

DW 04-020

FRYEBURG WATER COMPANY

INVESTIGATION INTO QUALITY OF SERVICE

Order Approving Stipulation between the Staff of the New Hampshire Public Utilities Commission, Office of Consumer Advocate, Robert and Nancy Swett, Town of Conway and State of Maine Office of Public Advocate

ORDER NO. 24,407

November 19, 2004

APPEARANCES: Russell F. Hilliard, Esquire, from Upton & Hatfield, on behalf of Fryeburg Water Company; Robert and Nancy Swett; F. Anne Ross, Esquire, on behalf of the Office of Consumer Advocate; William C. Black, on behalf of the State of Maine Office of Public Advocate, and Suzanne Amidon, Esquire, on behalf of the Staff of the New Hampshire Public Utilities Commission.

I. PROCEDURAL HISTORY

On January 14, 2004, the Commission received a petition from Nancy and Robert Swett (Petitioners), who are customers of Fryeburg Water Company (Fryeburg) in East Conway, New Hampshire. The petition contained signatures from twenty-two customers of Fryeburg and requested the Commission investigate the quality of service provided by Fryeburg to its New Hampshire customers. The Petition specifically references the 120 year old pipe between Fryeburg, Maine and East Conway, New Hampshire.

The Commission has reviewed Fryeburg's water quality issues in the past. In Docket No. DW 00-238, the Commission investigated the adequacy of the 7600 foot unlined cast iron main installed in 1883. This main supplies water to East Conway, NH where Petitioners reside as well as some customers located in Fryeburg, Maine, under the regulatory jurisdiction of the Maine Public Utilities Commission. In the final order in that docket, the Commission stated,

“We expect...that the Company, in the ordinary course of sound utility resource planning, will develop contingency plans now to address the likely need to replace the water distribution system dependent on the late 19th century main.” *Fryeburg Water Company*, Order No. 23,854 in Docket No. DW 00-238, 86 NH PUC 831 (2001). Because claims of poor water quality continued as evidenced by the Petition, the Commission determined that it was appropriate to open Docket No. DW 04-020 to update and investigate water quality and service issues related to Fryeburg’s service in East Conway, New Hampshire.

Because of the joint jurisdiction over Fryeburg by the state of Maine, Office of Public Advocate petitioned and was granted intervention in this docket. The New Hampshire Office of Consumer Advocate (OCA) informed the Commission that it would be participating in DW 04-020 on behalf of residential ratepayers. Intervention requests by the Swetts and the towns of Conway and Fryeburg were granted as well.

The Commission established a procedural schedule which included the pre-filing of testimony by all parties to the docket. Fryeburg submitted testimony of Hugh Hastings on or about June 23, 2004. Petitioners filed testimony on August 18, 2004. Staff submitted its testimony on August 26, 2004. (Testimony of Douglas W. Brogan, Water Engineer for the Staff, hereafter referred to as “Staff Testimony”).

Staff concluded that the 1883 cast iron main is the source of the water quality problems, related to the corrosion of the line. Staff Testimony, p. 2, 26-27. Staff reported that despite Fryeburg’s remedial efforts, Fryeburg had not taken any steps to undertake an engineering survey to evaluate the options to address the condition of the line until Staff’s discovery requests in this docket and, when it did so, Fryeburg had excluded the option of replacing the main in question. Staff Testimony p. 8, at 14-17 and 27-31. In spite of this,

Fryeburg did agree that the source of the water quality problem being experienced by the East Conway customers must be with the pipe. Staff Testimony p. 8, at 5-8

Staff reported that water quality issues and service were of continued concern to Fryeburg's East Conway customers; that Fryeburg had "repeatedly misrepresented the extent and nature of the complaints it has received"; and that "[c]ustomers with legitimate problems no longer see any point in responding to such efforts" as customer surveys. Staff Testimony, p. 3, p. 5 at 19-20 and p.6 at 6-7. Staff characterized Fryeburg as failing to conduct any improvements, other than those done in response to external pressure. Staff outlined several recommendations to provide Fryeburg with financial incentive to address the problems of the main line and the customer service issues uncovered in its investigation. Staff Testimony, pp. 19-22.

On September 3, 2004, the OCA filed a Motion to Compel an Engineering Study of Replacing or Relining the Water Main. The Motion stated the Engineering Study should include information on the prospects of (1) replacing and (2) relining the 1883 water main running from Fryeburg, Maine to East Conway, New Hampshire in addition to the information already provided on the prospects of (3) developing a new well and filtration system in East Conway and (4) developing two new wells in East Conway.

The Commission issued Order No. 24,373 (September 23, 2004) granting the OCA's Motion to Compel and establishing two phases for the balance of the proceeding. In the first phase, the Commission determined to "consider the past actions of the company and measures for remediation" recommended by Staff in its testimony. Order No. 24,373, p. 2. The Order anticipated that Phase I would conclude in a hearing before the Commission on November 2, 2004. The hearing date was subsequently changed to November 3, 2004.

The Order directed the parties and Staff to meet for settlement discussion as scheduled on October 19, 2004, to focus on the issues identified in Phase I. Phase II issues will be evaluated once Fryeburg completes its engineering studies. The Parties met on October 19, 2004, as directed by the Commission

II. POSITIONS OF THE PARTIES AND STAFF

A. Position of the Signatories and Staff

The Swetts, State of Maine Office of Public Advocate, New Hampshire, the Town of Conway, OCA and Staff (hereinafter the Signatories) signed a Stipulation addressing all issues. Fryeburg did not support the Stipulation, which is summarized below. The Town of Fryeburg took no position on the issues addressed in the stipulation.

The Signatories believe that an appropriate incentive is necessary to ensure that Fryeburg solves the water quality problems that have plagued the East Conway customers and gave rise to this proceeding. They believe that a financial incentive will be the only effective tool. To that end, the Signatories urge the Commission to order Fryeburg to escrow all of the revenues received from its East Conway customers for bills rendered on and after the date of the Commission order approving this Stipulation. The Signatories believe that the annual revenues Fryeburg receives from the East Conway customers total approximately \$14,000.

The Signatories urge the Commission to order that the funds be escrowed by Fryeburg's outside counsel, Russell Hilliard, Esq., or by a third party acceptable to the Signatories and the Commission, and be placed in an interest-bearing account. Fryeburg should be required to file monthly reports with the Commission, with copies to the service list in this proceeding. These reports should indicate the opening balance of the escrowed funds, deposits

made, interest credited, and the closing balance for the month. The reporting should be continued until such time as the Commission orders otherwise.

The Signatories believe that the escrowed funds should not at any time be available to Fryeburg for any purposes, including as collateral for loans or as collateral for any other purpose. Rather, the Signatories believe, the escrowed funds should be dedicated to capital improvements undertaken by Fryeburg for the purpose of resolving the water quality problems in East Conway. The Signatories believe that if after completion of Phase II, the Commission directs Fryeburg to make capital improvements to the East Conway system, then Fryeburg should apply the escrowed funds toward those improvements.

B. Position of Fryeburg Water Company

Fryeburg did not challenge Staff's assertions or offer any alternative to the specifics of the Stipulation, nor did it contradict Staff that the 1883 water main was the cause of water problems in East Conway. Instead, Fryeburg suggested options, such as: that the Commission yield its jurisdiction over the New Hampshire portion of company's system to the Maine Public Utilities Commission; that a separate, undetermined company accept ownership of the New Hampshire portion of the system and purchase water through the 1883 main via a master meter; or, that all parties "lay low and let time work things out". *See* Exhibit 7 (Statement to the New Hampshire Public Utilities Commission from the Fryeburg Water Company), p. 2.

The Commission held a hearing on the Stipulation on November 3, 2004. Petitioners presented testimony in support of the Stipulation. Petitioners stated that the problem with water quality, including rust colored water, stained laundry, black specks and odor, are an ongoing problem with water delivered in East Conway from the Fryeburg water system.

Petitioners testified that they have concluded that the 1883 cast iron main was the cause of the water quality problems. In support of this conclusion, Petitioner Robert Swett stated that he had witnessed a flushing of the main onto a white sheet. Petitioner said that, after the main was flushed, the sheet was stained with rust. Petitioner stated that the source water was not the problem, but that the staining of the sheet and the associated water quality problems in the Swetts' home were the result of particles and debris picked up from the inside of the main. Petitioners also indicated that the water quality problems they have experienced have been occurring for 14 years.

In addition to presenting the Stipulation, Staff testified that Fryeburg's ability to deliver a reliable and adequate water supply would not be impaired if \$14,000 were placed in escrow annually. *See* Exhibit 4 (Income Statement Comparison for the Years Ended December 31, 1999-2003). Staff also testified the escrow fund proposed by the Stipulation is similar to a depreciation fund pursuant to RSA 374:10 and RSA 374:11, in that the escrow funds would be dedicated to restoring or replacing part of Fryeburg's physical plant.

III. COMMISSION ANALYSIS

The Commission was asked to investigate the quality of service provided by Fryeburg to its New Hampshire customers pursuant to RSA 374:1. Other issues in the docket include Fryeburg's compliance with Commission Order No. 23,854 and the remedies available to us in light of the regulatory role of the Maine Public Utilities Commission.

We have considered all the testimony and exhibits in this docket and determine that the Stipulation is a reasonable solution to the issues presented. The testimony presented by the Staff of the Commission was essentially uncontested by Fryeburg. The alternatives presented by Fryeburg at hearing are not acceptable. Any proposals involving corporate, political or

physical splitting of the Fryeburg system will be considered in, and perhaps even after, Phase II of this docket.

We find that Fryeburg would not be impaired or harmed in any way if the sum of \$14,000 were placed in an escrow fund as proposed by the Stipulation. Further, we find that we have authority to order this financial incentive because the escrow fund contemplated by the Stipulation is similar to a depreciation fund that the Commission may order pursuant to RSA 374:10 and RSA 374:11, in that the escrowed funds are committed to restoring or replacing part of Fryeburg's physical plant. The stipulation is also focused on aspects specifically within this Commission's jurisdiction, that is, on revenues derived from those customers residing in the New Hampshire portion of Fryeburg's system, and improvement of service to those New Hampshire customers.

We emphasize that the escrow of these funds is a financial incentive, and not a penalty or fine ordered by this Commission. As stated in the Stipulation, these funds are being set aside and dedicated to the improvement of the infrastructure of Fryeburg's water service system. We anticipate that Fryeburg will have to dedicate money to either replace or substantially refurbish the cast iron main which appears on the record to be the source of water quality problems in East Conway, and Fryeburg is not penalized by setting aside funds for that contingency at this time.

Based upon the foregoing, it is hereby

ORDERED, that the Stipulation signed by the Signatories is hereby

APPROVED; and it is

FURTHER ORDERED, that all revenue derived on or after the date of this order from Fryeburg's East Conway customers be escrowed by Fryeburg's outside counsel, Russell

Hilliard, Esq., or by a third party approved by the Commission, and be placed in an interest-bearing account; and it is

FURTHER ORDERED, that Fryeburg file monthly reports with the Commission, under terms delineated in the Stipulation.

By order of the Public Utilities Commission of New Hampshire this nineteenth day of November, 2004.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary