

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DT 07-027

**KEARSARGE TELEPHONE CO., WILTON TELEPHONE CO.,
HOLLIS TELEPHONE CO. and MERRIMACK COUNTY TELEPHONE CO.**

Petitions for Approval of Alternative Form of Regulation

Order on Motion for Rehearing re Discovery Dispute

ORDER NO. 24,846

April 14, 2008

On November 2, 2007, the Commission entered Order No. 24,802 in this docket, denying the motion of intervenor segTEL, Inc. to compel the petitioners to provide certain materials in discovery. As the 30-day period specified in RSA 541:3 for a request to rehear Order No. 24,802 drew to a close, segTEL apparently found itself in the somewhat unusual procedural position of finding the decision on the discovery motion to be objectionable but having settled with the petitioners on the underlying merits of the case. Accordingly, on December 3, 2007, segTEL filed a pleading that sought (1) leave to withdraw the underlying discovery motion, and (2) a decision by the Commission either setting aside Order No. 24,802 (on the ground that the discovery dispute was no longer a live one), clarifying the order or granting rehearing pursuant to RSA 541:3. For the reasons that follow, we find the pending segTEL motion to be moot and we deny the request to set aside, clarify or to grant rehearing of Order No. 24,802.

In its motion, segTEL expresses concern about the future precedential effect of Order No. 24,802. According to segTEL, the Commission erred by applying RSA 378:43 to a discovery dispute since, in the opinion of segTEL, RSA 378:43 is merely a statutory exception to the Right-to-Know Law, RSA 91-A, and has no bearing on the question of access to material in

discovery by a party to an adjudicative proceeding. Further, in the view of segTEL, Order No. 24,802 establishes an erroneous principle to the effect that small companies may be denied discovery of competitively sensitive materials purely because their size makes it impossible to prevent key corporate decision makers from having access to the materials.

The pending segTEL pleading makes clear that segTEL no longer has need of the relief it sought in the underlying discovery motion. Moreover, discovery disputes call for fact-specific, discretionary decision making in which precedent can be of limited persuasive value. Finally, segTEL fails to state good reason for rehearing inasmuch as it has not identified specific matters that were overlooked or mistakenly conceived but rather has, in essence, merely reasserted prior arguments and requested a different outcome. Accordingly, we find no basis to grant any of the various forms of relief sought by segTEL.

Based upon the foregoing, it is hereby

ORDERED, that segTEL's motion is DENIED.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of April, 2008.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Clifton C. Below
Commissioner

Attested by:

ChristiAne G. Mason
Assistant Executive Director & Secretary