

STATE OF NEW HAMPSHIRE  
BEFORE THE  
PUBLIC UTILITIES COMMISSION

*Fryeburg Water Company*  
Docket No. DW 09-291

**PETITION FOR AUTHORIZATION TO SERVE CUSTOMERS IN EAST  
CONWAY AS A FOREIGN BUSINESS ENTITY PURSUANT TO RSA 374:24**

NOW COMES the Fryeburg Water Company (the “Company”) and petitions the Commission for approval to serve customers in East Conway, New Hampshire, as a foreign business entity pursuant to RSA 374:24, or, in the alternative, for exemption from rate regulation pursuant to RSA 362:4, and, in support hereof, states as follows:

**I. PETITION FOR AUTHORIZATION TO SERVE EAST CONWAY AS A  
FOREIGN BUSINESS ENTITY PURSUANT TO RSA 374:24**

1. The Fryeburg Water Company is a public utility in the State of Maine that serves approximately 737 customers in the Town of Fryeburg at rates approved by the Maine Public Utilities Commission (the “Maine PUC”). The Company further serves approximately 67 customers in East Conway, New Hampshire, adjacent to its Maine service territory. In recent years, the Company has provided such service at rates approved by this Commission. *See e.g. Order Nos. 24,873 & 24,950.*

2. The Company’s service to New Hampshire customers is the result of the location of its original supply main established in 1882. *Fryeburg Water Company*, 99 N.H. 487, 487-488 (1955) (“The Fryeburg Water Company was organized in 1882 and in that year ... established a reservoir on what is known as the White Brook lot in Conway [and] [...] a line of pipe was laid in an easterly direction and extending approximately a mile and a half to the village known as East Conway.”).

3. The Company's service to customers in East Conway therefore pre-dates the establishment of the New Hampshire Public Service Commission in 1911 and it was not required to obtain approval to operate as a public utility because the Legislature exempted public utilities that were "now operating a public utility plant in this state or doing or desiring to do an interstate business." Laws of 1911, Chapter 164:13 (d); *see* RSA 374:22.

4. As reported in *Fryeburg Water Company*, 79 N.H. 123, 124 (1919), in 1919 the New Hampshire Public Service Commission sought to prevent the payment of dividends by the Company to its stock holders. However, the New Hampshire Supreme Court vacated the Commission's order holding that "the issuing of stock is a corporate act which is regulated and controlled by the laws of the incorporating state, and which, relating to the internal conduct and management of the corporation, is exclusively subject to the local laws." Thereafter, it appears that the Company provided service at the rates approved by the Commission's counterpart in Maine.

5. The Court's decision reflects the law and decisions during a period when States could not directly or indirectly regulate interstate commerce. For example, in *Bellows Falls Hydro Electric Corp., v. State*, 94 N.H. 187, 190 (1946), the Court observed that New Hampshire had sought to exclude all foreign utilities, noting that: "In effect the 1913 Legislature adopted a policy of excluding, so far as constitutionally permissible, that which they could not adequately control in the public utility field."

6. The Court's footnote to the *Bellows Falls Hydro Electric* decision shows that it understood the legal principles of the day that dramatically curtailed State authority over interstate utilities such as those set forth in *Missouri ex rel. Barrett v. Kansas*

*Natural Gas Co.*, 265 U.S. 298, 307-308 (1924); *PUC v. Attleboro Steam & Electric Co.*, 273 U.S. 83 (1927) in which States were prohibited from regulating interstate commerce. Even where authority existed to regulate direct sales to in-state consumers, *e.g. Public Utilities Commission v. Landon*, 249 U.S. 239, 245 (1919), State legislation had been commonly struck down because of its effect on interstate commerce. *See e.g. West v. Kansas Natural Gas Co.*, 221 U.S. 229 (1911).

7. In 1955, the New Hampshire Supreme Court again considered the Company's status in the case of *Fryeburg Water Company*, 99 N.H. 487, 488 (1955). The Court observed that "[u]pon establishment of regulatory commissions in both this state and in Maine, the company filed tariffs in each state and *established uniform rates which have remained the same in each state* for different types of general consumers." (emphasis added). Even in 1951, when the Company still relied on its New Hampshire reservoir located in Conway, "no hearing was held by the Commission in this state and the new rates established for Maine consumers became effective as to the consumers in this state". *Id.* The Court therefore vacated a Commission order that set rates based on the costs to provide service to New Hampshire customers alone and that failed to consider "the requirements of and benefits to all similar users throughout the system." *Id.*

8. In the years since the Court's 1955 decision, it appears that this Commission has relied on the rates approved by the Maine PUC in lieu of conducting its own rate case review due to the Company's unique status. *See e.g. Fryeburg Water Company*, 62 NHPUC 168, Order No. 12,788 (1977) ("in preceding cases involving Fryeburg Water Company, the Commission has relied on and accepted the decision of the Maine Public Utilities Commission in matters regarding the customers served in New

Hampshire”); *Fryeburg Water Company*, 67 NHPUC 591, Order No. 15,818 (1982) (“this Commission is satisfied that the deliberations and decision of the Maine Commission is in the best interest of Fryeburg's New Hampshire Customers.”); *Fryeburg Water Company*, 75 NHPUC 133, Order No. 19,733 (1990); *Fryeburg Water Company*, 78 NHPUC 28, Order No. 20,732 (1993); *Riverside Water Works*, 85 NHPUC 332, Order No. 23,458 (2000); *Fryeburg Water Company*, 86 NHPUC 828, Order No. 23,854 (2001) (“we have previously adopted the position of the Maine Commission where the Company has requested a rate increase, noting the Maine Commission had jurisdiction over 92.2% of the customers served by the utility.”).

9. In 1967, the New Hampshire Legislature amended RSA 374:24 to eliminate the prohibition against service by foreign utilities described in the *Bellows Falls Hydro Electric Corp.* case and allow “public utilities organized under the laws of another state and which furnish utility service in towns outside the state [to] furnish utility service to New Hampshire towns adjacent to the state boundaries when the public utilities commission finds this service to be in the public interest.” RSA 374:24; Laws of 1967, Chapter 181 (Exhibit JA-3, Page 9). During hearings before the Senate Judiciary Committee, James Doon testified on behalf of the Commission that the amendment was intended to allow foreign utilities to provide service to communities like Conway and Chatham where it was unavailable. *Testimony of Jean Andrews, Exhibit JA-3, Page 5.*

10. A modern reading of RSA 374:24 leaves many unanswered questions concerning its purpose. *Cf. Bellows Falls Hydro Electric Corp.*, 94 N.H. at 190 (“The history of the act throws no light on the legislative intent since these sections have undergone no substantive change in subsequent revisions since its origin in Laws 1913, c.

145, s. 13.”). Read alone, it merely allows the Commission to permit a foreign utility to provide the same service under RSA 374:24 on border Towns that a domestic utility could provide under RSA 374:22. If this were its only intent, it would serve little purpose because, as Donald Sinville of the Public Service Company of New Hampshire explained to the Senate Judiciary Committee in his testimony: “Under the law as it is now, if a utility wants to go over the state line legally he should form a New Hampshire corporation.” *Exhibit JA-3, Page 5*. If RSA 374:24 required a foreign utility to become subject to the full panoply of Commission regulations, a foreign utility could simply form a domestic utility corporation under RSA 374:22.

11. The testimony before the Senate Judiciary Committee in 1967 (Exhibit JA-3, Pages 5-6), however, shows that RSA 374:24 is intended to allow foreign utilities to provide service along New Hampshire’s borders under less stringent regulation in light of the limited authority to regulate interstate commerce. For example, Donald Sinville testified that: “All we are concerned about is that any Massachusetts, Vermont or Maine company be a public utility in the other state operating as a public utility in that other state.” *Id.* He noted that “the whole western part of the State is served by foreign corporations” and that PSNH itself served 15 communities outside of New Hampshire. On the subject of rates, he indicated that foreign utilities “charge the same for everybody.” Thus, the New Hampshire Legislature clearly understood that foreign utilities would be subject to less stringent regulations than their domestic counterparts.

*Cf. Bellows Falls Hydro Electric Corp.*

12. RSA 374:24 was therefore adopted to allow foreign utilities to operate within the state but with limited regulation such as the authority to “charge the same rates

for everybody” without having to establish a domestic corporation that would be fully regulated. It avoids the complexities that the Legislature and Court recognized in the *Bellows Falls Hydro Electric* case before RSA 374:24 was amended by allowing the Commission to condition approval upon reasonable terms.

13. The Fryeburg Water Company was not subject to Chapter 181 of the Laws of 1967 because its service pre-dated the establishment of the Public Service Commission in 1911. *See RSA 374:22 & 25.* However, as set forth in the *Testimony of Jean Andrews*, it now petitions for Commission approval to operate as a foreign business entity under RSA 374:24 in order to charge the same rates for its New Hampshire customers that it charges in Maine.

14. The public interest will be better served by using the approach established by the Legislature in 1967 under RSA 374:24, by allowing the Company to operate as a foreign business entity charging the same rates for both its New Hampshire and Maine customers. The New Hampshire customers will benefit by avoiding costs for a second rate case in New Hampshire. The Company will benefit by avoiding regulatory costs and delays associated with obtaining a second rate approval for a limited number of customers.

## **II. PETITION FOR EXEMPTION PURSUANT TO RSA 362:4**

15. In the alternative, the Company requests that the Commission issue an order exempting the Company from rate regulation pursuant to RSA 362:4 because it serves fewer than 75 customers in the State of New Hampshire. In amending RSA 362:4, the Legislature recognized that the costs of providing regulated utility service were

prohibitive and allowed for exemption to lower costs to consumers upon a finding of the public good.

16. Exemption from duplicate rate regulation in New Hampshire is in the public good because it will allow the Company and its New Hampshire customers to avoid the costs for a regulatory function that is already provided by the State of Maine.

### **III CONCLUSION**

17. The Fryeburg Water Company petitions this Commission for the authority to provide service at the rates and economic terms and conditions it provides as a regulated utility in the State of Maine. Approval of the Company's petition will promote the public interest because the Company's New Hampshire customers will avoid substantial regulatory compliance costs that duplicate those already provided by the Maine Public Utilities Commission.

18. The Company will continue to provide service that is reasonably safe and adequate as required by RSA 374:1, pursuant to tariffs filed with this Commission. The Company's New Hampshire customers will benefit directly from reduced regulatory costs while continuing to receive service that is subject to this Commission's jurisdiction.

WHEREFORE, the Fryeburg Water Company respectfully requests that this Commission:

- A. Grant this petition and allow the Company to serve its New Hampshire customers at rates approved by the Maine PUC subject to such conditions the Commission deems appropriate; and
- B. Grant such other relief as justice may require.


Respectfully submitted,

**FRYEBURG WATER COMPANY**

By Its Attorneys,

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Date: August 10, 2010

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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document by electronic mail on all persons on the official service list in this proceeding.



Justin C. Richardson