

DW 00-238

FRYEBURG WATER COMPANY

**Petition for Permanent Rates Submitted to the
State of Maine and the State of New Hampshire**

Prehearing Conference Order

O R D E R N O. 23,664

March 23, 2001

APPEARANCES: Peter G. Hastings, Esq., for Fryeburg Water Company; Lynmarie C. Cusack, Esq., on behalf of the Staff of the New Hampshire Public Utilities Commission.

I. PROCEDURAL HISTORY AND BACKGROUND

This docket was initiated on October 16, 2000,¹ when the New Hampshire Public Utilities Commission (the Commission) received a Petition for Permanent Rates submitted to the States of Maine and New Hampshire by Fryeburg Water Company (the Company), proposing approximately a twenty percent (20%) increase in water rates.

The Company next communicated with the Commission when, on December 28, 2000, the Commission received a Summary of Order, Background, and Decision (Maine Order) of the Maine

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In a letter dated October 31, 2000, from the Commissioner's Executive Director, the Company was notified that a docket number would be assigned to the case but no further action would be taken on the petition as it did not comply with Commission rules.

Public Utilities Commission (MPUC),² approving a rate increase requested by the Company.

As a result of the Maine order, the Company began charging, on January 1, 2001, the Maine-approved higher rates to New Hampshire customers. On January 8, 2001, the Commission notified the Company that Fryeburg Water did not have the authority to raise the rates of New Hampshire consumers without the prior approval of this Commission. Given the Company's actions in increasing rates to New Hampshire customers, the Commission issued an Order of Notice on February 1, 2001, scheduling a Prehearing Conference for February 20, 2001.

The Prehearing Conference was held on February 20, 2001, at which time the Company and Staff presented their positions regarding this case. Also present at the Prehearing Conference were Mr. and Mrs. Robert Swett. The Swetts are New Hampshire customers of the Company. At the hearing, the Swetts were asked if they wanted to obtain intervenor status. Mr. Swett, at that time, indicated he would like to receive notice of the hearings and be on any service list the

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MPUC Docket No. 2000-860 Summary of Order, Background and Decision dated December 28, 2000.

Commission used in the docket. Subsequently, on March 1, 2001, the Swetts requested formal intervention.

II. POSITIONS OF THE PARTIES AND STAFF

A. Fryeburg Water Company

In support of its petition for a rate increase, the Company stated that it had submitted documentation and financial data prior to the Prehearing Conference. The Company went on to point out that a rate increase was required because it had substantial capital expenditures in excess of \$200,000 involving the construction of two deep-hole, gravel-packed wells, the most cost-effective method of complying with the requirements of the Safe Drinking Water Act, and that the Company's improvements to the water system were made exclusively for the benefit of its customers.

The Company next addressed the issue of water quality. The Company averred that it believed that the Maine Human Resources Division, had sole responsibility for monitoring the water quality of the Company, as the New Hampshire Department of Environmental Services (NHDES) had abdicated any authority. On this basis, the Company concluded that this Commission has no authority over the quality of service.

Finally, addressing the matter of raising rates to New Hampshire customers in the absence of a New Hampshire Commission order, the Company stated that the New Hampshire Supreme Court ruled that Maine and New Hampshire rates for common, non-distinctive customers, would be the same. The Company noted that since that ruling in the 1950's, the Commission has approved, without a public hearing, the rates established by the Maine Commission.

The Company believes it was appropriate to begin charging new rates on January 1, 2001, to New Hampshire customers as well as Maine customers, in accordance with the 1955 Supreme Court Decision³, and because it had been billing rates in New Hampshire comparable to those billed in Maine for the past 45 years.

B. New Hampshire Consumer Robert Swett

Mr. Swett stated that he has been a customer of the Company for 39 years and, over the past several years, his water quality has significantly decreased. In particular, his quality of service concerns focused on the fact that HUD, FHA, and New Hampshire recommended a 0.3 or less milligrams per liter iron level. Mr. Swett claimed that on September 1,

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Petition of Fryeburg Water Company, 99 N.H. 487, 115 A.2d 420 (1955).

1998, his level was .06 milligrams per liter; two years later, on September 18, 2000, the test result levels were 4.79 milligrams per liter.

In addition, Mr. Swett stated that in a New Hampshire survey of 66 Fryeburg Water Company customers, 28 customers responded with some indicating problems with the water quality. Mr. Swett noted that the poor quality of the water not only applies to health issues, but the water is so discolored that it irreparably stains clothing, leaves visibly discolored water in toilet bowls, and is so unappealing to drink that he could not get two representatives of the Company to even taste it during a recent visit to his home. In addition, Mr. Swett stated that the water has a strong, unappealing odor.

