

**DG 03-160**

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

**2003-2004 Winter Cost of Gas**

**Order Approving Settlement Agreement**

**ORDER NO. 24,323**

**May 7, 2004**

**APPEARANCES:** McLane, Graf, Raulerson & Middleton, PA by Steven V. Camerino, Esq., on behalf of EnergyNorth Natural Gas, Inc., d/b/a KeySpan Energy Delivery New England; New Hampshire Legal Assistance by Alan Linder, Esq., on behalf of Pamela Locke, Sandra Desruisseaux and George Desruisseaux; Office of the Consumer Advocate by F. Anne Ross, Esq., on behalf of residential utility ratepayers; and Edward N. Damon, Esq. and Marcia A.B. Thunberg, 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)<sup>1</sup> 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. The monthly report projected an under-collection of \$1,913 for the 2002-2003 Winter COG period.

On August 15, 2003, KeySpan filed with the Commission its 2002-2003 Winter Period COG Reconciliation and 2002-2003 Winter Period Fixed Price Option (FPO) Reconciliation which disclosed an under-collection of \$9,288,065.

On August 25, 2003, the Commission issued an Order of Notice opening the 2003-2004 Winter Period COG proceeding and initiating an investigation to explore the issues

---

<sup>1</sup> On November 8, 2000, KeySpan acquired Eastern Enterprises (Eastern) and Eastern acquired EnergyNorth, Inc., the parent of EnergyNorth Natural Gas, Inc. These acquisitions were approved by the Securities & Exchange Commission on November 7, 2000 and by the Commission on May 8, 2000. See *EnergyNorth Natural Gas, Inc.*, 85 NHPUC 360, Order No. 23,470 (2000).

described in the Order of Notice, including (i) the under-collection of KeySpan's 2002-2003 Winter Period COG, (ii) reporting deficiencies, (iii) whether KeySpan optimized its supply portfolio, and (iv) whether the Commission should impose civil penalties. On August 26, 2003, the Office of the Consumer Advocate filed with the Commission its notice of intent to participate on behalf of residential ratepayers.

On September 22, 2003, KeySpan filed with the Commission its 2003-2004 Winter Period COG filing, together with supporting testimony and schedules. On September 25, 2003, KeySpan filed supplemental testimony of Leo Silvestrini.

On October 2, 2003, the Commission issued Order No. 24,215, which approved the procedural schedule proposed at a September 11, 2003 technical session, as well as two Motions for Protective Order and Confidential Treatment filed by KeySpan on September 8, 2003 and September 22, 2003.<sup>2</sup> On October 20, 2003, KeySpan filed with the Commission a revised version of the 2003-2004 Winter Period COG filing.

On October 21, 2003, the Commission held a duly noticed hearing regarding the COG-related rates and rate components proposed by KeySpan. On October 29, 2003, the Commission issued Order No. 24,227, which, among other things, approved a number of COG-related rates and rate components, including KeySpan's Winter Period COG rates on an interim basis, FPO rates, Local Distribution Adjustment Clause (LDAC) charges,<sup>3</sup> transportation supplier balancing charge, firm transportation winter COG rate, transportation peaking demand charge, and transportation capacity allocators. The Commission left resolution of KeySpan's environmental surcharge and final 2003-2004 Winter COG rate for hearing in December, 2003.

---

<sup>2</sup> Order No. 24,215 recites additional details of the procedural history of this docket; *see also* Order No. 24,227 (October 29, 2003), Order No. 24,270 (January 30, 2004) and section I of the Settlement Agreement (filed March 9, 2004), described below, for further details not recited here.

<sup>3</sup> KeySpan's proposed environmental surcharge allowable for LDAC was made effective subject to change based on a final order in this docket.

During the course of the revised procedural schedule, KeySpan filed three more Motions for Protective and Confidential Treatment with the Commission. In a Motion filed on November 7, 2003, KeySpan seeks to protect information relating to gas commodity costs contained in schedules provided with KeySpan's FPO. Updated versions of the schedules were submitted as Exhibit 6 at the October 21, 2003 hearing.<sup>4</sup> In support of the Motion, KeySpan asserts that it does not share this information with any person outside of the company or its representatives; that release of the information would place KeySpan at a competitive disadvantage; and that the Commission has granted confidential treatment to similar information in previous cost of gas dockets.

In a Motion filed on November 19, 2003, KeySpan seeks to protect seven contracts relating to its gas supply portfolio that KeySpan had provided to Staff in the course of discovery.<sup>5</sup> In support of the Motion, KeySpan asserts that the contracts contain confidential commercial information regarding gas supply costs and other negotiated contract terms that KeySpan does not share with persons outside of the Company or its representatives; and that release of the information would be likely to result in competitive disadvantage for KeySpan in the form of less advantageous or more expensive gas supply contracts.

On November 17, 2003, New Hampshire Legal Assistance (NHLA) requested late intervention on behalf of Pamela Locke, Sandra Desruisseaux and George Desruisseaux

---

<sup>4</sup> Specifically, KeySpan seeks to protect certain lines on: pages 2, 3, and 4 of Schedule 1; page 1 of Schedule 2; page 1 of Schedule 4; pages 2, 3, 4, and 5 of Schedule 5; pages 2 and 3 of Schedule 6; pages 1, 2, 3, 4, and 5 of Schedule 7; pages 1, 2, and 3 of Schedule 8; pages 1, 2, and 3 of Schedule 13; and page 2 of Schedule 14.

<sup>5</sup> KeySpan identified them as follows: September 1, 1993, with Tennessee Gas Pipeline Company (Service Package No. 523); September 1, 1993, with Tennessee Gas Pipeline Company (Service Package No. 3559); November 1, 1994, with Tennessee Gas Pipeline Company (Service Package No. 8587); November 1, 1995, with Distrigas of Massachusetts Corporation; July 13, 1999, with Portland Natural Gas Transmission System; July 1, 2002, with Distrigas of Massachusetts LLC (entered into by Boston Gas Company d/b/a KeySpan Energy Delivery New England); and October 29, 2002, with Entergy-Koch Trading, LP.

