

State of New Hampshire
Public Utilities Commission

DT 07-027

KEARSARGE TELEPHONE COMPANY, WILTON TELEPHONE COMPANY,
HOLLIS TELEPHONE COMPANY, AND MERRIMACK COUNTY TELEPHONE
COMPANY PETITIONS FOR APPROVAL OF ALTERNATIVE FORM OF
REGULATION.

Phase 3

Motion for Leave to File Proposed Findings and Rulings

Now comes Daniel Bailey, pursuant to NH Code Admin. R. Puc 203.07, and Moves for Leave to File Proposed Findings and Rulings, and in support states as follows:

1. Hearings haven taken place in this docket on December 4 and 5 of 2007, and on September 29 and October 1 of 2009. The Commission issued various Orders in this docket, including Orders numbered 24,852, 24,885, 25,103, and 25,130. Further hearing is scheduled for September 27, 2010.

2. This docket involves complex issues of fact and law.

3. The parties' filing of proposed findings and the Commission's issuance of Findings of Fact & Rulings of Law would serve to clarify the complex issues presented in the proceeding, promote administrative efficiency, and would be of assistance to the Commission in its review of the evidence and law in preparation of its final order in this matter. It may also assist one or more parties in the presentation of their respective positions and legal arguments to the Commission.

4. NH Code Admin. R. Jus 801.02(b) provides that the model rules of practice and procedure "...shall also apply to an adjudicative proceeding conducted by an agency that has adopted rules governing the conduct of administrative hearings only to the extent that the agency's rules do not address a practice or procedure addressed in the model rules." The NH Code Admin. R. Puc 200 series does not include a rule of practice on the submission of proposed findings of fact and conclusions of law.

5. NH Code Admin. R. Jus 812.05, "Proposed Findings of Fact and Conclusions of Law," provides as follows:

- (a) Any party may submit proposed findings of fact and conclusions of law to the presiding officer prior to or at the hearing.
- (b) Upon request of any party, or if the presiding officer determines that proposed findings of fact and conclusions of law would serve to clarify the issues presented at the hearing, the presiding officer shall specify a date after the hearing for the submission of proposed findings of fact and conclusions of law,
- (c) In any case where proposed findings of fact and conclusions of law are submitted, the decision shall include rulings on the proposals.

6. RSA 541-A:35 provides: "... If, in accordance with agency rules, a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding."

7. RSA 541-A:30-a, V, provides:

Notwithstanding the provisions of RSA 541-A:22, I, an agency shall apply the model rules as necessary in a particular adjudicative proceeding to the extent that the agency's rules or governing statutes do not address the procedures in the model rules, and provided that:

- (a) Such use shall not conflict with a statute, judicial decision, or other rules of the agency;
- (b) Notice shall be given to all parties with the notice pursuant to RSA 541-A:31, III of the extent to which the model rules will apply to the proceeding; and
- (c) The agency shall provide copies of the notice to the attorney general, the director of the office of legislative services, and the joint legislative committee on administrative rules.

8. After diligent review of the Commission rules, statutes and caselaw, counsel believes that the submission of and the ruling on proposed findings and

rulings do not appear to conflict with any statute, judicial decision, or other rules of the Commission.¹

9. Counsel for Mr. Bailey has forwarded this motion to the parties in this docket, and counsel for Mr. Bailey represents as follows: The OCA supports the motion and concurs in the relief requested, the Staff takes no position on the motion, and the TDS Companies oppose the motion.

10. The final hearing in this matter is scheduled for September 27, 2010.

Wherefore Daniel Bailey respectfully requests that the Commission:

- A. Grant leave for the parties to file proposed findings and rulings at the close of the hearing or as appended to briefs,
- B. Provide notice to the parties of the application of model rule NH Code Admin. R. Jus 812.05 to this adjudicative proceeding, as is required by RSA 541-A:30-a, V (b),
- C. Provide copies of the notice to the attorney general, the director of the office of legislative services, and the joint legislative committee on administrative rules, as is required by RSA 541-A:30-a, V (c),
- D. Rule on this motion as soon as feasible in order to allow the parties to plan appropriately for the hearing, and
- E. Grant such other relief as is just.

¹In 1992, the Commission found no statute or Commission rule provided for findings of fact and rulings of law. Re Public Service Company of New Hampshire, Order No. 20,594, 77 NH PUC 527, at 2 (1992). In 1996, the phrase "...in accordance with agency rules..." in RSA 541-A:35 was interpreted as not requiring agency ruling on proposed findings if the agency's rules did not require it. Appeal of New Hampshire Dept. of Employment Sec., 140 N.H. 703, 710-711 (1996). Then, in 1998, the Legislature passed RSA 541-A:30-a (Chapter Law 298:2, eff. July 1, 1998). RSA 541-A:30-a, II required the attorney general to draft and adopt model rules for adjudicative proceedings. There does not appear any post-1998 caselaw, Commission ruling, or Commission statute that conflicts with the model rule provisions cited above.

Respectfully submitted,
On Behalf of Daniel Bailey
By His Attorney,

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Dated: September 20, 2010

Certification of Service

I certify that a copy of this document was sent to staff and all parties to this docket by email on this date and that the original and 7 copies of this document was delivered to the Commission on this date.

New Hampshire Legal Assistance



Daniel Feltes
Attorney for Daniel Bailey

Dated: September 20, 2010