DG 03-068

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

2003 Summer Cost of Gas

Order Approving the Cost of Gas and
Local Distribution Adjustment Clause

O R D E R N O. 24,167

April 30, 2003

APPEARANCES: McLane, Graf, Raulerson, and Middleton by Steven V. Camerino, Esq. on behalf of EnergyNorth Natural Gas, Inc. d/b/a KeySpan Energy Delivery New England; Office of the Consumer Advocate by Mr. Kenneth E. Traum on behalf of residential utility consumers; and Marcia A.B. Thunberg, Esq. for the Staff of the New Hampshire Public Utilities Commission.

I. PROCEDURAL HISTORY

On March 17, 2003, EnergyNorth Natural Gas, Inc. d/b/a KeySpan Energy Delivery New England (KeySpan), a public utility engaged in the business of distributing natural gas in southern and central New Hampshire and the City of Berlin in northern New Hampshire, filed with the New Hampshire Public Utilities Commission (Commission) its Cost of Gas (COG) for the 2003 Summer period. KeySpan's filing included the direct testimony and supporting attachments of A. Leo Silvestrini, Director of Rates and Regulatory Affairs, and Theodore E. Poe, Senior Resource Planning Consultant with Boston Gas Company.

Also on March 17, 2003, KeySpan filed a Motion for Protective Order and Confidential Treatment.

On April 8, 2003, the Office of the Consumer Advocate (OCA) filed a Notice of Intent to Participate in this docket on behalf of residential utility consumers pursuant to the powers and duties granted to the OCA under RSA 363:28,II. There were no other intervenors in this docket.

On April 11, 2003, Staff filed the Joint Direct Testimony of Stephen P. Frink, Assistant Director of the Gas & Water Division and Robert J. Wyatt, Sr. Utility Analyst.

On April 14, 2003, KeySpan filed a Motion for Protective Order and Confidential Treatment regarding an attached Agreement with Entergy-Koch Trading. On April 15, 2003, Staff submitted a letter to the Commission stating it did not object to the Motions for Protective Treatment for the Agreement with Entergy-Koch Trading.

II. POSITIONS OF THE PARTIES AND STAFF

A. KeySpan

KeySpan witnesses A. Leo Silvestrini and Theodore E. Poe testified as to the following issues: 1)calculation of the Firm Sales COG rate and the impact on customer bills; 2) factors contributing to the increased rate; 3) reasons for the 2002

Summer COG under-collection; 4) Tilton/Laconia improvements; and 5) the increase in the LDAC rate.

1. Calculation and Impact of the Firm Sales COG Rate

KeySpan's proposed 2003 Summer COG average cost of gas (residential firm sales rate) of $0.9174 per therm is comprised of anticipated direct gas costs, indirect gas costs and various adjustments. Exh. 1 at 28. Hearing Transcript of April 14, 2003 ("4/14/03 Tr.") at 11 line 13. Anticipated direct gas costs total $21,012,250 and are comprised of commodity and transportation charges, adjusted for a prior period under-collection of $2,039,699, hedging costs of $26,500 and interest of $46,272. Exh. 1 at 8, 29, and 36. Anticipated indirect gas costs total $487,628, consisting of working capital, bad debt and overhead charges. The gas costs to be recovered over the 2003 summer period, (anticipated direct and indirect costs and adjustments based on the prior period reconciliation) total $23,612,350 for recovery over the 2003 summer period. The gas costs for recovery over the upcoming summer period are divided by projected sales of 25,739,608 therms (based on 2002 summer normalized sales and projected sales growth) to arrive at the average cost of gas rate. Exh. 1 at 29.

KeySpan's proposed 2003 Summer COG residential rate of $0.9174 per therm is an increase of $0.3405 per therm over the current rate COG rate of $0.5769 per therm, and an increase of $0.5334 per therm over the 2002 Summer weighted average Firm Sales COG rate of $0.3840 per therm. Exh. 1 at 7 line 22.

The impact of the proposed firm sales COG rate is an increase in the typical residential heating customer’s summer gas costs of $171, a 67% increase compared to last summer. When combined with increases over the winter period, the increase in annual gas costs is $238, or 23.4%. Exh. 1 at 6. Tr 4/14/03 at 12 line 6.

2. Reason for the Increased Summer 2003 COG Rate

KeySpan testified that there were three factors primarily responsible for the increase in the proposed COG rate: 1) an increase in the projected commodity gas costs; 2) a prior period under-collection; and 3) a reduced rate last summer due to the return of a prior period over-collection and to the flow-through of a $1.2 million credit.

The natural gas prices as quoted on the New York Mercantile Exchange (NYMEX) are significantly higher than the prices paid last summer. One reason for higher prices is that inventories in the natural gas storage areas that serve New York, New Jersey and New England are at lower-than-usual levels due to the increase in demand which accompanied the exceedingly cold winter in addition to the greater demand as a result of increased gas fired electric generation in the Northeast. Tr. 4/14/03 at 12 lines 10-23.

A portion of the rate increase can be attributed to a large prior period under-collection. The 2003 summer COG rate is designed to recover a prior period under-collection of $2,039,699. In comparison, last summer's rate was designed to return a prior period over-collection of $784,222. Thus, the cumulative impact on gas costs of the current under-collection comparing last summer to this summer is a difference of almost $3,000,000.

Also contributing to last year's low rates was a $1,253,137 credit which was returned during the 2002 summer period, due to making COG rate changes effective on a service-rendered basis rather than a bills-rendered basis at that time.

3. Reasons for the 2002 Summer Under-collection

The primary reason for the under-collection of $2,039,699 from last summer was a calculating error due to including the transportation volumes in the 2002 firm sales forecast. KeySpan purchases gas to serve the Firm Sales customers and the COG rate is set accordingly to recover those gas costs from the Firm Sales Customer. By incorrectly including the transportation volumes in the calculation of the COG rate, the COG rate was set significantly below that necessary to recover the period gas costs.

KeySpan's final reconciliation of the 2002 summer gas costs show an under-collection of $2,003,365. On cross-examination KeySpan witness Mr. Silvestrini confirmed Staff's position that including the firm transportation volumes in the calculation of the 2002 Summer COG rate resulted in approximately $3,000,000 of uncollected COG revenues for the 2002 period. (Tr. 4/14/03 at 36, lines 7-11). The under-collection of revenues were partially offset by lower than projected gas costs of approximately $1,000,000. Exh. 1, Schedule 13, Summer 2002 Cost of Gas Results. Thus, the actual under-collection for the period was $2,039,699.

Mr. Silvestrini explained that the COG filing is extremely complex and that human errors are inevitable. He argued that disallowing carrying charges on the under-collection would be unwarranted and unjust. He also claimed that the CGA[1] clause requires reconciliation of actual costs and revenues to account for errors and that the under recovered gas costs and related carrying costs were prudently incurred.

[1] On March 30, 1999, by Order No. 23,470, the Commission instituted use of the unit cost of gas (COG) rather than a base unit with a cost of gas adjustment (CGA) when setting the COG rate. The cost of gas mechanism did not change, but is referred to as either CGA or COG depending on the date of the order.

4. Tilton/Laconia Improvements

During the 2002/2003 Winter COG proceeding the Commission asked the Company to meet with Staff and the OCA to develop a plan to address quality of service in the Tilton/Laconia area.

KeySpan developed a two-phased plan to improve and increase service in this area. Phase I is to take place in 2003 and calls for the installation of approximately 7 miles of 12-inch diameter pipe. Phase I will increase the capacity of the Tilton/Laconia line by 14 percent and reduce the Tilton Liquid Natural Gas (LNG) requirements by 6 percent.

Phase II is scheduled to begin in 2004 and will add 17 miles of 12-inch diameter pipe to complete the new line to Tilton, eliminating the need for Tilton LNG and providing sufficient capacity to meet the reliability needs of existing customers and provide additional capacity for customer growth. Tr. 4/14/03 at 18 lines 6-23.

Mr. Silvestrini stated the Tilton/Laconia plan had been reviewed by Staff and the OCA and both were satisfied with the planned improvements.

5. Increase in the LDAC Rate.

In Order No. 24,109 (December 31, 2002), the Commission approved the implementation of energy efficiency programs to be effective January 1, 2003, with program cost recovery to begin May 1, 2003, through a surcharge to be included in the LDAC.

The LDAC charge for the summer period related to the recently approved energy efficiency programs is $0.0118 per therm for residential customers, although residential heating customers will pay an addition $0.0004 per therm charge for lost revenues associated with the Demand Side Management programs that were terminated in 1998.

B. OCA

The OCA stated that customers should not be required to pay carrying costs resulting from KeySpan's erroneous calculation that reduced revenues $3,000,000. OCA argued that customers paid the rates they were billed and will be reimbursing the Company the actual gas costs. The OCA did not believe KeySpan could use restructuring as an excuse for the error since KeySpan's calculations for the winter period 2002, after restructuring, were done correctly.

C. Staff

Staff supported the proposed rates, but recommended the disallowance of carrying costs on the reduced revenues due to KeySpan including transportation volumes in calculating the 2002 summer COG rate. Staff calculated the interest to be

$77,733. Exh. 3 at 9. Staff stated that by including interest charges on the lower revenues, customers were being penalized for an error that was beyond their control and could have been avoided.

Staff testified that the reconciliation of the COG is designed to account for factors beyond the control of the utility, primarily differences between the projected and actual sales and costs. Staff agreed with KeySpan that the COG filings are complex, but that the human error was within the Company's control and that due to both the character of the error, and the substantial cost impact, it would be inappropriate for customers to be charged interest on the resulting under-collection.

Staff stated its intent to meet with KeySpan to discuss modifying reporting requirements to better identify transportation volumes, thereby providing the necessary information to avoid a recurrence of the forecasting error that occurred in the 2002 Summer COG.

Staff informed the Commission that the 2002 summer period gas costs had not been audited as of the date of the hearing, but stated that the Audit Staff would be performing the audit shortly and the Commission would be notified of any material errors revealed in the preliminary investigation prior to issuing the summer COG order.

III. COMMISSION ANALYSIS

1. Summer 2003 Cost of Gas Rate

In Order No. 23,951 (April 19, 2002), based on the evidence supplied by the Company, we noted the reasons for the summer rate change were due to: (1) a decrease in the projected commodity gas costs; (2) a prior period over-collection; and (3) a substantial credit to the summer COG related to a change in billing. We now know, however, there was a fourth factor, KeySpan's calculation error.

If we compare the 2001 Summer COG rate to what would have been the correct 2002 Summer COG rate, the summer billing impact on a typical residential customer would have been a 16 percent decrease instead of a 26 percent decrease. In comparing the corrected 2002 Summer COG to the proposed 2003 Summer COG (without the under-collection that resulted from the incorrect rates), the summer billing impact would have been a 38 percent increase instead of a 67 percent increase. It is clear that the calculation error was a major contributor to the rate volatility.

We appreciate the complexity of the COG filing and note that, after early missteps, KeySpan's recent filings have improved markedly. We agree, however, with Staff and the OCA that carrying costs on erroneous undercharges that are within

KeySpan's control are not automatically recoverable through the COG mechanism. The result of KeySpan's error was to significantly underprice the 2002 Summer COG and leave a large under-collection for later recovery.

We find the course of action that best protects consumers is to disallow the interest on the prior period under-collection and defer half of the prior period under-collection for recovery during the 2004 summer period. This reduces the 2003 summer gas costs by $1,038,018 (interest of $36,335 and deferral of $1,001,683) and the 2003 Summer average cost of gas (residential firm sales rate) decreases the proposed rate of $0.9174 by $0.0415 per therm to a rate of $0.8759 per therm. The 2004 Summer COG will include the prior period deferred balance of $1,019,850, without interest. Customers should not pay interest over and above the gas costs which they should have been billed during last summer, but were not. Our conclusion does not change depending on whether KeySpan recovers the under-collection over one summer period or two.

While still a substantial increase over both the current and last summer's rates, the typical residential heating customer can expect to see a May bill of approximately $109 compared with an April bill of $123. When comparing last summer and current rates to the proposed rate, it is worth noting that the 2002 summer rate was artificially low as a result of the KeySpan error and that the 2002/2003 Winter COG rate did not reflect market prices during that period, as KeySpan's hedging policies protected customers from a severe run up in gas prices, saving approximately $6 million in gas costs.

The Commission has previously approved the deferred recovery of costs as a rate stability or continuity measure in connection with cost adjustment proceedings. In *New Hampshire Electric Cooperative*, 81 NH PUC 1029 (1996), the Commission approved NHEC's proposed rate stabilization mechanism lowering the Power Cost Adjustment, which is similar to the COG in the gas industry, by deferring certain costs to a subsequent period. In another docket, the Commission approved Public Service Company of New Hampshire's recovery of under-collected Fuel and Purchased Power Adjustment Clause costs, without interest. *Public Service Company of New Hampshire,* 85 NH PUC 433, 434 (2000).

We reiterate the importance of utilities sending customers the correct price signal based on the true cost of gas for that period. *Gas Service, Inc.* 70 NH PUC 339, 341 (1985). KeySpan's error in calculating the 2002 summer gas costs resulted in customers not receiving accurate price signals for the 2002 and 2003 summer periods.

For the reasons cited above, we find the interest on the under-collection is not recoverable as part of the COG and we will disallow it in this summer COG proceeding.

2. Staff Audit and Future Reporting

As of the date of this Order, the Audit Staff’s preliminary investigation of the 2002 summer period gas costs has not revealed any material errors. We will set KeySpan’s 2003 Summer Firm Sales COG rates with the understanding that should changes be warranted as a result of issues raised by the Commission’s audit, those changes shall be made through either the monthly adjustments pursuant to the COG mechanism or through a revised filing, whichever is more appropriate and efficient.

In an effort to avoid such an error in future filings, and to provide Staff with a means to determine reasonableness of Company forecasts, we direct KeySpan to provide Staff more detailed monthly reports. Staff is to develop a reporting format that will include actual monthly demand volume and degree day data that can be used to track forecast versus actual demand volumes. KeySpan is also to include transportation volumes, delineated by customer class and whether grandfathered or non-grandfathered. The report(s) should become supplements to the monthly gas cost reports, with the understanding that actual data availability will result in a timing lag behind the monthly adjustment periods.

3. Motions for Protective Treatment

During the course of this proceeding, KeySpan filed two Motions for Protective Order and Confidential Treatment.

In the second motion, filed on April 14, 2003, KeySpan seeks protection for information contained in its agreement with Entergy-Koch Trading, L.P. (EKT). This Agreement was provided to Commission Staff in response to data requests. KeySpan states it is contractually obligated to maintain the confidentiality of the price provisions of the agreement. KeySpan further states disclosure of the information would be harmful to KeySpan and its customers and that the information constitutes confidential commercial information.

N.H. Admin. Rule Puc 204.06 provides that "the Commission shall grant confidentiality upon its finding that the documents sought to be made confidential are within the exemptions permitted by RSA 91-A:5,IV, or other provisions of law based on the information submitted. . . ." RSA 91-A:5, IV provides an exception to the general rule of public disclosure for "confidential, commercial or financial information." Interpreting this provision, the New Hampshire Supreme Court has instructed agencies of state government to construe this exemption narrowly, applying a balancing test in order to determine whether "the asserted private, confidential, commercial or financial interest" is outweighed by "the public's interest in disclosure." *Union Leader Corp. v. New Hampshire Housing Fin. Auth.*, 142 N.H. 540, 552-53 (1997).

In applying this balancing test, the Commission must determine whether confidential treatment is appropriate for the contractual agreement between KeySpan and Entergy-Koch Trading and for the supplier information included in the COG filing. L.P.. In *Re EnergyNorth Natural Gas, Inc. d/b/a KeySpan Energy Delivery New England*, DG 02-045, Order No. 23,950, dated April 12, 2002, the Commission found that the terms of gas supply agreements negotiated by a jurisdictional gas distribution company are sensitive commercial information and warrant confidential treatment. Additionally, in *Re Granite State Electric Company*, 84 NH PUC 310, 312 (1999), the Commission found that similar information contained in an unredacted copy of a transition service supply contract was "commercially sensitive terms and proprietary, and . . . the information, if made public, would create a competitive disadvantage that outweighs the benefit to the public of disclosure."

