PSNH PUBLIC SERVICE
Company of New Hampshire

August 6, 1979
SM 2576

Mr. Calvin Moon
Project Manager
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Seabrook Station Units 1 and 2
Docket Nos. 50-443 and 50-444

Dear Sir:

Enclosed are the following items which you verbally requested:

Memorandum of Public Service Company of New Hampshire before the New Hampshire Public Utilities Commission

Testimony of David N. Merrill before the Commonwealth of Massachusetts Department of Public Utilities

Testimony of Robert J. Harrison before the Commonwealth of Massachusetts Department of Public Utilities. (Exhibit 1 is not included since it is the Joint Ownership Agreement previously submitted to the Commission)

Statement of Robert J. Harrison before the House Commerce and Consumer Affairs Committee

Copies are being sent by first class mail to the attached service list.

Very truly yours,

Bruce B Beckley

Bruce B. Beckley
Manager of Nuclear Projects

BBB:ac

Enclosures

cc: Service List (w/attach)

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CERTIFICATE OF SERVICE

I, Bruce B. Beckley, hereby certify that on, August 6, 1979, I made service of the within document by mailing copies thereof, postage prepaid, first class or airmail to:

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Bruce B Beckley

Bruce B. Beckley

THE STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

DR 79-107

Public Service Company Of New Hampshire - Exclusion Of Construction Work In Progress From Rate Base And Rates Or Charges

MEMORANDUM OF PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

I. FACTUAL BACKGROUND AND STATEMENT OF ISSUE.

In its Report and Order of May 25, 1978 this Commission found and ruled that Public Service Company of New Hampshire (PSNH) was entitled to an opportunity to earn net operating income of $48,793,126 (Order No. 13,162, page 60). This determination rested in part on the Commission's conclusion that a sufficient level of cash earnings was required to permit PSNH to attract and meet the costs of capital associated with the Company's construction program (Ibid., page 28, 36). To achieve the necessary revenue level, after examining alternative rate-making devices, the Commission chose to allow the insertion of a portion of PSNH's major generation CWIP in rate base as the "soundest and most sensible" regulatory tool (Ibid., page 37).

The Commission's Rate Order of May 25, 1978 was subsequently upheld by the New Hampshire Supreme Court. The Court reiterated

its long-accepted standard for determining the appropriate level of public utility revenues:

> "A public utility must be given the opportunity to earn revenue sufficient to assure the investor's confidence in the financial soundness of the utility and enough to maintain and support its credit so that it will be able to raise money necessary to improve and expand its service. LUCC v. PSNH, 119 N.H. _____ (5/17/79, Slip Opinion page 16).

The Court also specifically recognized that the building of a nuclear powered generating facility requires very substantial levels of bank credit for the early construction stages, that immediate financing must be available and, specifically,

> "If credit is not forthcoming, the construction program will be jeopardized." (Id.)

Under these circumstances, the Court concluded that the Commission "properly exercised its regulatory function" by considering use of CWIP as the appropriate regulatory device to achieve the necessary revenue level (Id.).

Thus it is clear that the Commission's Order of May 25, 1978 found and established a necessary level of revenue, consistent with the legal standard imposed on that process by the Court. CWIP was merely the regulatory tool used to achieve that revenue level. There now can be no question that the Rate Order of May 25, 1978 was lawful when made and constituted a reasonable regulatory response to the legal requirement that a public utility must be accorded an opportunity to achieve revenues that meet the stated legal standard.

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HB 155 was enacted into law effective May 7, 1979, nearly a year after the rate Order of May 25, 1978. On its own motion, the Commission initiated proceedings to require PSNH to show cause why the Company should not be required to delete from its rate base the CWIP which had been installed under the Commission's Rate Order of May 25, 1978. Such deletion would reduce the Company's revenues by approximately $18,000,000. At the hearing held on June 5, 1979, the Commission rejected the Company's attempts to provide evidence to show PSNH's continuing need for revenues at the level prescribed in the Rate Order of May 25, 1978. The Commission indicated that in its view, the issue was "purely legal".

Accordingly, as perceived by the Commission, the issue is whether the Commission is now legally obliged to revoke or revise its Rate Order of May 25, 1978, solely and only because of the enactment of HB 155 and without regard to whether there has been any change in the Company's factual need for revenue. Stated another way, the question is whether, in HB 155, the Legislature has expressly or impliedly voided the Commission's rate Order of May 25, 1978 or has expressly or impliedly directed the Commission to revoke the Order and to reduce the Company's revenue in consequence.

In response, it is PSNH's position that nothing in HB 155 either expressly or impliedly voids the Rate Order of May 25, 1978 nor requires the Commission to disturb the Order. On the contrary, the Bill's textual silence in that regard, along with the legal presumption favoring prospective application only and the actual legislative history all combine to demonstrate that the Legislature

intended to leave the continuing vitality of the May 25, 1978 rate Order and Tariff No. 22 to the regulatory judgment of the Commission, to be determined in accordance with usual regulatory standards. Accordingly, since there is nothing in the record in this case which will support a regulatory finding that PSNH's revenue requirement has declined since May 25, 1978, the Commission must conclude that the Order and the Tariff should remain undisturbed at this point.

II. HB 155 DOES NOT EXPRESSLY VOID THE RATE ORDER OF MAY 25, 1978 OR TARIFF NO. 22, NOR DOES IT DIRECT THE PUC TO REVOKE OR REVISE ITS PREVIOUS RATE ORDER OR THE TARIFF.

The first inquiry in determining the issue as perceived by the Commission is whether HB 155 contains any express or literal annulment of the Rate Order of May 25, 1978 or Tariff No. 22, or any express or literal direction to the Commission requiring it to revoke or disturb the Order or the Tariff. As the Commission is aware, the text of RSA 378:30-a, as inserted by HB 155, reads as follows:

> "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."

Section 2 of HB 155 provided that the Act was to take effect upon its passage.

What the law expressly does, as its catch line recites, is to state that CWIP is not to be included in rate base. The statute does so plainly and in multiple phrases. But it is also plain that the statute does not expressly void the Commission's Order of May 25, 1978 or Tariff No. 22, nor does it contain any explicit instruction to the Commission to revoke or revise the Order or the Tariff.

This is an extremely vital point to grasp. Nowhere does the statute say, for example:

> "Any existing order of the commission to the contrary shall be void as of the effective date of this section."

Neither does it include any language which states:

> "The commission must reconsider and rescind any order contrary to this section, as of the effective date of this section."

Nor does the section contain any provision which recites, for instance:

> "Any existing tariff containing rates calculated other than in accordance with this section is void. Any public utility maintaining such a tariff shall file a new tariff containing rates which comply with this section, effective as of the date of this section."

As will be discussed later in this Memorandum, where the legislature wishes to give peremptory instructions to this Commission, it knows how to do so. Yet on the face of the statute at hand

there are no such peremptory instructions. That fact must be recognized at the outset if the statute is to be accorded its proper meaning.

III. HB 155 DOES NOT IMPLIEDLY VOID THE RATE ORDER OF MAY 25, 1978 or TARIFF NO. 22, NOR DOES IT IMPLIEDLY DIRECT THE PUC TO REVOKE OR REVISE THE ORDER OR THE TARIFF.

In the absence of explicit direction from the Legislature, the next step is to determine whether such a direction is necessarily implied by the statute. This requires interpretation of the statute and in New Hampshire, statutory interpretation does not involve arbitrary canons of construction. Chagnon v. Union Leader Corp., 104 N.H. 472, 474 (1963). Instead, the question is one of actual leglislative intent.

> "The familiar test . . . is to inquire as to what was the legislative intent. * * *. This inquiry, in turn, resolves itself into a question of fact to be determined by all the competent evidence available. * * * Such evidence here consists primarily of the language of the statute and its legislative history." (Ibid., pages 473-474)

(a) The language of the statute does not reasonably convey an intent to void the Order or the Tariff or to require the Commission to do so.

Applying the process set forth in Chagnon (supra) the language used in the statute must be examined to see if it suggests

an intention by the Legislature to void the Rate Order of May 25, 1978 or to require revision of that Order by the Commission.

As already noted, the statute contains no language which in and of itself declares the Rate Order void or directs revision of the Order or requires the filing of a new tariff. The very absence of such plain language has significance in determining legislative intent. The Legislature obviously knew of the existence of the May 25, 1978 Rate Order and the resulting Tariff No. 22 when it enacted the statute. Yet the Legislature did not choose to adopt any language which would directly affect the Order's continuing validity or require change in the Company's existing rates. This fact takes on added significance in light of other statutes in which the Legislature has undertaken to give explicit instruction either to this Commission or to utilities.

Examples of such explicit legislative directives can be found, among other places, in RSA 363-A:1 and 3 (instruction to PUC to ascertain its previous year's expenses and assess each utility accordingly); RSA 363-B:2,IV (directive to PUC to issue rules governing service termination); RSA 374:22-b (directive that utilities apply for and that PUC establish electric utility service territories); RSA 374-A:6, III (directive to PUC to include in rate base domestic utility investment in connection with "electric power facilities"); RSA 374-B:2 (instruction to Commission regarding calculation of power needs of municipalities applying for authority to issue municipal electric revenue bonds); RSA 378:7-a (instruction to electric utilities to file time

differentiated rates).

These are only a few examples but they serve to illustrate this simple point: When the Legislature wants to require specific action by this Commission or by utilities, it knows how to select appropriate, explicit language to accomplish the result.

Yet the Legislature selected no such language in HB 155 and as previously suggested, appropriate explicit language comes easily to mind. Under these circumstances, the absence of such language suggests the absence of any corresponding intent to void the Rate Order of May 25, 1978 or the tariff that results from it, or to require this Commission to revise its Order or the Tariff.

In situations such as this, our Court has repeatedly stated that it has no right to redraft legislation to conform to an intention not fairly expressed therein. In a very recent case, the Court added:

> "The question before us is not what the legislature ought to have done when it enacted this statute but what it did, as expressed in the words of the statute itself. * * * Nor is it for this court to add terms to the statute that the legislature did not see fit to include. * * * It is not our function to speculate on any supposed intention not appropriately expressed in the act itself. Relief 'from its inappropriateness' must be sought through further legislative action." Ahern v. Laconia C.C., 118 N.H. _____ (9/27/78).

See also State v. Cutting, 114 N.H. 200, 202 (1974); R. A. Vachon, Inc. v. Concord, 112 N.H. 107, 113 (1972); Frizzell v. Charlestown, 107 N.H. 286 (1966); Sigel v. B & M R.R., 107 N.H. 5, 23 (1966);

Trustees of Phillips-Exeter Academy v. Exeter, 92 N.H. 473, 478 (1943); Bodeau v. Bodeau, 92 N.H. 183, 184 (1942).

If the Court would not "write in" additional language under present circumstances, this Commission has no authority to do so.

(b) Retroactive impact of HB 155 may not be created by implication.

Beside the lack of appropriate language in HB 155 there is another very strong reason for not reading into HB 155 an intention to void either the Order of May 25, 1978 or Tariff No. 22. To read such meaning into the statute would give it retroactive effect, in violation of usual presumptions and would raise questions of its constitutionality under Part I, Article 23 of the New Hampshire Constitution.

As noted, the Rate Order of May 25, 1978 was lawful when it was made. In reliance on that Order and the revenue level it authorized, PSNH undertook to raise capital through short term borrowings and the issuance of securities. A list of those financings appears in Exhibit P-1 for identification (Testimony of Harrison) which PSNH believes was improperly excluded from these proceedings. For present purposes, the Commission may treat that list as an offer of proof or it may take notice of its own dockets involving the same financings. In any event, regardless of evidentiary rulings, the plain fact is that in reliance on the validity of the May 25, 1978 Rate Order, PSNH has incurred substantial obligations in terms of principal and annual servicing cost of issued securities.

Consequently, if HB 155 were now read to void the May 25, 1978 Rate Order or to direct this Commission to revise it to exclude a portion of the allowed revenues, the result would be to give it retrospective impact. PSNH's ability to meet the costs of capital issued in the interim would be substantially impaired, even though these transactions are now complete and were undertaken in honest reliance on an order of this Commission which was lawful when made and which has since been judicially affirmed. It is precisely this kind of impact which our Court had in mind when it defined retrospectivity:

> "Every statute, which takes away or impairs vested rights, acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability, in respect to transactions or considerations already past, must be deemed retrospective." Pepin v. Beaulieu, 102 N.H. 84, 89-90 (1959).

To avoid unnecessary problems arising from retrospectivity, our Court follows the principle that legislation is presumed to be intended as prospective only. Keating v. Gilsum, 100 N.H. 84, 87 (1956); Mihoy v. Proulx, 113 N.H. 698, 700-701 (1973). Recently, the Court again applied this principle, stating:

> "There is no indication that the Legislature intended these amendments to apply retroactively and, in absence of such an intent the statutes are presumed to operate only prospectively. Lessard v. Manchester Fire Department, 118 N.H 43, 47 (1978) (emphasis added).

Accordingly, retrospective effect is not to be read into a statute, unless there is clear evidence of legislative intent in that regard.

And if such effect were to be read into HB 155, the statute would run afoul of the Constitutional prohibition in Part I, Article 23 of the New Hampshire Constitution, which prohibits such legislation. If HB 155 were read to void the May 25, 1978 Rate Order or to require the Commission to do so, the result would not merely "affect a remedy" (Cf. Pepin v. Beaulieu, 102 N.H. 84, 89 (1959)). As demonstrated, the resulting loss in revenue would effectively impair PSNH's settled expectations, honestly arrived at, with respect to a substantial interest, i.e., meeting its obligations relating to financings undertaken in reliance on the Rate Order of May 25, 1978. Accordingly, this Commission should apply the principle which our Court requires, and void any implication that would give HB 155 any retroactive effect.

(c) The legislative history of HB 155 plainly forecloses any implication of intent to void the Rate Order or the Tariff or to require the Commission to do so.

In addition to the inferences drawn from the language used in HB 155 and the problem of retrospectivity, there is direct factual evidence that the legislature did not intend HB 155 to void the Rate Order or Tariff No. 22, or to require the Commission to do so. This evidence is set forth in the transcript of the House floor debate of April 11, 1979, (Exhibit P-2). See particularly the remarks of Representative Quimby (Exhibit P-2, page 7, line 14 through page 8, line 12); Representative Chambers (Exhibit P-2, page 15, line 20 to page 16, line 10); and

Representative Wight (Exhibit P-2, page 28, lines 11-18).

