

**STATE OF NEW HAMPSHIRE**  
**BEFORE THE**  
**PUBLIC UTILITIES COMMISSION**

**Re: EnergyNorth Natural Gas, Inc. d/b/a National Grid NH**  
**Docket DG 08-009**

**OFFICE OF CONSUMER ADVOCATE'S OBJECTION TO NATIONAL GRID NH'S**  
**MOTION FOR REHEARING AND/OR RECONSIDERATION**

The Office of Consumer Advocate (“OCA”) objects to the Motion for Rehearing and/or Reconsideration (“Motion for Rehearing”) filed by EnergyNorth Natural Gas, Inc. d/b/a National Grid NH (“Company”) with respect to the Commission’s Order No. 24,972 (“Order”). The Order approved a Settlement Agreement for all issues other than ROE,<sup>1</sup> and also determined the ROE. The Company’s Motion for Rehearing challenges only the Commission’s determination of ROE. The Commission has already considered and rejected the issues that the Company raises in its Motion for Rehearing, and the Company has presented no good reason for the Commission to alter its prior determination on those matters. By way of further explanation for this Objection, the OCA states as follows.

1. “The standard for granting a motion for rehearing pursuant to RSA 541:3 and RSA 541:4 requires the [moving party] to demonstrate that the order is unlawful or unreasonable.” City of Nashua, RSA 38 Proceeding re Pennichuck Water Works, DW 04-048, Order Denying Motions for Rehearing (No. 24,948, March 13, 2009), slip op. at

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<sup>1</sup> The OCA was a signatory to the Settlement Agreement in this case, which resolved all issues other than ROE. In its Motion for Rehearing, the Company appears to suggest that its compromise of issues reflected in the Settlement Agreement entitle it to a higher ROE. *See* Motion for Rehearing at p. 6. This suggestion troubles the OCA, as the Settlement Agreement represented compromises of all the parties, and the approval of the Settlement Agreement was wholly independent from the determination of ROE.

p. 19. Despite this clear standard, the Company simply repeats the facts and arguments that it previously raised in its brief on the same issues.

2. For instance, in section III of the Motion for Rehearing, and again in section V, the Company repackaged its arguments that the ROE is important to attract investor capital; that the Company will invest in other jurisdictions if the ROE is set too low; and that ROEs set at higher levels, in other jurisdictions, are more appropriate. *Compare* Motion for Rehearing, at pp. 5-7, and pp. 10-12, *with* the Company's brief, at pp. 2-4, and pp. 23-24. Likewise, in section IV of the Motion for Rehearing, the Company returned to its arguments about the flaws of the DCF methodology, and the necessity of considering the results of other methodologies in determining ROE. *Compare* Motion for Rehearing, at pp. 8-9, *with* the Company's brief, at pp. 3-4, and pp. 14-19. Because these facts and arguments are not new, the Commission should reject the Company's request for rehearing or reconsideration.

3. In support of its requests for relief, the Motion for Rehearing also alleges mistakes by the Commission in rendering its Order. These claims of mistake, however, are also insufficient to provide the Commission with a basis to rehear or reconsider its Order, as discussed below.

4. First, the Company claims that in setting the ROE the Commission "mistakenly relied on the Company's legal obligation to invest sufficient capital to maintain a safe and reliable system." *See* Motion for Rehearing, at p. 6. The Company also alleges that the Commission "misunderstood" the Company's argument about the level of ROE required to attract investors as being premised upon the Company's access to capital from its

parent company. *See* Motion for Rehearing, at pp. 12-13, and 14. Neither claim meets the standard for rehearing or reconsideration.

5. In pertinent part, the Company contends that the Commission wrongly assumed “that because *the Company* has a minimum obligation to invest its own earnings so that its distribution system is maintained in a particular manner, the Company's *parent* (i.e., its shareholder) has a corresponding obligation to invest its capital (i.e., to inject new debt or equity) when needed.” Motion for Rehearing, at p. 14. Therefore, according to the Company, the Commission may have “failed to properly analyze whether or not the return on equity was too low to attract investment capital in light of returns available from other investment opportunities.”

6. The Company’s allegations of mistake appear to be yet another version of an argument previously presented by the Company, and previously considered by the Commission, namely that a certain level of ROE is necessary to attract investment capital. The Company has already made its case that the ROE is critical to the investment community and its ability to attract investors, particularly in light of other investment opportunities in other jurisdictions. *See, e.g.*, Company’s Brief, at pp. 2-4, and pp. 23-25. These facts and argument are not new. Instead of constituting mistakes, these statements simply represent the Company’s disagreement with the Commission’s decision. Consequently, the Commission should deny the Motion for Rehearing.

7. Moreover, the Commission’s comments about the Company’s obligation to invest in its system and the Company’s access to capital from its parent did not form the basis of the Commission’s ROE analysis or determination. Instead, the Commission made these observations in the context of an evidentiary ruling on the Company’s survey data, which

the Commission rejected on other grounds as unsupported and unreliable.<sup>2</sup> *See* Order, pp. 52-55.

8. The Commission based its evidentiary ruling on the survey data upon established precedent. *See* Order at p. 54. Because there was “little or no evidence in the record regarding the circumstances behind the ROEs awarded in other cases, in other states and at other times, including, for example, the risks, market conditions, regulatory factors and reasoning behind the ROE awards,” the Commission rejected the survey data as a basis for its determination of the ROE and opted instead to rely upon “the use of analytical methods.” *Id.* at p. 54. In later sections of the Order, the Commission reviewed the various analytical methodologies advocated by the parties, and exercised its judgment and discretion to apply certain of these methodologies to determine the Company’s ROE. The Company itself recognizes the Commission’s authority in this area when it states that “from a legal perspective, the Commission has broad discretion in determining a proper return on equity.” Motion for Rehearing at p. 7.

9. The contested assumptions, or alleged mistakes, of the Commission did not speak directly to the legal issues determined by the Commission: the reliability of the survey data; the selection of an appropriate analytical methodology; or the application of these methods to determine ROE. Rather, the OCA views these remarks as more in the nature of *dicta*, the unreasonableness or unlawfulness of which the Company fails to demonstrate in its Motion for Rehearing. Moreover, these statements represent a proper exercise of judgment and discretion by the Commission in balancing the competing interest of the company and its investors; as such, they are both reasonable and lawful.

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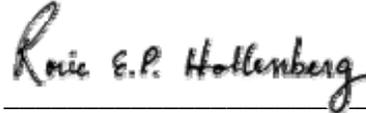
<sup>2</sup> Of note, the Company did not directly challenge as unlawful or unreasonable the Commission’s ruling on the evidentiary significance of the survey data.

Consequently, these statements do not form a sufficient basis for the relief requested, and the Commission should deny the Company's request for rehearing.

Conclusion

For the reasons stated above, the Commission should reject the Company's request for rehearing or reconsideration.

Respectfully submitted,  
OFFICE OF CONSUMER ADVOCATE



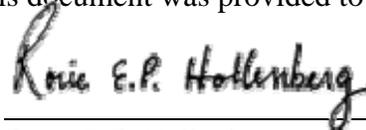
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Date: July 7, 2009



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