuclear Reactor Regulation

Enclosures:

1. NHPUC Eleventh Supplemental Order No. 13,962
dtd 12/26/79
2. NHPUC 12/21/79 Report to Eleventh Supplemental Order No. 13,962

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ENCLOSURE 1

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

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E L E V E N T H S U P P L E M E N T A L O R D E R N O . 1 3 , 9 6 2

In consideration of a report issued December 21, 1979, which is made a part hereof; it is

ORDERED, that the Public Service Company of New Hampshire be, and hereby is, allowed emergency rate relief in the amount of \$11,970,591, to become effective with all billings issued on or after December 28, 1979 and to continue until permanent rates are ordered under this docket; and it is

FURTHER ORDERED, that said revenue be gained by increasing service charges and applying a surcharge to each kilowatt-hour of energy sold, with the exceptions noted within the report; and it is

FURTHER ORDERED, that surcharges for each class be calculated according to the Report of Proposed Rate Change attached to the aforementioned Report; and it is

FURTHER ORDERED, that the resulting rates be documented by filing Supplement No. 7 to the Public Service Company of New Hampshire's tariff NHPUC No. 22 - Electricity; and it is

FURTHER ORDERED, that public notice be given according to tariff Filing Rule 27, said notice to summarize Supplement No. 7.

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



Vincent J. Iacopino
Executive Director and Secretary

POOR ORIGINAL

ENCLOSURE 2

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Enclosure 2

Request for Rate Increase

Application for authority to alter existing rates on account of emergency circumstances.

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Appearances: for the Company, Martin Gross, Esquire, Franklin Hollis, Esquire and Philip Ayers, Esquire; for the Legislative Utility Consumers' Council, William Shaine, Esquire and Gerald Lynch, Esquire; for Community Action Program, Gerald Eaton, Esquire; for the U S Air Force and General Services Administration, Captain Jefferson M. Shaffner, Esquire.

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REPORT

On November 27, 1979, the Public Service Company of New Hampshire, an electric utility company, filed an application for authority to alter existing rates on account of emergency circumstances to produce an annual increase of revenues of 5.5% in the amount of \$11,970,591 or 7.5% over the present base revenues computed in accordance with Tariff No. 22 but exclusive of the fuel adjustment charge. The application is filed pursuant to RSA 378:9, or in the alternative RSA 378:27 or 29.

On November 29, 1979 the Commission issued an Order of Notice providing for a public hearing on this application to be held on December 11, 1979 and for publication of said notice. The notice was duly published and the hearings were held on December 11, 12, 13, and 14, 1979.

The Company presented testimony from Robert J. Harrison, Vice President and Chief Financial Officer of the Company, William Q. Harty, Vice President and the Head of the Public Utilities Department of Morgan Guaranty Trust Company and Eugene W. Meyers, Vice President of the Kidder Peabody Company, Hanover Square, New York, New York.

The Commission requested the testimony of Jonathan D. Horne of the First National Bank of Boston and Philip H. McLaughlin of Shawmut National Bank of Boston.

The Legislative Utility Consumers' Council (hereinafter called the LUCC) presented testimony of Professor J. Peter Williamson of Dartmouth College.

Various members of the public and representatives of consumer groups gave oral or written statements to the Commission.

I. Position of the Parties

A. Position of Public Service Company

Public Service Company (hereinafter referred to as the Company or PSNH) contends that without an increase in the basic rates it will no longer be able to sell long term securities nor will it be able to finance its construction or its day-to-day operations. This inability to meet its obligations is cited as confronting PSNH with immediate and substantial financial disaster both as to the completion of Seabrook and the continuation of PSNH as a corporate entity.

PSNH in its memorandum states that it has carried its burden under both RSA 378:9 (emergency) and RSA 378:27 and 29 (temporary). The Company cites the Commission's attention to Petition of Public Service 97 N.H. 549 (1951) and Concord Electric DR 74-1 (1974) for support of its contention that under either RSA 378:9 or 27, an inability to finance its capital requirements is a sufficient ground for relief.

PSNH relies upon evidence submitted in this proceeding for the proposition that it has made a good faith effort to reduce its cash demands. The Company charges that the failure to reduce these cash demands can not be laid at the Company's doorstep given the appeals taken by other parties to this proceeding.

The problems the Company faces are delineated in their memorandum as follows: (a) the need to raise \$290 million by December 31, 1980, (b)

the term loan is up for renewal, (c) access to the short-term credit market has been curtailed, (d) common stock access is limited, (e) general and refunding bonds are not a possibility at this time, and (f) only limited amounts of preferred stock could be issued.

PSNH contends that alternatives to the surcharge are not feasible or an adequate replacement for rate relief. The Company indicates that regulatory approvals which reduce PSNH ownership in Seabrook to 35% will not solve the problem since 28% is the level that is manageable by the Company. Other alternatives such as shutting down construction or altering the scheduled completion dates are also rejected by the Company as being both against the public interest and of little value in solving inadequate cash flow. The Company concludes that only through a surcharge can these problems begin to be resolved.

PSNH takes exception to the contention that the requested rate relief is a departure from cost of service principles. Supporting this position, the Company cites, that cost of service includes not only a utility's cost of operation but also its cost of capital. That further, this cost of capital is not to be determined solely in terms of return on amounts invested in plant actually in service.

The Company finds solace and support for its contentions as to cost of service principles in LUCC witness Williamson's testimony. If Professor Williamson finds a 4.2 to 6.2% increase necessary under a narrow concept of cost of service, the Company contends its 5.5% is clearly justified.

Finally, the Company contends that while it has submitted a variety of proposed rate structures to the Commission, it believes its original filing to be the strongest. However, the Company will accept the method the Commission finds appropriate.

B. Position of LUCC

The LUCC objects to the Company's application and sets forth a number of arguments for the consideration of the Commission.

The first argument is that the application discussed costs that are associated with the Company's uncompleted construction at Seabrook, and are, thus irrelevant to the establishment of rates whether they be interim, temporary, emergency or otherwise. LUCC takes the position that the level of rates and charges to be assessed by PSNH may not be based on any manner on the cost of construction work in progress; nor may the level of rates and charges be based upon any costs associated with construction work if said construction work is not completed. To do so would violate the language of RSA 378:20-a.

The second argument advanced by the LUCC is that Emergency rates should be denied because it is unlikely that PSNH will be able to substantiate an increase of 5.5% over their current levels of revenues in the hearings concerning rate relief requested by PSNH. This contention basically alleges that PSNH can not meet the burden of proof necessary to justify a rate increase of any kind in light of the fact that they cannot show that they can maintain their present level of revenues. In this context the LUCC also suggests that the Commission should not grant the Company's request to fully normalize its income tax accounts.

The third contention of the LUCC is that there is no testimony that the requested increase will avert the crisis. LUCC sets forth that it would be an abuse of discretion to grant an increase without evidence of a permanent financing package designed to allow PSNH to continue construction of Seabrook on schedule, at its current level of ownership.

Generally, the LUCC alleges that the Company has not pleaded a factual basis for the granting of emergency rate relief and if such relief were granted a bond should be required to protect residential consumers.

C. Position of Community Action Program

The Community Action Program (CAP) sets forth a number of considerations for the Commission to evaluate in arriving at a decision in this proceeding. The first concern expressed by CAP is if the Commission finds that an emergency exists, the Commission should not allow a rate increase without a concomitant effort by Public Service Company. CAP views the additions of personnel for purposes of construction monitoring and the possibility of increased dividends to stockholders as unreasonable if consumers are asked to pay higher rates to relieve an emergency.

The second contention put forth by CAP is that Public Service has simply not carried its burden of proof pursuant to RSA 378:8. In addition, CAP alleges that the emergency, if it exists, relates directly to financing construction costs, generating cash for construction and preventing default on lending agreements for construction. Therefore, CAP contends that this expense of construction financing is directly prohibited from being passed on to the ratepayer by RSA 378:30-a.

The third concern expressed by CAP is that the Commission must first determine if there is a crisis of sufficient severity to warrant relief and then determine the extent of the relief. Petition of Public Service Company, 97 N.H. 549 (1951) - Blandin opinion. CAP alleges that even if there is an emergency, the emergency rate request will not cure the financial difficulties faced by the Company. CAP alleges that there is a significant probability that many of the Company's plans will not bear fruition in 1980, thus worsening the emergency. Among those cited by CAP are: (1) sale of the Vermont facilities; (2) the approval of the divestiture by other regulatory bodies; (3) the refusal of the various banks to provide assurances that the loans will be renewed or extended; (4) the nuclear fuel agreement will occur; and (5) that a renegotiation of the unit sale of power from Merrimack II will be successful.

CAP points to the fact that many of its clients face emergencies of their own. If these people are faced to part with a portion of their limited resources, CAP contends that there is no assurance that the Company will succeed in remaining stable during 1980, or that there won't be further requests.

CAP's fourth contention is that temporary rates cannot be granted because of the failure to adequately inform the public that temporary rates would be addressed.

CAP's final concern is that if the Commission ignores CAP's other concerns and finds an emergency, the rates granted should be applied on a per kilowatt hour basis.

II. Statutory Concerns

A. Temporary Rates

The Commission has in this proceeding provided adequate notice to the public of an immediate rate increase request. A hearing was scheduled and notice of said hearing was properly published. The adequacy of the notice and the awareness of the public concerning the matters before the Commission have been clearly demonstrated by the number of people who have presented their views both orally and in writing to the Commission.

Temporary rates have traditionally protected a utility's right to a reasonable return during the pendency of a proceeding. Consumers are protected through the notice and hearing provisions and RSA 378:30 which allow for a bond to secure repayment to the customer of the utility in the event that temporary rates prove to be higher than what is allowed in the permanent rate decision.

The Commission in Concord Electric DR 74-1 (1974) allowed a temporary increase in rates where it found that Concord Electric was unable to do any

permanent financing. Similar concerns were expressed in Public Service Company D-R 6081 (1974). ~~Therefore, by past Commission precedent.~~ RSA 378:27 ~~is a mechanism whereby a utility can obtain an increase in rates provided it can demonstrate that access to the permanent capital markets is being influenced by the inability of the utility to earn a reasonable return.~~

B. Emergency Rates

RSA 378:9, the emergency rate statute, has also been recognized as a vehicle whereby a utility after demonstrating a lack of avenues to the permanent financing markets can receive an increase in rates, New England Telephone and Telegraph v. State 95 N.H. 59 (1949) Petition of Public Service Company 97 N.H. 549 (1951).

In both the New England Tel. decision and the Blandin opinion in Public Service the inability to finance generally, inability to pay present bank loans and/or issue common stock have been recognized as sufficient grounds by the Supreme Court for the finding of an emergency. The Kenison opinion in Public Service does not differ as to the recognition of what factors result in a rate increase being granted prior to completion of a permanent rate order. Rather, the focus of the Kenison opinion is the statutory mechanism. Since that decision, the Supreme Court has clearly stated that the Commission is not to substitute form over substance. LUCC v. PSNH III _____ N.H. _____ (1979). While the issue of form versus substance was a question of methodology in that proceeding, the considerations supporting that decision are equally applicable to the question of which statute is appropriate.

The Commission does not believe that an emergency request pursuant to RSA 378:9 loses its character as an emergency, simply because the matter is set for public hearing. Commission policy is to always have a hearing because this is the only way the Commission can be assured of balancing the

interests of the consumers and the utility.

Therefore, the Commission adopted the position that this proceeding is pursuant to RSA 378:9 and 378:27 either individually or in conjunction.

C. Burden of Proof

RSA 378:8 states that when any utility seeks the benefit of any order of the Commission to charge and collect rates in excess of the rates presently being charged, the burden of proving the necessity of the increase is clearly on the utility.

In an emergency rate relief situation, there is a heavy burden upon the utility seeking relief to allege and establish the existence of circumstances which would warrant departure from the normal ratemaking process. Re Potomac Electric Power Co., 9 PUR 4th 363 (1975). While the burden of establishing the need for rate relief is always upon the applicant in a rate proceeding, ~~that burden bears more heavily upon the~~ applicant in a request for extraordinary relief. Re Arkansas Power & Light Co., 10 PUR 4th 474 (1975).

Since the Commission does not have the benefit of a complete independent analysis by its staff on the financial posture of the utility, the evidence submitted by an applicant for emergency rate relief must clearly and convincingly demonstrate that a situation exists which warrants an exercise of the Commission's emergency powers. Re Arthur Mutual Telephone Co., Case No. 73-562-4 (1973).

III. Commission Analysis

The testimony of Mr. Meyer of Kidder Peabody is concise and to the point. This Company is foreclosed from permanent financing if additional revenues are not forthcoming. If permanent financing is not available, the

commercial bankers have no reason to either ~~renew or extend short term~~ financial arrangements. If that occurs this company will not be able to meet its bills which would effectively stop the construction of Seabrook. Furthermore, there is at least a strong likelihood that Public Service Company itself would flounder on the shoals of insolvency absent rate relief.

Staff Exhibit #8 does show that this Company is earning a rate of return in excess of that allowed by the Commission in the last rate case decision DR 77-49. If the financial circumstances involving this Company had remained the same, Staff Exhibit #8 would present a significant barrier to rate relief. However, the circumstances involving this Company have changed. First, at the time the Company was last before the Commission the prime interest rate was below 10%; now it is at 15%. Second, during the last proceeding the economy as a whole was on a relative upward swing. Today, all of us are in the throes of a recession. Third, between the last filing by this Company and this emergency rate filing, an incident occurred at the Three Mile Island Station. In the aftermath of this incident the financial markets have reacted somewhat less positively than in the past. While hopefully the events in Caracas this past week will begin to swing the pendulum in the opposite direction, certainly the incident did add risk to those utilities constructing nuclear plants.

Fourth, the stock market has had a steady downward slide. This overall market condition, a symptom of the recession and the high interest rates, has had a particularly chilling effect on stocks of utilities. Those with major construction programs or heavy reliance upon oil were hit the hardest. PSNH is in the unfortunate position of qualifying under both.

~~Fifth,~~ the Company has maintained and ~~correctly,~~ we believe, that Seabrook is a valuable project. The New England utilities who first requested

portions of Seabrook and then backed off provided an additional risk factor that neither the Company or this Commission could control. However, a risk factor to which investors and bankers respond. Obviously, if the Company is perceived as having to be wary of its fellow brethren in the industry, this too causes risk.

Mr. Meyer's indication that he believed Public Service was the utility with the greatest risk may be true. However, what is clear is the correctness of our statement in DR 79-107 where the Commission indicated that both the overall rate of return and the return on common equity is higher than our findings in DR 77-49. Lucc witness Williamson, Company witness Meyer and Harrison all maintained that the cost of common equity for PSNH was higher than 14%. Certainly the 15.3% at this point in time is reasonable.

Applying the facts in this proceeding to the tests set forth by the Supreme Court, it is clear that the Company qualifies for emergency assistance. As in Petition of Public Service, (1951) infra Public Service Company is again faced with an inability to sell common stock, 95 N.H. 551.

As in 1951, Public Service Company must, assuming the divesture is not completed in 1980, raise extraordinary amounts of additional capital. This factor was another one relied upon by the Supreme Court in determining an emergency existed in 1951. 97 N.H. at page 551. Finally, again as in 1951 a loan is coming due that must be renewed or extended to pay for past construction and to pay for further expansion of services.

The evidence of Lucc witness Williamson also indicates that at least some form of permanent rate relief is necessary. While Professor Williamson did not address his belief as to the emergency situation and what relief if any was needed. His recommendation of a 4.2% to 6.2% permanent increase does not differ markedly from the action the Commission takes today.

The testimony of Mr. Harrison together with our own extensive investigation into what is occurring in other jurisdictions, leads us to conclude that PSNH has made every attempt to implement the divesture in the most expeditious fashion possible. If they had not been held up by people such as the Massachusetts intervenors there is a strong likelihood that the action taken today might not have been necessary.

Upon a review of all the evidence in this proceeding it is clear that PSNH has sustained its heavy burden and that our action conforms to the tests set forth by the New Hampshire Supreme Court. Obviously, this review cannot address all the concerns raised by each party to the proceeding. However, the full investigation in situations such as these is left to the hearings on the permanent increase. The \$11,970,00 revenue request is approved.

D. Bond.

The Commission pursuant to RSA 378:30 will require a bond to be posted.

IV. Allegations Concerning CWIP and RSA 378:30a

Parties to the proceeding have set forth the proposition that the Company's request is nothing more than CWIP by another name. In addition, some of these parties contend that RSA 378:30a precludes any mention of any project under construction. Because these parties have persisted with these positions, the Commission finds it necessary to provide the following:

If RSA 378:30-a was not in existence, the Company would be entitled to a rate base nearly double the rate base submitted in this proceeding. Assuming the same 14% return on equity allowed in DR 77-49 the Company would be entitled to approximately \$83,706,267 of additional revenue this year. This compares to the approximate \$11,970,000 granted by this opinion and the approximately \$18,500,000 asked in the permanent rate increase request.

Clearly neither this Commission nor PSNH is sidestepping the effect of RSA 378:30-a.

The formula used by the Commission in DR 79-107 will again be cited as an attempt to explain ratemaking.

$$R = E + (V-d)r$$

R = Overall revenues required

E = Expenses

V = Rate Base

d = Depreciation

r = Overall return

Under either the CWIP or no CWIP scenario, expenses and depreciation can be assumed to be treated in the same fashion. Consequently, the differences are rate base and return. Obviously, many of the concerns of the 15.3% at this early stage of the proceeding would not be ignored in a similar proceeding without RSA 378:30 (a). The differences, if any, on return on equity are the proper subject for experts. Debt costs and preferred stock costs that have been the subject of hearings by this Commission would not be addressed by the caliber of witnesses such as Harrison and Williamson, since these portions of the rate of return are rarely, if ever, in dispute.

This leaves a rate base under CWIP based rates on a New Hampshire jurisdictional basis of \$648,522,763 as opposed to the requested non-CWIP rate base (on a jurisdictional basis) of \$325,722,740.

As to the suggestion that RSA 378:30-a is designed to eliminate consideration of construction from all elements of ratemaking, ie. expenses, return, and rate base is untenable.

The bill reads as follows:

1. Costs of Construction Work In Progress Excluded From Rate Base. Amend RSA 378 by inserting after section 30 the following new section:

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 its passage. (Emphasis supplied).

The statute as well as the title of the statute clearly indicates that the legislature was intending to exclude CWIP from rate base.

V. Commensurate Jurisdiction Returns and Divestiture

The Commission urges the Company to proceed in a reasonably expeditious manner to seek equality of rates from customers in other jurisdictions serviced by the Company and at the same time to continue to strive toward a successful conclusion of the planned divestiture.

Emergency Measures - PSNH

CAP AND LUCC are concerned that if consumers are paying higher rates because of an emergency resulting from lack of cash flow then it is only fair and reasonable to require similar sacrifices by the utility and its stockholders. Both ask for a curtailment in expenses and CAP has particular concerns about a possible dividend increase.

Both of these parties want the Commission to evaluate the expenses of the Company and it is suggested that the Commission impose either a flat percentage reduction to expenses or in the alternative disallow certain expenditures such as the expenditure associated with the Electric Power Research Institute.

The questions raised by CAP and LUCC relate to the methods and practices of the utility and its management. These are legitimate inquiries that must be considered before reaching a decision in the permanent rate request. However, the Supreme Court has clearly indicated that "emergency relief does not depend upon the answers to these questions but upon the needs of the company..." New England Telephone and Telegraph Co. v. State 95 N.H. 58, 62 (1948).

While there is no statutory or case law which requires a limitation on expense, the question of increased dividends may well have been addressed in part by the New Hampshire Supreme Court in the New England Telephone and Telegraph Co. decision. In that decision, the Court found that a proper return for common equity was required to be found before establishing permanent rates. The court then stated the following:

"Until such permanent rates can be established, stockholders must expect to share the burden of abnormal costs without transferring the whole to the public under the guise of emergency relief."
95 N.H. at p. 63.

However, the Commission agrees with Mr. Harrison that the Commission lacks the authority to dictate the dividend policy of this Company or any other company (Transcript 4-48). The Company and its investment bankers must decide what is necessary for the common and preferred stock of the company to be attractive to investors.

Rate Design

Because of the expedited nature of both temporary and emergency proceedings, rates must be established without in depth allocations of costs. The allocations chosen by the Commission in these types of proceedings do not necessarily control when fixing permanent rates. New England Telephone and Telegraph Co. v. State 95 N.H. 515 68 A. 2d 114 (1949). Consequently, parties to the proceeding have the right to challenge the cost allocations made by the Commission in hearings to be held on the permanent rate request.

The Commission, in adopting the increased rate level sought by the Company is faced with substantial problems of increasing complexity. Yesterday's solutions are not always applicable where (1) a unit is being built with a cost many times the size of the Company's existing investment, (2) the fuel type of the new plant is more desirable because of inflationary and national interest problems associated with the fuel type that is presently being used, and (3) conservation is now a national policy.

The Commission has attempted to implement a three pronged approach to reducing the oil dependence of utilities within our jurisdiction, First, the Commission endorsed and continues to endorse the construction of the nuclear facility at Seabrook. Second, the Commission has initiated an investigation into the feasibility of converting oil fired stations to

coal. Third, the Commission has, through its decision on rates for small energy producers, attempted to increase substantially the amount of hydro-power in the State and possibly make it more likely that other alternate energy forms will also increase. In addition, the Commission has launched an investigation into whether or not the Commission should require greater amounts of hydro-power generation on the Connecticut River to be used within the State.

Today, the Commission adds a fourth prong; namely, to make the rate structure more conservation oriented at least until either the other fuel types begin to have a greater percentage of PSNH's mix or until the oil crisis lessens in impact.

At the present time any increased usage by any consumer in this State will be satisfied by a greater use of oil fired generating stations. This will be especially true if the NRC carries through on its order to begin closing some of New England's nuclear plants for safety checks and for safety related equipment additions. Consequently, the initial rate structure submitted by the Company will not be accepted for purposes of this proceeding.

Instead, the Commission will allow the following increases to the following customer classes and service charges. It should be noted that the full \$11,970,591 is being allowed but because of the \$1.82 fuel adjustment charge as opposed to the test year average fuel adjustment charge of \$1.33 the overall percentage is lower. (4.98%). The Commission will spread the emergency surcharge as shown on the attached report of proposed rate changes. The proposed change is to be placed on a per kilowatt hour basis within each customer class of service. The Company will use the amount of kilowatt hours for each class of service that it used in the calculations it submitted to the Commission. The Commission will make two deviations from this overall rule. The controlled water heating subclass for the general service rate G

will not have any increase applied to its kilowatt hour useage. This lost revenue is to be recovered on a per kilowatt hour basis from other rate G customers. The second deviation is that no increase will be applied to the high-pressure sodium outdoor lights. Again, this small revenue loss is to be recovered from other ML customers on a per kilowatt hour basis. Our order will issue accordingly. to be effective as of December 28, 1979.

J. Michael Love
Chairman

Concurring:

December 21, 1979

Francis J. Riordan, Commissioner

Malcolm J. Stevenson, Commissioner

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION
Concord

REPORT OF PROPOSED RATE CHANGES

UTILITY Public Service Company of New Hampshire DATE FILED _____
Supplement No. 7

TARIFF NO. 22 EFF. DATE _____

Based on Actual Sales to New Hampshire Customers
For the Twelve Months Period Ending May 31, 1979**

Rate or Class of Service	Effect of Proposed Change*	Average Number of Customers	Estimated Annual Revenue†		Proposed Change	
			Present Rates **	Proposed Rates	Amount	%
Residential Service Rate D***	Increase	238,225	\$105,171,503	\$108,521,160	\$3,349,657	3.18
General Service Rate G	Increase	30,379	\$40,474,739	\$41,573,712	\$1,098,973	2.71
Primary General Service Rate GV**	Increase	1,198	\$46,420,020	\$49,570,525	\$3,150,505	6.78
Transmission General Service Rate TR**	Increase	79	\$41,298,582	\$44,511,484	\$3,212,902	7.7
Outdoor Lighting Service Rate ML	Increase	13,814††	\$6,298,297	\$6,562,001	\$263,704	4.18
Service Charges, Rates D & G	Increase		\$447,425	\$1,342,275	\$894,850	200.0
TOTALS	Increase	270,054	\$240,110,566	\$252,080,872	\$11,970,591	4.98

* Show increases, decreases and net changes in each rate classification separately, where applicable.

(See reverse side for other footnotes.)

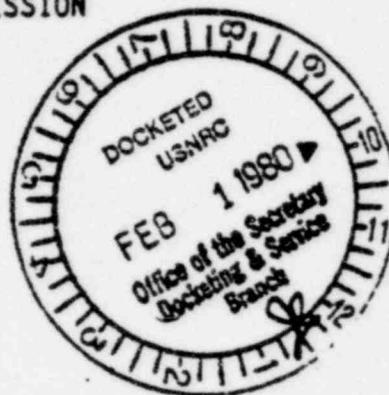
Signed by: _____

Title: _____

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

John F. Ahearne, Chairman
Victor Gilinsky
Richard T. Kennedy
Peter A. Bradford



In the Matter of

PUBLIC SERVICE COMPANY OF
NEW HAMPSHIRE, et al.

(Seabrook Station, Units 1 and 2)

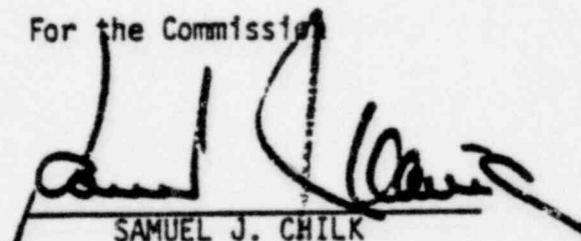
Docket Nos. 50-443
50-444

ORDER

Pursuant to 10 CFR 2.772, the time within which the Commission may act to review the November 16, 1979 decision of the Director, Nuclear Reactor Regulation, denying a petition under 10 CFR 2.206 relating to financial qualifications, is extended until February 7, 1980.

It is so ORDERED.

For the Commission



SAMUEL J. CHILK
Secretary of the Commission

Dated at Washington, D.C.

this 31 day of January, 1980.