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STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

November 6, 2008 - 10:16 a.m.
Concord, New Hampshire

NHPUC NOV24'08 AM11:47

RE: DE 07-122
PUBLIC SERVICE OF NEW HAMPSHIRE:
Petition for Clarification and
Interpretation of Commission Orders
Regarding Hemphill Power & Light.

PRESENT: Commissioner Clifton C. Below, Presiding
Commissioner Graham J. Morrison

Connie Fillion, Clerk

APPEARANCES: Reptg. Public Service of New Hampshire:
Gerald M. Eaton, Esq.

Reptg. Hemphill Power & Light:
Bryan K. Gould, Esq. (Brown, Olson & Gould)

Reptg. Residential Ratepayers:
Kenneth E. Traum, Asst. Consumer Advocate
Office of Consumer Advocate

Reptg. PUC Staff:
F. Anne Ross, Esq.

Court Reporter: Steven E. Patnaude, LCR No. 52

ORIGINAL

I N D E X

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 STEPHEN R. HALL

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P R O C E E D I N G S

CMSR. BELOW: Good morning. We're here for a hearing on the merits in DE 07-122, Public Service of New Hampshire, Petition for Clarification and Interpretation of Commission Orders Regarding Hemphill Power & Light. Last November 9th, PSNH filed a petition for -- that petition. On November 27th, the Consumer Advocate notified the Commission that it would be participating. Chairman Getz indicated by letter on December 20th of last year that he would not participate in the proceeding. A prehearing conference and technical session were held pursuant to the order of notice and supplemental order of notice on January 7th, 2008.

The Company informed the Commission that Hemphill and PSNH had decided to enter settlement discussions last January 10th, and a Hearing Examiner's report was also filed on that date that recommended that Hemphill be granted intervention without condition, and noting that there were no objections. I don't think that was ever acted upon, so we will accept that intervention or grant that intervention now, to the extent that's not clear. And, on September 3rd, PSNH filed a motion to approve Settlement Agreement. The Staff proposed a procedural schedule that covered data request responses

1 and suggested this hearing, and that was approved on
2 October 3rd by secretarial letter.

3 So, we can take appearances.

4 MR. EATON: For Public Service Company
5 of New Hampshire, my name is Gerald M. Eaton. Good
6 morning.

7 CMSR. BELOW: Good morning.

8 CMSR. MORRISON: Good morning.

9 MR. GOULD: For Hemphill Power & Light
10 Company, Bryan Gould.

11 CMSR. BELOW: Good morning.

12 CMSR. MORRISON: Good morning.

13 MR. GOULD: Good morning.

14 MR. TRAUM: Good morning, Commissioners.
15 Representing the Office of Consumer Advocate, Kenneth
16 Traum.

17 CMSR. BELOW: Good morning.

18 CMSR. MORRISON: Good morning.

19 MS. ROSS: Good morning, Commissioners.
20 Representing Staff of the Commission, Anne Ross, and with
21 me today is Steve Mullen.

22 CMSR. BELOW: Good morning.

23 CMSR. MORRISON: Good morning.

24 CMSR. BELOW: And, do we have a witness

[WITNESS PANEL: Vogel|Hall]

1 or --

2 MR. EATON: Yes, we have two witnesses.
3 I'd like to call to the stand Mr. Carl Vogel and
4 Mr. Stephen Hall.

5 CMSR. BELOW: Okay.

6 (Whereupon **Carl N. Vogel, III**, and
7 **Stephen R. Hall** were duly sworn and
8 cautioned by the Court Reporter.)

9 **CARL N. VOGEL, III, SWORN**

10 **STEPHEN R. HALL, SWORN**

11 **DIRECT EXAMINATION**

12 BY MR. EATON:

13 Q. Mr. Vogel, would you state your name for the record.

14 A. (Vogel) Yes. My name is Carl Norman Vogel.

15 Q. For whom are you employed?

16 A. (Vogel) I work with Public Service of New Hampshire.

17 Q. What is your position there?

18 A. (Vogel) I'm currently the Manager of Supplemental
19 Energy Sources.

20 Q. And, what are your duties?

21 A. (Vogel) The duties basically involve administering all
22 interconnections and payments for our small power
23 producers, qualifying facilities, and non-utility type
24 generators.

{DE 07-122} {11-06-08}

[WITNESS PANEL: Vogel|Hall]

1 Q. Mr. Vogel, did you participate in settlement
2 discussions with Hemphill Power & Light?

3 A. (Vogel) Yes, I did.

4 Q. And, are you familiar with the settlement that was
5 reached with Hemphill Power & Light?

6 A. (Vogel) Yes, I am.

7 Q. Let me back up a little bit. Have you previously
8 testified before the Commission?

9 A. (Vogel) Briefly in a docket back in early 2000.

10 Q. Mr. Vogel, on September 2nd, Public Service Company
11 filed a package with the Commission. Do you have that
12 in front of you?

13 A. (Vogel) Yes, I do.

14 Q. And, what does that package contain?

15 A. (Vogel) Basically, this was a filing dated September 2,
16 2008. It contains a narrative of the history of the
17 conflict between PSNH and Hemphill, a description of
18 the Settlement Agreement, and an attachment with my
19 testimony to that.

20 MR. EATON: I will defer to the Chair as
21 to how to mark this, but I would propose to mark the
22 letter and the motion as "Exhibit 1", the Settlement
23 Agreement as "Exhibit 2", and Mr. Vogel's testimony as
24 "Exhibit 3".

{DE 07-122} {11-06-08}

[WITNESS PANEL: Vogel|Hall]

1 CMSR. BELOW: Okay. We can mark that as
2 such.

3 (The documents, as described, were
4 herewith marked as **Exhibit 1** through
5 **Exhibit 3**, respectively, for
6 identification.)

7 BY MR. EATON:

8 Q. Mr. Vogel, could you turn to your testimony, Exhibit 3.
9 Do you have any corrections to make to that testimony?

10 A. (Vogel) Yes, there's one correction to be made. It's
11 on Page 4. In the testimony, I suggested the
12 settlement be recovered from the "Default Energy
13 Service rate", and I should have said that it be
14 recovered from the "Stranded Cost Recovery Charge".

15 Q. So, that answer should read "PSNH proposes that the
16 settlement payment be collected from customers over a
17 one year period through the Stranded Cost Recovery
18 Charge." Is that correct?

19 A. (Vogel) That's correct.

20 Q. With that correction, is this testimony true and
21 accurate to the best of your knowledge and belief?

22 A. (Vogel) Yes, it is.

23 Q. And, if asked those questions today, you would answer
24 the same way?

1 A. (Vogel) Correct.

2 Q. Could you please summarize your testimony and the
3 Settlement Agreement?

4 A. (Vogel) Certainly. The issue stems back into the early
5 1980s, when Hemphill filed a 20 year rate order under
6 the procedures established in the Settlement Agreement
7 from docket 83-62. In the filing, Hemphill had a 20
8 year filing for rates, which were to begin in 1987, and
9 then were listed through 20 years, ending in the year
10 2006. The project came online on October 27th, 1987.
11 And, also, in accordance with docket 83-62, PSNH paid
12 Year 2 rates as specified in the settlement proceeding
13 of that docket, which means we paid 1988 rates starting
14 with October 27th, 1987.

15 Hemphill received rate changes annually
16 on its anniversary month, again as prescribed in the
17 docket of 83-62 Settlement Agreement. And, when we
18 reached October 2005, the annual rate change used the
19 2006 rates, which was the last set of rates in that
20 filing. Therefore, on October 27th, 2006, Hemphill,
21 which was beginning its 20th year of its 20 year rate
22 order, had no rates left in the docket or in its filing
23 that was approved to be paid. So, at that point, PSNH
24 concluded that the rate order obligation was complete.

[WITNESS PANEL: Vogel|Hall]

1 And, at that point, we started paying the project
2 short-term rates for any generation it sold to us.

3 Hemphill disagreed with our finding, and
4 made a filing in superior court. And, ultimately -- I
5 won't say "ultimately", but the filing that they
6 claimed was that they were due a 20th year of rate
7 order rates. And, as we would calculate that, that had
8 a value of approximately 9 -- had a value of
9 approximately \$14.9 million. PSNH filed a counterclaim
10 with that superior court filing, and also said that the
11 dispute should be heard before the Public Utility
12 Commission, and opened a docket before the Public
13 Utility Commission.

14 At a prehearing in January of 2008, the
15 parties were together and agreed to put all proceedings
16 on hold while they pursued a settlement agreement.
17 And, a Settlement Agreement was ultimately reached, the
18 one that's filed before you today, where we have agreed
19 to pay \$3.5 million, provided PSNH receives approval of
20 the settlement from the Commission, with recovery from
21 its customers.

22 That's the summary of the events.

23 Q. Mr. Vogel, did PSNH purchase power for that 20th year
24 from Hemphill?

[WITNESS PANEL: Vogel|Hall]

1 A. (Vogel) Yes. PSNH purchased all the power generated
2 from the plant for that 20th year, and, as I mentioned,
3 paid short-term rates of approximately \$7.6 million.

4 Q. So, would that be deducted from the \$14 million figure
5 that you mentioned?

6 A. (Vogel) To phrase the amount that Hemphill claimed,
7 yes, you would subtract the amount that had already
8 been paid from that 14.9 million to make Hemphill's
9 claim of 20th year rates complete.

10 Q. Mr. Hall, could you please state your name for the
11 record.

12 A. (Hall) Stephen R. Hall.

13 Q. For whom are you employed?

14 A. (Hall) I'm employed by Public Service of New Hampshire.

15 Q. What is your position and what are your duties?

16 A. (Hall) I am Rate and Regulatory Services Manager. I'm
17 responsible for rate administration, rate design,
18 pricing, and regulatory relations.

19 Q. And, have you testified before the Commission?

20 A. (Hall) Yes, I have.

21 Q. Did you file prefiled testimony in this docket?

22 A. (Hall) No, I didn't.

23 Q. What is the purpose of your appearance here and what
24 are you prepared to answer?

[WITNESS PANEL: Vogel|Hall]

1 A. (Hall) The reason I am here is to answer any questions
2 that may arise with regard to cost recovery of the
3 amount of payment that will be made to Hemphill.

4 Q. Do either of you gentlemen have anything to add to your
5 direct testimony?

6 A. (Vogel) I do not.

7 A. (Hall) No.

8 MR. EATON: The witnesses are available
9 for cross-examination.

10 CMSR. BELOW: Okay. Thank you.

11 Mr. Gould?

12 MR. GOULD: I have no questions.

13 CMSR. BELOW: Okay. Mr. Traum?

14 MR. TRAUM: Thank you.

15 (Atty. Ross and Atty. Eaton conferring.)

16 CMSR. BELOW: Okay. Are we ready to
17 proceed with Mr. Traum?

18 MR. EATON: There's one other item we'd
19 like to mark for identification to make the record more
20 clear, and that's the original petition that was filed
21 with the Commission on November 9th. And, I'll make
22 available a copy for the Clerk. It's the November 9th,
23 2007 Petition for Clarification, and that also has
24 attached to it the original rate order and interconnection

[WITNESS PANEL: Vogel|Hall]

1 agreement. I think it will make the record more complete.

2 CMSR. BELOW: So, we'll mark that as
3 Exhibit 4.

4 (The document, as described, was
5 herewith marked as **Exhibit 4** for
6 identification.)

7 CMSR. BELOW: Okay. Now, Mr. Traum can
8 proceed.

9 MR. TRAUM: Thank you, sir.

10 **CROSS-EXAMINATION**

11 BY MR. TRAUM:

12 Q. I have a couple of questions. And, I'll just let
13 whoever is more comfortable on the panel answering it
14 to please answer. I guess, just in the way of a little
15 bit of background, is there any kind of a corporate
16 affiliation between PSNH and Hemphill?

17 A. (Hall) No.

18 Q. Okay. And, why should the Office of Consumer Advocate,
19 or the Commission, for that reason, be comfortable that
20 PSNH would have negotiated this settlement in the best
21 interest of ratepayers, as opposed to just saying
22 "Well, we're going to recover the money anyway"?

23 A. (Vogel) I'll take that question. PSNH felt that it
24 completed its obligation and took the first steps as a

1 means of acting as a responsible utility. Along that
2 same vein, we worked in good hard interest to try to
3 provide the best deal that we could get.

4 A. (Hall) I'll add to that, that PSNH's objective, when it
5 comes to cost control, is to keep its costs as low as
6 possible for customers. We are always focused with
7 customers in mind.

8 Q. Thank you for that. Where, at this point you're
9 seeking to recover the \$3.5 million through a stranded
10 cost reconciliation charge, what is the basis for
11 considering it to be 3.5 to be a recoverable stranded
12 cost?

13 A. (Hall) The basis is that the 3.5 million is an amount
14 that we're paying over and above the locational
15 marginal price that we've already paid to Hemphill.
16 Under the restructuring settlement, the way that it's
17 been interpreted is that, with respect to payments to
18 independent power producers, we recover through the
19 Energy Service rate the market value of the power
20 priced at the locational marginal price. Any payment
21 to an IPP over and above the market value of the power
22 has been recovered through Part 2 of our Stranded Cost
23 Recovery Charge. Since this is a payment over and
24 above the market value of the power, we're proposing

1 recovery of that through the Stranded Cost Recovery
2 Charge, Part 2 specifically.

3 Q. And, when, assuming the Commission approves this
4 Settlement, when would you be making the 3.5 million
5 payment to Hemphill?

6 A. (Hall) I will turn to the Settlement itself. And, I'm
7 looking at Paragraph 2 on Page 2 of the Settlement.
8 And, that talks about rendering payment "upon issuance
9 of the approvals in a final order", "provided, however,
10 that the parties' obligations shall be suspended during
11 the Commission's consideration of any motion for
12 rehearing or the Supreme Court's consideration of any
13 appeal of any such order." So, the time frame for
14 motions for rehearing, I believe, is 30 days following
15 a Commission order. And, barring any motion for
16 rehearing, we would make the payment at that time.

17 Q. And, as far as recognizing the 3.5 million in the
18 stranded cost basket, let's say, would it be recognized
19 for interest calculation purposes at the time that the
20 3.5 million is paid or is booked?

21 A. (Hall) It would be recognized on the date or as of the
22 month in which it's expensed. Now, whether we expense
23 it at the time the payment is made, or whether it's
24 expensed before the payment is made, will be subject to

[WITNESS PANEL: Vogel|Hall]

1 the judgment of our accountants, Deloitte, as to when
2 we're required to recognize that obligation.

3 Q. And, your accountants would use this consistency in
4 terms of recognizing, when they recognize expenses is
5 when they recognize revenues?

6 A. (Hall) Absolutely. It's an accrual basis.

7 Q. Would you anticipate there be any costs above the
8 3.5 million?

9 A. (Hall) I'm not quite following you.

10 Q. Any internal or external costs incurred by PSNH that
11 they would be seeking recovery of beyond the
12 3.5 million?

