

DT 99-086

BELL ATLANTIC

Special Contract with University of New Hampshire

Order Denying OCA Motion for Rehearing or Reconsideration

O R D E R N O. 23,372

December 21, 1999

On December 6, 1999, the Office of Consumer Advocate (OCA) filed a Motion for Rehearing or Reconsideration of the New Hampshire Public Utilities Commission's (Commission) Order No. 23,348, issued November 22, 1999. Order No. 23,348 denied the motions of the OCA, the Destek Group and Vitts Networks, Inc. for rehearing of Order No. 23,255 (approving a special contract between Bell Atlantic-New Hampshire (BA) and the University of New Hampshire (UNH)).

OCA raises two arguments in its motion for rehearing or reconsideration of Order No. 23,348. First, OCA states that it filed its motion "in order to correct certain errors of law concerning OCA's standing to move for rehearing." In Order No. 23,348, the Commission noted that the OCA had not shown that the ratepayers it represents will be directly affected by the order approving the special contract, since the effect on rates could only be determined in a subsequent rate setting proceeding. On this basis the Commission found that the OCA lacked standing to petition for reconsideration, but we decided, nevertheless, to "address the issues and arguments raised by OCA." Order No.

23,348 at 8. OCA claims that the Commission has thus established a new and "dangerous" interpretation of OCA's standing to challenge Commission Orders.

OCA also expresses "concerns" with the contract approval process. OCA argues that it presented evidence in its July 23, 1999, Motion for Reconsideration of Order No. 23,255, concerning its allegations of the appearance of a conflict of interest on the part of a staff member who participated in the Commission's consideration of the underlying special contract filing. OCA argues that instead of addressing this matter or issuing additional guidelines for "extracurricular" activities of staff, the Commission "struck at the OCA's traditional statutory standing", and has tried to "silence the OCA by removing its standing to participate in this Commission docket."

Commission Discussion:

At the outset, we note that it is not customary, nor is it contemplated by the statute or the Commission's rules, to have several rounds of motions for rehearing or reconsideration. In the interest of administrative efficiency, however, we will rule on the OCA's motion, so that the record may be quite clear about the events of this docket.

We address first OCA's contention that the Commission's determination that the OCA lacked standing to request a rehearing was in error. This issue is moot and does not require further

consideration in this docket. In Order No. 23,348, while noting the issue of OCA's standing, the Commission nonetheless fully considered the substantive arguments of the OCA in its Motion for Reconsideration of Order No. 23,255, filed July 23, 1999. OCA has not been prejudiced, as it has been accorded every respect and consideration that a full party intervenor would have received, despite the Commission's determination as to issues of standing.

With respect to OCA's second issue, that there was an appearance of impropriety in the process by which the Commission considered this case and that we failed to consider OCA's arguments to this effect in its rehearing motion, OCA's assertions lack merit. We fully considered this claim in our rulings on the various motions for rehearing and reconsideration of Order No. 23,255. To its arguments in the Motion for Reconsideration of Order No. 23,255, OCA now adds new arguments, which could have been raised in its original motion. Although we could ignore these arguments as untimely, we will consider them on the merits, as well.

First, OCA asserts that Bell Atlantic's filing in support of the Asynchronous Transfer Mode Tariff arrives at the same total cost amount as the UNH/BA special contract but in a different way, and that this constitutes "evidence that even BA recognizes that its earlier cost study in support of the special contract was inadequate." Whether BA recognized the inadequacy

of its filing or not after the fact is irrelevant, because the Commission did not rely on BA's cost filing in approving the BA/UNH special contract.

Second, OCA repeats its observation that Ms. Bailey was chairman of the Distance Learning Commission. OCA is correct in its observation that the Commission disagreed with OCA on the import of this fact, and of the other evidence associated with the DLC which OCA adduced in its July 23, 1999 motion. In the instant motion, OCA acknowledges, albeit begrudgingly, that "Ms. Bailey did not knowingly act improperly." In Order No. 23,348, we expressly and affirmatively determined that the OCA had not shown any basis to find bias or conflict of interest:

"We find no merit in the claims that Staff Assistant Chief Engineer Bailey had a conflict of interest in this docket....We have confidence in the analysis prepared by our Staff in this docket and also note that we believe Staff has acted in a fair and objective manner in accordance with all the Commission's requirements and rules." Order No. 23,348 at 20, 21.

Third, OCA argues for the first time in its December 6, 1999 Motion for Rehearing or Reconsideration that the Commission should issue "appropriate guidelines on behavior and participation" for staff in activities outside the Commission where a potential conflict might arise. We have a comprehensive Ethics Policy that covers many aspects of employee and Commissioner conduct, and this policy is working well. We are not persuaded by the OCA's rhetoric, impassioned as it may be,

that further guidelines are necessary.

Finally, OCA, at the close of its motion, asserts that the Commission has "struck at the OCA's traditional statutory standing" in an "attempt to silence the OCA," rather than address its concerns of bias or impropriety. OCA provides no support for this assertion. The assertion is false. We consider it unworthy of further discussion.

Based upon the foregoing, it is hereby

ORDERED, that the OCA's Motion for Rehearing or Reconsideration is hereby denied.

By order of the Public Utilities Commission of New
Hampshire this twenty-first day of December, 1999.

Douglas L. Patch
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Claire D. DiCicco
Assistant Secretary