

DG 03-160

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

2003/2004 Winter Cost Gas

**Order Approving Procedural Schedule and
Noticing Proposed 2003/2004 Winter Cost Gas Rate, Local
Distribution Adjustment Charge and Supplier Balancing Charges**

O R D E R N O. 24,215

October 2, 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 Consumer Advocate by F. Anne Ross, Esq. on behalf of residential utility consumers; and Edward N. Damon, Esq. for the Staff of the New Hampshire Public Utilities Commission.

I. PROCEDURAL HISTORY

On March 25, 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 29 cities and towns 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 updated monthly projected over or under collection report for the 2002/2003 Winter Cost of Gas (COG) period pursuant to Order 24,078 dated October 28, 2002, Docket No. DG 02-170, approving KeySpan's 2002/2003 Winter COG. The report projected an under collection

of \$1,913 for the 2002/2003 Winter COG period.

On August 15, 2003, KeySpan filed its 2002/2003 Winter Period COG Reconciliation and 2002/2003 Winter Period Fixed Price Option (FPO) Reconciliation. This reconciliation of final gas costs and revenues disclosed an under collection of \$9,288,065.

On August 25, 2003, the Commission issued an Order of Notice initiating an investigation into the following issues: the reported under collection and how the under collection should be treated; reporting deficiencies; pricing, operation and reporting of non-firm, emergency, capacity release and non-retained transportation related margins; whether KeySpan optimized its supply portfolio to meet 2002/2003 winter period COG demand; whether interest paid on fuel inventories could have been less; and whether the Commission should impose civil penalties pursuant to RSA 365:41 for failure to comply with any order, directive or requirement of the Commission. The Order of Notice also set a prehearing conference for September 11, 2003, and directed parties to meet for a technical session following the prehearing and to develop a proposed procedural schedule.

On August 26, 2003, the Office of Consumer Advocate (OCA) filed a notice of participation on behalf of residential ratepayers.

On September 8, 2003, KeySpan filed a Motion for Protective Order and Confidential Treatment regarding the Winter 2003/2004 COG docket.

On September 11, 2003, the prehearing conference and technical session took place as scheduled and Staff submitted a procedural schedule proposed by the parties:

September 11, 2003	Data Requests (DRs), Set 2
September 22, 2003	2003/2004 COG to be filed
September 22,23,25,29,30	PUC Audit Staff On-Site
September 24, 2003	Co. Responses to DR Set 2
September 30, 2003	Staff & Intervenor DRs, Set 3
October 10, 2003	Co. Responses to Audit Requests and DRs Set 3
October 14, 2003	Tech Session @ 9:00am and DRs Set 4
October 21, 2003	Hearing @ 9:00 am to Set the FPO Rate, Environmental Response Costs Allowable (ERCA) Rate, Local Distribution Adjustment Charge (LDAC), and Temporary COG rates
October 24, 2003	Co. Responses to DRs Set 4
November 10, 2003	Staff & Intervenor Testimony
November 13, 2003	Tech Session @ 9:00 am
November 17, 2003	Co. DRs
November 25, 2003	Staff & Intervenor Responses to DRs
December 2, 2003	Co. Rebuttal Testimony

December 4-5, 2003

Hearing @ 9:00 am on COG Rates and
Outstanding Issues.

On September 22, 2003, KeySpan filed its 2003/2004 Winter COG and a Motion for Protective Order and Confidential Treatment Regarding Settlement Agreement.

On September 25, 2003, KeySpan filed its 2003/2004 Winter FPO.

The proposed Residential COG rate is \$0.8188 per therm, compared to a weighted Residential COG rate of \$0.5758 per therm for last winter. The proposed commercial/industrial (C&I) low winter use COG rate is \$0.7293 per therm and the proposed commercial/industrial high winter use COG rate is \$0.8343 per therm.

The proposed FPO rates for the Residential, C&I low winter use and C&I high winter use are \$0.8597 per therm, \$0.7658 per therm and \$0.8759 per therm, respectively.

The proposed surcharge to recover environmental remediation costs is \$0.0108 per therm, a decrease of \$0.0006 per therm from the current environmental surcharges totaling \$0.0114 per therm.

The proposed Conservation Charge for residential heating customers is \$0.0005 per therm, an increase of \$0.0001

per therm from the current rate of \$0.0004 per therm. The proposed Conservation Charge for Commercial and Industrial (C&I) customers is a credit of \$0.0001 per therm, a decrease of \$0.0002 per therm from the current charge of \$0.0001 per therm.

The estimated impact of the proposed firm sales COG rate and revised surcharges on a typical residential heating customer's winter bill of 932 therms is an increase of approximately \$231, or 27%, from \$840.

The proposed Firm Transportation COG rate is \$0.0000 per therm, compared to \$0.0029 per therm for last winter.

KeySpan proposed to credit a \$3,356 over recovery of gas restructuring expenses (Docket No. DE 98-124) from C&I customers against environmental remediation expenses.

KeySpan is updating its Supplier Balancing charges, the charges that suppliers are required to pay KeySpan for balancing services as KeySpan attempts to meet the shifting loads for the supplier's customer pools. The proposed Balancing Charge has been decreased from \$0.14 per MMBtu to \$0.12 per MMBtu and the proposed Peaking Demand Charge increased from \$15.25 per MMBtu of Peak MDQ to \$19.44 per MMBtu of Peak MDQ. The changes are based on an update of volumes and costs used in calculating the charges.

The proposed capacity allocator percentages used to allocate pipeline, storage and local peaking capacity to a customer's supplier under New Hampshire's mandatory capacity assignment, required for firm transportation service, have been updated to reflect KeySpan's supply portfolio for the upcoming year.

II. POSITIONS OF THE PARTIES AND STAFF

A. KeySpan

At the hearing, KeySpan stated that the under collection related to the 2002/2003 winter period was due to a very rapid run-up in gas costs at the end of the winter and that the process KeySpan followed last winter for identifying and reacting to projected over or under collections was consistent with prior winters. KeySpan also stated that any change in those processes would only have recovered a small portion of those costs during last winter and would not have had a significant impact on last winter's under collection.

KeySpan's Motion for Protective Order and Confidential Treatment filed on September 8, 2003 requests confidential, protective treatment of certain parts of its COG filing and several responses to Staff data requests, as follows:

COG Filing

Schedule 1	Summary of Supply and Demand Forecast
Schedule 2	Contracts Ranked on a per Unit Cost Basis
Schedule 4	Summary of Adjustments to Gas Costs
Schedule 5	Detail of Demand Volumes, Costs, Tariff Rates and Costs Per Unit
Schedule 6	Detail of Commodity Volumes, Costs, Tariff Rates and Costs Per Unit
Schedule 7	NYMEX Futures @ Henry Hub, Development of Commodity Rates by Content
Schedule 8	Calculation of Money Pool Interest Costs Associated with Natural Gas, LPG and LNG Storage Inventories
Schedule 13	Normal and Design Year Volumes and Capacity Utilization
Schedule 14B	Agreements for Gas Supply and Transportation

Responses To Staff Data Requests

1-1	Attachments to response (Summary Pages 2, 3 and 4; Schedules 2A, 2B, 4 and 8)
1-2	Reference to asset manager payments
1-10	Reference to AES contract pricing terms in attachment
1-11	Reference to Distrigas pricing terms and attachment to response (Revised Summary Page 1)
1-12	Reference to Distrigas and AES pricing terms
1-18	Attachment to response (Schedules 2A and 2B)
1-26	Reference to asset manager payments
1-27	Reference to asset manager payments

KeySpan states that these responses relate to commodity pricing information and asset manager payment information and that several pages of the COG filing and its attachments identify

specific suppliers and commodity and demand charges. According to KeySpan, this information constitutes the trade secrets of KeySpan and should be protected as confidential commercial information. KeySpan asserts that it does not disclose such information to anyone outside of its corporate affiliates and their representatives. Regarding the data request responses for which confidential, protective treatment is sought, KeySpan alleges that the information in the responses is similar to the information regarding the COG filing for which confidential, protective treatment is sought.

KeySpan's Motion for Protective Order and Confidential Treatment Regarding Settlement Agreement filed on September 22, 2003 seeks confidential, protective treatment of the terms and a summary of an agreement settling litigation brought by KeySpan against UGI Utilities, Inc. (UGI) to obtain reimbursement of certain expenses incurred in investigating and remediating environmental contamination related to the operation of a former manufactured gas plant in Manchester, NH. According to KeySpan, the terms of the settlement require KeySpan to keep the terms of the settlement strictly confidential. KeySpan asserts that public disclosure of this information would jeopardize the settlement and would be harmful to both KeySpan and its

customers.

B. Office of the Consumer Advocate

The OCA expressed concern with the misreporting of \$9 million in gas costs, especially in light of a similar problem which arose in KeySpan's 2003 Summer COG filing.

The OCA said it is considering the following recommendations: stretching the recovery of prudently incurred gas costs over three years, without carrying costs; making shareholders responsible for the under billings of customers who have left the system since last winter; civil fines; making FPO customers responsible only for the under collections they imposed on the system; and relieving new customers of any costs related to last year's under collection.

The OCA took no position on either of KeySpan's Motions for Protective Order and Confidential Treatment but according to KeySpan, OCA has agreed to treat the information as confidential unless and until the protective order is removed by subsequent order of the Commission.

C. Staff

Staff described several areas of concern: first, the matter of tariff compliance, and whether KeySpan has been filing the required reports under the terms of its tariff

and Commission orders; second, whether KeySpan optimized its portfolio of gas supplies in the most cost-effective manner during the 2002/2003 winter period. Staff observed that as various supply prices increased throughout the winter period, certain lower priced supplies appeared not to have been utilized as forecast, while other higher priced supplies were dispatched; and, third, the \$9.3 million 2002/2003 winter period under collection. Staff noted that five weeks before the end of last winter KeySpan was reporting, essentially, no under collection for the period, yet in August, KeySpan's 2002/2003 Winter Reconciliation Report revealed a \$9.3 million under collection.

Staff took no position on either of KeySpan's Motions for Protective Order and Confidential Treatment.

III. COMMISSION ANALYSIS

Having reviewed the proposed procedural schedule, we find that it is reasonable and will aid in the orderly review of the 2003/2004 Winter COG filing. We will, however, add review of Supplier Balancing Charges to the issues to be considered at the hearing on October 21, 2003. In addition, given the number, type, and size of the remediation expense invoices and recoveries submitted with KeySpan's filing, we note that it may not be possible for us to make a final determination of the Company's

prudence with respect to all expenses that are the subject of the October 21, 2003 hearing. Accordingly, subject to this caveat, we will approve the procedural schedule, revised in accordance with the above discussion regarding Supplier Balancing Charges.

We will also grant both of KeySpan's Motions for Protective Order and Confidential Treatment, subject, as usual, to the on-going authority of the Commission, on its own motion or on the motion of Staff, any party or any other member of the public, to reconsider in light of RSA 91-A, should circumstances so warrant.

The New Hampshire Right-to-Know Law provides each citizen with the right to inspect all public records in the possession of the Commission. See RSA 91-A:4, I. The statute contains an exception for "confidential, commercial or financial information." RSA 91-A:5, IV. The case law interpreting whether information is considered confidential requires an objective test; it is not based on the subjective expectations of the party generating the information. See *Union Leader Corp. v. New Hampshire Housing Finance Authority*, 142 N.H. 540 (1997).

KeySpan's Motion for Protective Order and Confidential Treatment filed on September 8, 2003 is similar to motions filed by KeySpan, and granted by the Commission, in connection with

past COG filings. See e.g., *EnergyNorth Natural Gas, Inc. d/b/a KeySpan Energy Delivery New England*, Order No. 24,067_ (October 11, 2002). As Order No. 24,067 indicates, in previous COG filings, the Commission has struck the balance in favor of confidential, protective treatment by recognizing that information concerning suppliers, pricing, and other sensitive contract terms are critical to the Commission's public review of filings and that this same information may be sensitive commercial information in a competitive market and may be worthy of protection. We also note that no party has objected to the Motion.

Regarding KeySpan's Motion for Protective Order and Confidential Treatment filed on September 22, 2003, we are not bound by the confidentiality obligations of KeySpan in the UGI settlement agreement. However, based on the information before us, we are persuaded that the interest of KeySpan and KeySpan's ratepayers in non-disclosure outweighs the public's interest in obtaining access to the information. Public disclosure of the information could jeopardize the settlement agreement and could make it more difficult for KeySpan to obtain environmental litigation settlements in the future, a result which may disadvantage ratepayers. In addition, we note that

confidentiality provisions in settlement agreements are common and no party has objected to confidential, protective treatment as requested by KeySpan.

Based upon the foregoing, it is hereby

ORDERED, that the procedural schedule set forth above is approved; and it is

FURTHER ORDERED, that KeySpan's Motions for Protective Order and Confidential Treatment filed on September 8, 2003 and September 22, 2003 are granted, subject to the on-going authority of the Commission, on its own motion or on the motion of Staff, any party or any other member of the public, to reconsider in light of RSA 91-A, should circumstances so warrant.

By order of the Public Utilities Commission of New Hampshire this second day of October, 2003.

Thomas B. Getz
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Claire D. DiCicco
Assistant Secretary