

**DG 04-040**

**ENERGYNORTH NATURAL GAS, INC. D/B/A  
KEYSPAN ENERGY DELIVERY NEW ENGLAND**

**Summer 2004 Cost of Gas**

**Order Approving Motions for Protective Order and Confidential Treatment**

**ORDER NO. 24,405**

**November 19, 2004**

On April 30, 2004, the Commission issued Order No. 24,317 (Order), approving the 2004 summer Cost of Gas for Energynorth Natural Gas, Inc. d/b/a Keyspan Energy Delivery New England (KeySpan or the Company). In the Order, the Commission granted a motion for protective order and confidential treatment filed by KeySpan with the Commission on March 22, 2004. After the Order was issued, KeySpan filed two additional motions for protective order and confidential treatment in connection with certain discovery being conducted pursuant to the Order.

In the motion for protective order and confidential treatment filed on May 21, 2004 (First Motion), KeySpan seeks protective treatment for certain information provided by KeySpan in response to Staff Data Request 3-2(c), namely, prices paid for spot gas purchases during the 2003 summer period. KeySpan asserts that this information constitutes a trade secret that KeySpan does not disclose to anyone outside of its corporate affiliates and their representatives. KeySpan further asserts that disclosure of these prices would provide third parties with important information regarding the amount above or below NYMEX prices that KeySpan may be willing to pay for spot gas, putting KeySpan and its customers at a disadvantage when negotiating such purchases in the future. KeySpan concludes that (i) release of this information is likely to result in competitive disadvantage for KeySpan in the form of less

advantageous or more expensive gas supply contracts and (ii) gas suppliers possessing the confidential information described above would be aware of KeySpan's expectations regarding gas supply costs and would therefore be unlikely to propose to supply such goods and services on terms significantly more advantageous to KeySpan. According to KeySpan, Commission Staff concurs in the relief sought by the motion; the Office of Consumer Advocate (OCA) takes no position on the relief requested.

In the motion for protective order and confidential treatment filed on June 25, 2004 (Second Motion), KeySpan seeks protective treatment for certain information provided by KeySpan in response to Staff Data Request 4-2, namely, an accounting of net profits under KeySpan's asset management agreement with Entergy-Koch Trading, LP (EKT). KeySpan asserts that this information constitutes a trade secret that KeySpan does not disclose to anyone outside of its corporate affiliates and their representatives. KeySpan further asserts that it is contractually obligated to maintain the confidentiality of the price provisions of its agreement with EKT and that the information for which confidentiality is sought would reflect significant aspects of that arrangement. In addition, KeySpan asserts that disclosure would be harmful to KeySpan and its customers because other parties who might in the future provide similar asset management services could become aware of the economic terms that are acceptable to KeySpan, thus depriving KeySpan of the opportunity to obtain the best possible terms for such services. According to KeySpan, Commission Staff did not respond to the motion and the OCA takes no position on the relief requested.

The New Hampshire Right to Know Law provides each citizen with the right to inspect all public records in the possession of the Commission. *See* RSA 91-A:4,I. The statute

contains an exemption, invoked here, for “confidential, commercial or financial information.” RSA 91-A:5,IV. Our applicable rule, N.H. Code Admin. Rules Puc 204.06, is designed to facilitate the implementation of the statute as it as been interpreted by the courts. In most cases, a balancing test is used to determine whether confidential treatment should be granted. *See e.g., Union Leader Corporation v. New Hampshire Housing Finance Authority*, 142 N.H. 540 (1997).

We note that no parties have objected to the First and Second Motions and that the information for which protective treatment is sought is similar to information for which the Commission has granted protective treatment in the past. In balancing the interests for and against public disclosure of the information, we are satisfied on the basis of the record in this docket that KeySpan has adequately substantiated that the interests of KeySpan and ultimately KeySpan’s ratepayers in non-disclosure outweigh the public’s interest in obtaining access to the information.<sup>1</sup> We will therefore grant the First and Second Motions at this time. Consistent with our practice, the protective treatment will be subject to the on-going rights of the Commission, on its own motion or on the motion of Staff, any party or any other member of the public, to reconsider in light of RSA 91-A, should circumstances so warrant.

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

**ORDERED**, that the First and Second Motions are GRANTED. The determination as to confidential treatment made herein is subject to the ongoing authority of the Commission, on its own motion or on the motion of Staff, any party or any other member of the public, to reconsider this order in light of RSA 91-A, should circumstances so warrant.

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<sup>1</sup> Although we have accepted KeySpan’s arguments for purposes of this docket, we expect in future motions for protective order that the proponent of confidentiality will explain why confidential treatment of dated commercial information is still appropriate. Such information will assist the Commission in applying the balancing test and determining that confidential treatment is not being accorded to more information than is necessary to meet the

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

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Thomas B. Getz  
Chairman

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Graham J. Morrison  
Commissioner

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Michael D. Harrington  
Commissioner

Attested by:

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Debra A. Howland  
Executive Director & Secretary

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established need.