

DW 04-020

FRYEBURG WATER COMPANY

Investigation into Water Quality

Order Modifying Procedural Schedule Regarding Reparations

ORDER NO. 24,512

September 9, 2005

This docket involves Fryeburg Water Company (Fryeburg), a small water utility that serves about 70 customers in East Conway, New Hampshire. On June 2, 2005, the New Hampshire Public Utilities Commission (Commission) issued Order No. 24,471 which, among other things, scheduled a prehearing conference for July 19, 2005, “to consider an additional phase of this proceeding to address the issue of whether reparations [pursuant to RSA 365:29] may and should be required.”

At the prehearing conference, counsel for Fryeburg stated a general objection against the payment of reparations. (Tr., p.7) On July 21, 2005, Staff filed, on behalf of itself and the parties, a proposed procedural schedule that was approved by a Secretarial Letter issued August 2, 2005. On July 22, 2005, the Office of Consumer Advocate (OCA) filed a Rate Complaint and Petition for Reparations (Petition) which “is intended to avoid certain procedural problems which may arise without it.” On that same date, Staff filed a response which indicated that “the OCA Motion is duplicative of the Commission’s directive...that an additional phase...be considered to address the issues of reparations.” Staff’s response also presumed that “legal argument for reparations is anticipated through the filing of testimony as a part of the procedural schedule.”

When we approved the procedural schedule for this phase of the proceeding on

August 2, 2005, we also noted that we would take the OCA's Petition under advisement. We did not, however, expressly set forth a schedule for addressing the legal issues raised in our order of June 2, 2005, or implicated by the OCA Petition. Accordingly, we seek briefing of the following issues by October 14, 2005. The schedule approved on August 2, 2005, is not otherwise affected by this addition. The issues are:

- Whether RSA 365:29 authorizes the Commission to order reparations for inadequate water service;
- Assuming that reparations are permissible, when does the two-year recovery period under the statute begin (e.g. the date the customers' complaint was filed (January 14, 2004), the date the Commission noticed a prehearing conference on reparations (June 2, 2005), the date OCA filed its Petition (July 22, 2005), or some other date); and
- Assuming that reparations are permissible, must they be made to individual customers or may they be placed in an account for improvements to the system.

Based upon the foregoing, it is hereby

ORDERED, that the Parties file legal briefs on the issues recited above no later than October 14, 2005.

By order of the Public Utilities Commission of New Hampshire this ninth day of
September, 2005.

Thomas B. Getz
Chairman

Michael D. Harrington
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary