DT 01-164

VERIZON - NEW HAMPSHIRE

Special Contract for provision of Centrex Services to North Atlantic Energy Corporation

Order on Motion for Reconsideration/Rehearing

O R D E R N O. 23,917

February 8, 2002

I. INTRODUCTION

On September 21, 2001, the New Hampshire Public Utilities Commission (Commission) issued Order No. 23,779 relating to Verizon New Hampshire's (VZ-NH) request for approval of a seven-year special contract with North Atlantic Energy Corporation (NAEC). In Order No. 23,779 the Commission found that the seven year commitment period was both excessive and anti-competitive. The Commission, therefore, conditionally approved the special contract, indicating that the customer may upon reasonable notice opt out of the contract without penalty at any time after the first year of the contract.

The Commission also indicated that it would open a separate investigation to determine the proper rate to be charged for the period that no special contract was in effect, February 25, 2000 through September 20, 2001.

On October 18, 2001 VZ-NH filed a motion for reconsideration and/or rehearing citing four “good reasons” for such treatment. VZ-NH argued, (1) the Commission’s decision was based on a flawed assumption that VZ-NH recovered all of its fixed costs under the prior contract; (2) the Commission inappropriately substituted its judgment for that of the two contracting parties, thereby depriving VZ-NH and the customer the benefit of their bargain; (3) the Commission inappropriately expanded the “Fresh Look” system beyond the parameters of the system without discussion or briefing; and (4) the Commission improperly unilaterally modified the contract without providing notice to the Company or affording it the opportunity to respond to the Commission’s concern.

II. VERIZON-NEW HAMPSHIRE’S POSITION

First, the Company argues that the Commission’s decision to modify the contract period is not supported by any evidence, is incorrect and is contradicted by other findings. Specifically, the Company argues that the prior NAEC contract only recovered a prorated portion of the capital investment reflecting the period of time the customer contracted for service. It complains that the Commission denied the Company recovery of its capital costs covered by the contract by nullifying the termination liability provisions of the

contract.

The Company also complains that the findings of the Commission that “Centrex is a highly competitive service offering” and that “the customer was considering competitive alternatives in the event that the contract approval was not granted” refute the Commission’s conclusion that the seven-year length of the contract was “too long” and precluded competition.

Second, Verizon argues that there is no public interest served by unilaterally limiting the duration of a contract that was freely negotiated with the parties agreeing to terms they mutually chose. It argues that the Commission has found the service being provided (Centrex service), the area being served (Portsmouth), and the particular contract are all competitive and, therefore, the Commission should not restrict its ability to negotiate term contracts.

Next, the Company asserts that the Commission has inappropriately expanded its “Fresh Look” remedy without explanation. It argues that although the Commission established the Fresh Look opportunity in Re Freedom Ring, L.L.C., 82 NH PUC 833 (1997) to alleviate the effects of a monopoly locking up a market through long-term contracts, the opportunity for such a review is limited. Verizon argues that the Commission’s actions amount to a Fresh Look opportunity

three years after the Fresh Look window in the Portsmouth exchange closed. This, it says denies Verizon and its customers the opportunity to enjoy the benefit of their bargain.

Finally, Verizon contends that the Commission exceeded its authority when it modified the special contract without providing for a hearing. Verizon-NH asserts that the Commission in its Fresh Look Order cited to RSA 378:7 as authority to modify a contract. Accordingly, Verizon contends that the statute requires the Commission to determine and fix rates only “after hearing.” RSA 378:7 and Motion for Rehearing, p. 6.

III. COMMISSION ANALYSIS

Pursuant to RSA 541:3 a commission may grant a motion for rehearing if in its opinion "good reason" is stated in the motion. The New Hampshire Supreme Court has held that the purpose of a rehearing is to "direct attention to matters said to have been overlooked or mistakenly conceived in the original decision, and thus invites reconsideration upon the record upon which that decision rested." *Dumais v. State Personnel Commission*, 118 NH 309, 312 (1975) [citations omitted]. We take the step today to reconsider, in part, our original order.

In Order No. 23,779 (September 21, 2001) we found the requested seven-year extension to the special contract originally approved by the Commission on January 26, 1993 was "both excessive and anti-competitive." In further explaining that finding, we noted that the additional seven-year term "precludes the ability of others to compete to provide service to the customer in question over a too lengthy period." As an aside, we observed that "the lengthy term is not necessary in order to assure cost recovery, as such costs should have been recovered during the initial contract period, and the incremental costs now faced by the Company are small."

Among Verizon's arguments for rehearing is the claim that our observation about cost recovery is not based on record evidence and is factually incorrect. We do not agree with the thrust of Verizon's argument, which is that we are constrained to the limited information provided by the Company in its special contract filing. RSA 378:18-b imposes a truncated decision time on the Commission for telecommunications special contract filings even though they are complex and, individually and cumulatively, have far-reaching effects on competition. We must presume the Legislature contemplated that we would rely on our expertise, our experience, inferences drawn from earlier cases dealing

with the same special contract relationship, and other readily available sources of reliable information into the merits of the proposed agreement. Consequently, we have fashioned a process that deals fairly with the Company's requests. In any event, even if we were to accept the Company's position, our observation on cost recovery was not central to our decision, which any fair reading of Order No. 23,779 would reveal, and therefore provides no basis for granting rehearing.

Verizon also argues that it was improper for the Commission to substitute its judgment for the parties' judgment by modifying the term of the contract and that it was improper to do so unilaterally without notifying Verizon or affording it the opportunity to respond. Verizon misconstrues the Commission's responsibilities and its actions. Consistent with our obligation to consider the public interest when reviewing a special contract, we considered the effect on competition of allowing a seven-year extension to a contract that has been in force for eight years. In doing so, we found the contract as filed to be anti-competitive, and therefore not in the public interest. We did not substitute our judgment for the parties; we exercised our judgment in the public interest. We did, however, approve the contract conditionally, within the bounds of the public interest,

essentially giving the parties the opportunity to proceed over a period that is consistent with the public interest.

As for allowing an opportunity to respond, which Verizon asserts would have been consistent with our statement in Docket DT 01-008, Order No. 23,676 (April 12, 2001), regarding rehearing on busy line verification and busy line interrupt service, this case is clearly distinguishable. In that case, we erred in setting the modified rate levels we established and it indeed would have been a better course to have collected additional cost data despite the similarly quick statutory turnaround times for telephone tariffs set out in RSA 378:6, IV. In this case we have concluded, based on the fact that a special contract has existed with this customer since 1993, in combination with the additional seven-year extension, that the special contract is as a matter of policy anti-competitive. We have not erred in that decision and additional time or argument is not required.

Finally, Verizon contends that our actions constitute an inappropriate expansion of our Fresh Look policy. We do not agree that such is the case but the Company does implicitly make a good argument about the asymmetrical nature of our action in allowing the customer to opt out after the first year but requiring the Company to provide service in the absence of the customer opting out. The interests of competition are better served by limiting the contract term

more clearly and reciprocally. Accordingly, we revise our earlier finding to approving the special contract only for a term of one year.

Based upon the foregoing, it is hereby

ORDERED, that Verizon New Hampshire's request for rehearing/reconsideration is denied in part; and it is

FURTHER ORDERED, that the original decision conditionally approving the contract subject to North Atlantic Energy Corporation's ability to opt out without penalty after the first year is set aside; and it is

FURTHER ORDERED, that the special contract between Verizon and North Atlantic Energy Corporation is approved for a period of one year.

By order of the Public Utilities Commission of New Hampshire this eighth day of February, 2002.

Thomas B. Getz	Susan S. Geiger	Nancy Brockway
Chairman	Commissioner	Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary