

STATE OF NEW HAMPSHIRE



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May 27, 1992

Wynn E. Arnold, Esquire
New Hampshire Public Utilities Commission
8 Old Suncook Road
Concord, NH 03301

Re: DR 92-077 - Nuclear Decommissioning Charge

Dear Mr. Arnold:

On May 11, 1992, the New Hampshire Public Utilities Commission (commission) issued an order nisi which, inter alia, established a method by which Public Service Company of New Hampshire/Northeast Utilities (PSNH/NU) should calculate the nuclear decommissioning surcharge and ordered that any interested party was free to file written comments or request an opportunity to be heard in this matter no later than May 27, 1992. Order No. 20,475 (May 11, 1992). Staff hereby offers its written comments.

In Order No. 20,475, the commission specified the following method, in part, for calculating the nuclear decommissioning surcharge:

1. Identify the original amount of decommissioning costs included in the base rates;
2. Compound that amount by the January 1990 5.5% increase, then by the May 1991 5.5% increase, then by the anticipated June 1992 5.5% increase.
3. Surcharge any remaining amount to be assessed in order to collect the amount ordered by the NDFC.

From this order, it is apparent that the commission is concerned about the inter-relationship between recovery of decommissioning costs and the annual 5.5% base rate increases.

While staff shares this concern, a modification to Order No. 20,475 may be necessary to reflect the Rate Agreement's provisions regarding decommissioning costs, as distinguished from other costs that may be recovered as a surcharge under Section 5(a)(v) of the Rate Agreement.

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Section 8 of the Rate Agreement contained in Exhibit NU 1E in Docket No. DR 89-244 provides that:

Seabrook decommissioning costs will be collected by Stand-Alone PSNH and NUNH from customers as a separate surcharge on rates. . . . Such costs, as specified by the Nuclear Decommissioning Financing Committee's Seventeenth Supplemental Order of June 2, 1989, even though a separate surcharge, are included in the rate increases provided in paragraph 5 of this Agreement. (Emphasis added).

Moreover, Section 5 of the Rate Agreement authorizes PSNH "to reflect changes required by the Nuclear Decommissioning Financing Committee in the level of monthly payments to be made into the Nuclear Decommission Fund from the level prescribed in the Committee's Seventeenth Supplemental Order of June 2, 1989."

On March 9, 1992, the Nuclear Decommissioning Financing Committee (NDFC) issued its Sixth Supplemental Order in Docket NDFC 91-1 providing for a new, higher level of payments to be made into the Nuclear Decommission Fund.

The levels of contributions contained in the NDFC's Seventeenth Supplemental Order have been assumed to be collected under the base rate levels authorized under the Rate Agreement approved by this Commission in Docket DR 89-244. The NDFC re-evaluated the costs of decommissioning in 1991. A new schedule of contributions, higher than those assumed in the Rate Agreement, was approved by the NDFC for payments beginning April 1, 1992. Under Section 5 (a)(v)B of the Rate Agreement, PSNH is entitled to recover this increase in contribution levels in its rates and charges.

Staff believes that the interpretation and implementation of the following provision of Section 5(a)(v) may be at issue:

[R]ate adjustments authorized under this paragraph will increase or decrease the ongoing base rate level which is subject to the 5.5% annual increases occurring in the remainder of the fixed rate period.

It is Staff's understanding that PSNH/NU interprets this section to allow an additional \$681,901 of nuclear decommissioning charge to be included in retail base rates, subject it to the annual 5.5% increases authorized under the Rate Agreement. Any excess earned would be retained as income. This would result in an annual increase to PSNH/NU of approximately \$37,500 in income.

