

DG 99-060

**ENERGYNORTH NATURAL GAS, INC.**

**Petition for Approval of Recovery Mechanism  
for Costs Related to Clean-Up of Manufactured Gas Sites**

**Order Approving Settlement Agreement**

**O R D E R    N O.    23,303**

**September 20, 1999**

**APPEARANCES:** McLane, Graf, Raulerson and Middleton by Steven V. Camerino, Esq., for EnergyNorth Natural Gas, Inc.; Office of the Consumer Advocate by F. Anne Ross, Esq. for residential ratepayers; and Larry S. Eckhaus, Esq. for the Staff of the New Hampshire Public Utilities Commission.

**I.    PROCEDURAL HISTORY**

On April 20, 1999, EnergyNorth Natural Gas, Inc. (ENGI) filed with the New Hampshire Public Utilities Commission (Commission) a Petition for Approval of Recovery Mechanism for Costs Related to Clean-up of Manufactured Gas Sites. ENGI has identified six sites in New Hampshire at which ENGI or its predecessors operated manufactured gas plants (MGP). These sites are in Concord, Dover, Keene, Laconia, Manchester, and Nashua. In addition, a seventh property in Franklin is the site of a former gas holder that may have contaminants from manufactured gas that was stored there. It is ENGI's position that the MGP-related sites were owned and operated by ENGI or its predecessors in compliance with applicable laws and standards of the day, but that changes in environmental laws and regulations since the MGPs ceased operations have created actual and potential liability for

ENGI relating to the investigation and remediation of environmental contamination at these sites.

ENGI seeks Commission approval of a mechanism under which it will ultimately be able to recover deferred environmental expenses after a showing by ENGI that such clean-up expenses had been prudently incurred. Approval of such a mechanism is not intended to provide for such recovery unless and until ENGI establishes that the clean-up expenses were prudent. Under this process, the Commission would not reinvestigate or review the prudence of the MGP operations each time it reviewed the environmental remediation expenses.

On May 5, 1999, the Commission issued an Order of Notice which scheduled a Prehearing Conference for May 21, 1999. There were no timely Motions to Intervene filed. The Office of the Consumer Advocate (OCA) intervened on behalf of residential ratepayers pursuant to RSA 363:28.

On July 15, 1999, Public Service Company of New Hampshire (PSNH) filed a Petition for Late Intervention. On July 26, 1999, ENGI filed an Objection to PSNH's Petition for Late Intervention. On August 3, 1999, PSNH filed, in accordance with the approved procedural schedule, the pre-filed Direct Testimony of Ronald P. Klattenberg, Supervisor - Environmental Services. On August 26, 1999, the Commission granted PSNH full intervention in the proceeding, subject to the limitations that it accept the approved procedural schedule and that PSNH's intervention is

limited to issues other than ENGI's recovery mechanism or the potential sharing of remediation costs between ENGI's shareholders and ENGI's customers.

On August 31, 1999, Staff filed a Settlement Agreement (Settlement) entered into by and among ENGI, OCA, and Staff. On September 7, 1999, PSNH filed a Petition to Withdraw Intervention. PSNH obtained the concurrence of ENGI and Staff for its petition. The OCA took no position with respect to the petition. A hearing on the merits was held on September 8, 1999. Appearances were made by ENGI, OCA, and Staff. PSNH was not present. Testimony supporting the Settlement was presented by ENGI's witnesses Mark G. Savoie, Manager of Regulatory Affairs, and Kenneth M. Margossian, Executive Vice President.

## **II. SETTLEMENT AGREEMENT**

ENGI, OCA, and Staff agree that ENGI's petition should be approved subject to the Settlement Agreement which contains the following provisions:

1. Prudence of MGP Operations. ENGI and Staff recommend that the Commission should find that the waste products from operation of the MGP sites were stored and disposed of by ENGI and its predecessors in a prudent manner in accordance with the practices of the time, and that the alleged contamination of the MGP sites and surrounding areas is consistent with such operations. OCA takes no position with regard to the foregoing.
2. Rate Recovery Mechanism. ENGI, OCA, and Staff agree that the prudently incurred environmental investigation and remediation costs related to environmental clean-up, as well as litigation and other efforts to recover these costs from third parties, arising from or related to the MGP sites should be recovered through rates as follows:

- a. Costs related to environmental investigation and remediation arising from or related to the MGP sites and costs arising from or related to claims against third parties for such investigation and remediation shall be submitted to the Commission annually for review with ENGI's winter cost of gas filing. Upon a determination that such costs were prudently incurred, the costs shall be recovered through rates in the same manner as the costs that were the subject of DR 97-130, except as provided in Section 2(e) below. In any such review or proceeding, the issue of the prudence of the historical operation of the MGP sites and the historical storage and disposal of hazardous waste therefrom by ENGI or its predecessors shall not be subject to review.<sup>1</sup>
- b. The amounts authorized to be recovered in accordance with Section 2(a) shall be booked as a deferred asset and shall be recovered through a surcharge in rates to be collected over a seven (7) year period. Amortization of the deferred asset shall begin when recovery of the asset is included in rates. The unamortized balance of the asset shall not be included in rate base and shall not accrue carrying costs, except as provided for in Section 2(e). The surcharge shall be applied to all sales and transportation customer classes taking firm service, on an equal per therm basis, unless specifically excepted.
- c. Any amounts received from third parties, net of the costs of obtaining such payments, shall be applied to reduce any unamortized balance authorized to be recovered through rates. Such amount shall be applied by reducing the amortization period, rather than reducing the per therm amount of the environmental surcharge.
- d. The cost recovery mechanism set forth in this Settlement Agreement shall apply to all costs incurred with regard to environmental remediation and investigation related to the MGP sites (including costs related to pursuing claims against third parties), subject to a determination of prudence of the actual costs incurred as set forth in Section 2(a) above.
- e. The net amount recoverable by ENGI in any year (a year being measured from the beginning of the winter period)

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<sup>1</sup> It is the parties' intention that the issue of the prudence of clean-up and disposal of hazardous waste from the MGP sites that may occur in the future shall be open to a prudence review in association with any request by ENGI for rate recovery for the costs arising from such clean-up and disposal.

shall be capped at five percent (5%) of ENGI's total revenues from firm gas sales plus total imputed gas sales revenues for firm gas transportation customers.<sup>2</sup> For purposes of calculating the denominator (i.e., total gas sales revenues) by which the numerator (i.e., net amount recoverable through the surcharge) is divided, the denominator shall be calculated based on total revenues for the most recent twelve calendar months ending prior to the date on which ENGI files its request with the Commission seeking approval of the surcharge. To the extent that the amount eligible for recovery exceeds the cap, the excess amount shall be carried forward and recovered in the subsequent year or years, subject to the imposition of the same cap in each subsequent year. The amount that is carried forward shall accrue interest. The interest rate is to be adjusted each quarter using the prime interest rate as reported in the Wall Street Journal on the first day of the month preceding the first month of the quarter.

### III. COMMISSION ANALYSIS

After careful review of the Settlement Agreement and the testimony and exhibits offered at the September 8, 1999 hearing, we find that the Settlement Agreement is reasonable and in the public good. We agree with ENGI and Staff that the waste products from the identified MGP sites were stored and disposed of by ENGI and its corporate predecessors consistent with the practices of the time. At that time, those storage disposal actions were considered prudent. We note that the OCA took no position in the Settlement as it pertains to this issue. Our finding that the operations of ENGI and its corporate predecessors were prudent is consistent with past decisions made by the Commission. See EnergyNorth Natural Gas, Inc., Order No.

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<sup>2</sup> Imputed revenues from sales of gas to firm transportation customers shall be calculated based on ENGI's system average gas costs or gas supply costs by rate class, whichever may apply.

22,943 (May 19, 1998) and Northern Utilities, Inc., Order No. 23,046 (October 27, 1998). Further, we approve the recovery mechanism agreed to by ENGI, OCA, and Staff and will evaluate the actual rate itself within the context of ENGI's winter cost of gas proceedings. At that time, the Commission will be afforded the opportunity to scrutinize the costs incurred by ENGI to remediate its former MGP sites.

The Settlement refers to ENGI and its predecessors. In rendering this decision, the Commission interprets "its predecessors" to refer to ENGI's former, corporate entities as opposed to other non-related third parties who formerly owned the MGP sites.

We continue to be pleased with ENGI's aggressive pursuit of insurance and third party recoveries. Any recoveries obtained by ENGI have the potential to significantly reduce the remediation costs ENGI seeks to recover from its ratepayers, thereby providing a real benefit to ENGI's customers. Therefore, we encourage ENGI to continue pursuing recoveries which are prudent.

Consistent with our decisions in prior dockets regarding ENGI's Concord MGP site, we find that sharing of the burden of the remediation costs between ratepayers and shareholders is appropriate. The recovery mechanism in the Settlement that prohibits carrying costs or rate base treatment

of the deferred assets ensures that remediation costs shall be borne by both ratepayers and shareholders. ENGI's witness Mark Savoie testified that, over a seven-year period, shareholders will absorb approximately 20% of the remediation costs by not being allowed carrying costs on the unamortized balance of the deferred asset. The recovery mechanism is also consistent with our decision in EnergyNorth Natural Gas, Inc. 80 NHPUC 382, 386 (1995), cited in Northern Utilities, Inc. Order No. 23,046, which states:

Consistent with the recovery mechanism approved in DR 93-168, any recovery, such as settlement with UGI, net of costs, will reduce the total amount to be recovered through rates. But rather than simply lowering the amount to be collected over the remaining amortization period, we will require ENGI to credit the recovery to the end of the amortization period, thereby shortening the time of ratepayer recovery. This should serve as an additional incentive to ENGI to obtain any potential recovery quickly, as the amount recovered will reduce the carrying costs being absorbed by shareholders.

We continue to believe that our decisions in those proceedings to apply third party recoveries to reduce the amortization period serve as a strong incentive for the utilities to reduce the costs borne by its ratepayers for environmental remediation.

We will continue to require ENGI to report each year, as part of its winter cost of gas proceeding, the status of the cleanup recovery efforts with third parties. If there are adjustments necessary to the environmental surcharge mechanism, ENGI and any other party or Staff should make recommendations as part of that proceeding.

Lastly, we will approve PSNH's Petition to Withdraw Intervention. PSNH did not actively participate in the proceeding, did not sign the Settlement Agreement, nor did PSNH appear for the hearing on the merits.

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

**ORDERED,** that the Settlement Agreement is APPROVED;

and it is

**FURTHER ORDERED,** that PSNH's Petition to Withdraw Intervention is APPROVED; and it is

**FURTHER ORDERED,** that ENGI shall file a compliance tariff with the Commission within ten days of the date of this order, in accordance with N.H. Admin. Rules, Puc 1603.02(b).



By order of the Public Utilities Commission of New  
Hampshire this twentieth day of September, 1999.

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Douglas L. Patch  
Chairman

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Susan S. Geiger  
Commissioner

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Nancy Brockway  
Commissioner

Attested by:

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Thomas B. Getz  
Executive Director and Secretary