Representative Quimby was Chairman of the House Commerce and Consumer Affairs Committee which held extensive hearings on the Bill. Representative Wight was Chairman of the House Science and Technology Committee which deals with many public utility bills. Their remarks about the intent and effect of HB 155 must be considered as informed and authoritative and they plainly state that the Bill would not remove existing CWIP from the rate base.

If any clearer direct evidence of intent is required it can be found in the remarks of the Bill's sponsor, Representative Chambers:

> "This Bill says no more CWIP in the rate base. From the time of passage of this Bill, CWIP is not a viable way to raise capital. We cannot pass laws after the fact -- that is unconstitutional. But certainly the Public Utilities Commission will certainly hear an appeal concerning the present CWIP in the rate base, and you can rest assured that a fair hearing will be held and a decision will be made by the Public Utilities Commission as to whether or not the present CWIP in the rate base should stay there. Everyone needs to understand that no matter how much you might wish to rebate the consumer for what he has paid, we don't have the ability to do this." (Exhibit P-2, page 15, line 20 to page 16, line 10, emphasis added).

Mrs. Chambers' comments were plain and unequivocal about the Bill's intended effect. She asserted that the Bill would bar any additional CWIP in the future. She conceded that the Bill could not produce refunds of CWIP-associated rates paid in the past. Most importantly, she plainly stated that the Bill left it up to this Commission to determine whether or not the present CWIP

should remain in the rate base, after a fair hearing. This is absolutely inconsistent with any suggestion that the Bill was intended, in and of itself, to void the Rate Order of May 25, 1978 or to peremptorily instruct this Commission to remove existing CWIP from PSNH's rate base, regardless of what the facts or what the Company's revenue requirement might be.

There can be no doubt that legislative history is competent evidence to determine the fact of legislative intent. Chagnon v. Union Leader Corp., 104 N.H. 472, 473-474 (1963). Moreover, our Court has specifically used and relied on transcripts of legislative hearings and debates as direct evidence of legislative intent. Chagnon v. Union Leader Corp. (supra); Sigel v. B & M RR, 107 N.H. 5, 21 (1966); Doe v. State, 114 N.H. 714 (1974); State v. Bill, 115 N.H. 605 (1975); State v. Amato, 115 N.H. 639, 641 (1975).

Accordingly, this Commission should accept the direct evidence provided in Exhibit P-2. This evidence is so compelling that it forecloses any inference to the contrary.

IV. THERE IS NO FACTUAL BASIS ON THE RECORD FOR REVISING THE RATE ORDER OF MAY 25, 1978 OR TARIFF NO. 22.

As previously noted, the Commission's Rate Order of May 25, 1978 was affirmed by the New Hampshire Supreme Court as a reasonable application of the proper standard for determining the level of revenues which are to be accorded to a public utility. Once again,

the Court stated the familiar rule that a utility must be given the opportunity to earn revenue sufficient to assure the investor's confidence in the financial soundness of the utility and enough to maintain and support its credit so that it will be able to raise money necessary to improve and expand its service. The Court's decision was rendered after the enactment of HB 155 and it is clear that the standard set forth by the Court continues to be applicable in the factual determination of PSNH's revenue requirement.

Accordingly, before this Commission may properly reduce the revenues allowed to the Company in the May 25, 1978 Rate Order, there must be a finding that the Company's revenue requirements have been reduced. Moreover, such a finding could only be made if there were substantial evidence in the record to support it. Yet there is no such evidence.

The enactment of HB 155 created no factual reduction in the Company's revenue requirement. Nothing in the Bill lifted any of the Company's existing obligations from its shoulders or eased the burden of attracting capital for the Company's construction program. If anything, the Bill only complicated the problem of attracting capital until the Company can adjust to the new limitations on rate-making which the Bill imposes.

Indeed, whatever factual change in the Company's revenue requirement that will come about through reduction in its construction program will begin to be realized only after that program is actually reduced. PSNH's efforts in that regard are already under

way, but now await the approval of this Commission and other regulatory agencies. See Record, Docket No. DF 79-100.

At the hearing in this case, PSNH attempted to offer affirmative evidence through the witness Harrison that at the present time its revenue requirement has not changed in fact. However, on motion of LUCC the evidence was excluded as "beyond the scope" of the Commission's inquiry. Consequently, the record in this docket is now bare of any factual basis on which the Commission could reasonably determine that PSNH's revenue requirement has diminished since May 25, 1978. In the absence of substantial evidence, no such finding can be made and the Order of May 25, 1978 must stand.

V. CONCLUSION

For the reasons stated, the Commission should rule that there is no occasion to revoke or revise the Order of May 25, 1978 or Tariff No. 22 and this docket should be terminated.

This matter does not involve the exercise of regulatory judgment whether to allow CWIP in the first instance. Obviously, HB 155 now bars such a decision and the PUC no longer has authority to use CWIP as a regulatory device to achieve revenue levels necessary to meet the standard set forth by the Supreme Court. Instead, the issue here is whether HB 155 requires the PUC to modify a previous regulatory judgment which was lawful when made and upon which the Company relied and changed position, where no factual justification has been shown for modifying the previous regulatory judgment.

In many ways, the PUC's situation here is like a zoning board whose charter of authority (i.e., the zoning ordinance) has been recently changed to disallow a certain land use which the board was previously authorized to permit. The Company's situation is similar to the owner of property who had gotten the board's permission to make that specific use of its property under the old law and went ahead and did so. No one would accept that the change in the zoning law, in and of itself, would now require the zoning board to call in the property owner, revoke the previously-given permission and order discontinuance of the previously-permitted use, without any factual justification. Yet that is precisely what would result if the Commission were now to conclude that HB 155 in and of itself requires it to revoke the May 25, 1978 Rate Order.

As indicated to the Commission in Docket No. DF 79-100, the Company's need for preserving its cash revenues are critical to preservation of its access to its financing sources, while the Company awaits regulatory disposition of the proposal to reduce its construction program. If the Commission were now to take action which would reduce the Company's revenues for any period of time, however brief, the resulting uncertainty could dry up the Company's financing sources and produce a financial crisis which could be resolved only through shutdown of the construction program if insolvency were to be avoided.

The record in this matter is utterly barren of any factual justification for reducing the Company's revenu-s at this crucial stage. There is, accordingly, nothing upon which the Commission can rationally exercise its regulatory judgment to reduce the Company's revenues.

In the absence of any basis for exercising regulatory judgment regarding the Company's revenue needs, this Commission would be attempting to exercise a purely legal judgment as to the impact of HB 155 on its own authority to act. While the Commission has undoubted authority to make initial legal determinations in the course of exercising its regulatory judgment, where as here the Commission has itself perceived the issue to be purely legal in nature, the Commission should consider whether it is appropriate to make an initial decision or whether the legal question should be certified and transferred to the New Hampshire Supreme Court under RSA 365:20.

While it would be open to PSNH to appeal an adverse initial decision and while the Supreme Court would not be bound by the Commission's purely legal conclusions, the potential adverse consequences of an erroneous initial decision by the Commission could well be irreparable, in terms of the Company's ability to obtain continued financing while the appellate course was being pursued. Accordingly, if the Commission does not accept the Company's arguments, but if there is <u>any</u> room for reasonably doubting its conclusion, then the PUC should transfer the question

to the Supreme Court for authoritative determination rather than risk the chaos that an erroneous initial decision might produce.