(Intervenors) and submitted testimony on their behalf. The Commission approved the intervention request by Secretarial Letter dated December 9, 2003.<sup>6</sup>

On November 18, 2003, OCA filed with the Commission direct testimony of Kenneth Traum. On November 19, 2003, Commission Staff (Staff) filed with the Commission direct testimony of Stephen P. Frink and Robert J. Wyatt.

On December 11, 2003, KeySpan filed with the Commission a request for full Commission participation in the upcoming hearing. The following day, KeySpan filed with the Commission rebuttal testimony of A. Leo Sylvestrini, Elizabeth Arangio and James D. Carmichael.

On December 16, 2003, KeySpan filed with the Commission its report on the status of the Tilton, New Hampshire pipeline upgrade. On the same day, Staff filed with the Commission a report on the status of Phase II of the Tilton pipeline construction project.

The Commission held a duly noticed hearing on December 17, 18 and 22, 2003. At the close of the hearing, KeySpan moved that Staff witness Robert J. Wyatt be designated a staff advocate, pursuant to RSA 363:32,I.

The Commission denied the request of KeySpan but on its own initiative, pursuant to RSA 363:32, II it designated Mr. Wyatt a staff advocate, in light of his strongly held professional position developed through his particular combination of experience in the gas industry. *See* Commission meeting minutes of December 31, 2003 at p. 4.

The Commission took all matters presented in the hearings under advisement and held the record open until it received the remainder of the exhibits sought at the hearing pursuant to record requests. The Commission received the last of the record requests on January 14, 2004.

---

<sup>6</sup> Also during the course of the docket, the Commission received public comments from seven KeySpan customers; all objected to the rate increase proposed by KeySpan in its 2003-2004 Winter Period COG.

On January 23, 2004, Staff filed a letter with the Commission, on behalf of itself, KeySpan and OCA, which requested the Commission to temporarily postpone its deliberations to allow Staff and the Parties an opportunity to discuss settlement on the disputed issues.<sup>7</sup> The letter noted that NHLA did not object to the requests in the letter. Staff indicated KeySpan had requested Mr. Robert J. Wyatt's presence at the settlement discussions notwithstanding its earlier request that Mr. Wyatt be designated a staff advocate. Staff proposed a date by which Staff and the parties would report back to the Commission on the status of settlement discussions.

On January 30, 2004, the Commission issued Order No. 24,270, which suspended deliberations pending a settlement or report on settlement discussions on or before February 11, 2004.<sup>8</sup> On February 11, 2004, KeySpan, on behalf of itself, Staff, OCA and intervenors, filed an update with the Commission which indicated settlement discussions were ongoing and that the parties and Staff requested permission to have until February 18, 2004 to report the results of those discussions.

On February 18, 2004, KeySpan filed with the Commission a report indicating that (i) Staff and the parties had reached agreement in principle, (ii) they expected to submit a Settlement Agreement to the Commission in the near future, and (iii) they requested the Commission schedule a hearing on the Settlement Agreement for March 17, 2004. On March 9, 2004, KeySpan filed with the Commission a Settlement Agreement fully executed by KeySpan, Staff, OCA, and the intervenors.

On March 9, 2004, KeySpan also filed with the Commission a Motion for Protective Order and Confidential Treatment of Hearing Exhibits 25, 36, 40, 41, 43, 45, and 48. KeySpan notes that Exhibits 36, 40, and 45 had been granted protective treatment by Order Nos.

---

<sup>7</sup> However, the letter indicated that Staff, KeySpan and OCA did not wish the Commission to delay the Commission's consideration of certain revisions to the environmental surcharge described in the letter.

<sup>8</sup> The Commission also approved the proposed Environmental Remediation Surcharge as revised.

23,968 and 24,215; however, KeySpan seeks to unequivocally ensure the documents, now marked as hearing exhibits, would be exempt from disclosure under RSA 91-A:5. In support of the Motion, KeySpan asserts: that it is required to keep Exhibit 25 confidential pursuant to contractual obligations to Tennessee Gas Pipeline Company; that Exhibit 36 contains gas supply costs subject to confidential treatment pursuant to Order No. 24,215; that Exhibit 40 contains information previously protected pursuant to Order No. 23,968; that Exhibit 41 contains sensitive financial information concerning assets managed by its contract with El Paso and release of this information would cause KeySpan financial harm; that Exhibit 43 contains extensive confidential financial information that KeySpan received in response to its RFP for asset management services and release of this information would cause KeySpan financial harm; that Exhibit 45 includes gas supply costs and demand charges which had previously been protected pursuant to Order No. 24,215; and that Exhibit 48 is the current version of Exhibit 28 which has been previously protected pursuant to Order No. 24,215.

By Secretarial Letter dated March 10, 2004, the Commission set a hearing on the Settlement Agreement for March 17, 2004. On March 17, 2004, the Commission heard testimony and received evidence from the Staff and the parties in support of the Settlement Agreement.

## **II. SETTLEMENT AGREEMENT**

Staff and the Parties represented at hearing that the Settlement Agreement is intended to resolve the remaining disputed issues in DG 03-160, KeySpan's 2003-2004 Winter Period Cost of Gas Adjustment proceeding, including but not limited to: the treatment of the 2002-2003 Winter Period under-collection; the dispatch of the DOMAC FCS contract; certain reporting and tariff compliance issues; and other issues raised in the testimony of the witnesses for Staff, the OCA, KeySpan, and the Intervenors. Staff and the Parties averred the Settlement

Agreement fairly resolves the issues in this proceeding in a manner consistent with the public interest.

The substantive terms of the Settlement Agreement are set forth below:

A. Treatment of 2002-2003 Winter Period Under-Collection

Staff and the Parties agree that the full amount of the 2002-2003 Winter Period under-collection shall be recoverable over the 2003-2004 and 2004-2005 Winter Periods as follows:

1. KeySpan shall not adjust the interim cost of gas and fixed price option rates approved by the Commission pursuant to Order No. 24,227 during the 2003-2004 Winter Period to either increase or decrease the under-collection portion of the rate;
2. The remaining balance of the under-collection shall be included in full through the regular reconciliation process and applied to the 2004-2005 Winter Period Cost of Gas Adjustment; and
3. KeySpan shall not recover any accrued interest on the unrecovered balance of the under-collection unless and until the amount of unrecovered interest exceeds \$525,000. If the actual interest accrued but not recovered by KeySpan is less than \$525,000 at the end of the 2004-2005 Winter Period, KeySpan will credit the 2005-2006 Winter Period gas costs for the difference through a reconciling adjustment. If the actual interest accrued on the under-collection exceeds \$525,000 prior to the end of the 2004-2005 Winter Period, KeySpan shall be entitled to recover interest that is in excess of \$525,000.

B. Low Income Contribution and Docket to Address Low Income Program

KeySpan agrees to make a contribution, in the amount of \$75,000, to either the Neighbor Helping Neighbor Fund or to one or more of the Community Action Agencies providing service in KeySpan's service territory. The contribution shall be applied for the exclusive benefit of KeySpan's customers either to supplement fuel assistance program funds in cases in which a customer has exhausted available fuel assistance benefits or to assist a customer whose income exceeds the level necessary to qualify for the federal fuel assistance program but who is facing a hardship situation. Notwithstanding the foregoing, KeySpan may use up to \$5,000 of the \$75,000 to automate the transmission of fuel assistance information between the Community Action Agencies and KeySpan. KeySpan may require such organizations to provide KeySpan with a report detailing how the contributed funds were expended.

Staff and Parties recommend that the Commission open a docket to consider whether a low income customer bill assistance program for natural gas customers should be established and, if so, to investigate the design of such a program.

C. Prudence of Gas Costs

The Staff and Parties agree that they will not further contest the prudence of the 2002-2003 Winter Period gas costs incurred by KeySpan, and they further agree that this Settlement Agreement fully and finally resolves all issues related to the recovery of said costs through rates.

D. Integrated Resource Planning (IRP)

The Staff and Parties agree that an IRP process is important in ensuring that KeySpan and Staff understand one another's views regarding KeySpan's gas supply needs and gas resource decisions. KeySpan agrees to file with the Commission, on or before August 2, 2004, an IRP and identify resources it deems are necessary to serve its load over the ensuing five years. Among other things, KeySpan's IRP will address the goals and methods it will pursue and implement concerning its asset management agreement. KeySpan shall not be required to submit prefiled testimony in support of its filing unless supporting testimony is requested by the Commission after the initial filing is made. KeySpan shall also provide Staff with a copy of the IRP approved by the Massachusetts Department of Telecommunications and Energy for KeySpan's Massachusetts affiliates.

E. DOMAC FCS Contract

KeySpan agrees to attempt to determine the cost of amending its current asset management arrangement with Entergy Koch Trading, L.P. (EKT) to add the DOMAC FCS Contract to the resources currently managed by EKT under two scenarios: 1) Add the DOMAC FCS contract in the pricing tier immediately before underground storage gas and dispatching it solely as a vapor; and 2) the same scenario but adding an ability for KeySpan to take gas under the DOMAC FCS contract as a liquid in such quantities and at such times as it elects.

KeySpan agrees to attempt to determine the cost of amending its current asset management arrangement with EKT to allow KeySpan to retain control of the DOMAC FCS Contract, but to be able to dispatch those quantities up to the maximum daily quantity allowable prior to the dispatch of underground storage and to adjust the EKT nominations accordingly. The cost of obtaining such an amendment, in addition to the cost of any additional resources that KeySpan believes are required because of the amendment, shall be provided to the Staff on or before September 1, 2004.

F. Review of Risk Management Policy

The Staff and Parties agree to meet to consider whether the Company's hedging policy, which was approved in modified form by the Commission in Docket DG 02-149, should be further revised to seek to achieve additional rate stabilization for customers from month to month during the Winter Period.

G. Criteria for Underground Storage Management Decisions

The Staff and Parties agree to meet to consider whether a policy should be approved that limits or otherwise restricts KeySpan's reliance on forward price curves, weather forecasts and other forward looking or market information that is utilized by KeySpan in making

decisions regarding the utilization and refill of underground storage, including spot market gas purchasing decisions, during the Winter Period.

H. Reports

1. Gas Dispatch — The Staff and KeySpan agree to meet to identify what records KeySpan should maintain in order to facilitate Staff's review of daily and monthly gas dispatch decisions and how those decisions relate to least cost dispatch practices.
2. OBA — The Staff and KeySpan agree to meet to identify what records the Company should maintain in order to facilitate Staff's review of the daily and monthly imbalances allocated to KeySpan under the single Operational and Balancing Agreement currently in place with Tennessee Gas Pipeline Company on behalf of all of KeySpan Corporation's New England gas distribution subsidiaries.
3. Contracts — KeySpan agrees to file all new gas supply, transportation, storage and asset management contracts with the Commission, including notification of the extension of the term of any such contract, for informational purposes.
4. Administration of 280 Day Sales Service — KeySpan agrees to maintain in its files copies of letters of notification of service curtailment sent to customers receiving 280 Day Sales service. Those letters, along with documents pertaining to pricing, margin calculations, and other tariff related customer correspondence for 280 day sales service customers will be available for review by the Staff.
5. COG Filing Date – Staff and the Parties agree the filing date of KeySpan's Winter Period cost of gas proposal, other than the proposed rate for the fixed price option program, shall be changed to the first business day in September beginning in 2004, and KeySpan shall change its tariff to reflect this new filing date. KeySpan shall file the proposed rate for its fixed price option program and any supporting schedules on or before September 15 (or the first business day thereafter if September 15 is a weekend or holiday).

