

[REDACTED]

This State's law, the commission's practice, and the evidence presented at the hearings all demand that we remand this case to the commission for the limited purpose of deducting customer deposits and customer advances from the rate base, and for the purpose of making whatever adjustments in the overall rate of return as may be proper. *See Pub. Serv. Co. v. State*, 113 N.H. 497, 511, 311 A.2d 513, 522 (1973); *New England Tel. & Tel. Co. v. State*, 113 N.H. 92, 100, 302 A.2d 814, 820 (1973); *New England Tel. & Tel. Co. v. State*, 104 N.H. 229, 241, 183 A.2d 237, 246 (1962).

V

Conclusion

In summary, we sustain the commission's actions regarding attrition, depreciation, and cost of equity capital. We reverse its decision to include customer deposits and customer advances in the rate base, and remand the case to the commission directing it to deduct these items from the rate base and to establish a new rate order reflecting that deduction. Remand for this limited purpose will not unduly burden the commission and may be made on the record before it, *see Soc'y For The Protection of New Hampshire Forests v. Site Evaluation Comm.*, 115 N.H. 163, 175, 337 A.2d 778, 787 (1975), and it will serve the purpose of clearly establishing the ratemaking principle that customer deposits and customer advances are not includible in a public utility's rate base.

Remanded.

All concurred.

[REDACTED]

Public Utilities Commission
No. 78-219

NORTHERN VIEW WATER SUPPLY CO., INC.

v.

PUBLIC UTILITIES COMMISSION

May 17, 1979

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Stanley, Tardif & Shapiro, of Concord (*David E. Tardif* orally), for the company.

D'Ambruoso & Carroll, of Concord (*Dom S. D'Ambruoso*, special counsel, orally), for the Public Utilities Commission.

J. Michael Love, of Manchester, by brief only, for the Legislative Utility Consumers' Council.

BOIS, J. This is an appeal brought pursuant to RSA 541:6 from order No. 13,228 entered on July 19, 1978, by the public utilities commission (commission) following a hearing on a petition brought by Northern View Supply Co., Inc. (Northern View), a public water utility, for exemption from commission regulation. RSA 362:4 (Supp. 1977). Northern View contended at the commission hearing that it was a public utility company serving fewer than ten customers, thereby qualifying it to apply for an exemption. The company further argued that granting it an exemption would be "consistent with the public good." *Id.*

The commission specifically refrained from ruling on the question whether Northern View served fewer than ten customers. The commission ruled that even if Northern View did serve fewer than ten customers and were eligible for an exemption, it would be "unconscionable" to grant it one. The commission ruled that the "public good requires that [Northern View] continue in existence as a public water utility with the concurrent obligation within its franchised area." We affirm the commission's order.

A most significant role played by the commission is protecting consumers. See *Wisconsin's Environmental Decade, Inc. v. Pub. Serv. Comm'n.*, 81 Wis. 2d 344, 351, 260 N.W.2d 712, 715-16 (1978). The commission found that granting Northern View an exemption from the public utility regulatory scheme would allow the company to carry out its plan to cut off service to three single family residential customers, who would then be forced to provide their own water source at a cost of \$3,000-\$5,000 per family. The commission found that this would be particularly unjust in the present case because these homeowners had purchased their houses in reliance upon the fact that a public utility company would supply them water. The owner of Northern View was also the developer of the project.

Our scope of review in appeals from the commission has been adequately set forth in *Legislative Util. Consumers' Council v. Pub. Serv. Co.*, 119 N.H. 332, 402 A.2d 626 (1979), and *Legislative Util. Consumers' Council v. Granite State Elec. Co.*, 119 N.H. 359, 402 A.2d 644 (1979). The record in the present case is replete with evidence supporting the commission's ruling denying Northern View an exemption from public utility regulation.

The commission's accompanying directive ordering Northern View to "bill either the individual apartment occupants and/or [sic] the apartment building owner per the fixture rate per apartment," is within the wide ambit of power that the agency has in utility ratemaking. See *Bacher v. Pub. Serv. Co.*, 119 N.H. 356, 402 A.2d 642 (1979), citing *Legislative Util. Consumers' Council v. Pub. Serv. Co.*, 119 N.H. 332, 340, 402 A.2d 626, 631 (1979). See also RSA 378:7.

Appeal dismissed.

All concurred.

Original
No. 79-098

JANET BAGONZI

v.

GARY MILLER, DIRECTOR DIVISION OF MENTAL HEALTH

May 17, 1979

Wiggin & Nourie, of Manchester (*William S. Orcutt* orally), for the plaintiff.

Thomas D. Rath, attorney general (*Wilbur A. Glahn, III*, assistant attorney general, orally), for the defendant.

MEMORANDUM OPINION

On March 2, 1979, the Grafton County Probate Court (*Frederick J. Harrigan*, Acting Judge), pursuant to RSA 464:4, appointed John A. Bagonzi, of Haverhill, temporary guardian for plaintiff Janet Bagonzi,