On the other hand, if the Commission concludes that HB 155 does not require revision of the May 25, 1978 Rate Order or Tariff No. 22, then the Commission should so determine, as promptly as possible, again in the interest of preserving the stability of the Company's financing efforts until adjustment of its construction progran can begin.

Respectfully submitted,
Public Service Company of New Hampshire
By Sulloway Hollis Godfrey & Soden

By _____
Its Attorneys

I certify that on the date below I sent copies of the foregoing Memorandum to all counsel appearing in the case, as well as providing 10 copies for the Commission's use.

June 12, 1979 _____

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES

RE: D.P.U. 20055

Joint application of Montaup Electric Company and New Bedford Gas and Edison Light Company, and of Public Service Company of New Hampshire, under G.L. c. 164, §§ 97 and 101, as amended, for approval by the Department of Public Utilities of the readjustment of certain interests in property located in New Hampshire by the acquisition of interests in such property by Montaup Electric Company and New Bedford Gas and Edison Light Company and the corresponding reduction of the interest therein of Public Service Company of New Hampshire and a determination that the terms thereof are consistent with the public interest.

Direct Testimony of
David N. Merrill
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Q. Would you please state your name and business address for the record?

A. David N. Merrill. My business address is 1000 Elm Street, Manchester, New Hampshire.

Q. By whom are you employed?

A. Public Service Company of New Hampshire.

Q. In what capacity?

A. I am Executive Vice-President with responsibilities in the areas of Engineering, Production and Power Supply.

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Q. Would you describe briefly your educational and professional background?

A. I graduated from the University of New Hampshire in 1949 with a Bachelor of Science Degree in Chemical Engineering. At that time I joined Public Service Company. Since then I have held various positions in the Engineering and Production Divisions of the Company including Chemical Engineer, Station Superintendent, Manager of the Production Department, and Vice-President prior to assuming my present position of Executive Vice-President. I am a member of the American Nuclear Society, Past Chairman of the Northeast Power Coordinating Council System Operations Committee, an Alternate on the NEPOOL Executive Committee, a member of the NEPOOL Review Committee, Past Chairman of the NEPOOL Operations Committee, Past Chairman of the Electric Council of New England (ECNE) Power Generation Committee and a past member of the EEI Prime Movers Committee. I am a director of Public Service Company of New Hampshire and a director of Vermont Yankee Nuclear Power Corporation.

Q. Would you please briefly explain the origin and present ownership of the Seabrook Project.

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A. The present Seabrook Project, which will consist of two units, each with a Westinghouse pressurized water nuclear reactor utilizing ocean water for condenser cooling purposes with a generating capacity of 1150 MWe, was conceived in 1972 as a NEPOOL approved unit. Public Service Company of New Hampshire is the lead owner and has entered an Agreement For Joint Ownership, Construction and Operation of New Hampshire Units, dated as of May 1, 1973 as amended (a copy of which is attached hereto as PSCo Exh. #1 and which I will refer to in my testimony as the "Seabrook Agreement"). Under the Seabrook Agreement as originally executed, Public Service Company of New Hampshire owned an undivided 50% ownership interest in the Seabrook Project and eight other New England utilities owned the balance. In the intervening years, there have been several transfers of ownership interests in the Seabrook Project in accordance with the provisions of the Seabrook Agreement--some pursuant to Paragraph 3 which anticipated transfers to certain municipal utilities and some pursuant to Paragraph 23 which governs transfers of interests generally. None of these transfers involved Public Service Company of New Hampshire. As a result, there are presently 15 owning utilities and there are still some transfers

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among these entities which have not been consummated pending receipt of necessary regulatory approvals. When these are completed there will be a total of 14 owners.

Q. Would you please briefly summarize the history of the Seabrook Project?

A. The Seabrook Project has required numerous approvals and permits from various state, local and federal regulatory bodies. As originally conceived, it was anticipated that the Project would obtain these necessary permits in time for construction to begin in early 1975 and the units would be placed in commercial operation by 1979 and 1981. In fact, the permitting process was greatly extended; actual construction did not commence until July, 1976; it was subsequently suspended on two occasions for seven months and three weeks, respectively; and commercial operation is now scheduled for April, 1983 and April, 1985.

Briefly, this licensing process has involved the following major proceedings:

A proceeding under the New Hampshire power plant siting law which began in 1972 and culminated in the issuance of the requisite certificate by the New Hampshire Public Utilities Commission on January 29, 1974.

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Proceedings before the United States Nuclear Regulatory Commission, which commenced with the docketing of an application on July 9, 1973, involved lengthy, contested public hearings during 1975 and 1976, issuance of construction permits in July, 1976 and numerous appeals within the agency and to the federal courts during that period and since. As of today, all appeals have been resolved in favor of the Project except two, which are still pending. One is a pending appeal before the United States Court of Appeals for the First Circuit relating to the NRC's refusal in 1976 to suspend construction because of a court decision (which was subsequently set aside) in litigation relating to the environmental effects of reprocessing spent fuel and disposing of nuclear waste--a generic issue applying throughout the industry. The other is an issue relating to seismic design where the majority of the NRC Appeal Board upheld the Seabrook construction permits but one member dissented but has not yet written his dissenting opinion and the NRC has postponed its review of this issue until the dissenting opinion is available.

Proceedings before the United States Environmental Protection Agency commenced in August, 1974. These proceedings related to approval of the once-through cooling system for the Seabrook Project under the

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Federal Water Pollution Control Act, as amended. The concept was initially approved in June and October, 1975; that approval was ultimately upheld by the EPA Administrator in June, 1977; that decision was set aside on appeal to the federal court but, after further hearings before EPA, was reaffirmed by the EPA Administrator in August, 1978; and that decision was upheld by the United States Court of Appeals for the First Circuit in May, 1979.

Q. Could you briefly summarize the present status of the Seabrook Project and its prospects?

A. Yes. Construction of the Project began in July, 1976 and, despite the intervening interruptions, actual construction is 15.22% complete overall, with Unit #1 being 21.45% complete and Unit #2 being 3.54% complete. The engineering and design work is 83.5% complete and 94.3% of the material and components are on order. The offshore work for the intake structures and diffuser is complete and work on the two tunnels which will connect the plant with those structures is progressing.

For the reasons explained by Mr. Harrison in his testimony, Public Service Company of New Hampshire must reduce its participation in the Project. Assuming that adjustment of interests in the Project is approved

by the regulatory agencies having jurisdiction and the adjustment can be implemented in a timely manner, then we anticipate no further interruptions in the construction schedule and expect the Units to be in commercial operation as presently scheduled in April, 1983 and February, 1985.

Q. Do you anticipate any impacts on the Seabrook Project as a result of the TMI accident?

A. It is too soon to accurately predict the effect of TMI on other nuclear projects. One obvious area will be operator training--but we had included a simulator for operator training in our design before the TMI incident and we believe from recent conversations with NRC Staff personnel that our training program will meet any new requirements which may be imposed by the Nuclear Regulatory Commission.

We do not anticipate any moratorium which would affect a project in our stage of completion. However, present forecasts indicate that without Seabrook the New England power supply situation will be desperate.

Q. Could you indicate briefly how this licensing process has affected the cost estimates for the Seabrook Project?

A. Certainly. First, I should point out that cost projections for any construction project must be based upon certain assumptions as to the time frame for the construction activity, availability of labor and materials, deliveries of components, escalation of costs, etc. In a nuclear generating project, matters are further complicated by the fact that major components of the plant, the nuclear steam supply system, turbines, generators, condensers, and other items, require long lead times for fabrication by the suppliers and therefore work on these components must be contracted for and begun well in advance of actual site work and substantial sums are committed at an early point in the project schedule. So subsequent changes in any assumptions have a large impact on cost projections.

As I mentioned before, the Seabrook Project was conceived in 1972. This was before the oil embargo of 1973-1974 with its unforeseen, inflationary impact on the U.S. economy. The original projection assumed construction beginning in early 1975 and ending by 1981. As noted, there have been substantial delays in the schedule and two suspensions of construction

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which have had cost implications. And there have been the usual design refinements and additions imposed by the NRC.

As a result the original estimated capital requirement for the two Units filed in 1973, which was $999,500,000 including $54,000,000 for the initial cores for both units, has substantially increased. The latest projection now estimates aggregate capital requirements of $2,024,898 (excluding AFDUC) which includes $175,590,000 for the initial nuclear fuel cores for both Units.

Q. Do you have a breakdown of these costs?

A. Yes. Attached as PSC Exh. #2 is a schedule showing the breakdown of these estimates in the form recently filed with the Nuclear Regulatory Commission.

Q. Does this latest cost projection affect your view as to the viability of the Seabrook Project?

A. No. Although the cost has inevitably escalated over the past several years, the Seabrook Project is still a good bargain and will be built and operated at significantly less cost than any available alternative facility. Based upon all the relevant factors, I still consider Seabrook a desirable and viable project.

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COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES

Re: D.P.U. 20055

Joint application of Montaup Electric Company and New Bedford Gas and Edison Light Company, and of Public Service Company of New Hampshire, under G.L. c. 164, §§ 97 and 101, as amended, for approval by the Department of Public Utilities of the readjustment of certain interests in property located in New Hampshire by the acquisition of interests in such property by Montaup Electric Company and New Bedford Gas and Edison Light Company and the corresponding reduction of the interest therein of Public Service Company of New Hampshire and a determination that the terms thereof are consistent with the public interest.

Direct Testimony of
Robert J. Harrison
Public Service Company of New Hampshire

Q. Would you please give us your name and business address.

A. My name is Robert J. Harrison, and my business address is 1000 Elm Street, Manchester, New Hampshire.

Q. Please state your education and working experience.

A. I received a Bachelor of Business Administration Degree from the University of Oklahoma in 1957.

I became employed at Public Service Company of New Hamsphire in 1957 immediately upon graduation from college. My initial duties were in the fields of rate and economic research. In 1965 my

responsibilities were enlarged to include work in the areas of operations research and financing. In 1968 I was elected Assistant Treasurer and in 1971 Assistant to the President. In 1973 I became a Vice President of the Company and in January 1977 received the additional title of Treasurer. In may 1978 I was elected Financial Vice President and on May 10, 1979, I was elected to the Company's Board of Directors.

Q. What are your duties as Financial Vice President?

A. As Financial Vice President, I am the chief financial officer of the Company. As such, I am responsible for the Treasury and Accounting Divisions. A primary duty is making certain that the Company obtains the necessary outside capital when needed to meet its requirements. I conduct financial planning and analyze the market to determine the optimum size and timing of our security offerings. To that end, I maintain contacts with security analysts, investment bankers and commercial bankers.

Q. Do you belong to any trade or professional organizations?

A. I am a member of the Edison Electric Institute's Finance Division and have just completed a term on

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its Executive Committee. I am also a member of the Financial and Accounting Division Advisory Board of the Electric Council of New England and a member of the Financial Committee of the New England Power Pool. I belong to the Financial Executives Institute. I am a past Chairman of the Statistical Research Committee of the Electric Council of New England, and I have served on the Statistical Committee of the Edison Electric Institute.

Q. Why is Public Service Company seeking an adjustment in its ownership interest in Seabrook Station?

A. As Mr. Merrill has testified, the Company presently owns a 50% ownership interest in the two 1150 MW nuclear generating units under construction in Seabrook, New Hampshire. Under the provisions of the Seabrook Agreement, the Company is responsible for constructing the Seabrook project and for financing its ownership interest in the Project.

If the Company were to retain its present 50% ownership interest in the Seabrook Project, it would incur construction costs of approximately $753,173,500 during the period from 1979 through 1985 for the Seabrook Project and approximately $295,000,000 during that period for the remainder of its construction program.

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The Company's recent plans to finance its large construction program had been based on the inclusion in the Company's rate base of a portion of the Company's expenditures for construction work in progress, or "CWIP", associated with major generating facilities. Indeed, in May 1978 the New Hampshire Public Utilities Commission granted the Company an increase in its New Hampshire retail rates which included CWIP in the rate base. That order has recently been upheld by the New Hampshire Supreme Court.

As originally contemplated, the Company's plan for financing the Seabrook Project did not specifically look to such inclusion of CWIP. It was my opinion, as I testified before the Atomic Safety and Licensing Board of the then Atomic Energy Commission in May, 1975, that the inclusion of CWIP ". . . would be a proper step to take. If this occurs, it would of course, increase cash flow to this company." Subsequent to that time, delays in the regulatory process resulted in the total cost of the project increasing to the point where such cash flow became essential.

The Company's plans were thereafter based on the inclusion of CWIP for the very pragmatic reason that the financial community, including rating

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agencies, investment bankers, commercial bankers and institutional investors, had made it very clear to me over the past several years that the Company needed the revenues that would be generated by having CWIP in rate base to enable it to finance its construction program. Without the CWIP revenues, the Company's cash flow projections indicated it would have large negative cash flows during 1980, 1981 and 1982. Under those circumstances, the construction program could not be financed.

Therefore, when it began to appear likely the New Hampshire Legislature would enact legislation prohibiting CWIP, the financial community started to question the Company's ability to finance its construction program. It quickly became obvious that the Company could not continue to obtain financing for its 50% ownership interest in the Seabrook project in light of the uncertainty created by the possible legislative action.

Q. Would you please elaborate on the difficulty the Company faced in trying to finance its present construction program?

A. Yes, I will. In November 1978, the Company was forced to postpone a Common Stock offering on the advice of its investment bankers who stated that the market

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for the Company's securities had become unsettled because of the results of the election in which the CWIP controversy played a major part. The Company was able to proceed with that financing in January 1979 only after it had received expressions of support for the Seabrook Project from governmental officials in New Hampshire and had obtained informal expressions of interest from other Participants in the Seabrook Project that they would be willing to purchase a large portion of the Company's ownership interest in the Project if the Company offered it for sale.

However, as it became clearer in late January and February that the Legislature was likely to enact a bill purporting to prohobit CWIP and that no other sufficient alternative to CWIP would be forthcoming, the Company had to delay an offering of Preferred Stock. At the same time, the Company was approaching the upper limit of its $100,000,000 lines of credit from its commercial banks. The importance of (1) being unable to sell securities, and (2) approaching the limit of lines of credit cannot be overemphasized. With the Company's share of construction expenditures for Seabrook equal to about $12 million per month, and with access to both short-term funds and capital markets closed off the Company faced a severe liquidity problem. It became necessary for the Company to act

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promptly to find a solution to its financial problems to ensure that it would continue to have access to funds from its commercial banks and from investors to finance its construction program.

Q. What action did the Company take to adjust to the constraints placed on its ability to finance its construction program?