C. Staff

Staff indicated that the reason for this hearing was due to the fact that the Company did not comply with this Commission's rules concerning the provision of adequate supporting testimony and schedules to show that the proposed rate increase was just and reasonable. Staff pointed out that after receiving approval from the MPUC for a rate increase, on January 1, 2001, without complying with this Commission's requests for information, the Company began billing New Hampshire consumers at the newly-approved Maine rate.

Staff contends that the case cited by the Company does not establish that this Commission does not have authority to approve rates. Staff averred that the New

Hampshire Commission has the authority to approve rates in New Hampshire, and it needs certain information from the Company, to ensure that New Hampshire customers are paying a just and reasonable rate for the services they are being provided.

Staff referenced the consumer complaints received concerning the Company's quality of service, and disagrees with the Company's contention that New Hampshire does not have authority to monitor water quality. Staff maintains that the Commission has the authority and, indeed, obligation, to "...ensure that the services being provided are safe and adequate." RSA 374:1. Staff also contends that it is inappropriate for the Company to suggest that this Commission has no authority to inspect and evaluate the system or to ensure that New Hampshire customers are receiving the services for which they are being charged.

Finally, Staff recommends the financial data and testimony it has requested of the Company be thoroughly reviewed before the Commission makes a decision regarding the requested 20% increase.

III. PROCEDURAL SCHEDULE

After the Prehearing Conference, the Parties, Staff and intervenors met in a technical session to discuss a procedural schedule for the case. The following schedule was jointly recommended through a letter dated February 22, 2001:

Company to seek waiver and request that temporary rates be set	03/15/01
First Data Requests to Company	03/30/01
Responses to First Data Requests	04/20/01
Second Data Requests to Company	05/21/01
Responses to Second Data Requests	06/11/01
Staff Testimony	07/02/01
Data Requests from Company to Staff	07/23/01
Staff's Responses to Company's Data Requests	08/13/01
Settlement Conference	09/05/01
Hearing on the Merits	09/12/01

Also, as a result of discussions held at the Technical Session, the Company filed a motion to waive the rules requiring testimony to be filed before a rate increase could be granted. The Staff did not object to this motion.

IV. COMMISSION ANALYSIS

The Commission will approve the recommended procedural schedule set forth above.

Regarding the late request for intervention by the Swetts, the Commission has the discretion to grant such a request under RSA 541-A:33, II, if it is determined that the intervention "would be in the interests of justice and would not impair the orderly and prompt conduct of the proceedings." We find that granting the Swetts intervention is in the interests of justice. It does not appear that the participation of the Swetts will impair the orderly and prompt conduct of this proceeding. In addition, the Swetts have genuine quality of service issues, and their participation in this docket will be beneficial to the proceedings, at least with regard to those issues. Despite the Company's claims to the contrary, the Commission continues to retain authority over quality of service issues notwithstanding the fact that the NHDES may have ceded its water monitoring authority to its Maine counterpart. RSA 374:1 requires the Company to "furnish such service and facilities as shall be reasonably safe and adequate and in all other respects just and reasonable." The Commission's authority to insure the Company's compliance with the foregoing statute necessarily includes the ability to examine service quality and related issues, see RSA 374:3, and

such authority is in no way superceded by NHDES' delegation of its authority to Maine officials or by Petition of Fryeburg Water Company, 99 NH 487 (1955), a narrow holding that is clearly limited to the Commission's ratesetting authority.

Finally, we agree to waive, in this instance, the testimony requirement of our rules regarding petitions for rate increases. The Company has provided the same materials to this Commission as it did to the MPUC. While our rules apparently are different than those of Maine, we believe Staff can glean from the filing the necessary data.

We have authority to grant a waiver from our rules under Puc Rule 201.05, which sets forth a public interest standard. The two factors to be considered are: 1) whether compliance with a rule would be onerous given the circumstances; and 2) whether the purpose of the rule may be satisfied by an alternative method. We believe both factors are met in this instance. Staff can utilize the Maine filing and the discovery process to obtain the necessary information from the Company.

Based upon the foregoing, it is hereby

ORDERED, that the Procedural Schedule as proposed herein is adopted; and it is

FURTHER ORDERED, that the intervention request by Mr. and Mrs. Swett is granted; and it is

FURTHER ORDERED, that the requirement to file written testimony in support of the rate increase petition is waived.

By order of the Public Utilities Commission of New Hampshire this twenty-third day of March, 2001.

Douglas L. Patch
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Thomas B. Getz
Executive Director and Secretary