Based on KeySpan’s representations and the Commission’s previous treatment of similar information, we find that the benefits to the Company of non-disclosure in this case outweigh the benefits to the public of disclosure. The Commission finds that the information contained in the COG filing and the redacted portions of the EKT agreement are exempt from public disclosure pursuant to RSA 91-A:5,IV and Puc 204.06.

Based upon the foregoing, it is hereby

ORDERED, that KeySpan's Firm Sales Summer COG per therm rate for the period of May 1, 2003 through October 31, 2003, is APPROVED, effective for service rendered on or after May 1, 2003 as follows;

	Cost of Gas	**Minimum COG**	**Maximum COG**
Residential	$0.8759	$0.7007	$1.0511
C&I, low winter use	$0.8536	$0.6829	$1.0243
C&I, high winter use	$0.8919	$0.7136	$1.0703

FURTHER ORDERED, that $36,335 in prior period carrying costs are disallowed; and it is

FURTHER ORDERED, that $1,001,682 of the prior period under-collection be deferred, without interest, for recovery in the 2004 Summer COG proceeding; and it is

FURTHER ORDERED, that the Company will provide actual data of monthly firm sales, firm transportation, unaccounted for losses, company use and unbilled therm demand volumes, plus degree day data, in a reporting format developed by Staff to track forecast versus actual demand volumes used in part in the calculation of the COG rate; and it is

FURTHER ORDERED, that KeySpan may, without further Commission action, adjust the COG rates upward or downward monthly based on KeySpan's calculation of the projected over or under-collection for the period, the minimum and maximum rates as set above; and it is

FURTHER ORDERED, that the over or under-collection shall accrue interest at the Prime Rate reported in the Wall Street Journal. The rate is to be adjusted each quarter using the rate reported on the first date of the month preceding the first month of the quarter; and it is

FURTHER ORDERED, that should changes be warranted as a result of issues raised by the Commission's audit of the 2002 Summer Cost of Gas reconciliation, that those changes be made through either the monthly adjustments or via a revised filing, whichever is appropriate; and it is

FURTHER ORDERED, that KeySpan's 2003 Local Distribution Adjustment Clause per therm rates for the period May 1, 2003 through October 31, 2003 remain unchanged, except for the proposed Energy Efficiency Surcharge which will remain in effect until April 30, 2004 and is APPROVED effective for service rendered on or after May 1, 2003 as follows:

	Demand Side Mgmt.	**Envir. Remed.**	**Gas Restr. Costs**	**LDAC**
Residential Heating	$0.0122	$0.0114		0.0236
Residential Non-heating	$0.0118	$0.0114		0.0232
Small C&I	$0.0090	$0.0114	($0.0002)	0.0202
Medium C&I	$0.0090	$0.0114	($0.0002)	0.0202
Large C&I	$0.0090	$0.0114	($0.0002)	0.0202

FURTHER ORDERED, that KeySpan will provide the Commission with its monthly calculation of the projected over or under-collection, along with the resulting revised COG rate for the subsequent month, not less than five (5) business days prior to the first day of the subsequent month. KeySpan shall include a revised tariff page 20 - Calculation of Cost of Gas Adjustment for firm sales and revised firm rate schedules if KeySpan elects to adjust the COG rate; and it is

FURTHER ORDERED, that KeySpan file properly annotated tariff pages in compliance with this Order no later than 15 days from the issuance date of this Order, as required by N.H. Admin. Rules, Puc 1603; and it is

FURTHER ORDERED, that KeySpan's Motions for Protective Order and Confidential Treatment, described above, are GRANTED.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of April, 2003.

Thomas B. Getz Chairman	Susan S. Geiger Commissioner	Nancy Brockway Commissioner

Attested by:

Claire D. DiCicco
Assistant Secretary