A. The Company's Board of Directors decided on March 3, 1979 to direct the officers of the Company to reduce its ownership interest in the Seabrook Project to 28% by offering ownership interests totaling 22% to other Participants in the Project. The Board also directed the Company's officers to offer to other utilities the Company's interest in the Pilgrim No. 2 and Millstone No. 3 projects and to offer to the Company's resale customers located in New Hampshire an 8% interest in the Seabrook Project.

Q. What factors underlay the Company's decision so to reduce its participation?

A. The decision was based on the consensus among investment bankers, commercial bankers and the financial community in general that, absent the level of revenues generated by the inclusion of CWIP in rate base, the Company could not finance any more

than 25% to 30% of Seabrook. For example, the Company was aware of the testimony of officers of a large commercial bank and an investment banking firm in our rate cases relating to the Company's inability to finance 50% of Seabrook without the inclusion of CWIP. In addition the Company was very much aware of the abortive attempts of the Company in early 1978 to sell a series of General and Refunding Mortgage Bonds to institutional investors prior to the decision by the New Hampshire Public Utilities Commission on the Company's request to include CWIP in rate base. It was all of these things that led to the decision to reduce the Company's ownership interest to 28%.

Q. Did the Company consider alternatives to reducing its ownership interest in the Seabrook Project?

A. Yes, we did. We carefully considered every alternative that we could think of or that has been suggested to us, including project financing through a construction trust, a state guaranty of bonds, the future credit account plan, improved cash flow through rate-making devices like full normalization and faster depreciation, and a nuclear fuel lease. We also considered various combinations of possible alternatives. Unfortunately, there is no alternative, or combination of alternatives, available right now

that would enable the Company to retain its full 50% ownership of the Seabrook Project while permitting construction to continue on schedule and enabling the Company to finance its construction commitments as well as continue its business operations.

Q. What have the officers of the Company done to carry out the directions of the Board of Directors?

A. The Company's officers negotiated an arrangement with nine of the Seabrook Participants under which the ownership interests of the nine Participants will gradually increase by a total of 22% while the Company's investment and ownership interest in the Project will be reduced from 50% to 28%. The adjustment in ownership interest will occur over roughly a two-year period, which will commence as soon as all regulatory approvals are obtained. During the Adjustment Period, the nine Participants will share proportionately in the costs of constructing the Seabrook Project which would otherwise have been attributable to the Company's ownership share. It should be noted that the adjustment is based upon the actual invoice amounts and does not reflect any amount for AFUDC which the Company has booked prior to the Adjustment Period.

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For example, assume that the Adjustment Period begins on October 1, 1979 and the total cost of construction of the Seabrook Project for October is $20,000,000. The Company's share of the construction costs at a 50% interest would have been $10,000,000. However, during the Adjustment Period the nine Participants will be responsible for paying the Company's share of the cost, and therefore each Participant would pay a proportional part of the $10,000,000, and the Company would not be responsible for any portion of it. At the same time, as payment is made by the nine Participants, the Company ownership interest will be reduced slightly (for example from 50% to 49%), and the ownership interests of the nine Participants will increase accordingly. At the end of the Adjustment Period, the Company's ownership interest will have been reduced to 28% and the nine Participants' interests will have been increased by a total of 22%. Also, the Company will then resume financing its interest in the Project, at a 28% level.

Q. Are the arrangements you have just described reflected in an amendment to the Seabrook Agreement?

A. Yes, they are contained in the Seventh Amendment to the Seabrook Agreement, which is part of PSCO Ex. #1.

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Q. Have you had an exhibit prepared which lists the ownership shares of all of the Participants in the Seabrook Project after the proposed reduction of the Company's interest?

A. Yes, I have. PSCO Exhibit No. ___ contains a list showing the ownership shares of all of the Participants in the Seabrook Project at the end of the Adjustment Period.

Q. Why was this method of adjusting the Company's ownership interest selected, rather than a sale and lump sum payment by the purchasers?

A. This method was selected because it enables the Company to maximize utilization of the cash flowing from the reduction in the Company's ownership interest. To explain, under a conventional sale of property subject to the lien of the Company's First Mortgage Indenture, the proceeds of the sale must be deposited with the Trustee of the First Mortgage. The money thus deposited can be released only upon the evidencing to the Trustee of what is known as "additional property". Additional property is defined in the First Mortgage as that property which, among other things, has received all the necessary permits and franchises. Because of this definition the Company's

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investment in Seabrook will not qualify as additional property until an operating permit is received for Seabrook Unit No. 1 from the Nuclear Regulatory Commission. As a result, the Company presently has only a very small amount of additional property, and the proceeds from a normal sale of the Company's interest in Seabrook would be frozen with the Trustee. While the Company would earn interest on the money thus deposited, it would not be able to utilize the cash itself. With the Company's large requirements for cash while the Seabrook Project is being constructed, this result would not be satisfactory. So the Company's investment bankers and counsel and management developed the method I have described for reducing the Company's ownership interest. Under it, the Company will be relieved of making any additional expenditures for Seabrook during the Adjustment Period. This is the equivalent of receiving the benefit of the cash proceeds of a sale.

Q. Was the decision to reduce the Company's ownership interest related to its future need for power?

A. No, it was not. The Company's need for power from its 50% interest in Seabrook was not a factor in the Company's decision because, with the impending loss of the CWIP-related revenues, the investment and

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financial communities did not see how the Company could continue to finance its present 50% interest, regardless of its need for power.

Q. Does the Company need an early decision from the Department on the Joint Application?

A. Yes. The Company must continue to finance its full 50% interest until all regulatory approvals are obtained. The Company's commercial bankers have expressed extreme concern over the Company's financial ability to carry the 50% interest during the period while regulatory approvals are being sought. In addition the Company's recent attempt to negotiate an arrangement for a lease of nuclear fuel has also run into difficulty for the same reason. The sooner the approvals are obtained, the sooner the Adjustment Period can begin, and only <u>then</u> will the financing burdens on the Company be reduced.

Q. Will the Company be able to finance its 28% interest in the Seabrook Project without CWIP?

A. In my opinion, it will be able to finance a 28% interest without CWIP <u>once</u> the Adjustment Period begins, if certain basic assumptions turn out to be valid. My opinion is based in part on the results of the Company's financial forecast which makes two

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principal assumptions: first, that the Company will be able to retain its present level of revenues until the Adjustment Period begins; and second, that thereafter the Company will be able to obtain adequate rate levels to support its remaining construction responsibilities based on non-CWIP rate-making methodologies. In my opinion, these assumptions are reasonable. The Company's need for rate relief both before and during the Adjustment Period is presently the subject of a proceeding pending before the New Hampshire Public Utilities Commission.

Q. What is the status of the other regulatory approvals that are needed before the Adjustment Period can commence?

A. By application dated May 4, 1979, the Company sought NHPUC approval of the adjustment; the hearing record was closed on May 28, 1979 and a decision is expected shortly. By letter dated May 14, 1979, the Company filed an amendment to its license application with the Nuclear Regulatory Commission and requested approval of the proposed reallocation of the ownership interests in the Seabrook Project. I understand that a notification with respect to the adjustment has been filed with Vermont Public Service Board by the affected Vermont utilities. I also understand that

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the Massachusetts Municipal Wholesale Electric Company is moving ahead as rapidly as possible to obtain approval of the Massachusetts Department of Public Utilities so that it can finance its interest in the Project.

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Exhibit No. ___

OWNERSHIP SHARES IN SEABROOK NUCLEAR PROJECT
FOLLOWING PROPOSED ADJUSTMENT OF OWNERSHIP INTEREST
BY PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE*

Participants	Present Interest	Increase (Decrease) in Interest	Adjusted Interest
Public Service Company of New Hampshire	50.00000%	(22.00000)%	28.00000%
The United Illuminating Company	20.00000	-	20.00000*
Massachusetts Municipal Wholesale Electric Company	5.59249**	13.87446	19.46695
New England Power Company	9.95766**	-	9.95766
New Bedford Gas and Edison Light Company	4.37370**	2.17390	6.54760
Montaup Electric Company	2.93531**	1.00000	3.93531*
Central Maine Power Company	2.54178**	1.00000	3.54178*
Central Vermont Public Service Corporation	1.59096**	1.00000	2.59096
Bangor Hydro-Electric Company	0.37249	1.80142	2.17391
Maine Public Service Company	1.46056	-	1.46056
Green Mountain Power Corporation	0.00000	1.00000	1.00000
Fitchburg Gas and Electric Light Company	0.60432	-	0.60432
Vermont Electric Cooperative, Inc.	0.41259**	-	0.41259
Taunton Municipal Lighting Plant	0.10034	0.13065	0.23099
Hudson Light and Power Department	0.05780**	0.01957	0.07737
	100.00000		100.00000

*Does not reflect proposed transfers by The United Illuminating Company.
**Reflects changes which will result from transfers by participants, other than Public Service Company of New Hampshire, previously agreed to but not yet completed and assumes DPU approval where necessary.

PSC Exhibit #2

The construction cost estimates for Seabrook Station, separated into Units 1 and 2, with AFUDC estimated for the entire project calculated according to PSNH's methods, are as follows:

	--- $ in 1,000's ---	
	Unit 1 & 1/2 Common	Unit 2 & 1/2 Common
(a) Total nuclear production plant costs[1]	$ 1,237,621	$ 1,371,187
(b) Transmission, distribution, and general plant cost[2]	15,700	9,900
(c) Nuclear fuel inventory costs for first core[3]	84,060	91,430
	$ 1,337,381	$ 1,472,517

Also, attached are "Plant Capital Investment Summary Schedules" for each unit.

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[1] Estimated January 1979, includes AFUDC; but excludes nuclear fuel.

[2] Costs estimated in 1973 and 1977, includes all transmission facilities, with land rights estimated for New Hampshire only; excludes AFUDC. Distribution and general plant costs are included in (a) above.

[3] Estimated April 1979, does not include AFUDC.

6/14/79

PLANT CAPITAL INVESTMENT

5/29/79

SUMMARY

BASIC DATA

Name of plant	Seabrook Station Unit #1 + 1/2 Common	Cost basis: at	start of construction
Net capacity	1150 MW(e)		
Reactor type	Westinghouse PWR		
Location	Seabrook, N. H.	Type of cooling	

Design and construction period

Month, year NSSS order placed	January, 1973
Month, year of commercial operation	April, 1983
Length of workweek	40 Hr. 5 Days hours
Interest rate, interest during construction	9 1/2 or compound?

Type of cooling

Run of river	
Natural draft cooling towers	
Mechanical draft cooling towers	
Other (describe)	Atlantic Ocean

COST SUMMARY

Account Number	Account Title	Total Cost (thousand dollars)
	DIRECT COSTS	
20	Land and land rights	$ 1,250
	PHYSICAL PLANT	
21	Structures and site facilities	198,092
22	Reactor plant equipment	170,232
23	Turbine plant equipment	68,264
24	Electric plant equipment	48,930
325, 352, 353	Misc. plant equipment	20,950
	Subtotal	$ 507,718
	Spare parts allowance	3,236
	Contingency allowance	38,835
	Subtotal	$ 549,789
	INDIRECT COSTS	
91	Construction facilities, equip't, and services	$ 40,502
92	Engineering and const. mg't. services	141,316
93	Other costs	46,341
94	Interest during construction	371,000
	Subtotal	$ 599,159
	Start of construction cost	$1,148,948
	*Escalation during construction (8 % yr.)	88,673
	Total plant capital investment ($1077 /KW)	$ 1,237,621

* Indicate separate escalation rates for site labor, site materials, and for purchased equipment, if applicable. Escalation rate is 8%/Yr., simple.

Note: Cost data above is for Unit #1 and 1/2 of the Common facilities. Date of latest construction cost estimate is January, 1979.

5/29/79

PLANT CAPITAL INVESTMENT

SUMMARY

BASIC DATA

Name of plant	Seabrook Station Unit #2 + 1/2 Common	Cost basis: at start of construction	
Net capacity	1150 MW(e)		
Reactor type	Westinghouse PWR		
Location	Seabrook, N. H.	Type of cooling	
		Run of river	
Design and construction period		Natural draft cooling towers	
Month, year NSSS order placed	January, 1973	Mechanical draft cooling towers	
Month, year of commercial operation	February, 1985	Other (describe)	Atlantic Ocean
Length of workweek	40 Hrs. 5 Days hours		
Interest rate, interest during construction	9 1/2 ~~XXXXXX~~ or compound?		

COST SUMMARY

Account Number	Account Title	Total Cost (thousand dollars)
	DIRECT COSTS	
20	Land and land rights	$ 1,250
	PHYSICAL PLANT	
21	Structures and site facilities	201,980
22	Reactor plant equipment	143,209
23	Turbine plant equipment	67,932
24	Electric plant equipment	47,191
25	Misc. plant equipment	20,515
	Subtotal	$ 482,077
	Spare parts allowance	4,263
	Contingency allowance	51,165
	Subtotal	$ 537,505
	INDIRECT COSTS	
91	Construction facilities, equip't, and services	$ 55,997
92	Engineering and const. mg't. services	186,184
93	Other costs	60,675
94	Interest during construction	414,000
	Subtotal	$ 716,856
	Start of construction cost	$1,254,361
	*Escalation during construction (8 % yr.)	116,826
	Total plant capital investment ($1192 /KW)	$ 1,371,187

* Indicate separate escalation rates for site labor, site materials, and for purchased equipment, if applicable. Escalation rate is 8%/Yr., Simple.

Note: Cost data above is for Unit #2 and 1/2 of the Common facilities. Date of latest cost estimate is January, 1979.

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PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

STATEMENT OF

ROBERT J. HARRISON, FINANCIAL VICE PRESIDENT

BEFORE THE

HOUSE COMMERCE AND CONSUMER AFFAIRS COMMITTEE

RELATIVE TO HOUSE BILLS 134, 197 AND 155

March 8, 1979

Mr. Chairman, members of the Committee, my name is Robert J. Harrison. I am the financial vice president of Public Service Company of New Hampshire. I appear before you to present my Company's views on House Bills 134, 197 and 155.

HOUSE BILL 134

In regard to House Bill 134, we believe that this bill recognizes the problem utilities face in prefunding construction interest charges, and that the bill represents a sincere effort by its sponsor to assist in solving the problem. Unfortunately, we and our attorneys see difficulties in the bill which make it unfeasible.

The bill seeks to authorize a surcharge of up to 15% on utility rates to prefund construction interest charges and to require the utility to keep records of this surcharge and return it, with interest, by crediting the customers bills for a period not exceeding seven years from the operational date of the facility for which the surcharge was imposed.

