State of New Hampshire Supreme Court

NO. 96-268

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SEPTEMBER SESSION

APPEAL OF CAMPAIGN FOR RATEPAYERS RIGHTS

(PUBLIC UTILITIES COMMISSION)

APPEAL BY PETITION PURSUANT TO RSA 541 AND SUPREME COURT RULE 10

BRIEF OF APPELLANT, CAMPAIGN FOR RATEPAYERS RIGHTS

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STATEMENT OF FACTS

During the summer and fall of 1995, PSNH asked the PUC to approve a number of "special contracts" between PSNH and five large industrial users of electricity.[1] Each of the contracts was based upon the companies' claim that they needed lower electric rates for economic development or business retention purposes. The contracts called for PSNH to supply power at prices and terms different from PSNH's standard industrial tariff. Although authority has existed since 1913, up until three or four years ago, special contracts for electric service were rare. There are now about 75 contracts between PSNH and its large industrial customers, representing about one-third of PSNH's industrial load. These contracts will cost PSNH over $150 million in lost revenues over the next seven years, which other ratepayers may be called upon to reimburse.

In 1989, the Federal Bankruptcy Court, the New Hampshire General Court, the New Hampshire Supreme Court, as well as the First Circuit, the FERC, and the SEC, approved the "rate agreement" which was the result of the reorganization of PSNH after its bankruptcy. The 1989 rate agreement and its enabling legislation suspended the standard ratemaking process and instead created a seven-year period of escalating rates. To protect the company, its shareholders, and New Hampshire ratepayers, the agreement prohibited ratemaking in any manner not specified in the agreement. The purpose of this prohibition was to prevent the shifting of rate burdens from one class of ratepayers to another. By setting rates according to special contracts,

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[1]July 28, 1995, *Appendix to Notice of Appeal* at 37 (Teradyne contract); July 28, 1995, *Appendix to Notice of Appeal* at 54 (Kollsman contract); August 18, 1995, *Appendix to Notice of Appeal* at 69 (Miniature Bearings contract); September 25, 1995, *Appendix to Notice of Appeal* at 86 (Textron contract); October 26, 1995, *Appendix to Notice of Appeal* at 101 (Wyman-Gordon contract.

PSNH, with PUC approval, has set rates outside of the agreement and outside of the statute, thereby violating the terms of the agreement and calling its integrity into question. In addition, the PUC and PSNH have created the very potential for cost shifting to other ratepayer classes which the legislation sought to prevent.

In 1995, the State enacted legislation that created "economic development rates and/or retention rates" for industrial customers. The rates are to be created by generally available tariffs and are designed to attract new business into the State, encourage expansion, or to retain business that might leave due to high rates. By creating such rates, the statute sought to do that which PSNH and the PUC have been doing by special contract, but created a specific process that is reasoned, predictable, public, and lawful. Nonetheless, the PUC has, after the effective date of the statute, continued its more surreptitious means and has unlawfully approved the special contracts at issue here.

In 1993, in response to specific problems in the gas industry, the PUC created a checklist of criteria for the filing and approval of special contracts when such contracts are for the purpose of economic development or business retention. The checklist was developed in an adjudicative forum, and not in accordance with the rulemaking provisions of the New Hampshire Administrative Procedure Act. The checklist has all the indicia of a rule and has been used as a rule in the five special contracts here. By approving these special contracts with criteria in a rule that was created by a means not in accord with lawful rulemaking, the contracts are void.

STATEMENT OF THE CASE

The Campaign for Ratepayers Rights (CRR) intervened in the five PUC proceedings below. After the PUC's initial approval of the contracts, CRR filed Motions for Rehearing, which were denied. This appeal followed.

Separately, during the pendency of the PUC proceedings, CRR had sought injunctive relief to block the approval of the contracts here at issue. The Merrimack County Superior Court denied the emergency relief, and the suit was dismissed after this Court accepted this appeal.

SUMMARY OF ARGUMENT

CRR first argues that because the Rate Agreement and its enabling legislation prohibit ratemaking outside of the manner it prescribes, special contracts which set rates outside the agreement are *per se* illegal and are void *ab initio*. Because the rate agreement legislation is 76 years newer and more specific than the old statute authorizing special contracts, the PUC has no authority to approve special contracts. CRR then rebuts the PUC's claim that the statutes are not contradictory. CRR's rebuttal is based on the language of the statutes themselves and the legislative history. CRR also argues that even if the PUC had the authority to issue the special contracts, it did not make the findings necessary to do so. Finally, CRR argues that special contracts have the potential to result in rate design (*i.e.*, cost shifting to other ratepayer classes), which is prohibited by statute without the approval of the legislature.

Second, CRR argues that the special contracts here unlawfully create *defacto* economic development and business retention rates, which are specially provided for by statute.

Third, CRR argues that the special contracts were approved according to a checklist that operates as a rule but which was created pursuant to the PUC's quasi-judicial role rather than according to the administrative procedure act's rulemaking process. CRR rebuts the PUC's contention that the checklist is merely informational or explanatory.

ARGUMENT

I. Special PSNH Utility Contracts are Barred by RSA 362-C:6 and the Rate Agreement

A. Background

In January 1988, after years of teetering on the edge of financial disaster[2] as a result of building the Seabrook nuclear plant, PSNH declared chapter 11 bankruptcy[3] -- the first major utility bankruptcy since the depression. There were then protracted proceedings involving dozens of parties[4] before the Federal Bankruptcy Court,[5] which included numerous appeals to the

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[2] *See, e.g.*, *Appeal of Easton*, 125 N.H. 205 (1984); *Appeal of Seacoast Anti-Pollution League*, 125 N.H. 465 (1984); *Appeal of Seacoast Anti-Pollution League*, 125 N.H. 708 (1984); *Appeal of Seacoast Anti-Pollution League*, 126 N.H. 789 (1985); *Appeal of Conservation Law Foundation*, 127 N.H. 606 (1986); *Petition of Public Service Co. of New Hampshire*, 130 N.H. 265 (1988). The PUC provides a description of PSNH's financing woes in its order approving the bankruptcy agreement. *Re Northeast Utilities/Public Service Company of New Hampshire*, 114 PUR4th 385, 75 NH PUC 396 (1990).

[3] 11 U.S.C. § 1101 *et seq.*

[4] Among the parties and intervenors were: Alexandria Power Bio Energy; Amoskeag Bank; Bank of New England; Business and Industry Association of New Hampshire (non-party intervenor); Campaign for Ratepayers Rights (non-party intervenor); Canal Electric Co.; Central Maine Power Co.; Citicorp; Citizens Within a 10-Mile Radius (non-party intervenor); Commonwealth of Massachusetts; Connecticut Light & Power Co.; Consolidated Utilities & Communications, Inc.; Equity Security Holders Committee; EUA Incorporation; Eurodollar Term Loan Syndicate; Federal Energy Regulatory Commission; First Boston Corp.; First Fidelity Bank; IVJ Schroeder Bank and Trust Co.; Kaufman, Edward; Maryland National Bank; Midlantic National Bank; Montaup Electric Co.; National Union Fire Insurance Co.; New England Electric System; New England Power; New Hampshire Office of Consumer Advocate (non-party intervenor); New Hampshire Yankee; Northeast Utilities Service Company; Nuclear Regulatory Commission; Orion Royal Bank, Ltd.; Pinetree Power, Inc.; Prudential; Prulease; Public Service Company of New Hampshire; Richard, Robert C.; Rideout, Allen M. & Allene L.; Rochman, Martin; Saxon, Harry; Seabrook Joint Owners; Seacoast Anti-Pollution League (non-party intervenor); Second Mortgage Indentured Trustee; Securities and Exchange Commission; Shearson Lehman Hutton, Inc.; Small Power Producers; Spear, Leeds & Kellogg; State of Connecticut; State of New Hampshire; United Illuminating Co.; United States Trustee for the Districts of Maine, Massachusetts, New Hampshire, and Rhode Island; Unsecured Creditors (continued...)

First Circuit.[6] Ultimately the parties[7] reached a reorganization agreement pursuant to the federal bankruptcy statute, under which Northeast Utilities (NU) of Connecticut would acquire PSNH. The agreement[8] was approved by the Federal Energy Regulatory Commission (FERC),[9] and by

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[4](...continued)
Committee; Vermont Public Service.

[5]*In re Public Service Co. of New Hampshire:* 84 B.R. 1 (1988); 86 B.R. 7 (1988); 88 B.R. 518 (1988); 88 B.R. 521 (1988); 88 B.R. 546 (1988); 88 B.R. 558 (1988); 88 B.R. 563 (1988); 89 B.R. 1012 (1988), appeal decided, 884 F.2d 11 (1st Cir. 1989); 89 B.R. 1014 (1988); 90 B.R. 575 (1988); 91 B.R. 198 (1988); 93 B.R. 823 (1988); 94 B.R. 254 (1988); 95 B.R. 275 (1988); 98 B.R. 120 (1989); 99 B.R. 155 (1989); 99 B.R. 177 (1989); 102 B.R. 276 (1989); 107 B.R. 441 (1989); 108 B.R. 854 (1989); 110 B.R. 100 (1989); 112 B.R. 49 (1990); 114 B.R. 800 (1990); 114 B.R. 804 (1990); 114 B.R. 813 (1990); 114 B.R. 820 (1990); 116 B.R. 344 (1990); 116 B.R. 347 (1990); 129 B.R. 3 (1991); 138 B.R. 660 (1992); 148 B.R. 702 (1992), 848 F. Supp. 318, aff., 43 F.3d 763 (1st Cir. 1995), *cert denied*, *Rochman v. Public Service Co. of New Hampshire*, 115 S.Ct. 1959; 160 B.R. 404 (1993).

[6]*Public Service Co. of New Hampshire v. Consolidated Utilities & Communications, Inc.*, 846 F.2d 803 (1st Cir. 1988); *In re Public Service Co. of New Hampshire*, 879 F.2d 987 (1st Cir. 1989); *In re Public Service Co. of New Hampshire,* 884 F.2d 11 (1st Cir. 1989); *In re Public Service Co. of New Hampshire*, 898 F.2d 1 (1st Cir. 1990); *In re Public Service Co. of New Hampshire*, 963 F.2d 469 (1st Cir. 1992), *cert. denied*, *Rochman v. Northeast Utilities Service Co.,* 113 S.Ct. 304; *In re Public Service Co. of New Hampshire*, 43 F.3d 763 (1st Cir. 1995), *cert. denied*, *Rochman v. Public Service co. of New Hampshire*, 115 S.Ct. 1959.

[7]The parties to the agreement were limited to Northeast Utilities, Public Service Company of New Hampshire, the Official Committee of Unsecured Creditors, the Official Committee of Equity Security Holders, Citicorp, Consolidated Utilities & Communications, Inc., and Shearson Lehman Hutton, Inc. The only signatories are NU and the State.

[8]The agreement is not contained in any published reporter. It was attached as an exhibit to the Third Amended Disclosure Statement in the bankruptcy case. It is also available annotated by the State's witness in Volume II of a three-volume set of testimony provided by the Attorney General to the Public Utilities Commission on March 22, 1990. It is also available at the New Hampshire archives, which is the source of the copy provided in the appendix to this brief. While it is believed that the text is the same, pagination of the three sources differ.

[9]50 F.E.R.C. (CCH) ¶61,266 (1990).

the federal Securities and Exchange Commission (SEC).[10] Implementation of the agreement required legislation, RSA 362-C, which was accomplished in a special one-day session of the General Court.[11] Implementation also required approval of the Agreement by the New Hampshire Public Utilities Commission.[12] The resulting PUC order[13] was approved by the Bankruptcy Court,[14] the federal agencies, the New Hampshire Supreme Court,[15] and the Federal First Circuit Court of Appeals. The case was three times appealed to the United States Supreme Court, which each time denied certiorari.[16]

B. The Rate Agreement and its Enabling Legislation

The Rate Agreement contains lengthy and specific provisions regarding how rates are to be set as a condition of the emergence of PSNH from bankruptcy:

> "5. Base Rates (a) To improve and maintain the financial stability of [PSNH] and to enable [PSNH] to attract capital on reasonable terms, and to ensure that the impact of future rate increases on New Hampshire ratepayers is minimized to the maximum extent practicable, the Parties agree that base retail rates shall be adjusted as follows:

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[10]File No. 70-7695.

[11]1989 *Laws*, Special Session; *Journal of the Senate*, Special Session, Dec. 14, 1989; *Journal of the House*, Special Session, Dec. 14, 1989.

[12]11. U.S.C. 1129(a)(6).

[13]*Re Northeast Utilities/Public Service Company of New Hampshire*, 114 PUR4th 385, 75 NH PUC 396 (1990).

[14]*See*, *In re Public Service Co. of New Hampshire*, 112 B.R. 49 (1990).

[15]*Appeal of Richards*, 134 N.H. 148 (1991), *cert. denied*, *Richards v. New Hampshire*, 502 U.S. 899.

[16]*Richards v. New Hampshire*, 501 U.S. 899 (1991); *Rochman v. Northeast Utilities Service Co.*, 113 S. Ct. 304 (1992); *Rochman v. Public Service Co. of New Hampshire*, 115 S. Ct. 1959 (1995).

(I) [describing seven 5.5% annual rate increases]
(ii) [same]
(iii) [same]
(iv) [same]
(v) except for changes required by subparagraphs (ii), (iii) and (iv) above, the only changes to base rates during the [fixed rate period] will be one to adjust rates

(A) for legislative or regulatory changes such as changes to federal or state tax laws or regulations or environmental orders, regulations, and laws, which require capital expenditures . . ., or
(B) to reflect changes required by the [nuclear decommissioning fund], or
(C) to provide revenues to accomplish programs mandated . . . by legislators or regulators, or
(D) to recover costs associated with conservation and load management programs that have been undertaken with the specific approval of the [Public Utilities Commission].

In the event that a change or circumstance of the nature described in clause (A), (B), (C) or (D) above occurs, [PSNH] shall be entitled to file for a temporary rate increase . . . .

In addition, to the extent any new accounting standards are promulgated during the fixed rate period, [PSNH] shall be entitled to the same general rate treatment accorded other utilities . . . ."

Rate Agreement, ¶ 5a, *Appendix to Brief* at 11-14.

The parties did not intend for there to be traditional ratemaking[17] during the "fixed rate period." The utility required the financial stability of predictable rates at a level that would cover the costs of the NU buyout; ratepayers, represented by the State, required predictable rates at a level that would not gouge them or shift burdens among customer classes. The 5.5% escalating rate schedule was the product of compromise by both sides.

[17]Traditional ratemaking involves calculating the utility's revenue requirements with reference to its costs, profit needs, and operating and maintenance costs, and then splitting up the burdens among various classes of ratepayers to arrive at "just and reasonable" rates. *See e.g.*, RSA 378; *Appeal of Conservation Law Commission*, 127 N.H. 606 (1986); N.H. Code Admin. R. Puc 1601 *et. seq*.

The agreement provided four specific reasons for adjustments in the base rate upon which the scheduled increases were based; three of them are for taxes and social programs mandated by government, and the other involves the cost of decommissioning.[18]

The parties to the Rate Agreement were aware that without the Agreement, PSNH would not emerge from bankruptcy. *Rate Agreement*, ¶ 1, *Appendix to Brief* at 2 ("It is hereby acknowledged by all of the Parties that this Agreement constitutes an essential and necessary part of NU's proposed acquisition of PSNH and plan for its reorganization and that without this Agreement, NU will not consummate a plan of reorganization of PSNH."). The Parties were also aware that implementation of the Agreement would require legislation. This was due, in part, to the fact that existing law required rates to be set by the PUC according to an established regulatory process contained in RSA 378. The Agreement, however, called for rates to be set by the Agreement itself, in clear contravention of then current law. Thus, it was a condition of the Agreement that enabling legislation would be enacted. *Rate Agreement*, ¶ 14, *Appendix to Brief* at 21 ("The State shall initiate and support legislation needed to implement the Agreement as an enforceable obligation of the State and to provide any statutory changes required in order to implement this Agreement.").

Because of the State's concern about the possibility that PSNH or the PUC would allow some classes of customers to subsidize others, the enabling legislation provides that:

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[18]Decommissioning is the process of securing and dismantling Seabrook, and dealing with its nuclear waste, when its useful life ends. A decommissioning fund is created by statute and is levied by a surcharge on PSNH customer bills. RSA 162-F.

> "the [PUC] shall not cause the allocation of base rate revenue responsibility among residential, commercial, industrial and municipal customers in effect on [the contract date], for [PSNH customers] to change without legislative approval of the commission's finding that such revenue responsibility allocation is unjust or unreasonable."

RSA 362-C:8. The legislation also provides that:

> "Any modifications to an approved [Rate Agreement], made in accordance with [the Agreement], which potentially could increase rates, fares or charges shall, in addition to any requirements set forth in [the Agreement], require the approval of the legislature."

RSA 362-C:9. Thus, the legislature, concerned about the Rate Agreement's provision for rate design among customer classes, created a legislative oversight process.

Even more important, because of both sides' concern about the predictability and level of rates, the enabling legislation provides that once the PUC approves the Agreement and the rates contained in it:

> "the [PUC] shall not thereafter issue any order or process which would alter, amend, suspend, annul, set aside or otherwise modify such approval or result in the fixing of rates other than in the manner prescribed in the agreement."

RSA 362-C:6.

Thus, the legislation makes it clear that it is the last word on how rates are set, except for rate-design issues which require an additional layer of legislative approval. Any deviation from the Agreement in setting electric rates may be a violation of the Agreement and of the enabling statute. Moreover, even if the legislature amended the statute, the method of setting rates may need the consent of the parties to the Agreement to be changed

C. The Special Contracts Statute

New Hampshire's statute allowing special contracts was enacted in 1913.[19] It provides that:

> "Nothing herein shall prevent a public utility from making a contract for service at rates other than those fixed by its schedules of general application, if special circumstances exist which render such departure from the general schedules just and consistent with the public interest, and the [PUC] shall by order allow such contract to take effect."

RSA 378:18.

The PUC relies on this statute as authority for its post- Rate Agreement approval of the special contracts between PSNH and some of its customers. *Appendix to Notice of Appeal* at 50 (Teradyne contract); *Appendix to Notice of Appeal* at 65 (Kollsman contract); *Appendix to Notice of Appeal* at 82 (Miniature Bearings contract); *Appendix to Notice of Appeal* at 97 (Textron contract); *Appendix to Notice of Appeal* at 101 (Wyman-Gordon contract).[20]

D. Newer More Specific Statute Trumps Older Less Specific Statute

When statutes which deal with the same subject matter are contradictory, the later controls over the earlier. *Appeal of Public Service Company of New Hampshire*, 130 N.H. 265 (1988). Moreover, when one statute handles the subject matter in general terms, and the other in specific terms, the specific statute controls. *In re Laurie B.*, 125 N.H. 784 (1984); *State v. Bell*, 125 N.H. 425 (1984); *In re Robert C.*, 120 N.H. 221 (1980). When one statute is both newer and more specific, the choice is particularly easy.

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[19]Minor changes have been made in the intervening years.

[20]In several places, the PUC erroneously cites RSA 374:18 where RSA 378:18 was probably intended.

Board of Selectmen of Town of Merrimack v. Planning Board of Town of Merrimack, 118 N.H. 150 (1978).

The 1913 statute says that "nothing herein shall prevent" a utility from making a special contract "if special circumstances exist." RSA 378:18. The 1989 statute says that the PUC "shall not" set rates by a manner different from that provided in the agreement. RSA 362-C:6.

The two statutes deal with the same subject matter, and are contradictory. The statute prohibiting special contracts is 76 years newer. The newer statute is also more specific: it references a specific document setting forth a specific form of ratemaking and prohibits deviation from it, while the older statute merely gives the PUC discretion to divine an undefined "special circumstance" to justify special contracts. Thus, the older statute does not apply and the PUC has no power or authority to issue an order approving special contracts.

E. The PUC's Claim that the Statutes are not Contradictory is Unsupported By the Language of the Statutes

In each of its orders approving special contracts, the PUC finds that Rate Agreement statute, RSA 362-C:6, does not contradict the special contract statute, RSA 378:18. Its explanation is:

> "RSA 374:18 [sic][21] authorizes the approval of special contracts. It is not, in our view, a form of ratemaking or 'fixing of rates' as envisioned by RSA 362-C:6. When a special contract is approved, the tariffed rates for that class of customer remain unchanged. While the charge to the individual customer served under the special contract differs from the tariffed rate, rates themselves have not been changed. There is no adjustment to the revenue requirement of a

[21]RSA 378:18 was probably intended.

utility overall, and tariffed rates to other classes of customers are not adjusted to make up the difference between the tariffed rate and the special contract rate."

1. "Rate" Means Price

"Rate" in connection with electric utility service is not defined by any New Hampshire statute. The word in utility parlance refers to the result of the process of ratemaking in which the PUC calculates the utility's revenue needs based on its investments, operating and maintenance costs, and allowable profit. Revenue needs are then split up to be paid among various customer classes according to a schedule called a tariff. *See, e.g.*, *Appeal of Conservation Law Foundation*, 127 N.H. 606, 633 (1986); *Appeal of Public Service Co. of New Hampshire*, 125 N.H. 46 (1984). The process, however, always results in a set price, expressed as an amount of money per unit of electricity, or cents per kilowatt-hour ( ). *Id.*, 127 N.H. at 642. More often, the price itself is called a "rate." *Id.*, 127 N.H. at 642. This conforms to the colloquial understanding of the word. Webster's Third New International Dictionary ("quantity, amount or degree of something measured per unit of something else"; "a charge per unit of a public-service commodity"). It also conforms to the PUC's own rules. N.H. Code Admin. R. Puc 1601.01(e) ("The term 'rate' or 'rates' shall be all-inclusive and means any charge or price, and all related service provisions such as availability, terms of payment, minimum service period and customer contribution."). Indeed, every PSNH customer, whether the beneficiary of a special contract or not, is always described as a "ratepayer." RSA 362-C:6 does not say that the PUC is prohibited from changing PSNH's tariffs, or that it is prohibited from changing the ratemaking formula used to

develop rates. If it did, the PUC's position would be persuasive.

Instead, RSA 362-C:6 says that the PUC is prohibited from taking any action that would "result in the fixing of rates other than in the manner" set forth in the Agreement. The prohibition is against taking an action that would have a defined result. In standard ratemaking, the PUC takes a series of actions that result in the fixing of rates (*e.g.*, prices) charged to particular customers. RSA 362-C:6 precisely tracks the process of standard ratemaking in that it recognizes that there is (1) a ratemaking process, and (2) a resultant rate. The statute addresses the second part -- the result. The General Court's focus on the result -- the fixing of a rate -- demonstrates that it intended the word "rate" to have its meaning as "price" rather than any other meaning the PUC now wishes to imbue to it. Even assuming *arguendo* that the language in the statute is unclear, this Court construes legislative words according to their natural and common meanings. RSA 21:2; *State v. Telles*, 139 N.H. 344 (1994). The word "rate" in its common usage refers to price.

Customers who pay for their electricity according to the price contained in the tariff pay the tariffed rate. Customers who pay for their electricity according to a special contract discount pay a price lower than that contained in the tariff, and thus pay a lower rate. While it is true that, as the PUC says, the "tariffed rates for that class of customer remain unchanged," the rate for that *particular* customer is undeniably changed.[22]

2. The PUC has Attempted to Distinguish Things that Cannot be Distinguished

[22]The fact that the tariff rates for that class of customers "remain unchanged" does not, of course, provide any assurance that the tariff rates will not be changed in the future to recover revenues lost by the granting of special contract rate discounts. *See infra* at section I.H.

In its order, the PUC tried to create a novel distinction. In the last sentence of the passage above quoted, the PUC distinguishes between "tariffed rate" and "special contract rate." The PUC is here claiming that in the hundreds of places in New Hampshire utility law, and in the Rate Agreement, where the word "rate" appears, "rate" is sometimes modified with the adjective "tariffed" and sometimes with the adjective "special contract." This claim does not account for the fact that the term is unmodified by *any* adjective, does not help a reader of New Hampshire utility law to know when to insert the one adjective or the other, and it does not deal with the problem of exactly which adjective modifies the word "rate" in the "Rate" Agreement itself.

The PUC has attempted to distinguish things that, by their language, are the same. Instead, the word "rate" in the special contract statute, the word "rate" in the Rate Agreement statute, and the word "rate" in the Rate Agreement all must be construed to mean the same thing -- the price of electricity. Because the Rate Agreement and the Rate Agreement statute, RSA 362-C, contradict the special contract statue, RSA 378:18, standard principles of statutory interpretation -- which demand that the newer and more specific control -- apply. Accordingly, as the contracts at issue here violate the Rate agreement and the Rate Agreement statute, they are void *ab initio*.

F. The PUC's Claim that the Statutes are not Contradictory is Unsupported By the Legislative History of the Rate Agreement Statute

The General Court met for a special one-day session on December 14, 1989 for the purpose of enacting the enabling legislation to implement the Rate Agreement. Because of the emergency nature of the session, there is little legislative history. Nonetheless,

Senator (now DRED Commissioner) Bartlett, member of the "Joint Legislative Committee to Monitor the Public Service Company of New Hampshire Reorganization Proceedings" presented the proposed enabling bill to the full Senate. He spoke at length about the only amendment made to the proposal, which was to prevent shifting rate burdens among classes:

> "One change from the original agreement said that we would pass legislation as we are supposed to do under our obligations . . . . We objected to it and this legislation says that if there are changes in the plan that have to do with the rates, then it must come back for legislative approval. The second area is rate design.[23] The original agreement called for rate design. Both the Speaker and I found this to be objectionable. We were concerned that the residential rate payer had the possibility of being unfairly treated, that their rates could go up beyond the 5.5 percent. And when we talk about 5.5 in the agreement, it is 5.5 percent in revenues; it does not say 5.5 percent increase in rates.[24] We felt that this bankruptcy was not the fault of any one sector of our State and that those rate payers who are serviced by Public Service should expect to pay what would be a fair share. If we have drafted it right . . . , there will be no rate redesign outside of classes, which means that one class can not take the rates at a lower return of their revenues and place it on to another one. We think we have protected, and we hope we have, the residential rate payer by this legislation."

Journal of the Senate, Special Session, Dec. 14, 1989 at 21-23.

In this passage, Senator Bartlett refers to his concern for the shifting of rate burdens among customer classes. His Committee's "changes" resulted in the addition of sections to the enabling legislation, RSA 362-C:8 and RSA 362-C:9, quoted above. It is significant that these amendments are the only changes made to the bill as proposed.

Senator Bartlett used the word "rate" many times, and many more in passages not

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[23]Rate design, or rate structure, is the way a utility's revenue requirements are charged to various classes of ratepayers. *See*, Phillips, The Regulation of Public Utilities, 3rd ed. 1993.

[24]It is believed that Senator Bartlett or the reporter inadvertently reversed these terms.

quoted. There is no indication in any of this history that the legislature intended "rate" to mean anything other than the price customers pay for the electric service. There is also no indication that the legislature intended the artificial distinction between "tariffed rates" and "special contract rates" which the PUC invented in this case. A review of the various legislative history documents stored at the New Hampshire archives reveals no indication that "rates" was intended to meaning anything other than its natural and common meaning. CRR can find no support for the PUC's distinction in the law of any other jurisdiction.

Because the distinction the PUC attempts to create does not in fact exist, there is a clear contradiction between the 1913 special contract statute, and the 1989 Rate Agreement and its enabling legislation. Because there is a contraction, standard rules of statutory interpretation apply, and the newer more specific legislation controls over the older less specific statute. Accordingly, the special contracts addressed by this appeal are void *ab initio*.

G. No "Special Circumstances" Exist to Justify These Special Contracts

As noted above, New Hampshire law allows special utility contracts "if special circumstances exist which render . . . departure from the [tariffs] just and consistent with the public interest." RSA 378:18.

Few special contracts for electric utility rates were granted until several years ago, and up through about 1992 only a handful existed. They were generally restricted to facilities which, for a variety of reasons, had special or unique electricity needs that were not addressed by the tariffs. For example, in March 1992, the PUC approved a special

contract between PSNH and Crotched Mountain Rehabilitation Center (CMRC). *In re Public Service Company of New Hampshire Special Contract with Crotched Mountain Rehabilitation Center*, 77 NH PUC 145 (1992). In that case, it appears that the Rehabilitation Center had installed its own electric generating equipment for reasons related to its purposes as a health care facility, and desired PSNH service only adjunct to its own generation capacity and only in certain circumstances. In approving the special contract the PUC found that "the special contract would enable CMRC to receive service unlike any currently provided for by PSNH in its general rate schedules." *Id.* In other words, the situation of CMRC was unique, not contemplated by any tariff.

However, beginning several years ago, PSNH began applying for, and the PUC began approving, many more special contracts. Currently PSNH has about 75 special contracts for electric utility service with many of its industrial customers. (Special contracts are not available for commercial or residential consumers.) Special contracts now account for nearly one-third of PSNH's industrial load. *PUC Preliminary Plan for Restructuring New Hampshire's Electric Utility Industry*, Docket DR 96-150 at 32, fn. 20 (September 10, 1996).

The PUC has failed to find any special circumstances in the special contracts it approved in this case. All five companies in this appeal are typical large industrial electric users who have simply threatened to cease buying electricity from PSNH. PSNH has not offered any evidence of special circumstances.

The Teradyne contract is based upon PSNH's claim that without a special contract Teradyne would "increase its external purchases of printed circuit boards and would

increase its out-of-state production capacity," and that "electric costs represent a significant portion of Teradyne's total operating costs." PSNH maintains that the special contract will "provide Teradyne with an incentive to expand production capacity in New Hampshire which would result in returning outsourced product back to New Hampshire." PSNH acknowledges that even with the special contract, "Teradyne's electric rates will be higher than the rates paid by its principal competitors." *PUC Order No. 21,953*, Appendix to Notice of Appeal at 46-47.

The Kollsman contract is based upon PSNH's claim that without a special contract Kollsman would "initiate a relocation of its research, development and manufacture of avionics instruments to a facility located in the Mid-West," that "electric costs represent a significant portion of Kollsman's total operating costs," and that it needs rate relief to remain competitive with its industry. *PUC Order No. 21,957*, Appendix to Notice of Appeal at 60.

The Miniature Precision Bearings contract would be granted as an "incentive for expansion" in New Hampshire and so that it can "remain competitive in existing markets and expand into new markets." *PUC Order No. 21,987,* Appendix to Notice of Appeal at 75-76.

The Textron contract is based on PSNH's claim that "absent approval . . . Textron would relocate its Dover and Farmington New Hampshire facilities to other existing Textron facilities in other states," that it "will help Textron to remain competitive in a price-sensitive industry," and that the electric rate reductions in the contract are a "major component in its plans to . . . maintain[] jobs in this state." *PUC Order No. 21,959*,

Appendix to Notice of Appeal at 92.

The Wyman-Gordon contract is based on the PUC's understanding that it is "an economic development special contract designed to allow Wyman-Gordon to locate a new state-of-the-art furnace for titanium investment casting at its facility in Franklin, New Hampshire," that "electricity represents a significant cost of production for the new titanium casting operation," that "[a]bsent approval [of the special contract], Wyman-Gordon will not locate the new titanium casting operation at its Franklin facility," and that the special contract is "necessary to offset the enticements by the State of Connecticut to expand its titanium plant" there. *PUC Order No. 21,988*, Appendix to Notice of Appeal at 102.

While the need for business retention, job creation, and economic development in New Hampshire are important goals, they are not the "special circumstances" required by the statute. Surely all, or nearly all, of PSNH's large industrial customers are in a position similar to the five that are the subject of this appeal -- they pay among the highest electric rates in the country, and that makes it hard to compete with facilities in their industry which pay lower rates. The fact that each of these five companies have been granted special contracts for nearly identical reasons is evidence that they do not face "special circumstances." Further, the fact that rates for one-third of PSNH's load is now created by special contract, and not by tariff, is further evidence that the uniqueness necessary for "special circumstances" does not exist.[25]

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[25]It should be noted that contained in each of the files which the PUC has provided to this court and which constitute the record in this case, there is "testimony" of PSNH employees as to

(continued...)

The PUC's orders in each of the contracts in this case are merely conclusory re-statements of PSNH's own justification for the contracts. Because the "evidence" itself is suspect, and because even if true does not state any special circumstances, the special contracts which are the subject of this appeal should not have been approved by the PUC.

In fact PSNH's reasons for its recent rash of special contracts is suspect. The legislature and the PUC are now deregulating the electricity market. In the period leading up to deregulation of an industry, it is classic monopoly behavior to enter contracts that operate after competition starts. "The dominant firms commonly are a step ahead, creating barriers, engaging in pin-point pricing, locking up major customers with long-term discounts, and proposing mergers." William G. Shepherd, *Dim Prospects: Antitrust After the Deregulation of Telecommunications and Electricity*, 41 Antitrust Bulletin __ (1996). In PSNH's case, the merger already happened. PSNH is now attempting to create barriers to the entry of other firms into the market by using special contracts to create pin-point pricing and to lock up major customers with these long-term discount contracts. Monopolistic behavior is against the public interest. *See e.g.*, William L. Letwin, *Congress and the Sherman Antitrust Law: 1887-1890*, 23 U. CHI. L. REV. 221 (1956). Moreover, in light of the unique antitrust provisions in New Hampshire's Constitution, PSNH's behavior is unlawful. N.H. Const., Pt. 2, Art. 83 ("Free and fair competition in the trades and industries is an inherent and essential right of the people

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[25](...continued)
the need for the special contract in each case. Despite its appearance, this "testimony" is not the transcript of any proceeding. Instead it is "pre-filed testimony" required by PUC rule, N.H. Code Admin. R. Puc 202.08, in which PSNH states its position in a question-and-answer format rather than in standard prose.

and should be protected against all monopolies and conspiracies which tend to hinder or destroy it.").

H. Special Contracts have Potential to Result in Rate Design

To CRR's knowledge, PSNH has never disclaimed the probability that it will ask the PUC for residential and commercial ratepayers to make up for the lost earnings which

have resulted from special contracts approved by the PUC.[26] In fact, the PUC has specifically stated in its approval of each contract on appeal here that PSNH may request such a rate transfer, and that the PUC would consider it:

> "[D]uring any rate case or rate redesign filed by PSNH during the life of [this special contract], the Commission will consider whether any changes should be made to the revenue requirements or cost studies as a result of the discounted rates afforded [this industrial customer] by our approval today of this special contract."

Appendix to Notice of Appeal at 41 (Teradyne contract); *Appendix to Notice of Appeal* at 57 (Kollsman contract); *Appendix to Notice of Appeal* at 72 (Miniature Bearings contract); *Appendix to Notice of Appeal* at 89 (Textron contract); *Appendix to Notice of Appeal* at 108 (Wyman-Gordon contract).

The quoted language may sound cryptic, but its meaning is clear. The "revenue requirements" to which the PUC refers is the product of the ratemaking formula described earlier. The PUC is thus indicating to PSNH that PSNH is welcome to request an increase in its revenue requirements to make up for the revenue it will have lost due to the discounts it granted to special contract customers.

Thus, each of the special contracts which are the subject of this appeal "potentially could increase rates," RSA 362-C:9, and could cause rate design changes forbidden by

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[26]It has been estimated by PSNH itself that the special contracts approved as of December 1, 1995 will result in the following loss of revenue to PSNH:

Year	1996	1997	1998	1999	2000	2001	2002
Lost revenue/year ($millions)	16.61	19.78	22.171	22.614	23.134	23.425	23.878

Re ED & BR Rates, PUC Docket No. DR 95-180, PSNH answer to OCA data request NOCA-01 (Dec. 1, 1995)

the Rate Agreement enabling statute, RSA 362-C:8. The legislative rate design review was the only amendment the legislature made to the proposed Rate Agreement bill, and its importance cannot be exaggerated. Yet none of the contracts have been approved by the legislature, as the enabling statute envisions. Accordingly, the special contracts violate the finality section of the enabling statute, RSA 362-C:6, and are void.

II. These Five Special Contracts Unlawfully Create ED&BR Rates, Which Are Provided for by Statute

All of the contracts which are the subject of this appeal were approved by the PUC on the basis of industrial customers' claims either that lower electric rates would lead to economic development in the State of New Hampshire, or that without lower rates the companies will move their facilities elsewhere.[27]

In legislation enacted in 1995, the General Court specifically addressed the negotiation of special rate reductions for these purposes. The Legislature directed that:

> "all electric public utilities serving retail customers may file with the commission generally available rate schedules for the provision of economic development rates and/or retention rates to industrial customers."

RSA 378:11-a.

The legislature defined "economic development rates" to mean "rates, the purpose of which is to attract new industrial companies to the state and to encourage expansion of existing industrial companies that would otherwise not occur in the state." RSA 378:11-a. It defined "retention rates" to mean "rates, the purpose of which is to retain existing industrial companies that would otherwise leave the state." *Id.*

The new legislation envisions the creation of economic development rates and retention rates through the standard ratemaking process through which rate tariffs are created. Here, the PUC has created economic development rates and retention rates

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[27] *See* Various PUC orders approving special contracts, language quoted *supra*. Teradyne, *PUC Order No. 21,953*, Appendix to Notice of Appeal at 46-47; Kollsman, *PUC Order No. 21,957*, Appendix to Notice of Appeal at 60; Miniature Precision Bearings, *PUC Order No. 21,987,* Appendix to Notice of Appeal at 75-76; Textron, *PUC Order No. 21,959*, Appendix to Notice of Appeal at 92; Wyman-Gordon, *PUC Order No. 21,988*, Appendix to Notice of Appeal at 102.

through contract, a process not in accord with the statute.

The 1913 Special Contract statute allows the PUC to deviate from a utility's tariffs and authorizes contracts for rates other than the tariffed rates. The new statute provides that economic development and retention rates be offered through tariffs.

As noted above, when statutes which deal with the same subject matter are contradictory the later controls over the earlier. *Appeal of Public Service Company of New Hampshire*, 130 N.H. 265 (1988). When one statute handles the subject matter in general terms, and the other in specific terms, the specific statute controls. *In re Laurie B.*, 125 N.H. 784 (1984); *State v. Bell*, 125 N.H. 425 (1984); *In re Robert C.*, 120 N.H. 221 (1980). When one statute is both newer and more specific, the choice is particularly easy. *Board of Selectmen of Town of Merrimack v. Planning Board of Town of Merrimack*, 118 N.H. 150 (1978).

The two statutes address the same subject matter. The 1913 statute allows the PUC to handle the matter one way, while the 1995 statute directs that the PUC handle it a different way and is 82 years newer. Thus the new statute eliminated the PUC's authority to implement a special rate discount based upon economic development or retention, and the PUC has no power or authority to issue an order approving such special contracts.

Accordingly, all these special contracts, which were approved after the effective date of the new statute, are void.

III. The Special Contracts Were Approved According to a PUC "Checklist" Which is an Unlawfully Promulgated Rule

In each of the special contracts that are the subject of this appeal, the PUC found that PSNH's application was "made pursuant to . . . the Checklist for Economic Development and Business Retention Special Contracts." *Appendix to Notice of Appeal* at 45 (Teradyne contract); *Appendix to Notice of Appeal* at 59 (Kollsman contract); *Appendix to Notice of Appeal* at 74 (Miniature Bearings contract); *Appendix to Notice of Appeal* at 91 (Textron contract); *Appendix to Notice of Appeal* at 101 (Wyman-Gordon contract). This "checklist" was created by the PUC in violation of New Hampshire's Administrative Procedure Act, thus invalidating any action the PUC has taken pursuant to it.

A. Nature and Effect of Agency Rules

Agency rules must be promulgated pursuant to the rulemaking procedure set forth in RSA 541-A, which includes notice, publication in the rulemaking register, filing with the director of legislative services, public hearing and comment, making public the final proposed rule, review by the Joint Legislative Committee on Administrative Rules, and publication of the final rule. *Administrative Procedure Act*, RSA 541-A:1 *et seq.* This required process is necessary for the public to know what its government is doing and so people effected by the rule know how to comply. *Appeal of Marmac*, 130 N.H. 53 (1987).

Administrative agencies are not permitted to invent *ad hoc* administrative procedures or to promulgate rules according to any other procedure. *Appeal of Nolan*,

134 N.H. 723, 728 (1991); *Appeal of John Denman*, 120 N.H. 568, 573 (1980).

When an agency does so, the "rule" has no status; it is not a "rule" and it is not enforceable. RSA 541-A:22. "We stress again that State agencies must comply with the Administrative Procedures Act if their 'rules' are to have effect." *Petition of Daly*, 129 N.H. 40, 41 (1986), quoting *Appeal of John Denman*, 120 N.H. 568, 573 (1980) (internal quotation and parenthetical omitted). Thus any action taken pursuant to a "rule" that was not properly promulgated, is void. *Appeal of Nolan*, 134 N.H. at 728-29; *Great Lakes Container Corp. v. National Union Fire Ins. Corp.*, 727 F.2d 30, 32 (1st Cir. 1984); *see also*, 1994 *Op. Att'y Gen.* 3 (the administrative procedure act "would cast substantial doubt upon the enforceability of [an agency policy] if it were not formally adopted as a rule").

B. Promulgation of the "Checklist"

As noted, RSA 378:18 allows special contracts when "special circumstances exist which render such departure from the general schedules just and consistent with the public interest." "Special circumstances" are not defined in the statute, and were not theretofore defined by any rule or regulation.

In 1991, the PUC was faced with a decision whether to grant a special contract for gas service in a specific docket (DR 91-172) between EnergyNorth, Inc. and Hadco Corporation. Because the Commission found that it was difficult and inefficient to evaluate special contract applications without reference to generic criteria, the PUC broadened the proceeding for the purpose of determining generically whether, or under

what "special circumstances," it should grant special utility rate discount contracts.

The product was PUC order # 20,633. *Generic Discounted Rates Docket*, 77 NH PUC 650 (1992). The decision developed a loose set of findings (the merits of which CRR is not now appealing), and then "ordered that special contracts submitted shall be reviewed in accordance" with the decision. *Id.*, NH PUC at 655 (emphasis added).

Thereafter, the PUC announced that it would distill the PUC's findings into a checklist containing criteria. In June, 1993 the PUC issued its "Checklist for Economic Development and Business Retention Discounted Rates," attached to PUC Order 20,882. *Generic Discounted Rates Docket*, 78 NH PUC 316 (1993).

The Checklist calls for any utility seeking a special contract based on economic development or business retention (such as the contracts at issue in this appeal) to provide to the PUC a sufficient showing on ten specific criteria. The Checklist is then used by the PUC to determine whether a proposed special contract meets the Commission's criteria.

The PUC created the Checklist in its quasi-judicial role through an order resulting from a contested case, rather than in its quasi-legislative role through the rulemaking process. N.H. Code Admin. R. Puc 101.01(a). ("Adjudicative proceeding" means that procedure to be followed in contested cases").

However, the Checklist operates as a rule and should be considered a rule.

C. The Checklist is a Rule

What constitutes a rule is defined by statute:

> "each regulation, standard or other statement of general applicability adopted by an agency to (a) implement, interpret or make specific a statute enforced or administered by such agency or (b) prescribe or interpret an agency policy,

> procedure or practice requirement binding on persons outside the agency, whether members of the general public or personnel in other agencies. The term does not include . . . (b) informational pamphlets, letters or other explanatory material which refers to a statute or rule without affecting its substance or interpretation . . . ."

RSA 541-A:1, XV (emphasis added).

The Checklist has all the hallmarks of a rule.

The statute does not define "special circumstances" and the PUC Checklist developed in the *Generic Discounted Rates Docket* attempted to do just that. Thus, the Checklist interpreted and made specific a statute enforced by the PUC. Further, because the order in the *Generic Docket* required that utilities submit special contract applications in accord with the Checklist, the Checklist implements the statute. Because the order set forth agency policy that thereafter the PUC would accept applications in accord with the Checklist, its prescribes an agency policy. Also because of the directive that special contract applications "shall" be submitted pursuant to the Checklist, the *Generic Docket* intended a procedure or practice requirement binding on persons outside the agency. In short, the Checklist in the *Generic Docket* fulfills the entire statutory definition of a rule.

The Checklist was developed by the PUC in its quasi-judicial, and not its quasi-legislative role. *Appeal of Toczko*, 136 N.H. 480 (1992) ("New Hampshire courts have distinguished cases affecting private rights, which require adjudicative hearings, from those affecting public rights, which require . . . legislative hearings.") The requirements set forth in the *Generic Docket* were wholly prospective, and were not intended to merely decide a dispute between parties. Even the name of the docket, *Generic Discounted Rates Docket*, indicates in its generic-ness, that it was generally and prospectively

applicable and therefore a rule.

It cannot be said that the PUC's approval of special contracts pursuant to an unlawfully promulgated rule is a mere "procedural irregularity" such as the PUC failing to act on a motion within a statutory 10-day deadline. *Appeal of Concord Natural Gas Corp.*, 121 N.H. 685, 691 (1981). Instead the PUC's action here was an end-run around orderly administrative procedure. *Appeal of Nolan*, 134 N.H. 723 (1991).

D. The PUC's Claim that the Checklist is Merely Informational or Explanatory Cannot be Supported

The PUC claims that the Checklist is not a rule, but rather it is an "informational pamphlet, letter or other explanatory material" exempt from the procedural requirements of the Administrative Procedures Act. *Appendix to Notice of Appeal* at 10. The claim, however, cannot be supported.

"[W]hen a policy modification constitutes a substantive change in agency policy, it is defined as a rule, not as an explanation of existing policy." *Petition of Daly*, 129 N.H. 40 (1986). In this case, the *Generic Docket* made specific substantive policy choices. It defined under what circumstances special contracts would be granted. There was no previous policy on the matter, and the statute did not direct any. Thus, the Checklist cannot be chalked up to a mere explanation of existing policy -- it was a substantive creation of policy and therefore a rule.

Moreover, compliance with the Checklist is mandatory. The PUC's order requires that utilities "shall" submit special contract applications pursuant to the Checklist. *Generic Docket*, 77 NH PUC at 655. *Appeal of Concord Natural Gas Corp.*, 121 N.H.

685, 691 (1981) ("absent an indication of . . . intent to the contrary, the word 'shall' acts as a command"). Because of the mandatory nature, the Checklist cannot be passed off as merely informational or explanatory.

The PUC rebuts that mandatory nature of the checklist by claiming that because it has never rejected a special contract for failure to supply all the information requested by the Checklist, the Checklist is not a rule. *Appendix to Notice of Appeal* at 9. But the fact that an agency does not fully enforce a rule does not effect its existence as a rule. *See Appeal of Fugere*, 134 N.H. 322 (1991) (agency must follow its own rules). In New Hampshire for instance, allowing one's pigs to trespass, docking the tail of a horse, or having sexual intercourse with one who is not one's spouse, are all criminal violations which rarely (if ever) result in a prosecution. RSA 635:3; RSA 644:8-b; and RSA 645:3. Yet all are still laws. Similarly, the PUC has a rule that the caption of all pleadings submitted must contain the proscribed language "The State of New Hampshire Before the New Hampshire Public Utilities Commission." N.H. Admin. R. Puc 204.02. CRR sees plenty of pleadings missing the words, but knows of no pleading being rejected for failure to comply. There is no doubt, however, that the caption requirement is still a rule.

This Court has before been faced with the decision of whether an agency pronouncement is a "rule" or merely informational or explanatory. In *Appeal of Concord Natural Gas Corp.*, 121 N.H. 685, 689 (1981), this Court held that an order prescribing a uniform system of accounts fell within the statutory definition of a rule. In *Petition of Pelletier*, 125 N.H. 565 (1984), the New Hampshire Department of Health and Welfare adopted by rule a set of criteria to determine under what circumstances an elderly person

would be admitted to a public nursing home. During the promulgation of the rule, the Department circulated a policy bulletin which defined to whom the criteria was to apply but which was not noticed in accord with the Administrative Procedure Act. After the rules were adopted, the Department was faced with a person who was, according to the improperly circulated bulletin, outside the definition, and the Department did not follow the rule's criteria. This Court found that "[i]nasmuch as the adoption of this policy constituted the promulgation of a substantive rule, adherence to the rulemaking procedures of RSA chapter 541-A was required. Because these statutory procedures were not followed, the division's [policy bulletin] is without effect." *Id.*, 125 N.H. at 571. Thus, agency criteria, whether called a "policy bulletin" or a "checklist," are rules for the purposes of the administrative procedure act.

Because the Checklist is a rule and should have been promulgated with regard to the Administrative Procedure Act, any reliance for any purpose by the PUC upon the checklist is invalid. The special contracts at issue here have been measured for acceptance according to the criteria set forth in the checklist. As such they are void *ab initio*.

CONCLUSION & REQUEST FOR REMEDIES

Based on the foregoing, CRR requests that this Court declare the special contracts at issue here void *ab initio*. In the alternative, CRR requests that the PUC be directed to enter an order permanently prohibiting PSNH from seeking in any future rate proceeding recovery of the revenues it has forgone because of the contracts.

Respectfully submitted,

Campaign for Ratepayers Rights
By its Attorney,

Law Office of Joshua L. Gordon

Dated: August 8, 2000

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REQUEST FOR ORAL ARGUMENT AND CERTIFICATION

Counsel for Campaign for Ratepayers Rights requests that Attorney Joshua L. Gordon be allowed 15 minutes for oral argument notwithstanding time given to any other party.

I hereby certify that on September 27, 1996, a copy of the foregoing will be forwarded to Gerald Eaton, Public Service Company of New Hampshire, 1000 Elm St., Box 330, Manchester, NH 03105; J. Denny Houston, Textron Automotive Interiors, Industrial Park, PO Box 1504, Dover, NH 03821; Public Utilities Commission, 8 Old Suncook Rd., Concord, NH 03301; Office of Consumer Advocate, 8 Old Suncook Rd., Concord, NH 03301; Wynn Arnold, Office of the Attorney General, 33 Capital St., Concord, NH 03301; Chuck Douglas, Douglas & Douglas, Christian Mutual Bldg., 6 Loudon Rd., Concord, NH 03301

Dated: August 8, 2000

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