

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,

**UPTON & HATFIELD, LLP**

Date: August 10, 2010

By: 

Justin C. Richardson

NHBA #12148

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Portsmouth, NH 03801

(603) 436-7046

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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



**STATE OF NEW HAMPSHIRE  
BEFORE THE  
PUBLIC UTILITIES COMMISSION  
Fryeburg Water Company  
DW 09-291  
TEMPORARY AND PERMANENT RATE PROCEEDING  
STIPULATION AGREEMENT**

**I. INTRODUCTION**

This Agreement is entered into this 3rd day of February, 2011, by and between the Fryeburg Water Company (Fryeburg) and the staff (Staff) of the New Hampshire Public Utilities Commission (Commission). Fryeburg is a New Hampshire and Maine regulated public utility with its principal place of business in the Town of Fryeburg, Maine. It serves approximately 737 customers in Maine and 67 customers in the adjacent town of East Conway, New Hampshire.

The purpose of this Agreement is to memorialize a procedure for Fryeburg to follow to change its general permanent rates in recognition of the fact that Fryeburg's rates and service are also regulated by both the Maine Public Utilities Commission (MPUC) and the Commission and the cost of a full rate case in both states may not provide additional benefit to customers in New Hampshire. As a result, Fryeburg and Staff agree upon procedures to be followed in future cases and request Commission approval.

**II. PROCEDURAL BACKGROUND**

On December 31, 2009, Fryeburg filed with the Commission a Notice of Intent to File Rate Schedules. On or about January 4, 2010, Fryeburg filed for approval of an approximate 15% rate increase with the MPUC. Fryeburg's request includes recovery of costs to serve all its customers, including those in New Hampshire. On or about April 16, 2010, the MPUC approved a stipulation agreement providing for a rate increase of about 12.9% to Fryeburg's customers.

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On August 11, 2010, Fryeburg filed the results of the Maine proceeding with the Commission and also filed a Petition for Temporary Rates pursuant to RSA 378:27, a Petition for Authorization to serve its East Conway customers as a Foreign Business Entity pursuant to RSA 374:24, and an assented-to Motion to Waive N.H. Code Admin. R. Puc Chapter 1604 filing requirements. In support of its rate filing, Fryeburg also filed the testimony of Jean Andrews, Treasurer of Fryeburg, proposed tariff pages, and a proposed statement to be mailed to Fryeburg's New Hampshire customers.

On July 1, 2010, Fryeburg provided notice to its Maine and New Hampshire customers of its rates approved by the MPUC.

Fryeburg requested approval of temporary rates for its New Hampshire customers at the level approved for permanent rates in Maine. Fryeburg stated that its 2009 test year earnings were insufficient to earn a reasonable rate of return, citing a significant decline in sales to Pure Mountain Springs, LLC as the primary reason. Fryeburg stated that temporary rates were needed in order for the company to continue to meet its obligations to provide service to its New Hampshire customers at rates that are just and reasonable as allowed RSA Chapter 378.

Fryeburg offers water service in New Hampshire at quarterly, monthly, and seasonal rates approved by the MPUC and the Commission. In its New Hampshire rate filing, Fryeburg proposed to charge its New Hampshire customers the same quarterly, monthly, and seasonal rates approved by the MPUC. It therefore proposed a quarterly rate for 5/8 inch service of \$45.00 for the first 1,200 cubic feet; a monthly rate for 5/8 inch service of \$15.00 for the first

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400 cubic feet; and a seasonal rate for 5/8 inch service of \$135.00 for the first 2,400 cubic feet.

The existing rates in New Hampshire are \$39.24, \$13.08, and \$109.80 respectively.

In Fryeburg's Petition for Authorization to Serve Customers as a Foreign Business Entity Pursuant to RSA 374:24, Fryeburg requested that it be permitted to serve its New Hampshire customers at rates set by the MPUC in lieu of the filing requirements for temporary and permanent rates under RSA 378:27 et seq. Fryeburg stated that it will continue to provide service that is "reasonably safe and adequate" as required by RSA 374:1, pursuant to tariffs filed with the Commission. Fryeburg stated that New Hampshire customers will benefit from reduced regulatory costs. Alternatively, Fryeburg requested the Commission issue an order exempting the company from rate regulation pursuant to RSA 362:4 because it serves fewer than 75 customers in New Hampshire.

On August 31, 2010, the Commission issued an Order of Notice and scheduled a prehearing conference and Technical Session for October 5, 2010. On September 10, 2010, Fryeburg provided copies of the Commission's Order of Notice to all of its New Hampshire customers.

At the Prehearing, Staff and Fryeburg provided their preliminary positions. There were no intervention requests. Staff and Fryeburg met in a technical session after the prehearing conference and developed a proposed procedural schedule to govern the remainder of the proceeding. Staff filed this schedule on October 5, 2010 and on October 15, 2010, the Commission issued a secretarial letter approving a different procedural schedule that provided for discovery to be completed by October 29, 2010; the filing of a stipulation agreement or

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testimony on November 19, 2010; and a hearing on temporary and permanent rates on December 8, 2010.

On November 30, 2011, Staff filed an assented-to letter requesting changes to the procedural schedule. On December 2, 2010 and again on January 26, 2011, the Commission rescheduled the hearing on the merits to February 4, 2011.

### **III. TERMS OF AGREEMENT**

#### **A. NOTICE OF REQUEST TO CHANGE PERMANENT RATES**

##### **1. Notice to Customers.**

When Fryeburg seeks to change its permanent rates it charges its customers, Fryeburg agrees to provide notice of its Maine rate case to its New Hampshire customers in the same manner and by the same method as prescribed by the MPUC for its customers in Maine or if the MPUC's notice requirements are less stringent than the notice requirements of New Hampshire, Fryeburg agrees to also provide notice to its New Hampshire customers as required by New Hampshire law, including but not limited to: RSA 378:3; N.H. Code Admin. R. Puc 1604.05, *Notice of Intent to File Rate Schedules*; and N.H. Code Admin. R. Puc. 1203.02(c), *Information to Customers*, which requires a utility to provide customers, "no later than 30 calendar days from the date of filing" a "clear and concise statement of the rate schedules applied for and indicate which schedules are applicable to that customer."

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**2. Notice to the Commission.**

Fryeburg agrees to file with the Commission and the Office of the Consumer Advocate a *Notice of Intent to File Rate Schedules* (Notice of Intent) pursuant to N.H. Code Admin. R. Puc 1604.05.

**B. REQUEST TO CHANGE PERMANENT RATES**

No later than 60 days after filing its *Notice of Intent*, Fryeburg agrees to file with the Commission a Request to Change New Hampshire Rates, inclusive of the following:

1. A complete copy of Fryeburg's initial request and supporting schedules submitted to the MPUC.
2. A statement describing notice provided to Fryeburg's New Hampshire customers, including copies of customer notices.
3. All proposed changes to its New Hampshire tariff pursuant to N.H. Code Admin. R. Puc 1603.
4. If requested by Fryeburg, information necessary for Temporary Rates.

Fryeburg agrees to document the notice to New Hampshire customers by filing an affidavit with the Commission no later than 10 days after the date of such notice.

**C. ORDER OF NOTICE**

Upon submission of a complete Request to Change Permanent Rates as provided by Section III (B) of this Agreement, Staff and Fryeburg anticipate that within 30 days of Fryeburg's filing the Commission will issue an Order of Notice for publication by Fryeburg pursuant to RSA 378:3 and N.H. Code of Admin. R. Puc 1604.03.

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**D. FILING OF MPUC APPROVED RATES IN NEW HAMPSHIRE**

Except as otherwise ordered by the Commission, upon receipt of a final order from the MPUC, Fryeburg agrees to file with the Commission the following documents in support of its Request to Change New Hampshire Rates:

1. Any additional information in support of its permanent rate filing before the MPUC subsequent to that provided to the Commission pursuant to Section III (B) (1) of this Stipulation;
2. The MPUC order(s) approving Fryeburg's request for permanent rates;
3. Tariff schedules showing the permanent rates approved by the MPUC; and
4. Tariff schedules for New Hampshire customers that comply with N.H. Code Admin. R. PART Puc 1603, General Tariff Filing Requirements concerning the format of the tariff schedules; and identify the new permanent rates approved by the MPUC that Fryeburg intends to charge New Hampshire customers.

**E. WAIVER OF N.H. CODE ADMIN. R. PUC 1604.01, 1604.02, 1604.06, and 1604.07**

Staff and Fryeburg request the Commission waive application of these sections of N.H. Code Admin. R. PART Puc 1604 for future permanent rate filings made by Fryeburg. In support of this request, Staff and Fryeburg state that requiring Fryeburg to comply with N.H. Code Admin. R. Puc:

- 1604.01, Contents of a Full Rate Case;
- 1604.02, Procedure and Contents of Full Rate Case Proposal;
- 1604.06, Filing Requirement Schedules; and
- 1604.07 Contents of Filing Requirement Schedules;

would be duplicative of the information contained in its MPUC filing that would be, in turn, filed with the Commission. Additionally, any information found to be lacking by Staff could be

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obtained through discovery or audit of Fryeburg's records if a full investigation were to be conducted by the Commission.

**F. CERTIFICATION OF NO CONSTRUCTION WORK IN PROGRESS**

Contemporaneously with its filing as outlined in section D above, Fryeburg agrees to provide a statement certifying that the permanent rates it seeks to apply to New Hampshire customers do not contain Construction Work in Progress (CWIP), since such CWIP is prohibited pursuant to RSA 378:30-a. To the extent that any rates approved by the MPUC include CWIP, Fryeburg agrees to modify its New Hampshire rate schedules as necessary to allow Fryeburg to charge the rates approved by the MPUC without the inclusion of CWIP.

**G. STAFF'S RECOMMENDATION**

Within 30 days of submission of the MPUC order approving Fryeburg Water Company's new rates, Staff agrees to submit a recommendation to the Commission to:

1. Approve the rates approved by the MPUC for New Hampshire customers;
2. Issue a suspension order to provide notice to New Hampshire customers of the Commission's intent to conduct an investigation concerning Fryeburg's request to change New Hampshire rates; or
3. Take such other action as otherwise authorized by New Hampshire law.

Staff and Fryeburg anticipate that the Commission will issue an order in response to Fryeburg's request to change New Hampshire rates based on Staff's recommendation or otherwise, as provided by law. Fryeburg shall serve the order as directed by the Commission. In the event that Staff recommends that the Commission issue an order suspending the rates approved by the

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MPUC, Staff agrees to recommend that the Commission allow Fryeburg to charge the rates approved by the MPUC as temporary rates subject to reconciliation or adjustment pursuant to RSA 378:27-29.

**H. EFFECTIVE DATE OF THE MPUC-APPROVED RATE CHANGES TO NEW HAMPSHIRE CUSTOMERS**

For future permanent rate filings in New Hampshire, Staff and Fryeburg recommend the effective date of any change in rates for New Hampshire customers be the effective date approved by the MPUC, provided that Fryeburg shall have first complied with notice requirements of this Agreement. In the event that the effective date of any change in rates approved by the MPUC does not comply with the notice requirements under New Hampshire law or this Agreement, Fryeburg shall revise the effective date of its New Hampshire tariff schedules accordingly.

In the event the Commission issues an order suspending the proposed tariffs, as contemplated in Section III (G) of this Agreement, Staff and Fryeburg recommend that the Commission allow Fryeburg to charge the rates approved by the MPUC as temporary rates subject to reconciliation or adjustment pursuant to RSA 378:27-29.

It is the intent of Staff and Fryeburg that properly-filed tariff schedules for Fryeburg's New Hampshire customers that do not contain CWIP and which are based on a rate filing that Staff has no objection or concerns with be allowed to go into effect pursuant to RSA 378:3 without additional Commission action.



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Staff and any other intervenor to Commission dockets involving Fryeburg's future rate filings do not relinquish their right to request the Commission to investigate and suspend Fryeburg's tariff schedules pursuant to RSA 378:5 and RSA 378:6.

Fryeburg does not relinquish its right to file for other rate relief allowed pursuant to RSA Chapter 378, including RSA 378:27, Temporary Rates.<sup>1</sup>

#### **I. APPROVAL OF PERMANENT RATES**

Staff and Fryeburg agree and recommend that the new permanent rates as approved by the MPUC in its April 16, 2010 order set forth in Attachment A to this Agreement be approved for application to Fryeburg's New Hampshire customers effective on a service rendered basis as of September 29, 2010.<sup>2</sup> These new permanent rates represent an approximately 12.9% increase in rates currently in effect. Staff and Fryeburg agree that Fryeburg's New Hampshire customers received notice of the rate proceeding in Maine at the same time as its Maine customers were noticed. Fryeburg certifies that these new permanent rates as approved by the MPUC contain no CWIP.

In the event the Commission approves these permanent rates after Fryeburg has issued its fourth quarter bills, Staff and Fryeburg agree and recommend the Commission authorize Fryeburg to recoup from each New Hampshire customer a surcharge for the difference between the revenues received under current rates between September 29, 2010 and the order approving the rates and the amount of revenue it would have received had the new permanent rates been in

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<sup>1</sup> There is no similar temporary rate provision in Maine.

<sup>2</sup> The MPUC also approved rates for public and private fire protection. Fryeburg does not provide public or private fire protection service to its New Hampshire customers and has not sought approval to do so in New Hampshire.

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effect during September 29, 2010 to the date of the order approving the new permanent rates.

This recoupment is set forth in Attachment B.

#### **IV. CONDITIONS**

This agreement shall not be deemed in any respect to constitute an admission by any party that any allegation or contention in these proceedings is true or valid. This agreement is expressly conditioned upon the Commission's acceptance of all its provisions, without change or condition. If the Commission does not accept this agreement in its entirety, without change or condition, the agreement shall at Fryeburg's or the Staff's option, exercised within ten days of such Commission order, be deemed to be null and void and without effect and shall not constitute any part of the record in this proceeding nor be used for any other purpose.

The Commission's acceptance of this agreement shall not constitute continuing approval of, or precedent regarding, any particular principle or issue in this proceeding, but such acceptance does constitute a determination that the provisions set forth herein in their totality are consistent with the public interest under the circumstances. Fryeburg and Staff agree that all pre-filed testimony should be admitted as full exhibits for the purpose of consideration of this agreement. Agreement to admit all pre-filed testimony without challenge, however, does not constitute agreement by any party that the content of the pre-filed testimony filed by another party is accurate or what weight, if any, should be given to the views of any witness.

The Commission's approval of the recommendations in this agreement shall not constitute a determination or precedent with regard to any specific adjustments, but rather shall

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constitute only a determination that the revenue requirement and rates resulting from this agreement are consistent with the public interest in this proceeding.

IN WITNESS WHEREOF, the parties to this agreement have caused the agreement to be duly executed in their respective names by their fully authorized agents.

FRYEBURG WATER COMPANY


By Its Attorneys,  
UPTON & HATFIELD, LLP

Dated: February 3rd, 2011

By:   
Justin C. Richardson, Esq.  
159 Middle Street  
Portsmouth, NH 03801  
(603) 436-7046

STAFF OF THE NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION

Dated: February 3, 2011

By:   
Marcia A.B. Thunberg, Esq.  
21 South Fruit Street, Suite 10  
Concord, NH 03301  
(603) 271-2431

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**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DW 09-291**

**FRYEBURG WATER COMPANY**

**Notice of Intent to File Rate Schedules**

**Order Approving Stipulation Agreement and Permanent Rates**

**ORDER NO. 25,212**

**April 5, 2011**

**APPEARANCES:** Upton & Hatfield, L.L.P., by Justin C. Richardson, Esq., for Fryeburg Water Company; Staff of the Public Utilities Commission by Marcia A.B. Thunberg, Esq.

**I. PROCEDURAL HISTORY**

Fryeburg Water Company (Fryeburg) is a New Hampshire and Maine regulated public utility with its principal place of business in the Town of Fryeburg, Maine. It serves approximately 737 customers in Maine and approximately 67 customers in the adjacent town of East Conway, New Hampshire. On December 31, 2009, Fryeburg filed with the Commission a Notice of Intent to File Rate Schedules. On January 4, 2010, Fryeburg filed for approval of an approximate 15% rate increase with the Maine Public Utilities Commission (MPUC). On April 16, 2010, the MPUC approved a stipulation agreement providing for a rate increase of about 12.9% to Fryeburg's customers.

On August 11, 2010, Fryeburg filed a MPUC order and other supporting documents from the MPUC proceeding with the Commission and also filed a Petition for Temporary Rates pursuant to RSA 378:27, a Petition for Authorization to serve its East Conway customers as a Foreign Business Entity pursuant to RSA 374:24, and an assented-to Motion to Waive N.H. Code Admin. R. Puc Chapter 1604 filing requirements. Fryeburg also filed the testimony of Jean

Andrews, Treasurer of Fryeburg, proposed draft tariff pages, and a proposed statement to be mailed to Fryeburg's New Hampshire customers.

Fryeburg requested approval of temporary rates for its New Hampshire customers at the level approved for permanent rates in Maine. Fryeburg asserted that its 2009 test year earnings were insufficient to earn a reasonable rate of return and cited a significant decline in sales to Pure Mountain Springs, LLC as the primary reason for the under earning. Fryeburg proposed the following rates, which were approved by the MPUC: a quarterly rate for 5/8 inch service of \$45.00 for the first 1,200 cubic feet (cf); a monthly rate for 5/8 inch service of \$15.00 for the first 400 cf; and a seasonal rate for 5/8 inch service of \$135.00 for the first 2,400 cf. The existing rates are \$39.24, \$13.08, and \$109.80, respectively.

In Fryeburg's Petition for Authorization to Serve Customers as a Foreign Business Entity Pursuant to RSA 374:24, Fryeburg requested that it be permitted to serve its New Hampshire customers at rates set by the MPUC in the future without further requests to, or approval from, this Commission. Fryeburg stated that it would continue to provide service that is "reasonably safe and adequate" as required by RSA 374:1, pursuant to tariffs filed with the Commission. Fryeburg stated that New Hampshire customers would benefit from reduced regulatory costs. Alternatively, Fryeburg requested the Commission issue an order exempting the Company from rate regulation pursuant to RSA 362:4 because it serves fewer than 75 customers in New Hampshire.

Fryeburg also requested waivers pursuant to N.H. Code Admin. R. Puc 201.05, from the filing requirements for a full rate case found in N.H. Code Admin. R. Puc 1604.01, 1604.02, 1604.06, and 1604.07. Fryeburg requested a waiver of the 60-day time period for submission of schedules as found in N.H. Code Admin. R. Puc 1604.05 (c), citing that Fryeburg filed a Notice

of Intent to File Rate Schedules on December 31, 2009. Fryeburg stated that waiver of these filing requirements will serve the public interest since it will reduce rate case expenses to customers for rates already determined to be just and reasonable in Maine and that N.H. Code Admin. R. Puc 1601.01 (d) permits water utilities with gross annual revenues under \$100,000 to petition to make alternative filings to those required by N.H. Code Admin. R. Chapter Puc 1600. Fryeburg indicated that its gross annual revenues from its New Hampshire customers are well under \$100,000. Fryeburg stated that Commission Staff assents to these waiver requests and that the Office of the Consumer Advocate (OCA) takes no position.

On August 31, 2010, the Commission issued an order of notice and scheduled a prehearing conference and technical session for October 5, 2010. The Commission ordered that Fryeburg notify customers of the docket by mailing a copy of the order to all Fryeburg's New Hampshire customers no later than September 20, 2010. On September 21, 2010, Fryeburg filed an affidavit that it had notified all of its New Hampshire customers as ordered.

On October 5, 2010, the Commission held a prehearing conference. There were no requested interventions. After the prehearing conference, Staff and Fryeburg met in a technical session and later that day filed a proposed procedural schedule. On October 15, 2010, the Commission issued a secretarial letter approving a more abbreviated procedural schedule than that proposed by Staff and Fryeburg. The Commission set a hearing for December 8, 2010 to hear argument on the foreign business and exemption arguments posed by Fryeburg. The hearing date was later rescheduled to February 4, 2011. On February 3, 2011, Staff and Fryeburg filed a stipulation agreement and presented the agreement, testimony, and other exhibits at the February 4, 2011 hearing. On February 18, 2011, Staff filed a copy of Fryeburg's

response to an information request made at the hearing confirming the accuracy of the proposed \$686.35 quarterly charge for 6-inch service.

## **II. STIPULATION AGREEMENT**

The terms of the stipulation agreement are more fully described in the agreement and are summarized as follows. Fryeburg effectively withdraws its petition regarding serving as a Foreign Business Entity and its request for exemption from regulation pursuant to RSA 362:4. Staff and Fryeburg, instead, proposed a method for reviewing Fryeburg's future rate cases. The proposal stems from the fact that Fryeburg is subject to the jurisdiction of both the MPUC and the Commission; each of which has authority to perform a thorough review of Fryeburg's rate filings. Staff and Fryeburg seek to minimize the duplicate review and resulting expense to ratepayers. Staff and Fryeburg propose that when Fryeburg seeks to change the permanent rates it charges its customers, Fryeburg will provide notice of its MPUC rate case to its New Hampshire customers in the same manner and by the same method as prescribed by the MPUC for its customers in Maine. In the event the MPUC's notice requirements are less stringent than the notice requirements of New Hampshire, Fryeburg agrees to also provide notice to its New Hampshire customers as required by New Hampshire law.

Within 60 days of its *Notice of Intent*, Fryeburg will file a complete copy of its initial MPUC filing, a statement describing the notice it provided to New Hampshire customers, as well as all proposed changes to its New Hampshire tariff. Upon receipt of a final order from the MPUC, Fryeburg agrees to file any additional information it filed with the MPUC regarding its permanent rate proceeding; a copy of the final MPUC order approving Fryeburg's request for permanent rates; as well as its MPUC tariffs and proposed New Hampshire tariffs.

In recognition that Fryeburg's MPUC filing is comprehensive and that if information is incomplete it can be provided during discovery, Staff and Fryeburg request waiver of certain filing requirements, including contents of a full rate case and schedules. Fryeburg agrees to certify that the permanent rates it seeks to apply to New Hampshire customers do not contain Construction Work in Progress (CWIP).

Within 30 days of Fryeburg filing the MPUC order approving Fryeburg's new rates, Staff agrees to file a recommendation with the Commission. The recommendation will offer Staff's opinion on whether the Commission ought to: 1) approve the rates approved by the MPUC for New Hampshire customers; 2) suspend the taking effect of the rates and conduct an investigation; or 3) take such other action as authorized by law. If Staff recommends the Commission commence an investigation, Staff and Fryeburg agree and request that the Commission allow Fryeburg to charge the rates approved by the MPUC as temporary rates subject to reconciliation or adjustment pursuant to RSA 378:27-29.

Staff and Fryeburg agree and recommend that the MPUC-approved rates be effective in New Hampshire on the day the rates become effective in Maine, provided that Fryeburg has complied with the notice provisions of the stipulation agreement. In the event that the effective date of any change in rates approved by the MPUC does not comply with the notice requirements, Fryeburg agrees to revise the effective date of its New Hampshire tariff schedules accordingly.

As to Fryeburg's existing rate filing, Staff and Fryeburg agree and recommend that the new revenue requirement and permanent rates as approved by the MPUC on April 16, 2010 be approved for application to Fryeburg's New Hampshire customers effective for service rendered as of September 29, 2010. The MPUC-approved rates represent an approximately 12.9%



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increase in rates currently in effect. Staff and Fryeburg agree that Fryeburg's New Hampshire customers received notice of the rate proceeding in Maine at the same time as its Maine customers were noticed.

Staff and Fryeburg agree and recommend that Fryeburg be authorized to recoup from each New Hampshire customer a surcharge for the difference between the revenues received under current rates between September 29, 2010 and the order approving the rates and the amount of revenue it would have received had the new permanent rates been in effect during September 29, 2010 to the date of the Commission's order approving permanent rates.

### **III. COMMISSION ANALYSIS**

#### **A. Waiver Request**

We first address Fryeburg's waiver request as it pertains to its request to increase rates. Pursuant to N.H. Code Admin. R. Puc 201.05, the Commission may waive its rules if it finds that the waiver serves the public interest and the waiver does not disrupt the orderly and efficient resolution of matters before the Commission. Determination of the public interest requires consideration of whether: (1) compliance with the rule would be onerous given the circumstances; and (2) the purpose of the rule is satisfied by an alternative method.

Fryeburg's assented-to motion requests waiver in this rate case of the filing requirements for a full rate case which are set forth in N.H. Code Admin. R. Puc 1604.01, Contents of a Full Rate Case; 1604.02, Procedure and Contents of Full Rate Case Proposal; 1604.06, Filing Requirement Schedules; and 1604.07 Contents of Filing Requirement Schedules. Fryeburg also requests waiver of N.H. Code Admin. R. Puc 1604.05 (c) concerning filing its schedules within 60 days of its Notice of Intent to File Rate Schedules. Fryeburg requests the Commission allow

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it to satisfy the administrative rules by an alternative method and states that production of the information would be onerous.

As to the request for waiver of the rate case filing requirements in Puc 1604.01, 1604.02, 1604.06, and 1604.07, Fryeburg states that requiring it to provide these would be duplicative of the information already contained in its MPUC filing that would, in turn, be filed with the Commission. Additionally, Fryeburg states that any information found to be lacking could be obtained through discovery or audit of Fryeburg's records if a full investigation were to be conducted by the Commission.

This is not the first time Fryeburg has requested waiver of the Commission's rate case filing requirements. In Fryeburg's 2000 rate case, Docket No. DW 00-238, the Commission approved Fryeburg's request to waive the filing requirements and noted that submission of its MPUC filing was sufficient for Staff to glean the necessary data and if not, that Staff could utilize discovery to obtain the necessary information. *Fryeburg Water Company*, Order No. 23,664, 86 NH PUC 188 (2001). Similar to that rate case, Fryeburg filed as an attachment to the pre-filed testimony of Jean Andrews in the instant docket, information it had provided to the MPUC. Staff and Fryeburg make the same argument that any necessary information can be obtained from the MPUC filing or through discovery. We agree. We find that it would be onerous for Fryeburg, which serves approximately 800 customers, to provide essentially the same information in its MPUC filing but in a different format specified by our administrative rules. We find that information identified in Puc 1604.01, 1604.02, 1604.06, and 1604.07 can be obtained from the MPUC filing, Staff discovery, audit, or through a record request at hearing. Thus, ample alternate methods of obtaining the information exist and thus the purpose of the rules can still be satisfied. Accordingly, we find waiver of Puc 1604.01, 1604.02, 1604.06, and

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1604.07 serves the public interest and does not disrupt the orderly and efficient resolution of matters before this Commission.

As to waiver of the 60 days for filing its schedules, Fryeburg historically files its rate case in Maine, waits for approval, and then files the MPUC-approved rate request in New Hampshire. *See, Fryeburg Water Company*, Order No. 15,818, 67 NH PUC 591 (1982) and Order No. 19,733, 75 NH PUC 133 (1990). The MPUC proceeding can take longer than 60 days. If Fryeburg were to file within 60 days, it would end up responding to two simultaneous rate proceedings since the Commission would need to conduct its investigation during the twelve-month suspension period, pursuant to RSA 378:6. Requiring Fryeburg to comply with the filing requirements would cause Fryeburg to incur additional rate case expense, which would then be passed on to customers. The purpose of the rule, to provide advanced notice of rate filings to the Commission, is satisfied even though, as in this case, Fryeburg filed its schedules approximately seven months later. Accordingly, we find waiver of N.H. Code Admin. R. Puc 1604.05 (c) serves the public interest and does not disrupt the orderly and efficient resolution of matters before this Commission.

#### **B. Proposed Permanent Rates**

RSA 378:7 authorizes the Commission to fix rates after a hearing upon determining that the rates, fares, and charges are just and reasonable. In determining whether rates are just and reasonable, the Commission must balance the consumers' interest in paying rates no higher than are required with the investors' interest in obtaining a reasonable return on their investment. *Eastman Sewer Co.*, 138 N.H. 221, 225 (1994). In circumstances where a utility seeks to increase rates, the utility bears the burden of proving the necessity of the increase pursuant to RSA 378:8. Pursuant to RSA 541-A:31, V(a), informal disposition may be made of any

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contested case at any time prior to the entry of a final decision or order, by stipulation, agreed settlement, consent order or default. Puc 203.20 (b) requires the Commission to determine, prior to approving disposition of a contested case by settlement, that the settlement results are just and reasonable and serve the public interest.

The settling parties propose a revenue requirement for Fryeburg's combined Maine and New Hampshire operation of \$545,443, which represents an increase of \$62,257, or 12.9%, over 2009 revenues. This revenue requirement is \$10,000 less than that requested by Fryeburg in Maine and was the result of a settlement among the parties in that proceeding. Exh. 1 at 165. The MPUC has approved this revenue requirement according to legal standards similar to those applicable in New Hampshire: the utility bears the burden of proof when seeking to increase rates; the MPUC must make a finding that the proposed rates are just and reasonable; and in settlements, the MPUC independently reviews the stipulations to ensure that the overall result is in the public interest. *See, In re Northern Utilities, Inc.*, No. 96-678, 1997 WL 295178, (Me. P.U.C. April 28, 1997).

Staff and Fryeburg agree to use the rate base set by the MPUC and Staff testified that the plant in rate base is all used and useful. Hearing Transcript of February 4, 2011 (Tr. 2/4/11) at 12 lines 16-18. Fryeburg testified that it had added little to rate base since its last rate case and that it had been running a "tight ship." Tr. 2/4/11 at 9 lines 2-5. In discovery, Fryeburg reported that it had added just \$173.15 to rate base in New Hampshire since its last rate case. Exh. 5 at 6. Fryeburg's revenue requirement includes a weighted cost of capital of 7.03%. Exh. 1 at 22. Fryeburg certifies that recovery of CWIP is not contained in the revenue requirement or its customer rates. Having reviewed the record in this matter, we find that the plant, equipment, and

capital additions placed in Fryeburg's rate base are prudent, used, and useful in accordance with RSA 378:28 and we find the resulting revenue requirement to be just and reasonable.

**C. Rate Impact**

According to Exhibit 3, Fryeburg offers service at quarterly, monthly, and seasonal rates. Fifty-nine of Fryeburg's existing customers take service through a 5/8 inch meter; two take service through a one inch meter; and one takes service through a two inch meter. All are billed quarterly. The proposed quarterly rate for 5/8 inch service is a fixed charge of \$45.00 for the first 1,200 cf compared to an existing rate of \$39.24. The proposed quarterly rate for one inch metered service is \$99.03 for the first 3,600 cf compared to an existing rate of \$89.40. The proposed quarterly rate for two inch metered service is \$187.35 for the first 12,000 cf compared to an existing rate of \$171.72. The proposed quarterly volumetric rates are as follows: \$2.81 per 100 cf up to 1,800 cf; \$1.12 per 100 cf up to 69,000 cf; and \$.779 per 100 cf up to 72,000 cf. We find these increases to be reasonable. Although Fryeburg has invested limited capital in New Hampshire, it has experienced a 48% decline in sales to Fryeburg's large metered customer, Pure Mountain Springs, LLC, since its 2006 test year. Accordingly, we find the proposed customer rates to be just and reasonable pursuant to RSA 378:7.

**D. Future Rate Proceedings**

Staff and Fryeburg agree upon procedures to be followed in future rate cases in an effort to minimize the cost to customers of undergoing full rate cases in both Maine and New Hampshire. With the exception of the waiver of certain rules described above, Fryeburg will continue to comply with Commission rules and applicable New Hampshire statutes. Fryeburg will continue to provide notice to customers, but will do so when it files its Maine rate case as well as when it files in New Hampshire.

Notice of the MPUC proceeding to New Hampshire customers allows them an additional opportunity to petition to intervene in the MPUC proceeding. According to Fryeburg, the MPUC allows intervention by any person having a “direct and substantial interest in the proceeding.” Code Me. R. § 720 (1996). Fryeburg stated the intervention right extends to New Hampshire residents as evidenced by a MPUC procedural order in Docket No. 2006-590, which cited the hearings examiners’ authority to grant discretionary intervention to the OCA and Mr. and Mrs. Robert Swett, New Hampshire customers. Exh. 5 at 7. The OCA and Mr. and Mrs. Swett were granted intervention pursuant to section 721, Discretionary Intervention, not section 720, which requires a showing that the proceeding will substantially and directly affect the person requesting to intervene. In the event New Hampshire customers are denied the opportunity to participate in future MPUC proceedings, either by right or at the discretion of the MPUC, they will still have the opportunity to participate in New Hampshire.

The stipulation agreement sets forth when Fryeburg will make filings and what the filings will contain, but it does not remove any of the protections of RSA Chapter 378. Fryeburg will still provide notice to customers, the OCA, and the Commission. Fryeburg will file with the Commission, as well as the OCA, all information it filed with the MPUC so that the Commission may fully review the proposed revenue requirement. The Commission must still find that all plant, equipment, and capital improvements are prudent, used, and useful; that rate base is just and reasonable; and that the rate of return is just and reasonable. The Commission must also, after hearing, determine the justness and reasonableness of the proposed rates, fares, and charges. Thus, there is no change in applicable rules and statutory standards, and New Hampshire customers will still have the opportunity to participate in the rate case when Fryeburg files with the Commission. Accordingly, we will approve the additional notice provided to New

Hampshire customers in the stipulation agreement, but note that it is only supplementary and that the protections of RSA Chapter 378 still apply.