13 A. (Hall) No.

14 MR. TRAUM: Okay. Thank you. That's
15 all I have.

16 CMSR. BELOW: Okay. Ms. Ross.

17 MS. ROSS: Good morning.

18 WITNESS HALL: Good morning.

19 BY MS. ROSS:

20 Q. Mr. Vogel, I would like to just clarify a little bit
21 some information that you have in your testimony. In
22 your testimony, at Page 3, you mention the \$3,500,000
23 figure as the Settlement amount?

24 A. (Vogel) That's correct.

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[WITNESS PANEL: Vogel|Hall]

1 Q. What I'd like to do is give the Commission a little bit
2 more background on that number. And, I would like to
3 refer you to a response to a Staff data request, which
4 were issued on October 10th, Staff Request Number 1.
5 And, I'm going to ask that it be marked as an exhibit.
6 And, we'll give you a copy of it, in case you don't
7 have it up there with you.

8 A. (Vogel) Thank you. I have a copy.

9 Q. Okay. And, in that response --

10 CMSR. BELOW: Well, wait a second.

11 Okay. We'll mark this as "Exhibit 5", the Data Request
12 NSTF-01.

13 (The document, as described, was
14 herewith marked as **Exhibit 5** for
15 identification.)

16 BY MS. ROSS:

17 Q. And, Mr. Vogel, in this request, Staff was asking you
18 to show the supporting calculations for the 7,002,114
19 amount, which is the difference between what PSNH paid
20 and what Hemphill was claiming. Could you just walk
21 through those spreadsheets for us, to explain what they
22 show?

23 A. (Vogel) Certainly. There's -- First, I should identify
24 the narrative, identify those two dollar amounts of

1 7.845 million that PSNH paid and 14.847 million that
2 Hemphill claimed would have been due. Those two
3 figures were the joint development of PSNH and Hemphill
4 in preparing the narrative. When the question was
5 asked and the calculation was brought back through
6 history, starting not with the billing month, but with
7 the date the rate order ended, and ending with the year
8 later, which would have completed the 20th year that
9 Hemphill was claiming. The calculation of the data in
10 two spreadsheet pages was presented to answer the
11 question.

12 The actual cost PSNH paid during that
13 period was \$7.6 million, broken down in that
14 spreadsheet on a monthly basis for energy capacity, as
15 well as a couple of adjustments that were made
16 associated with the capacity payment. And, the second
17 sheet is what PSNH would have paid using rate order
18 rates. This is a path that was not taken by PSNH, as
19 we were paying the avoided cost at that time. So, we
20 went back, recalculated on a month-by-month basis the
21 on-peak and off-peak energy, as there was an on and
22 off-peak rate associated with it, along with the
23 capacity that would have been in effect under the rate
24 order scenario.

1 And, also, the rate order had an
2 associated cap to it of 13.8 megawatts. And, should
3 the unit operate above that, it was entitled to
4 short-term rates. So, all of those payments were
5 brought out, again, on a month-by-month basis, and the
6 actual total of the rate order month was
7 \$14.943 million. So, the actual difference was a
8 little higher than was in the narrative, it was
9 actually 7.343 million.

10 Q. Would it be fair to say that the three and a half
11 million is roughly half of the 7.343 difference the
12 parties arrived at?

13 A. (Vogel) Yes. When you look at things within the grand
14 scheme of things, you can -- as we testified in my
15 statement, it was roughly half of the difference that
16 was presented in the narrative. From the grand scheme,
17 you could say it's roughly half of what's presented
18 here, to answer your question.

19 Q. Why is this Settlement favorable to Hemphill and PSNH?

20 A. (Vogel) Absent a Settlement, this argument and dispute
21 would go on. There is a risk to PSNH and its customers
22 that Hemphill could have an additional \$7 million
23 coming out of it, associated with being paid the full
24 rate order rate. PSNH saw, especially with the

[WITNESS PANEL: Vogel|Hall]

1 counterclaim, that, if Hemphill prevailed in that
2 argument, there could be benefits to PSNH and its
3 customers, because one line of reasoning would be that
4 we made advance payments associated with those 20 years
5 of rates, and Hemphill had the advantage of receiving
6 advance payments, as well as any benefits of interest
7 accumulated. Each party had an interest and a risk
8 associated with it, and ultimately saw the Settlement
9 as a means, at least I can speak for PSNH, as a means
10 that was acceptable.

11 Q. Did PSNH attempt to quantify its counterclaim?

12 A. (Vogel) PSNH, I don't know if we filed a counterclaim
13 value. Jerry, do we have that on the record somewhere?

14 MR. EATON: I believe it's in the
15 discovery in the superior court case. That was one of the
16 questions we were asked by Hemphill as to quantify our
17 counterclaim value. Do you agree with that?

18 MR. GOULD: I believe that's correct. I
19 don't remember the number, but I --

20 WITNESS VOGEL: I could put something
21 out. We're under a confidentiality agreement with PSNH
22 and Hemphill, and details, if it's something that is not
23 considered confidential, but I can give you a rough
24 number.

[WITNESS PANEL: Vogel|Hall]

1 MR. EATON: Given the fact that it was
2 an answer to an interrogatory in the superior court case,
3 I don't believe your number would be confidential.

4 MR. GOULD: I agree with that.

5 **BY THE WITNESS:**

6 A. (Vogel) To answer your question, it was approximately
7 \$2 million of overpayment, and \$16 million of
8 accumulated interest, because that payment occurred
9 very early in the rate stream. So, a total of
10 approximately \$18 million.

11 MS. ROSS: Thank you.

12 BY MS. ROSS:

13 Q. I have one other area that I'd like to explore. I
14 don't know whether either of the witnesses are
15 conversant. Were either of you involved in the
16 settlement regarding Pinetree and Tamworth --

17 A. (Vogel) Yes.

18 Q. -- and their long-term --

19 A. (Vogel) Yes, I was associated with that.

20 Q. Okay. Could you describe what distinguishes the
21 Hemphill case from those prior two disputes?

22 A. (Vogel) Yes. Prior to the Hemphill issue, PSNH
23 concluded that Bridgewater and Tamworth had wording in
24 their rate order filing that indicated that the rate

[WITNESS PANEL: Vogel|Hall]

1 order would end 20 years after the date, which was --
2 which, if they came online on the instant that they
3 described that they were coming online, would have had
4 the full 20 years of rate order payments within their
5 request. Both projects came on later than the first
6 date they could have come on within that rate order
7 period. And, PSNH included that December 31st of the
8 date that they were looking for was the last date that
9 the rate order applied. That was brought forth to the
10 Commission for clarification. The Commission
11 determined we were incorrect in that ruling, and they,
12 in fact, were entitled to a full 20 years, based on the
13 more -- based on the overall perception and discussion
14 and preponderance of evidence, I guess it would be
15 called.

16 Hemphill would start with that same
17 theory and go forward. What made them different from
18 the Tamworth/Bridgewater case is that both Bridgewater
19 and Tamworth had rates that were in effect with the
20 continuance of that period to the completion of their
21 20th year. Hemphill, by contrast, ran out of rates and
22 had no rate in effect, thus causing the difference.

23 BY MR. MULLEN:

24 Q. Just to follow up on that, when you say that they "ran

[WITNESS PANEL: Vogel|Hall]

1 out of rates". How does the -- basically, I think the
2 issue of that revolves around their initial power year,
3 --

4 A. (Vogel) That's correct.

5 Q. -- in terms of when they came online. So, how is
6 Hemphill different than the two Pinetrees?

7 A. (Vogel) Hemphill came online in October of the first
8 year. And, 83-62's procedures state that, when a
9 project comes online after September of a year, you
10 receive the second year of rates. So, Hemphill never
11 received its first year of rates. It missed that.

12 Q. So, that's essentially what differentiates this case
13 from those prior cases, in terms of when they came on,
14 in terms of their initial power year, whether it was in
15 the second year?

16 A. (Vogel) Yes. The other two projects came online in
17 time to receive their first year of rates, which stayed
18 in effect until the next anniversary date.

19 MR. MULLEN: Thank you.

20 MS. ROSS: Thank you. We have no
21 further questions for the panel.

22 CMSR. BELOW: Okay. Any redirect, Mr.
23 Eaton?

24 MR. EATON: No thank you.

[WITNESS PANEL: Vogel|Hall]

1 CMSR. BELOW: Mr. Gould?

2 MR. GOULD: Yes, just a couple.

3 BY MR. GOULD:

4 Q. Mr. Vogel, do you have Exhibit 1 in front of you,
5 which, as I understand it, is the motion and the cover
6 letter?

7 A. (Vogel) Yes, I do.

8 Q. Would you look at Page 2 please. And, this question
9 goes to the valuation of the counterclaim, which you
10 said was approximately \$18 million?

11 A. (Vogel) Correct.

12 Q. If you look at Paragraph D of PSNH's motion, would you
13 just take a look at that, read that over, and then I'm
14 going to ask you a question about it.

15 A. (Vogel) I'm all set.

16 Q. Could you just maybe enlarge upon what's in Paragraph
17 D, and explain to the Commission your understanding of
18 the counterarguments that -- the legal counterarguments
19 that Hemphill was making with respect to the value of
20 the counterclaim?

21 A. (Vogel) You're asking me to describe Hemphill's
22 arguments?

23 Q. Right. Based on -- First of all, does Paragraph D
24 refresh your recollection of those arguments?

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1 A. (Vogel) Yes, I'm comfortable with the general basis of
2 it.

3 Q. Okay. So, yes, I'd just like you to describe in your
4 own words what your understanding of those arguments
5 was.

6 A. (Vogel) As I described briefly, the counterclaim
7 involved an advance -- on the premise that there was an
8 advance payment that was made earlier on, and PSNH did
9 a calculation on the present worth value, using rates
10 that were in the docket, which was 13.43 percent for
11 the value of money.

12 Q. The discount rate?

13 A. (Vogel) The discount rate. And, under that Item D,
14 first, Hemphill maintains PSNH can only recover the
15 present value of payments based on a premature rate
16 change made three years or less before PSNH filed its
17 counterclaim. PSNH had a disagreement with -- well,
18 PSNH basically stated it did not know that there was a
19 dispute.

20 Q. Right.

21 A. (Vogel) So, that three years was not from the
22 counterclaim, but would be argued that it was three
23 years from the knowledge. And, the second is Hemphill
24 maintains that the correct discount rate to be applied

1 is prescribed in as stated here, RSA 336:1, II.

2 Q. And, you understand that to be the legal rate of
3 interest as set by statute?

4 A. (Vogel) I would defer that to our counsel, but I know
5 there was a dispute between the two rates.

6 Q. Okay. Let's make sure that we're clear about the first
7 argument that you talked about. You referenced "RSA
8 508:4. Is it your understanding that that statute is a
9 statute of limitations?

10 A. (Vogel) Based on discussions with our attorney, I
11 understand there is a statute of limitations. Again, I
12 will defer to him for a full explanation of it.

13 Q. Understood. You alluded to this, I just want to make
14 it clear. Most of the value in the \$18 million figure
15 you gave is attributable to a rate change that took
16 place, either in the late '80s or early '90s, correct?

17 A. (Vogel) That's correct.

18 Q. And, then, you use a 13.43 percent interest rate to
19 bring that to present value, and that creates a very
20 significant piece of that \$18 million?

21 A. (Vogel) Yes, it does.

22 Q. Okay. So, if the statute of limitations prevented PSNH
23 from going back more than three years from the date
24 that it filed its counterclaim in the superior court,

[WITNESS PANEL: Vogel|Hall]

1 then PSNH would not be entitled to recover that very
2 large piece of the \$18 million, assuming that the
3 statute of limitations applied?

4 A. (Vogel) The understanding I have, that's consistent
5 with it. But, again, I would defer to legal counsel
6 for a legal interpretation.

7 MR. GOULD: Understood. No further
8 questions. Thank you.

9 CMSR. BELOW: Okay. Anything other
10 redirect?

11 (No verbal response)

12 CMSR. BELOW: Hearing none, the panel is
13 dismissed. Thank you. If there's no objection, we'll
14 enter the five exhibits as full exhibits, and proceed to
15 closing arguments. Mr. Traum.

16 MR. TRAUM: Thank you, Commissioner.
17 Because of the millions of dollars of above market prices
18 that ratepayers have paid for Hemphill power over the long
19 term -- life of the long-term rate order, the OCA cannot
20 support paying them \$3 million more under the Settlement.
21 But, at same time, we recognize it is a settlement, and we
22 do feel that PSNH has had ratepayers' concerns at heart
23 when they negotiated. So, we're not objecting to it
24 either.

1 CMSR. BELOW: Okay. Thank you.

2 Ms. Ross.

3 MS. ROSS: Yes. Staff does support the
4 Settlement, recognizing that each party identified some
5 significant litigation risk in this matter. And, we
6 believe this compromise is reasonable, in terms of both
7 PSNH's interests, as well as the ratepayers' interests in
8 this matter.

9 CMSR. BELOW: Mr. Gould.

10 MR. GOULD: I don't think I have
11 anything to add, Mr. Chairman, beyond what's in PSNH's
12 motion. Thank you.

13 CMSR. BELOW: Thank you. Mr. Eaton.

14 MR. EATON: Thank you, Mr. Chairman. We
15 attached to our motion, and I don't think you need to
16 review all of it, the Hearing Examiner's report, and there
17 was a very frank discussion on the record of what Hemphill
18 might do. At that time, there was a superior court case.
19 And, PSNH had petitioned to have the superior court
20 recognize the Commission having primary jurisdiction, but
21 there was no guarantee that that was going to be granted.
22 So, this case might have been litigated in superior court,
23 as well as here. And, again, Mr. Gould was very frank
24 with the Hearing Examiner, saying that, based upon the

1 *Alden Greenwood* case that was in front of -- I think had
2 been decided by the Federal District Court, that Hemphill
3 might have also taken litigation up in Federal District
4 Court. All of those possibilities have risks. And, one
5 of the risks is that the case is tried to its conclusion
6 and Hemphill wins and gets the entire excess of the rate
7 order rate above the short-term rate that PS already paid.
8 So, those risks are weighed by each party. And, I think
9 that the parties got together in good faith and came up
10 with a compromise that the Commission ought to accept.

11 Furthermore, if litigation had taken
12 place in superior court or federal court, I'm sure that
13 the judges there would have also asked us to sit down and
14 try to settle this, and it may have been several years
15 later or several months later where, if a settlement was
16 reached in another forum, we still would be in front of
17 the Commission asking for approval of that settlement and
18 for rate recovery.

19 So, I think we did the best we could.
20 And, to show that PSNH has always been looking after the
21 ratepayers' interest dates back to that initial payment,
22 when they looked at the 83-62 order and said "Well, we
23 really shouldn't pay them the first year's rate, we should
24 pay them the second year's rate." And, that's how we

1 proceeded. We paid them from Year 2 through 20, and we
2 wound up with no rates to pay them for the final year.

3 This is all, you know, disputed by
4 Hemphill, and they disagreed with the way we handled it.
5 And, I think what we come to is a reasonable settlement,
6 and it ought to be approved, and recovery through the
7 Stranded Cost Recovery Charge should be granted. Thank
8 you.

9 CMSR. BELOW: Okay. Thank you. If
10 there are no other issues, we'll close the hearing and
11 take the matter under advisement. Thank you.

12 **(Whereupon the hearing ended at 10:55**

13 **a.m.)**
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