We are not certain that the Internal Revenue Service will agree that this type of surcharge constitutes a loan to the Company and therefore is not income subject to tax at the approximately 46% corporate rate. We have requested a revenue ruling on the question. Assuming that the surcharge would be ruled a loan, Public Service would have to create an enormous and costly administrative system to keep separate records for each customer which is satisfactory to the IRS for obtaining taxpayer identification numbers and individual social security numbers in order to report interest on these

loans to the IRS. Further this system would have to perform the function of keeping principal and interest separate so that each would be reported on the customers monthly statement, and refunded if the customer terminated service.

For your further information, initially it would mean that we must maintain individual records for 250,000 customer's accounts. This figure grows 20 to 25% each year as present customers move within our service territory and new customers are added and others terminate. Public Service would in effect be keeping records similar to Savings Banks. In fact the number of accounts would be greater than those savings accounts of the largest three savings banks in New Hampshire combined.

From a legal and constitutional point of view, one primary concern is that this bill does not expressly provide for recovering the costs associated with future credit accounts, nor does it even suggest that such costs would be recoverable. It is well established under the Fourteenth Amendment to the Constitution of the United States that a utility must be allowed to recover through rates all operating and capital costs used in its operations, therefore, the issue of when and how these costs would be recovered must be addressed.

We are also concerned about the bill's establishment of a minimum interest rate on future credit accounts. The effect of this provision would be to establish a minimum interest cost, regardless of what money market conditions might actually be. Traditionally, the cost of capital for

rate-making purposes is established by conditions in the marketplace and this is especially so with respect to debt capital. As the New Hampshire Supreme Court has said, the cost of capital is a matter for the Public Utilities Commission to determine on the evidence. N.E.T. & T. Co. v. State, 95 N.H. 353, 361 (1949). The bill's establishment of a minimum interest rate, which might be higher than the market would require, could subject the utility and its customers to an arbitrary level of costs and consequent artificial inflation of rates.

The provisions of this bill which seek to establish a priority for holders of future credit accounts in the event of a utility company bankruptcy, may exceed the Legislature's constitutional authority. To the extent that priorities of claims in bankruptcy are concerned, that matter is governed by federal law.

Finally, the requirement that the utility refund all principal and interest in cash to persons voluntarily terminating service would, in our opinion, create a special class of persons and the validity of the classification would be subject to challenge to determine if it bore a rational relationship to a legitimate legislative purpose. Practically, if this classification was allowed to exist, each customer could regularly withdraw all his accumulated future credit account plus interest in cash by the simple expedient of shifting the name of the electric service account holder to another member of his family.

HOUSE BILL 197

House Bill 197 is fraught with legal and administrative difficulties which are beyond resolution.

The definition of "charges" set forth in proposed section 369:18 states that they are "expenses included in the rate base for the purchase of public utility service . . .". The problem is that until a facility is completed and goes into service, its costs are not expenses included in the rate base. If CWIP is allowed then, the expenses of financing the construction are excluded from the rate base since they have already been paid by the customers. The terminology of the bill being based on the definition of charges does not follow the Uniform Classification of Accounts prescribed by the NHPUC which by law electric utilities must use in keeping their books of accounts. Neither does it follow sound accounting principles nor the legally required methodology of the rate making process. This problem makes the bill unworkable from a legal and practical point of view.

Assuming that the question of definition of "charge" could be resolved, it would be practically impossible to prepare the Registration Statements required by the Securities and Exchange Commission for the issuance of the stock that the bill contemplates would be distributed. There would also be great problems in complying with the Blue Sky Laws of various states.

The bill contemplates the customer obtaining ownership of one share when he has paid "charges" equal to the "cost" of that share. Yet the "cost" of the share is not

determined until the market value of the Company's stock based on the average market value for the previous year has been determined. The result is ownership amounts could not be determined until January 15 of the following year. When the requirement is coupled with the requirement that the issue of stock "purchased" through "charges" be at a "cost" equal to the average market value of the Company's Common Stock for a ten year period. This "cost" would be greater or less than the actual market prices of the stock over that period. If the figure was lower then the issue could be attacked as having been made of inadequate consideration.

The problem of fair and legal consideration for the stock to be issued is complex. Since the "payment" would be through the payment of a form of rates, the funds collected would be subject to taxes. The result would be that only about one-half of the revenues would be retained by the Company. Thus, the Company would have to issue stock at a "cost" about equal to market value, but for which it has retained only about one-half of the market value. This would result in the unlawful issuance of stock for inadequate consideration. In such a case, a constitutional question arises as to whether or not the issuance of stock for less than adequate consideration would result in confiscation of a portion of the investment of stockholders who have purchased their shares in the open market at full book value.

Since the stock which would be issued under the

plan proposed in HB 197 would not pay dividends until after it was issued, the present common stock of the Company could not be used. The Company's present common stock requires dividends to be paid to the legal owners of the stock, while the proposal under HB 197 forbids dividends until the stock is issued, a time that may be as much as 10 years after ownership is acquired. Thus, a new class of stock would have to be created, authorized by the State and the Company's charter would have to be amended. Further, this new class of stock would have no "annual average market value" since it would not have previously existed. From a legal point of view, the bill is clearly unworkable.

HOUSE BILL 155

House Bill 155 seeks to prohibit all CWIP charges by utilities. We believe that enactment of such legislation would be a serious mistake.

When the NHPUC and the Administrative Law Judge of the Federal Energy Regulatory Commission reviewed Public Service's requests for increased rates,both concluded that the CWIP method was the best method from the customer's point of view of raising the money needed to pay the financing charges associated with the need to obtain large amounts of capital funds to construct Seabrook Station. Many people think that CWIP charges are construction funds; they are not, they are the funds used to pay the interest charges that must be paid on construction funds until the time when the plant can begin to earn on its own and pay these charges.

In making the decision to sell off portions of its ownership in Seabrook, the Company's position was that we should plan for the future on the assumption that there would be no timely New Hampshire solution emerging from Concord. Therefore, our financial planning now assumes that no additional CWIP will be allowed in our New Hampshire retail rate base to help pay the financing costs of Seabrook, beyond what has already been allowed by the Public Utilities Commission.

We use the words "no additional CWIP" advisedly: Our ability to retain even a 28% interest in Seabrook will hinge in part on our ability to retain at least that portion of CWIP which was allowed by the PUC Order of May 25, 1978, until Unit I of Seabrook has been completed. However, it is not clear to us whether HB 155, as presently drafted, would allow that. Accordingly, at a minimum we urge that the Bill be amended to specifically exempt from any ban the amount of CWIP already allowed on our rate base by the PUC. This would not only help us to retain the 28% share in Seabrook, but also, as our lawyers tell us, would remove a potential problem with the bill's constitutionality.

Looking beyond Seabrook I and II into the late 1980's and beyond, if sufficient electricity is to be supplied to the New Hampshire consumer, the Public Utilities Commission should retain the authority to allow some means of recovering construction finance charges through current electric rates.

We suggest that it will be virtually impossible for utilities to implement plans for electric facilities unless the Legislature gives the NHPUC such flexibility in deciding the issues. Accordingly, we recommend that the bill be amended to leave authority in the PUC to allow a utility which can demonstrate the need for some percentage of CWIP in the rate base for an electric facility which has been authorized by the New Hampshire Site Evaluation Committee.