This issue was raised by staff in Docket No. DR 89-244 and partially resolved by the parties and the commission in the

following manner:

Effect of Compounding 5(a)(v) Base Rate
Adjustments by the 5.5% Annual Increases

Staff recommended that rate adjustments authorized under Section 5 (a)(v)(A) through (D) should not increase the ongoing base rate levels which are subject to the 5.5 percent annual increases. Ex. Staff 1-C, Recommendation No. 12. In response, NU and the State have proposed that all incremental C&LM costs recovered under Paragraph 5(a)(v)(D) of the Rate Agreement in one year shall be increased by NU by 5.5% annually for the remainder of the fixed rate period. The intent of this proposal is that compounding of the 5.5% increases in allowed C&LM costs will be matched by corresponding increases in C&LM expenditures and will not be retained by PSNH as income. Joint Recommendation at 7(ii).

This proposal satisfactorily addresses the problem of compounding C&LM expenditures.

Re Northeast Utilities/Public Service Company of New Hampshire,
114 PUR 4th 385 at 421 (1990).

Whether increases in decommissioning costs under Section 5(a)(v) B of the Rate Agreement would be subject to the compounding effect of the 5.5% annual base rate increases was not explicitly resolved by the commission in its report and order approving the Rate Agreement. The commission, therefore, must now resolve an issue it left unresolved in DR 89-244 and in so doing must employ the rules of law pertaining to contract interpretation.

When interpreting a provision of the Rate Agreement in an unrelated proceeding, the commission recently set out the standards by which it would interpret the Rate Agreement:

In interpreting a contract, the New Hampshire Supreme Court has instructed us to focus on the intent of the parties at the time of the agreement. R. Zoppo Co., Inc. v. City of Dover, 124 N.H. 666 (1984). Moreover, we must also consider the situation of the parties at the time of their agreement and the object that was intended thereby, together with all provisions of their agreement taken as a whole, because the interpretation of a contract is, by necessity, fact oriented, Id.; see also, Post Machinery Co., Inc. v. Targes, 705 F. Supp.

55 (D.N.H. 1989) (language of any written agreement is not completely dispositive of parties' intent, but must be considered in light of parties' situation at time of agreement and object that was intended thereby, together with all provisions of their agreement taken as a whole).

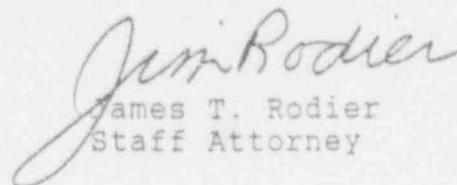
Report and Order No. 20,280 (October 25, 1991) at 13.

The commission, therefore, must focus on the intent of NU and the State at the time the Rate Agreement was entered into. The staff believes that in Section 5(a)(v) the parties to the Rate Agreement intended to assign the risk of changes in certain expenditures, including nuclear decommissioning charges, to ratepayers rather than stockholders. Therefore, the Agreement treats these costs as a pass-through to ratepayers. The staff strongly believes, however, that it was not the intent of the State to allow PSNH/NU to compound otherwise legitimate increases in decommissioning costs by the 5.5% annual base rate increases and to retain the excess as income. To argue otherwise would be to assume that the state intended to convert the Nuclear Decommissioning fund into a profit center for the company, by allowing PSNH/NU to expropriate an annual windfall on the flow through of decommissioning costs.

In fact, profit on decommissioning charges is specifically prohibited by statute. RSA 162-F:19, I provides, in pertinent part, "The monies in such fund shall not be subject to any federal or state taxes and shall not provide any monetary profit to the owner or owners of the facility."

The staff, therefore, recommends that the commission revise the methodology specified in Order No. 20,475 to require PSNH to include in base rates the amounts required by the NDFC's 17th Supplemental Order and return to customers any incremental benefit associated with the compounding of increases in decommissioning costs by the 5.5% annual base rate increase. This will also result in decommissioning cost increases being treated the same as incremental C&LM expenditures, as specifically ordered by the commission in Report and Order No. 19,889 (July 20, 1990).

Very truly yours,


James T. Rodier
Staff Attorney

JTR:bj

cc: Service List - 92-077

State of New Hampshire

PUBLIC UTILITIES COMMISSION

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