

DG 99-132

ENERGYNORTH NATURAL GAS, INC.

1999/2000 Winter Period Cost of Gas Proceeding

Granting Motion for Protective Order and Confidential Treatment

O R D E R N O. 23,316

October 11, 1999

On September 15, 1999, EnergyNorth Natural Gas, Inc. (ENGI) filed with the New Hampshire Public Utilities Commission (Commission) its 1999/2000 Winter Period Cost of Gas filing. ENGI concurrently filed a Motion for Protective Order and Confidential Treatment (Motion) in which it requested confidential treatment of certain information, pursuant to RSA 91-A:5,IV and Puc 204.05(b) and Puc 204.06.

The Motion requests confidential treatment that identifies ENGI's suppliers and sets forth the terms of the gas supply agreements negotiated by ENGI with its suppliers relating to the pending 1999/2000 Winter Period Cost of Gas proceeding (Gas Supply Information). The Gas Supply Information specifies the commodity and demand charges under the supply contract and includes the calculation of firm sales cost of gas rate, a supply and demand forecast, a calculation of unit cost of supply, a conversion of gas volumes and cost to therms, a unit cost calculation for natural gas storage, a unit cost calculation for liquid petroleum gas, a unit cost calculation for liquid natural gas, and the 1998-1999 firm sales winter cost of gas results.

In its Motion, ENGI also requests confidential treatment for testimony, which had not yet been filed, describing a settlement agreement (Settlement Agreement) between ENGI and Public Service Company of New Hampshire (PSNH) regarding the allocation of environmental cleanup expenses at the site of a former manufactured gas plant (MGP) in Laconia, New Hampshire. This information was filed by ENGI on October 1, 1999 and includes testimony and documents which describe the Settlement Agreement and the allocation of cleanup expenses between the parties, and includes a copy of the Settlement Agreement (MGP Cleanup Information).

ENGI filed the Gas Supply and MGP Cleanup Information (together, the Information) in redacted form as well as full, unredacted copies. Pursuant to Puc 204.05(b), documents submitted to the Commission or Commission Staff accompanied by a motion for confidentiality shall be protected as provided in Puc 204.06(d) until the Commission rules on the Motion for Confidential Treatment.

ENGI states in its Motion that at the time of filing of the Motion that, when notified, Commission Staff was not able to respond with a position and that the Office of Consumer Advocate did not take a position.

I. GAS SUPPLY INFORMATION

In its Motion, ENGI states that: (1) the Gas Supply Information contains trade secrets of ENGI which should be protected as confidential commercial information; (2) that ENGI does not disclose this information to anyone outside of its corporate affiliates and their representatives; (3) that release of this information is likely to result in competitive disadvantage for ENGI; and (4) that this information would be extremely beneficial to ENGI's competitors who would gain a competitive advantage as a result of disclosure.

The Commission recognizes that the Gas Supply Information regarding suppliers and contract terms identified above is critical to the review of the cost of gas (COG) filing by the Commission, the Commission Staff (Staff) and the Office of Consumer Advocate (OCA). The Commission also recognizes that the Gas Supply Information as contained in the filing is sensitive commercial information in a competitive market. Thus, based on ENGI's representations, under the balancing test we have applied in prior cases, e.g., Re NET (Auditel), 80 NHPUC 437 (1995), Re Eastern Utilities Associates, 76 NHPUC 236 (1991), we find that the benefits to ENGI of non-disclosure in this case outweigh the benefits to the public of disclosure. The information, therefore, is exempt from public disclosure pursuant to RSA 91-A:5,IV and N.H. Admin. Rules, Puc 204.06.

II. MGP CLEANUP INFORMATION

In its Motion, ENGI asserts that the MGP Cleanup Information was submitted to the Commission following protective treatment of this information in Docket DG 99-060, a docket which addressed ENGI's petition for approval of a recovery mechanism for costs related to clean-up of MGP sites.

On September 15, 1999, PSNH filed a letter with the Commission requesting that the portion of the transcript in DG 99-060 relating to the MGP Cleanup Information remain confidential. PSNH states that disclosure of the terms to which ENGI and PSNH were willing to agree may compromise the position PSNH may take in the future. In order to preserve PSNH's position, PSNH requested that the Settlement Agreement be kept confidential in Docket DG 99-060 and in other ENGI proceedings in the future, including this docket. By Order No. 22,943 (May 19, 1999) and Order No. 23,303 (September 20, 1999), ENGI's environmental costs to remediate former MGP sites were to be addressed within ENGI's cost of gas proceedings. Therefore, since ENGI seeks to recover remediation costs related to the Laconia MGP site within the current proceeding, ENGI filed the Settlement Agreement along with supporting testimony. ENGI stated that it does not have an independent need to maintain the confidentiality of such information, but has done so at PSNH's request and pursuant to the terms of the Settlement Agreement.

We recognize the need for confidential treatment of the Settlement Agreement between PSNH and ENGI and testimony and other material and information regarding the agreement in this proceeding. In Order No. 22,853 (February 18, 1998) in Docket DR 97-130 in which disclosure of a similar remediation settlement agreement involving ENGI was at issue, we accepted Staff's proposed changes to the request regarding the manner in which the protected material would be handled. In that docket, Staff agreed that the material qualified for protection pursuant to RSA 91-A and our administrative rules and that disclosure of the terms of the agreement, except as permitted under the settlement agreement related to that cleanup, may compromise the position of the other party to the contract.

As in Docket DR 97-130, we will, therefore, grant ENGI's Motion for Protective Treatment pursuant to RSA 91-A:5,IV and N.H. Admin. Rules, Puc 204.05 and 204.06, consistent with Commission practice.

Based upon the foregoing, it is hereby

ORDERED, that the Motion for Protective Order and Confidential Treatment of EnergyNorth Natural Gas, Inc., as it relates to the Gas Supply Information, as described above, is GRANTED; and it is

FURTHER ORDERED, that the Motion for Protective Order and Confidential Treatment of EnergyNorth Natural Gas, Inc., as it relates to the Manufactured Gas Plant (MGP) Cleanup Information, as described above, is GRANTED; and it is

FURTHER ORDERED, that the Settlement Agreement between EnergyNorth Natural Gas, Inc. and Public Service Company of New Hampshire and any related testimony or material shall be and hereby are designated as Protected Materials and any testimony, briefs, documents and other material and information submitted by or to any participant in this proceeding that refers to the Settlement Agreement, other than of the fact that such information is required to be kept confidential, shall be and hereby are similarly designated as Protected Materials; and it is

FURTHER ORDERED, that unless and until otherwise ordered by the Commission or a court of competent jurisdiction, all Protected Materials shall be used only in connection with this proceeding or related appellate proceedings and may be inspected by or disclosed to and used by the Commissioners, law firms of record for the parties in this proceeding, OCA and members of Staff with direct involvement in this proceeding (Permitted Persons); and it is

FURTHER ORDERED, that prior to disclosure of any Protected Material to any Permitted Person (other than a Commissioner or member of Staff), each such individual shall be

given a copy of this Order and shall execute a certificate stating that he or she has read this Order and that he or she will not divulge any Protected Material or any portion thereof or any information derived therefrom, other than in accordance with this Order; counsel for the party by whom such Permitted Person is employed shall submit a copy of such certificate to all other participants in this proceeding and a copy shall be filed with the Commission; and it is

FURTHER ORDERED, that any person who receives Protected Material pursuant to this Order shall make no more than one copy of such Protected Material except copies may be made of documents for marking as sealed exhibits in accordance with the Order as set forth below; and it is

FURTHER ORDERED, that if a party tenders for filing with the Commission or any court any written testimony, exhibit brief, or other submission that includes, incorporates or otherwise discloses Protected Material, all portions thereof disclosing such materials shall be marked Protected Material and be filed and served in sealed envelopes or other appropriate containers endorsed to the effect that they are sealed pursuant to this Order; and it is

FURTHER ORDERED, that unless the Commission orders otherwise, Protected Material or portions thereof may be disclosed only in an in camera portion of any proceeding, closed

to all persons except Commissioners, members of Staff and those who have signed a certificate in accordance with this Order; and it is

FURTHER ORDERED, that this Order is subject to the ongoing rights of the Commission, on its own motion or on the motion of Staff or any party or any other member of the public to reconsider this Order in light of RSA 91-A, should circumstances so warrant.

By order of the Public Utilities Commission of New Hampshire this eleventh day of October, 1999.

Douglas L. Patch
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Thomas B. Getz
Executive Director and Secretary