

DW 00-238

**FRYEBURG WATER COMPANY**

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

**Order On Temporary Rates**

**O R D E R    N O.    23,711**

**May 24, 2001**

**APPEARANCES:** Hugh Hastings, 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**

The procedural history of this case through March, 2001, is encompassed in the prehearing conference order, Order No. 23,664, issued March 23, 2001. Order No. 23,664 provided a procedural schedule for the remainder of the case and granted the Petitioner, Fryeburg Water Company (Company), a waiver from the requirement of submitting accompanying testimony along with its petition for a rate increase.

The Commission issued a Supplemental Order of Notice on April 24, 2001 stating that pursuant to RSA 378:27 a hearing would be held on May 16, 2001, to determine reasonable temporary rates. At the hearing, the Staff and the Company agreed that temporary rates should be set at the rates already prescribed by the State of Maine Public Utilities Commission (MPUC). The MPUC approved an increase of \$47,599, or

20.22%, over 1999 actual revenues of \$235,389. Quarterly rates for the first 1,200 cubic feet of water for customers on a 5/8 inch meter would be set at \$33.30 per quarter.

The Company requested that temporary rates be set retroactive to January 1, 2001, since the Maine order had allowed the increase to go into effect as of the beginning of the year. Questions arose at the temporary rate hearing about the January 8, 2001, letter from the Executive Director which directed the Company to cease and desist in collecting from New Hampshire customers rates in excess of those currently approved and on file with the New Hampshire Commission. Specifically, the Company was asked whether it had collected the Maine approved rates from New Hampshire customers. The Company indicated that it had collected the higher rates from its New Hampshire customers, believing it had the right to do so.

## **II. COMMISSION ANALYSIS**

It is well established that the standard for granting temporary rate increases is less stringent than for granting permanent rate increases. Temporary rates shall be determined expeditiously and without such investigation as might be deemed necessary for the determination of permanent

rates. *Appeal of the Office of Consumer Advocate*, 134 NH 651 (1991). As such, if we decide the Maine increase is reasonable we can, without investigation, set those rates as temporary.

The question in this proceeding deals, however, with retroactively setting temporary rates. The New Hampshire Supreme Court has determined that the earliest date on which we can order temporary rates to take effect is the date on which the utility filed its underlying request for a permanent increase. *Appeal of Pennichuck Water Works*, 120 NH 526 (1980). Therefore, if we determine the Company is entitled to temporary rates, we may retroactively set them to the date the Company filed for permanent rates.

Given the MPUC's determination that the Company was entitled to a 20.22% rate increase, the deference such a determination has been afforded in the past, and our Staff's concurrence in setting the Maine rates as temporary for New Hampshire customers, we believe such a temporary rate increase is reasonable in New Hampshire. We acknowledge the difficulty a cross border utility has when one Commission orders new rates but the other lags behind. As such, we will approve the Maine rates as temporary rates effective January 1, 2001. We note, however, our Staff is investigating the requested rate

increase and also quality of service issues that have been raised by New Hampshire customers. A determination on permanent rates must await the Commission's review of the results of this investigation and other evidence presented by the Company and intervenors.

We also consider it important to remind the Company that it cannot implement rate changes without Commission approval or as otherwise authorized by law. Our approval of the temporary rates retroactive to January 1, 2001 should not in any way be considered as sanctioning or encouraging the procedures followed in this case.

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

**ORDERED,** that the Company is entitled to temporary rates, as of January 1, 2001, at an increase of 20.22% from 1999 rates, as approved by Maine on December 28, 2000.

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

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Douglas L. Patch  
Chairman

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Susan S. Geiger  
Commissioner

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Nancy Brockway  
Commissioner

Attested by:

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Thomas B. Getz  
Executive Director and Secretary