I. Finality of Issues

Staff and the Parties agree that, except as expressly modified hereby, any issues resolved on an interim basis by Commission Order No. 24,227 (October 29, 2003) and Commission Order No. 24,270 (January 30, 2004) should be made final.

**III. COMMISSION ANALYSIS**

A. Settlement Agreement

New Hampshire's Administrative Procedures Act authorizes and encourages state agencies to resolve contested matters by nonadjudicative processes, absent law precluding such disposition. *See* RSA 541-A:38. "Informal disposition" may be made of any contested case, at any time prior to the entry of a final decision or order, by stipulation, agreed settlement, consent order or default. *See* 541-A:31, V(a). The Commission has previously recognized that settlement of issues through negotiation and compromise offers an opportunity for creative problem-solving, allows parties to reach a result more in line with their expectations, and is often a more expedient alternative to litigation. *Granite State Electric Company*, 87 NH PUC 302, 306 (2002).

Pursuant to RSA 378:7, the Commission has an independent statutory duty to find that rates, fares, and charges by a public utility for service rendered are just and reasonable and consistent with the public interest. Notwithstanding the Staff and Parties' presentation at hearing of a Settlement Agreement resolving the disputed issues, the Commission must still independently determine that the rates resulting from the Settlement Agreement are just and reasonable and consistent with the public interest. *See e.g., Granite State Electric Company*, 87 NH PUC 302 (2002).

The Commission has approved a rate adjustment mechanism for gas utilities commonly called the Cost of Gas (COG) adjustment mechanism. Under this mechanism, gas utilities divide their calendar year into a summer period and a winter period.<sup>9</sup> The Commission reviews the reasonableness of COG rates semi-annually and typically authorizes the utility to adjust its COG rate during the period, within a set percentage from the approved rate, without further Commission action. The utility submits monthly trigger reports to keep the Commission apprised of the level of over- or under-collection for a given period. The COG mechanism

---

<sup>9</sup> The Summer Period runs from May 1<sup>st</sup> to October 31<sup>st</sup>; the Winter Period runs from November 1<sup>st</sup> to April 30<sup>th</sup>.

benefits customers in many ways. Customers receive proper price signals for the gas they use, which affords them an opportunity to adjust their usage and serves as a reasonable benchmark for larger customers considering purchasing from a third party supplier. The monthly adjustments also minimize large over- and under-collections by better matching period costs with period revenues, which reduces cross subsidization among customers.<sup>10</sup> The Commission first approved KeySpan's automatic adjustment feature in *EnergyNorth Natural Gas, Inc.*, 83 NH PUC 213, Order No. 22,890 (1998).<sup>11</sup>

It is in the context of this mechanism and these policies that we consider the Settlement Agreement.

1. Treatment of 2002-2003 Winter Period Under-Collection

During hearings held on October 29, 2003, and December 17, 18 and 22, 2003, the Commission heard evidence that in March 2003, KeySpan reported an estimated \$1,913 under-collection for New Hampshire, but by August 2003, KeySpan reported that the 2002-2003 Winter Period under-collection was actually \$9,288,065. Staff testified that KeySpan's affiliates utilized their COG mechanism to adjust their rates in Massachusetts in response to rising gas costs, but KeySpan failed to similarly adjust its rates in New Hampshire. Hearing Transcript of December 17, 2003 (12/17/03 Tr.) at 101-102 lines 18-12.<sup>12</sup> KeySpan responded that, while the Massachusetts and New Hampshire utilities are operated as a single company, KeySpan evaluates adjustments differently in each state. Hearing Transcript of December 18, 2003 (12/18/03 Tr.) at 119 line 9 and at 119-120 lines 16-3. KeySpan explained it initially believed

---

<sup>10</sup> For instance, when ENGI first requested automatic adjustments, it testified that had automatic monthly adjustments been in place, an estimated \$2,354,316 over-collection that was carried to the subsequent period would have been reduced to \$123,466. See *EnergyNorth Natural Gas, Inc.*, 83 NH PUC 213 (1998).

<sup>11</sup> At the time, the Commission approved an automatic monthly adjustment with a range of 10 percent (+/-) of the approved COG rate. In *EnergyNorth Natural Gas, Inc.*, 83 NH PUC 213 (1998), the Commission expanded that range to 20 percent (+/-).

<sup>12</sup> Staff's pre-filed testimony indicated KeySpan increased gas rates of its four Massachusetts gas utilities by 30% over March and April. Ex. 14 at 3.

New Hampshire's hedging plan was dampening the price volatility compared to operations in Massachusetts, which lack a hedging plan. 12/18/03 Tr. at 82 line 9. KeySpan also attributed the failure to adjust New Hampshire's rates to KeySpan's error in estimating February gas costs. 12/18/03 Tr. at 119 lines 21-24. Ultimately, KeySpan explained that the 2002-2003 Winter Period under-collection was largely due to: 1) KeySpan omitting \$2,957,000 of indirect gas costs; 2) KeySpan's double booking of \$2,739,000 in hedging savings in March; and 3) KeySpan's failure to report February gas costs of \$4,748,000 in either the February or March reports. Ex. 14 at 20. Hearing Transcript of March 17, 2004 (3/17/04 Tr.) at 18 lines 7-10.

To resolve this issue, Staff and the Parties propose that the \$9.3 million under-collection be recovered during the 2003-2004 and 2004-2005 Winter Periods. The Commission has already approved, on an interim basis, recovery in customer rates of one-half of the 2002-2003 Winter Period under-collection. *See EnergyNorth Natural Gas, Inc.*, Order No. 24,227 (October 29, 2003). Inclusion of half of the recovery in the 2003-2004 Winter Period COG rate increased rates for the typical residential heating customer using 932 therms over the course of the winter period by 26.95 percent compared to the previous Winter Period's artificially low rate. This increase translates into an increase of \$226 over the course of the winter. 12/18/03 Tr. at 95-96, lines 20-13. At the December hearings, low income Intervenors testified that they could better accommodate recovery of the under-collection if it were spread out over two periods. Ex 12 at 4. 12/17/03 Tr. at 11 line 19; at 12 lines 1, 2, and 9; at 13 lines 12, 18, and 24. They reiterated this position at the settlement hearing and we note the Intervenors support the Settlement Agreement. Based upon our review of the record, we find this provision reasonable. We further find that the lengthened recovery period, combined with KeySpan's contributions to low income assistance programs described below, is in the public interest.

Under the terms of the Settlement Agreement, KeySpan agrees to forgo \$525,000 in interest on the 2002-2003 Winter Period under-collection. At hearing, Mr. Silvestrini testified that KeySpan agreed to forgo collection of interest because a major portion of the under-collection resulted from KeySpan's calculation errors. 3/17/04 Tr. at 18 lines 7-10. Mr. Silvestrini assured the Commission that KeySpan was taking all necessary steps to correct the problem and ensure it does not happen again. 12/18/03 Tr. at 72 lines 19-23.

The Settlement Agreement is consistent with how we treated the almost identical situation that arose in KeySpan's 2003 summer COG filing (Docket No. 03-068) and was addressed in Order No. 24,167 (April 30, 2003) approving KeySpan's 2003 summer COG rates. In that Order we stated:

“[C]arrying 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 under price the 2002 Summer COG and leave a large under-collection for later recovery.

We find the best course of action that best protects consumers is to disallow the interest on the prior period under-collection and defer half of the under-collection for recovery during the 2004 summer period.”

Order No. 24,167 at pp. 10-11.

We reiterate the importance of utilities sending customers the correct price signal based on the true cost of gas for the period. The Settlement Agreement insures customers will not pay interest over and above the gas costs which they should have been billed in the prior winter and the deferred recovery of one-half of the under-collection provides a measure of rate stability. The 2003-2004 winter rates were a substantial increase over the artificially low rates of the prior winter and would have been considerably higher without the deferral contained in the Settlement Agreement. We will, therefore, accept the terms of the Settlement Agreement disallowing carrying costs on the under-collection and deferral of one-half of the under-collection until the 2004-2005 winter period.

2. Contributions for Low Income Customers  
Low Income Assistance Docket

During the October 21, 2003 hearing, low income residential customers testified that collecting the entire under-collection during the 2003-2004 Winter Period would adversely impact their ability to pay their monthly bills. The customers explained they already take advantage of KeySpan's Fixed Price Option and Balanced Billing Programs, receive fuel assistance, and live in subsidized housing and thus have very little flexibility in their budgets to accommodate KeySpan's proposed rate increase. Ex. 12 at 2 and 5. The Intervenors requested KeySpan to spread recovery of the under-collection over two winter periods and the Settlement Agreement does that.

To further mitigate the adverse impact that recovery of the \$9.2 million under-collection may have on low income customers, KeySpan agrees to contribute \$75,000 toward programs that will assist low income customers, such as the Intervenors. At hearing, KeySpan testified that Staff, the OCA, the Intervenors, and other parties would be meeting to discuss the details of how to best distribute the \$75,000. 3/17/04 Tr. at 13 lines 20-24 and 16 lines 20-24. Up to \$5,000 is anticipated will be spent on automating certain communications between the Community Action Agencies and KeySpan. We find these terms of the Settlement Agreement reasonable and consistent with the public interest.

The Settlement Agreement also calls upon the Commission to open a docket to consider whether a low income customer bill assistance program for natural gas customers should be established. At the December hearing, the Intervenors requested KeySpan to consider offering a program similar to the Electric Assistance Program (EAP). 12/17/03 Tr. at 15 lines 22-24. The Commission approved a tiered discount electric assistance program for low income customers by Order No. 23,980 (May 30, 2002). Docket No. DE 03-195 was opened to review the first year EAP costs, the second year budgets and possible modifications to the EAP. Staff

and the Parties submitted a Stipulation, Settlement and Recommendation for Commission Order on April 16, 2004 and a hearing was held on the Stipulation. We will consider the reasonableness of opening a docket to investigate the benefits of a low income assistance program for gas customers after we have issued an order on the Stipulation.

3. Gas Supply Issues

Disputes remain between Staff and KeySpan and their positions are summarized as follows:

Staff is critical of KeySpan's order of dispatch for the DOMAC FCS contract, also known as the Distrigas Vapor contract. Staff witness, Mr. Robert J. Wyatt, testified that the DOMAC FCS contract was structured to serve primarily as a 151 day winter base load vapor service to be dispatched before underground storage supplies. Mr. Wyatt argued that KeySpan had unnecessarily incurred \$198,528 of additional gas costs during the months of November and December 2002 as a result of utilizing more expensive underground storage prior to DOMAC FCS. Ex. 15 at 28. 12/17/03 Tr. at 77 lines 20-21. According to Mr. Wyatt, although the DOMAC FCS contract allows for supply to be taken in either liquid or vapor form and may be used during the summer period if the full 151 day allotment was not used during the previous winter, those enhancements were designed to enable use of that supply at a later date in the event of a warmer than normal winter. Ex. 15 at 18. Mr. Wyatt said that prior to the acquisition of ENGI by KeySpan, the DOMAC FCS contract had been used almost entirely as a vapor delivery service. He maintained the value of that DOMAC FCS contract is as a vapor, because the cost covers both the commodity and transportation delivered to KeySpan's New Hampshire city gates; KeySpan is able to deliver 8,000 MMBtu a day in vapor form through the pipeline to its New Hampshire city gates without having to contract for 365 days of Tennessee Gas Pipeline capacity it only needed for 151 days. Ex. 15 at 8.

In defense, KeySpan witness, Ms. Elizabeth Arangio, testified that the tremendous increase in KeySpan's peak demand over the past few years had caused a corresponding increase in demand for seasonal supplemental supply. Ex. 50 at 6. Ms. Arangio argued the Distrigas Vapor contract has become the most valuable asset throughout the winter because those supplemental volumes must be available to KeySpan's distribution system when the pipeline supplies are exhausted. Thus, according to KeySpan, the DOMAC FCS supply, not underground storage, becomes the critical source of supply that must be conserved to insure its availability. 12/18/04 Tr. at 149 lines 19-24. Finally, Ms. Arangio stated it would be a mistake to dispatch that resource based on price considerations alone. Ex. 50 at 18.

According to the Settlement Agreement, Staff, OCA and the Intervenors resolve the gas supply issue by agreeing not to further contest the prudence of KeySpan's 2002-2003 Winter Period gas costs and associated utilization of gas supply resources. Staff and the Parties agree to evaluate KeySpan's existing supply contracts and the appropriateness of including KeySpan's DOMAC FCS contract in its asset management agreements and allow KeySpan to retain control of the DOMAC FCS Contract, but to be able to dispatch those quantities up to the maximum daily quantity allowable prior to the dispatch of underground storage and to adjust the EKT nominations accordingly. The cost of obtaining such an amendment, in addition to the cost of any additional resources that KeySpan believes are required because of the amendment, shall be provided to the Staff on or before September 1, 2004.<sup>13</sup> Staff and the Parties agree to develop criteria for the utilization and refill of underground storage and agree to assess whether KeySpan's approved hedging policy should change. We commend Staff and the Parties for

---

<sup>13</sup> KeySpan's Asset Management Agreement (AMA) with Entergy-Koch Trading, L.P. (EKT) had an Initial Term running from April 1, 2003 to March 31, 2004 and a two year Subsequent Term the terms of which are determined by KeySpan's choice of option 1 or 2. See Exhibit Exhibit 49. In the recent hearing on DG 04-040, KeySpan's 2004 Summer Period COG proceeding, KeySpan testified that the AMA had been continued in effect for one additional year.

identifying specific ways to resolve those disputes going forward. We find these terms of the Settlement Agreement reasonable and we will approve these terms of the Settlement Agreement.

4. Integrated Resource Planning

Pursuant to the Settlement Agreement, KeySpan agrees to file an Integrated Resource Plan (IRP) on or before August 2, 2004. KeySpan testified it will include in its 5-year IRP information on what resources KeySpan will use to serve its load. 03/17/04 Tr. at 33-34 lines 23-1. KeySpan will also provide Staff with copies of its Massachusetts IRP. Prior to ENGI's acquisition by KeySpan Corporation, ENGI filed IRPs. The Commission halted the practice of filing IRPs based on Staff's recommendation in Docket No. 98-134.<sup>14</sup> At the time, Staff had no concerns regarding ENGI's resource model and Staff stated ENGI was effectively managing its supply portfolio.

It is evident from the record in this docket that both the IRP process and results have changed since ENGI was acquired by KeySpan. The filing of an IRP, in combination with other provisions of the Settlement Agreement, should enable Staff and the Commission to better understand and evaluate the IRP process as practiced by KeySpan and allow for a more thorough, methodical exploration of the changes in KeySpan's supply and dispatch operations resulting from: (i) the acquisition of ENGI by KeySpan Corporation, (ii) increased demand during recent years, and (iii) as further discussed below, the use of asset management agreements, than can be made in the normal course of expedited COG dockets. Staff testified that IRPs are valuable communication mechanisms which provide Staff with information relative

---

<sup>14</sup> Staff's recommendation, filed with the Commission in a memorandum dated April 21, 2000 stated: "Staff believes that ENGI has demonstrated satisfactorily that ENGI has developed and utilizes an appropriate and comprehensive resource model in its short- and long-term resource planning. ENGI has also demonstrated its ability to effectively manage its supply portfolio with the demands placed on its system by its customers....Staff recommends that the utility notify the Commission, under RSA 374:4 Duty to Keep Informed, if there are any significant changes to the IRP process or results." In accepting the recommendation, we stated that in the event an integrated resource plan proved necessary in the future, we could address the issue either in a separate docket, or in the context of a cost of gas proceeding.

to expected growth and demand, how the company is planning on meeting those forecasted supply needs, and whether long term contracts, such as the Distrigas contract, are needed.

12/17/03 Tr. at 118 lines 8-20. We, therefore, will approve the Settlement Agreement terms requiring KeySpan to file an IRP on or before August 2, 2004.

5. Asset Management Agreement

As part of the Settlement Agreement, KeySpan is required to detail, in its IRP, “the goals and methods to be pursued and implemented in connection with” its AMA with EKT under which KeySpan contracts with EKT to manage certain of KeySpan’s gas transportation, underground storage and commodity contracts. KeySpan had a 5-month asset management agreement with EKT in effect from November 1, 2002 through March 31, 2003. KeySpan and EKT entered into the current AMA which had an Initial Term running from April 1, 2003 through March 31, 2004. The proper role of the asset manager and the benefits and constraints of the AMA remain in dispute between Staff and KeySpan. Their positions are summarized as follows:

According to Staff, under the EKT contracts in effect during the 2002-2003 Winter Period, EKT is required to deliver specified quantities of gas, up to a maximum daily quantity, to KeySpan’s city gates at prices set forth in a pricing hierarchy in the AMA. Although EKT is not required to use KeySpan’s resources to serve KeySpan, the prices EKT charges KeySpan are supposed to be no different with or without the AMA. EKT pays a management fee to KeySpan, consisting of a Guaranty Payment and “net profits,” if any, shared in a specified percentage amount between KeySpan and the Asset Manager. Ex. 15 at 9-10.

Most troubling to Staff is KeySpan’s assertion that the AMA in effect during the 2002-2003 Winter Period required the dispatch of underground storage supply before DOMAC FCS vapor supply. Staff testified at hearing that pursuant to Section 4.1 of the AMA in effect for

that period, KeySpan appeared to have the flexibility to allow EKT to dispatch assets not included in the AMA, and thus EKT could have dispatched DOMAC FCS prior to underground storage.<sup>15</sup> Staff's position at hearing was that regardless of whether the asset management agreement terms in effect permitted EKT to dispatch DOMAC FCS before underground storage, dispatching underground storage before DOMAC FCS was imprudent and resulted in unnecessary costs to ratepayers. Furthermore, Staff contended this order of dispatch conflicted with KeySpan testimony that its AMAs are structured to mimic how KeySpan would dispatch its assets in a least cost manner if it were managing the assets itself. Ex. 50 at 11. At hearing, Staff averred that KeySpan's obligation to act prudently necessitated its negotiation of a properly structured asset management agreement that would allow least cost dispatch. 12/22/03 Tr. at 214-215 lines 21-6.

In response, KeySpan testified that the AMA assumed a set order of dispatch and dispatching DOMAC FCS before underground storage would have been inconsistent with the clear intent of the contracting parties and would have exposed KeySpan to litigation or caused EKT to terminate the agreement. Ex. 50 at 14. KeySpan noted that it had met with Staff on December 3, 2002, after its execution of the initial five month asset management agreement with EKT for the express purpose of reviewing the pricing hierarchy of the new AMA. KeySpan argues that Staff raising the dispatch issue now, rather than in the previous COGs is nothing more than hindsight. Ex. 50 at 15. KeySpan continues to assert that its utilization of the DOMAC FCS contract and the supply assets through the AMA is prudent. 3/17/04 Tr. at 30 line 18.

---

<sup>15</sup> Section 4.1 stated: "Buyer possesses certain assets used to meet seasonal requirements of Buyer's utilities that are not included in this Agreement. From time to time over the Initial Term, Buyer and Seller may agree to allow Seller to access and manage some or all of these assets. Buyer shall not grant this right to anyone other than Seller during the Initial Term, except as may be required by the PUC as part of Buyer's Unbundling Program." Ex. 49.

As stated earlier, we recognize that gas supply issues are highly complex and that COG proceedings are generally expedited proceedings. As stated above, we have accepted the agreed upon resolution of prudence issues concerning KeySpan's 2002-2003 Winter Period gas costs. We recognize that Staff and KeySpan's discussions regarding KeySpan's gas resource decisions, including use of its AMA, essentially keep the prudence issue open as of the 2003 Summer Period COG. *See* Order No.24,317 (April 30, 2004) in DG 04-040. Given these circumstances and the depth of disagreement on this issue, we accept Staff and the Parties' proposal to resolve this contentious issue outside of a formal proceeding. We find the settlement terms calling for discussions on how the AMA should be structured to be reasonable and we will approve them.

6. Future Reports to Commission

The Settlement Agreement requires KeySpan to either maintain or file certain types of information with the Commission, as follows: 1) KeySpan agrees to meet with Staff and identify what records KeySpan should maintain in order to facilitate Staff's review of daily and monthly gas dispatch decisions and how those decisions relate to least cost dispatch practices; 2) KeySpan agrees to meet with Staff to identify what records KeySpan should maintain in order to facilitate Staff's review of the daily and monthly imbalances allocated to KeySpan's New Hampshire operations under the single Operational Balancing Agreement currently in place with Tennessee Gas Pipeline Company on behalf of all of KeySpan Corporation's New England gas distribution subsidiaries; 3) KeySpan agrees to file all new gas supply, transportation, storage and asset management contracts with the Commission, including notification of the extension of the term of any such contract, for informational purposes; 4) KeySpan agrees to maintain in its files, and will make available for review by Staff, copies of letters of notification of service curtailment sent to customers receiving 280 Day Sales service as

well as other documents pertaining to pricing, margin calculations, and other tariff related customer correspondence for 280 day sales service customers.<sup>16</sup> At hearing, Staff and the Parties explained that the intent of these reports is to facilitate the exchange of information on subjects not resolved in DG 03-160 in hopes that the improved information exchange will lead to resolution in the near future, and will assist KeySpan in maintaining compliance with its reporting requirements. 3/17/03 Tr. at 30-31 lines 21-5 and at 35-36 lines 24-8.

We noted in our Order of Notice that KeySpan had failed to provide a number of the reports required by *EnergyNorth, Inc.*, 73 NH PUC 374 (1988) and KeySpan's tariff. We also stated that a preliminary Staff inquiry into the pricing and operation of the program indicated that KeySpan's reporting history was inconsistent, KeySpan had provided inaccurate data in its reports, and KeySpan had violated its tariff with respect to the 280 Day Sales service alternate fuel pricing methodology, use of daily marginal cost floor price and other operational requirements. In light of KeySpan's testimony at hearing that it has instituted processes to address the reporting deficiencies,<sup>17</sup> as well as the breadth of reporting required under the Settlement Agreement, we will accept Staff and KeySpan's representations that this course of action will improve KeySpan's filings

As stated earlier, certain gas supply issues raised by the Commission in its Order of Notice and by Staff and the Parties during the hearings in this docket remain unresolved. We acknowledge that the intent and expectation of the Settlement Agreement reporting provisions is

---

<sup>16</sup> With respect to KeySpan's administration of the 280 Day and Interruptible sales service, Staff testified that KeySpan had not been following the required pricing formula and the reported margins to be credited back to firm sales customers differed significantly between four separate reports filed with the Commission. Ex. 14 at 9 After Staff brought those discrepancies to KeySpan's attention, KeySpan made a \$224,490 adjustment to increase the margins and correct the reporting discrepancies. KeySpan will also credit an additional \$25,551 of margins identified subsequent to the 2003-2004 COG filing which were consequently not included in the 2003-2004 winter COG rates. Through these adjustments, firm sales customers will have been credited the correct margins and KeySpan has complied with the related Commission orders and directives. Ex. 32 at 12. We will consider the 280 Day issue resolved for the 2002-2003 Winter Period, provided KeySpan continues to adhere to the specifics of the program as approved by the Commission.

that the information exchange will foster better communication, and hence a better understanding, between Staff and KeySpan concerning the reasonableness of gas dispatch decisions. We find this intent laudable and find the reporting provisions of the Settlement Agreement to be reasonable. We note, however, that our approval of these provisions does not prevent us from investigating these issues in the future or from exercising our authority to ensure that rates charged by KeySpan are just and reasonable pursuant to RSA 378:7 and that the service it provides is safe and adequate pursuant to RSA 374:1.

7. Adjustment of Filing Deadlines

Staff and the Parties agree that KeySpan will file future Winter Period cost of gas proposals on the first business day in September and that KeySpan will file its proposed FPO rates on or before September 15<sup>th</sup>. This will extend Staff's opportunity to review the filings by two weeks. We find this settlement term reasonable. We will, therefore approve the change to September 1<sup>st</sup> and September 15<sup>th</sup> filing deadlines for the above rate filings, as may be modified by N.H. Code, Admin. R. Puc 202.03 regarding weekends and holidays.

8. Conclusion

Our approval of this treatment of the remaining issues in this docket, in particular the under recovery issue, is not without reservation. We approved KeySpan's acquisition of ENGI by Eastern Enterprises and KeySpan Corporation in May of 2000. *EnergyNorth Natural Gas, Inc.*, 85 NH PUC 360 (2000).<sup>18</sup> At that time, we approved the acquisition based upon representations by KeySpan that the acquisition would not result in any adverse effects on ENGI's rates, terms, service, or operations. The Commission, however, began observing

---

<sup>17</sup> 12/18/03 Tr. at 80 lines 15-23.

<sup>18</sup> On November 8, 2000, KeySpan acquired Eastern Enterprises (Eastern) and Eastern acquired EnergyNorth, Inc., the parent of EnergyNorth Natural Gas, Inc. These acquisitions were approved by the Securities & Exchange Commission in an order issued on November 7, 2000 and by the Commission in its Order No. 23,470 (May 8, 2000).

calculation errors by KeySpan as early as the fall of 2001. Staff witness Stephen Frink detailed the calculation errors affecting three of KeySpan's past COG filings and we need not reiterate the details here. Exh. 14 at 10-11. Suffice it to say, shortly after the acquisition, the Commission put KeySpan on notice that it would not tolerate continued miscalculations in its filings. At this time we view KeySpan's forgoing of \$525,000 in interest as being in the nature of a penalty, which is a clear and strong reminder that KeySpan must successfully address the processes that gave rise to the repeated filing errors. Notwithstanding our acceptance of the Settlement Agreement, we reserve the right to consider penalties and further regulatory action if calculation errors persist in KeySpan's filings.

We note the Settlement Agreement specifies no deadline for the production of the information required by the reporting provisions. We believe it would be helpful for Staff and the Parties to develop a schedule for completing the reporting provisions. To that end, we direct Staff and the Parties to submit to the Commission, within 30 days of this order, a time schedule during which Staff and the Parties expect to implement the following provisions of the Settlement Agreement:

1. Section II, B relating to the contributions to low income assistance programs;
2. Section II, E relating to the DOMAC FCS Contract;
3. Section II, F relating to the review of KeySpan's Risk Management Policy;
4. Section II, G relating to criteria for underground storage Management Decisions; and
5. Section II, H relating to reporting.

B. Motions for Protective Treatment

KeySpan requests protection of information that it avers is within the general category of "confidential, commercial or financial information" exempted from disclosure pursuant to RSA 91-A:5, IV. N.H. Code Admin. R. Puc 204.06 authorizes the Commission to grant confidentiality upon a finding that the information sought to be protected from disclosure to the public is within an exemption permitted by law, would disadvantage the petitioner if made

public, and is not general public knowledge. Case law interpreting whether information is considered confidential requires 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 KeySpan’s: gas commodity costs; gas supply contracts; Capacity Decisions; unredacted Testimony of Arangio; unredacted version of an asset management contract and proposals; and unredacted data response 1-12.<sup>19</sup> The Commission has previously found that information identifying gas suppliers, as well as terms of gas supply agreements negotiated by a jurisdictional gas distribution company, is sensitive commercial information and warranted confidential treatment. *See e.g., EnergyNorth Natural Gas, Inc. d/b/a Keyspan Energy Delivery New England*, 87 NH PUC 250 (2002). The Commission has also found that an unredacted copy of a transition service supply contract between the parties contained “commercially sensitive terms” and warranted confidential treatment. *See, e.g. Granite State Electric Company*, 84 NH PUC 310, 311 (1999).

Based on KeySpan’s representations and the Commission’s previous treatment of similar information, we find that the benefits to KeySpan of non-disclosure in this case outweigh the benefits to the public of disclosure. We conclude that the information is exempt from public disclosure pursuant to RSA 91-A:5, IV and Puc 204.06. Our granting of KeySpan’s Motion is subject to the on-going authority of the Commission and the Commission may, on its own motion, or on the motion of Staff, any party, or any other member of the public, reconsider this determination should circumstances so warrant.

---

<sup>19</sup> Redacted versions of these documents, with particular sections removed because of confidentiality, would remain

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

**ORDERED**, that the Settlement Agreement submitted by Staff, the OCA, the Intervenor, and KeySpan, is hereby **APPROVED**; and it is

**FURTHER ORDERED**, that Staff and KeySpan shall file, within 30 days of this order, a time schedule which indicates when Staff and KeySpan expect to implement sections of the Settlement Agreement, as described above; and it is

**FURTHER ORDERED**, that KeySpan shall file for approval of its 2004-2005 Winter Period Cost of Gas on or before September 1, 2004.

By order of the Public Utilities Commission of New Hampshire this seventh day of May, 2004.

---

Thomas B. Getz  
Chairman

---

Susan S. Geiger  
Commissioner

---

Graham J. Morrison  
Commissioner

Attested by:

---

Debra A. Howland  
Executive Director & Secretary

---

public.