

DT 01-221

KEARSARGE TELEPHONE COMPANY

**Petition for Approval of an Alternative Form of Regulation -
Order Addressing Level of Temporary Rates and Effective Date**

O R D E R N O. 24,056

September 19, 2002

APPEARANCES: John C. Lightbody, Esq. for Kearsarge Telephone Company; Anne Ross, Esq. for the Office of the Consumer Advocate on behalf of residential consumers, and E. Barclay Jackson Esq. for the Staff of the New Hampshire Public Utilities Commission.

I. PROCEDURAL HISTORY

On November 9, 2001, Kearsarge Telephone Company (KTC) filed with the New Hampshire Public Utilities Commission (Commission) a petition for approval of an Alternative Form of Regulation Plan pursuant to NH RSA 374:3-a and NH Admin Rule Puc 206.07. On February 1, 2002, a prehearing conference and technical session was held pursuant to NH Admin Rule Puc 203.05. The Office of the Consumer Advocate (OCA) participated on behalf of residential consumers. On March 1, 2002 by Order No. 23,925, the Commission adopted a procedural schedule and further determined that a rate case should be conducted simultaneously with the review of the alternative regulation proposal. In reference to the rate case, Staff filed a motion for a hearing on temporary rates on June 25, 2002. By an Order of Notice issued on July 24, 2002, the Commission scheduled a hearing on temporary

rates for August 8, 2002 and requested that the parties and Staff file position papers regarding temporary rates by August 6, 2002.

On July 31, 2002, KTC requested that the Commission permit its witnesses to participate in the scheduled hearing by teleconference or, in the alternative, that the Commission grant a continuance to permit its witnesses to participate in person. Staff filed an objection to the teleconference requested, to which KTC responded by letter dated August 7, 2002. On August 8, 2002, the Commission granted KTC's request for a continuance and rescheduled the hearing on temporary rates for August 28, 2002. Prior to the hearing, KTC and the OCA filed position papers regarding temporary rates and Staff filed testimony on the issue.

At the hearing on August 28, 2002, the Commission heard evidence regarding the propriety of imposing temporary rates, as well as the appropriate amount thereof.

II. POSITION OF THE PARTIES

A. Staff

Staff requests that temporary rates be set at the level of current rates, effective retroactively to the date of the Commission Order No. 23,925, March 1, 2002 (*March 1st Order*). The *March 1st Order*, according to Staff, put the company on notice that this docket includes a rate case component. Citing to the holding in *Appeal of Pennichuck Water Works*, 120 N.H. 562

(1980) that the earliest date on which temporary rates can take effect is the date that a utility files its request for a rate change, Staff argues that the *March 1st Order* is the equivalent of a request for a rate change. Staff does concede however, that it would be reasonable for the Commission to decide that temporary rates go into effect June 5, 2002. On that date, Staff filed a letter informing the parties and the Commission that Staff would be seeking retroactive temporary rates. Staff averred that it would have requested the imposition of temporary rates earlier in this proceeding and that the intertwining of the rate case with the case on alternative regulation caused the lateness of its request.

Staff argues that its analysis of the reports filed by KTC demonstrates that KTC is currently earning a rate of return of 15.2% or approximately 5.78% above a reasonable rate of return on an intrastate basis. For purposes of this analysis Staff used a rate of return of 9.41% and a 10% return on equity. Staff asserts that the level of temporary rates should be set at current levels pending the full rate investigation to determine the exact amount of overearning. Accordingly, Staff asserts that the imposition of temporary rates is justified in order to protect consumer interests, and does not harm KTC.

B. KTC

KTC argues that temporary rates are not necessary in this docket because the company is not overearning. Claiming that Staff's analysis is incorrect, KTC contends that the imposition of temporary rates in this case, according to KTC, would set a new Commission policy of imposing temporary rates in every rate case, regardless of the evidence of overearning. However, KTC argues, if the Commission nonetheless does order temporary rates, they should be set prospectively and not retroactively.

In support of its argument, KTC avers first that this case does not fit into the purview of RSA 378:27, the temporary rate statute. KTC argues the language of the statute limits temporary rates to instances when proceedings are "brought either upon motion of the commission or upon complaint." As the rate component of this case is merely adjunct to an alternative regulation docket, KTC asserts that temporary rates are not available. Second, KTC states that retroactive temporary rates would be unfair, offends due process requirements, and against public policy. Third, KTC cites to the Commission's prior practice in its 1998 rate case in which temporary rates were prospective.

KTC acknowledged that the Commission's *March 1 Order* indicated that rates are relevant in the context of the

alternative regulation plan. However, for the reasons set forth above, KTC asserts that temporary rates, if set at all, should be set at current rate levels, effective upon issuance of a Commission Order or, at the earliest, effective as of the date of the hearing, August 28, 2002.

C. OCA

The OCA recommended that the Commission set temporary rates for KTC at the level of current rates effective as of the November 16, 2001 Order of Notice in this docket. The OCA argues that the Order of Notice is sufficient notice to ratepayers that rates may be changed in this docket. OCA believes that this recommendation properly balances the interests of the company and ratepayers and is consistent with NH RSA 378:27 and applicable case law.

III. COMMISSION ANALYSIS

The standard to be employed by the Commission in determining a temporary rate is less stringent than the standard for permanent rates, in that temporary rates are determined expeditiously and without such investigation as might be deemed necessary to a determination of permanent rates. *Appeal of Office of Consumer Advocate*, 134 NH 651, 597 A2d 528 (1991). Temporary rates are to be established pursuant to RSA 378:27, which requires, *inter alia*, that temporary rates be "sufficient

to yield not less than a reasonable return on the cost of the property of the utility used and useful in the public service less accrued depreciation, as shown in the reports that the utility filed with the commission."

The Staff recommendation is based on its review of KTC's reports on file with the Commission and Staff's analysis demonstrates that a rate reduction may be justified. All parties have agreed that if temporary rates are established, current rates should be used to set them. We find that temporary rates are appropriate at current levels.

The remaining issue before us is establishing an appropriate effective date. Our March 1st Order made clear that a rate case will be conducted. It is therefore analogous to a rate case filing initiated by a utility. Appeal of Pennichuck Water Works, 120 N.H. 562 (1980) permits the Commission to establish temporary rates on a service rendered basis retroactively to the initiation of a case in any proceeding involving the rates of a public utility, notwithstanding that the company's request for temporary rates is filed at a later date. We see no reason to apply a different standard when a rate change is initiated by the Commission. Therefore, we will order that temporary rates shall be effective for service rendered on or after March 1, 2002.

Based upon the foregoing, it is hereby

ORDERED, temporary rates for the ratemaking portion of this docket shall be set at current rate levels; and it is

FURTHER ORDERED, that the effective date of temporary rates shall be for service rendered on and after March 1, 2002.

By order of the Public Utilities Commission of New Hampshire this nineteenth day of September, 2002.

Thomas B. Getz
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Michelle A. Caraway
Assistant Executive Director