

**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%

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

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

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

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

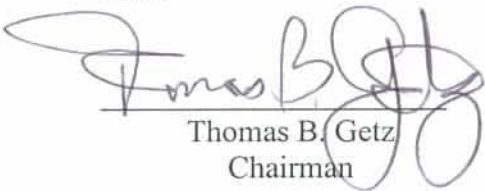
FURTHER ORDERED, that Fryeburg's request to increase its revenue requirement by \$62,257 for a combined revenue requirement of \$545,443 is hereby approved, for service rendered on or after September 29, 2010, and Fryeburg is authorized to collect from customers the rates described herein to recover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

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Docket #: 09-291

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WITH THE EXCEPTION OF DISCOVERY, FILE 7 COPIES (INCLUDING COVER LETTER) TO:
DEBRA A HOWLAND
EXEC DIRECTOR & SECRETARY
NHPUC
21 SOUTH FRUIT STREET, SUITE 10
CONCORD NH 03301-2429