The only substantive change Staff and Fryeburg propose concerns the time within which Staff files its recommendation to the Commission. Normally, Staff files its position in a rate proceeding in the form of testimony according to a procedural schedule. It can also file its position as part of a settlement agreement. Staff and Fryeburg propose that in future rate proceedings, Staff file, within 30 days of Fryeburg's filing of the MPUC order, its recommendation on whether the Commission ought to approve the proposed rates, suspend the proposed rates and initiate an investigation, or take such other action as authorized by law. The stipulation agreement is silent as to whether Staff must send a copy of its recommendation to all New Hampshire customers. The stipulation is also silent as to whether Staff will provide the OCA with a copy of its recommendation. We find it appropriate for Staff to serve a copy of its recommendation to all New Hampshire customers as well as the OCA, particularly in light of the stipulation provision accelerating the point at which Staff must make its recommendation. Furthermore, if Staff's recommendation is for the Commission to approve Fryeburg's rate filing, customers and the OCA will still be able to reply to Staff's recommendation. If Staff recommends the Commission commence an investigation, then the proceeding will likely have a procedural schedule that sets forth opportunities for discovery and testimony.

Lastly, we address Staff and Fryeburg's request for waiver, in future rate proceedings, of. Puc 1604.01, Contents of a Full Rate Case; 1604.02, Procedure and Contents of Full Rate Case Proposal; 1604.06, Filing Requirement Schedules; and 1604.07 Contents of Filing Requirement Schedules. In future rate proceedings, it is reasonable to presume that Fryeburg will face some difficulty in producing its filing for two jurisdictions; that preparing two sets of rate filings, one

for the MPUC and one for the Commission, will add additional rate case expense; and that the purpose of Puc 1604.01, 1604.02, 1604.06, and 1604.07 can be satisfied by filing with the Commission all information Fryeburg filed with the MPUC. We thus find that granting Fryeburg a waiver of these rules on a prospective basis for its future rate cases serves the public interest and will not disrupt the orderly and efficient resolution of matters before this Commission. This waiver is subject to reconsideration pursuant to RSA 365:28 should circumstances change.

Having reviewed the agreement, exhibits, and testimony provided at hearing, we find the proposed procedure for Fryeburg to file its future rate cases is in the public interest. This approval is conditioned upon a requirement not explicitly found in the agreement, that all New Hampshire customers and the OCA receive Staff's recommendation in a timely manner.

#### **E. Conclusion**

Having reviewed the record in this proceeding, including the stipulation agreement and the supporting testimony presented at the February 4, 2011 hearing, we find the terms of the stipulation agreement to be reasonable and for the public good. We find that the terms will result in just and reasonable rates for Fryeburg's New Hampshire customers. We find that the terms represent an appropriate balancing of ratepayer interests and the interests of Fryeburg's investors. The stipulation does not diminish the Commission's authority to fully review Fryeburg's rate cases, nor does the stipulation diminish Fryeburg's customers' right to participate in future rate proceedings before this Commission. Accordingly, we approve the stipulation agreement.



**Based upon the foregoing, it is hereby**

**ORDERED**, that the terms of the stipulation agreement entered into between Staff and Fryeburg are adopted and approved as modified herein; and it is

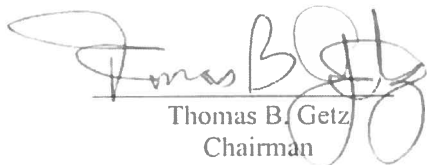
**FURTHER ORDERED**, that Fryeburg's request to increase its revenue requirement by \$62,257 for a combined revenue requirement of \$545,443 is hereby approved, for service rendered on or after September 29, 2010, and Fryeburg is authorized to collect from customers the rates described herein to recover this revenue requirement; and it is

**FURTHER ORDERED**, that Fryeburg is authorized to recoup from its New Hampshire customers a surcharge for the difference between the revenues received under current rates between September 29, 2010 and the order approving the rates and the amount of revenue it would have received had the new permanent rates been in effect from September 29, 2010 to the date of the Commission's order approving permanent rates as identified, by customer, on Exhibit 2, Attachment B; and it is

**FURTHER ORDERED**, that Fryeburg file a compliance tariff within fifteen days of the date of this order.

By order of the Public Utilities Commission of New Hampshire this fifth day of April


2011.

  
Thomas B. Getz  
Chairman

  
Clifton C. Below  
Commissioner

  
Amy L. Ignatius  
Commissioner

Attested by:

  
Lori A. Davis  
Assistant Secretary