

DG 99-193

ENERGYNORTH NATURAL GAS, INC.
PETITION FOR APPROVAL OF THE ACQUISITION OF ENERGYNORTH NATURAL
GAS, INC. BY EASTERN ENTERPRISES AND KEYSpan CORPORATION

ORDER REGARDING APPLICABILITY OF RSA 369:8 II AND RSA 374:33
TO PROPOSED TRANSACTION
AND SCHEDULING PREHEARING CONFERENCE

O R D E R N O. 23,367

December 13, 1999

On December 3, 1999, EnergyNorth Natural Gas, Inc. (ENGI), Eastern Enterprises (Eastern) and KeySpan Corporation (KeySpan)(together the Joint Petitioners) jointly filed, pursuant to RSA 369:8,II and RSA 374:33, with the New Hampshire Public Utilities Commission (Commission) a petition for approval of the acquisition of ENGI by Eastern and KeySpan. In the event the Eastern merger with KeySpan terminates or expires, it is intended that the merger of Eastern and EnergyNorth will proceed.

According to the Petition, ENGI will be acquired indirectly by KeySpan: Eastern will acquire EnergyNorth, the parent of ENGI, and Eastern will be acquired by KeySpan. The KeySpan/Eastern Merger is not contingent upon the Eastern/EnergyNorth transaction. Eastern must also obtain the approval of the Securities and Exchange Commission (SEC) for the acquisition of EnergyNorth pursuant to the Public Utility Holding Company Act of 1935 (PUHCA). KeySpan must also obtain SEC approval of its application to become a registered holding

company under the PUHCA and its acquisition of Eastern.

ENGI is a New Hampshire corporation and public utility as defined in RSA 362:2, and the largest natural gas utility in New Hampshire serving approximately 72,000 customers in 28 cities and towns in southern and central New Hampshire and the City of Berlin in northern New Hampshire.

Eastern is a Massachusetts business trust and holding company that owns Boston Gas Company, Colonial Gas Company and Essex Gas Company which serve 735,000 natural gas customers in Massachusetts. Eastern also owns and operates several unregulated business enterprises.

KeySpan is a New York corporation that owns Brooklyn Union Gas Company and KeySpan Gas East which serve 1.6 million natural gas customers in New York City and Long Island. KeySpan also owns and operates other regulated electric generation companies in the state of New York, as well as several unregulated business enterprises.

The Joint Petitioners aver that the mergers will result in numerous benefits, including: an immediate reduction in gas costs resulting in a 2.2% burner tip price reduction to ENGI customers; cost savings due in part to the elimination of 62 positions (47 management and 15 non-management); increased supply options, purchasing power and the ability to dispatch across Eastern's combined distribution system; integration of corporate

and administrative functions; sharing of information technology; and customer service enhancements.

The EnergyNorth Merger Agreement further provides as a condition of the merger, with regard to rates and recovery of costs associated with the merger (including the acquisition premium, and transaction and integration costs), that the Commission's approval shall be upon terms and conditions that are not less favorable than those set forth in Order No. 22,983, *Northern Utilities, Inc.* 83 NH PUC 401 (1998). The Joint Petitioners propose to work with the Commission to develop a mechanism for identifying and quantifying cost savings that are achievable only as a direct result of the merger, and to have the opportunity to request in a future proceeding the recovery of merger related costs required to accomplish the transaction if such costs are demonstrated to be offset by merger related savings.

The Joint Petitioners request approval of the transactions as filed in accordance with RSA 369:8,II(b)(2), or, alternatively, RSA 374:33. Pursuant to RSA 374:33, the acquisition by a utility or public holding company of more than 10 percent of the stocks or bonds of a public utility or public utility holding company incorporated in or doing business in this state requires Commission approval. RSA 369:8, II provides, however, that where the parent company of a utility regulated by

the Commission seeks to merge or be acquired by another utility, the approval of the Commission is not required if there will be no adverse effect on rates, terms, service or operations of the New Hampshire utility, and a detailed written representation to that effect is made to the Commission.

In Order No. 23,202, *New England Electric System*, Docket DE 99-035 (April 21, 1999), the Commission determined that the mere representations of the public utility are not sufficient to satisfy the statute; the Commission must independently verify that no adverse effect on the rates, terms, service or operation of the utility to be acquired will occur. Id at 3. That determination was reaffirmed in Order No. 23,308, *New England Electric System*, Docket DE 99-035 (October 4, 1999) at 13. The determination to independently verify the claim of no adverse effect is not a decision on the merits of the underlying transaction and whether it should or should not be approved as proposed.

Subsequent to that proceeding, RSA 369:8,II was amended, requiring, among other things, an order of the Commission within 60 days of the completed filing or the transaction will be considered approved as filed. RSA 369:8,II (b)(2). Although the Petitioners have filed, along with the Petition, the testimony of officers of ENGI, Eastern and KeySpan, we note that it is not a "completed filing" as required by RSA

369:8,II (b)(2) and, is, therefore, not the "detailed representation" as required by RSA 369:8,II (a) or (b)(1). The filing does not include the Agreement and Plan of Merger between Eastern and KeySpan, and does not contain any supporting documentation or schedules pertaining to and developing the alleged savings referred to in the testimony of Mr. Bodanza. The Agreement and Plan of Reorganization between Eastern and ENGI was originally executed on July 14,1999, nearly five (5) months ago. The savings alluded to in Mr. Bodanza's testimony relate to savings as a result of that merger. Yet, no supporting information has been filed. While the information regarding savings analysis resulting from the KeySpan acquisition of Eastern, which agreement was not entered into until November 4, 1999, may not be fully developed, if the Petitioners seek to support their filing by claim of such savings, the supporting material must be provided, and the filing will not be considered complete until it is. Because this is not a "completed filing", we find that the time provisions of RSA 369:8,II have not yet been triggered. Nevertheless, because of the tight time frame under RSA 369:8,II in which the Commission must reach a conclusion in this matter, we believe that it is appropriate to proceed under RSA 374:33 and schedule a prehearing conference to accept motions for intervention and adopt a procedural schedule.

The filing raises, inter alia, issues related to

whether the merger will have an adverse effect on the rates, terms, safety, services and operation of the utility, including: the filing of affiliate agreements between ENGI and Eastern and KeySpan and the effect of those agreements on ENGI; the impact on the financial structure of ENGI; the rate impact and accounting treatment of merger costs; what the structure of the surviving corporation should be; methodology to identify and quantify merger costs and savings; and consideration of the proposed acquisition adjustment, and its allocation and recovery, if any.

Based upon the foregoing, it is hereby

ORDERED, that a Prehearing Conference, pursuant to N.H. Admin. Rules Puc 203.05, be held before the Commission located at 8 Old Suncook Road, Concord, New Hampshire on December 23, 1999 at 10:00 am, at which any one or more of the issues set forth in N.H. Admin Rule Puc 203.05(c) shall be considered; and it is

FURTHER ORDERED, that the Prehearing Conference may be tape recorded unless a party, at least 5 days in advance of the Prehearing Conference, requests a transcript, in which case the Commission shall order a stenographic record, pursuant to N.H. Admin. Rule Puc 203.05(d); and it is

FURTHER ORDERED, that, immediately following the Prehearing Conference, ENGI, Eastern, KeySpan, the Staff of the Commission and any Intervenors hold a Technical Session to review the Petition and prefiled testimony and allow ENGI, Eastern and

KeySpan to provide any amendments or updates to its filing; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, the Petitioners shall notify all persons desiring to be heard at this hearing by publishing a copy of this Order of Notice no later than December 15, 1999, in a newspaper with statewide circulation or of general circulation in those portions of the state in which operations are conducted, publication to be documented by affidavit filed with the Commission on or before December 23, 1999; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rule 201.05, the Commission waives, in part, the fourteen day notification requirement of N.H. Admin. Rules Puc 203.01(a); and it is

FURTHER ORDERED, that any party seeking to intervene in the proceeding shall submit to the Commission an original and eight copies of a Petition to Intervene with copies sent to the Petitioners and each entity identified on the Commission's service list on or before December 20, 1999, such Petition stating the facts demonstrating how its rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding, or that the petitioner qualifies as an intervener under any provision of law as required by N.H.

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Admin. Rule Puc 203.02 and RSA 541-A:32; and it is

FURTHER ORDERED, that any party objecting to a Petition to Intervene make said Objection at or before the prehearing conference on December 23, 1999.

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By order of the Public Utilities Commission of New
Hampshire this thirteenth day of December, 1999.

Douglas L. Patch
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Thomas B. Getz
Executive Director and Secretary

Any individuals needing assistance or auxiliary communication aids due to sensory impairment or other disability, should contact the American with Disabilities Act Coordinator, NHPUC, 8 Old Suncook Road, Concord, New Hampshire 03301-7319; 603-271-2431; TDD Access: Relay N.H. 1-800-735-2964. Preferably, notification of the need for assistance should be made one week before the scheduled event.