

DT 01-221

KEARSARGE TELEPHONE COMPANY

Petition for Alternative Form of Regulation

Order on Recovery of Rate Case Expenses

ORDER NO. 24,372

September 17, 2004

I. BACKGROUND

On February 20, 2004, the New Hampshire Public Utilities Commission (Commission) entered Order No. 24,281 in this docket, denying the petition of Kearsarge Telephone Company (KTC) for an alternative form of regulation pursuant to RSA 374:3-a and revising downward KTC's revenue requirements. The Order directed KTC to file rate schedules and a compliance tariff, as well as calculations reflecting the reconciliation of permanent rates to temporary rates. The Order also instructed KTC to submit a calculation of allowable rate case expenses with a proposal for their recovery. This order concerns the latter issue.

The Commission granted in part and denied in part a KTC motion for rehearing on April 12, 2004 by Order No. 24,307. In the rehearing order, the Commission accepted certain KTC proposals allocating the refund arising out of the reconciliation of temporary rates to the permanent ones ultimately arising out of the case.¹

On March 22, 2004, the same day on which it sought rehearing, KTC filed its accounting of rate case expenses and a proposal for their recovery from customers. The Company requested recovery of \$256,802.80 in rate case expenses, via a reduction to the refund

¹ Temporary rates were effective in this proceeding in connection with service rendered on or after March 1, 2002. See Order No. 24,057, 87 NH PUC 649, 651 (2002). Reconciliation of temporary rates to the permanent ones is authorized pursuant to RSA 378:29.

that would otherwise arise out of the temporary/permanent rate reconciliation. Comprising this sum were 1) a \$20,000 fee paid to KTC's expert witness on cost-of-capital issues, 2) a court reporter fee of \$2,186, 3) a printing fee of \$136.50, 4) fees paid to the Company's outside law firm of \$112,571.72, and 5) company expenses of \$121,500.23, of which \$12,315.83 was due to travel. The Commission Staff (Staff) did not agree with the extent of this request and, accordingly, discussions with the Company ensued.

II. SETTLEMENT PROPOSAL

As the result of discussions between Staff and KTC, Staff submitted a memorandum on August 24, 2004 indicating that it had reached agreement with the Company on recovery of \$245,137.28 in rate case expenses. According to Staff, recovery at this level is appropriate, given the 24 months' time it took to complete this case.

Staff noted that the "rate case" aspects of the proceeding had frequently been intertwined with the "alternative form of regulation" portions of the case, making it difficult to separate the recoverable expenses associated with the rate case with the non-recoverable ones relating to the proposed alternative form of regulation. However, Staff further reported that KTC's parent company, TDS Telecom (TDS), allocated many of the expenses with the use of "exception reporting" to track time spent on matters that are not included in normally recoverable categories. Staff noted that, through this exception reporting, time and expenses associated with the rate case (as opposed to other matters) were separately tracked and accounted for to Staff's satisfaction. Accordingly, Staff recommended full recovery of the corporate expenses as well as the expert witness, court reporter, printing and travel expenses.

With respect to the legal expenses, Staff indicated that it had reviewed the invoices submitted by KTC's outside counsel, comparing them to the detailed time-and-entry report prepared in spreadsheet form by the law firm. Noting that the firm had provided counsel to KTC in connection with all aspects of the proceeding, Staff sought to ensure that any legal fees recommended for recovery did not arise out of the alternative regulation proceedings.

Staff reported that the law firm made the allocations between the rate case and alternative regulation case more than a year after the work was actually performed. Because of this time lag, Staff was unable to provide specific assurance that fees were correctly allocated to the rate case as opposed to other aspects of the proceeding. Nevertheless, Staff concluded that the allocation appeared to be generally reasonable under the circumstances. Therefore, Staff recommended discounting the total legal fees approved for recovery by 10 percent. Furthermore, Staff noted that it researched recent Commission orders in other rate cases to determine whether KTC's rate case expenses proposal was reasonable in comparison to those cases, taking into consideration the length of this case and found the proposal to be comparable. In all, Staff concluded that recovery of \$245,137.28 in rate case expenses in connection with a proceeding that spanned 24 months appeared to be reasonable. KTC agreed to this recommendation.

Finally, the Staff memorandum recommended that KTC be required within 14 days to provide 1) an updated calculation of total refund; 2) details of its proposed billing credits to both end users and IXCs, with supporting documentation; 3) a report of actual costs with supporting documentation for allowed local number portability and an update of the estimated costs with supporting documentation for allowed network infrastructure improvements, and 4) any additional required compliance tariff supplements pursuant to Rule Puc 1603.08.

III. COMMISSION ANALYSIS

We evaluate requests for recovery of rate case expenses from customers according to the same “just and reasonable” standard that applies to all rates charged by public utilities pursuant to RSA 378:7. The touchstones are the magnitude of the expenses and assurance that they do not cover expenses that are attributable to routine operating expenses. *See, e.g., Tioga River Water Co.*, 87 NH PUC 839, 843 (2002).

As noted in the Staff memorandum, this was not a conventional rate case and, thus, deciding what rate case expenses are recoverable from customers is more complex than usual. KTC did not seek to increase rates, nor did this case begin with a Commission investigation into whether existing rates were no longer just and reasonable. Rather, the Commission determined in Order No. 23,925, 87 NH PUC 110 (2002), that it would be necessary to conduct a rate case simultaneously with the alternative regulation proceedings so as to “ascertain the appropriate starting point” for any rates that would then be subject to an alternative form of regulation. *Id.* at 113. KTC has never sought recovery of expenses related to its pursuit of alternative regulation and we agree that such expenses are the responsibility of shareholders rather than customers.

We adopt Staff’s analysis. Staff undertook the appropriate efforts to ascertain the extent to which the cost services provided to KTC by its parent firm were not already subject to ordinary rate recovery. We agree with Staff that the magnitude of the corporate expenses, while significant, is appropriate given the length of this case and the fact that it was fully contested. Finally, we share Staff’s concern about the after-the-fact allocation of legal expenses between the rate case and alternative regulation aspects of the proceeding, but agree that in the

circumstances Staff's across-the-board reduction of the recoverable legal expenses is a reasonable proxy of what a careful audit of contemporaneously created records would have produced. Accordingly, we approve the compromise proposal on recovery of rate case expenses described in Staff's memorandum and assented to by KTC.

Based upon the foregoing, it is hereby

ORDERED, that the proposal for recovery of rate case expenses contained in the Staff memorandum of August 24, 2004 is APPROVED; and it is

FURTHER ORDERED, that Kearsarge Telephone Company file within 14 days of this Order 1) an updated calculation of the total refund arising out of this proceeding, 2) details of its proposed billing credits to both end users and IXCs, with supporting documentation, that will effectuate the refund; 3) a report of actual costs with supporting documentation for local number portability as allowed by Order No. 24,307 and an update of the estimated costs with supporting documentation for allowed network infrastructure improvements, and 4) any additional required compliance tariff supplements pursuant to Rule Puc 1603.08.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of September, 2004.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary