

**DG 04-133
DG 04-175**

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

Integrated Resources Plan and Gas Dispatch Investigation

**Prehearing Conference Order and
Order on Outstanding Motions for Protective Treatment**

ORDER NO. 24,408

December 3, 2004

APPEARANCES: Steven V. Camerino, Esq., of McLane, Graf, Raulerson & Middleton, for EnergyNorth Natural Gas, Inc. d/b/a KeySpan Energy Delivery New England; Edward N. Damon, Esq. for the Staff of the New Hampshire Public Utilities Commission.

I. PROCEDURAL HISTORY

On August 2, 2004, EnergyNorth Natural Gas, Inc. d/b/a Keyspan Energy Delivery New England (KeySpan or the Company), filed with the New Hampshire Public Utilities Commission (Commission) an Integrated Resource Plan for November 1, 2004 through October 31, 2009 (IRP) pursuant to Order No. 24,323 (May 7, 2004) in Docket DG 03-160. The IRP was docketed as DG 04-133. On September 20, 2004, Commission Staff filed with the Commission a Status Report regarding Staff's investigation of 2003 summer gas costs pursuant to Order No. 24,317 (April 30, 2004) in Docket DG 04-040 noting ongoing concerns regarding KeySpan's gas dispatch. This matter was docketed as DG 04-175. On September 24, 2004, the Commission issued an Order of Notice consolidating DG 04-133 and DG 04-175 for procedural purposes and establishing a procedural schedule for the two dockets. On September 28, 2004, the Office of Consumer Advocate (OCA) filed with the Commission its notice of intent to participate in this docket on behalf of residential ratepayers consistent with RSA 363:28. On

October 15, 2004, the Commission held a prehearing conference in accordance with the Order of Notice.

On November 15, 2004, KeySpan filed with the Commission a Motion for Protective Order and Confidential Treatment Regarding Response to Data Request Staff 1-43 (1-43 Motion). On November 23, 2004, KeySpan filed with the Commission a Motion for Protective Order and Confidential Treatment Regarding Response to Data Request Staff 1-44 (1-44 Motion). Also on November 23, 2004, Staff filed with the Commission a letter proposing to revise the proposed procedural schedule in certain respects, which the Commission approved on November 30, 2004.

II. PRELIMINARY POSITIONS OF THE PARTIES AND STAFF

A. KeySpan

KeySpan requests Commission action on the IRP indicating that it is approved as filed or with appropriate revisions that are agreed to by Staff. KeySpan does not object on a preliminary basis to adding to the docket potential issues of gas dispatch from prior periods or to the procedural schedule contained in the Staff's Status Report. However, if the Staff suggests disallowances or if there are significant disputes regarding the IRP, KeySpan states that the proposed procedural schedule may have to be revisited, either to de-link the two dockets and conduct them separately or at least to provide more time for discovery and testimony.

KeySpan denies that the schedules filed in the COG dockets constitute "dispatch plans," as Staff views them. KeySpan also asserts that it has adhered to the Commission's existing hedging policy and price stabilization policies; KeySpan understands that within the context of the Commission's hedging and price stabilization policies, the goal is to minimize costs to consumers, not simply to avoid all volatility.

In its 1-43 Motion, KeySpan states that it is seeking protective treatment for the price provisions of the Amended and Restated Gas Resource Portfolio Management and Gas Sales Agreement (2004 Asset Management Agreement or 2004 AMA) entered into by KeySpan and Entergy-Koch Trading, LP (EKT) and dated April 1, 2004. KeySpan provided this information in response to Staff Data Request 1-43. KeySpan asserts that: (i) it is contractually obligated to maintain the price provisions of the 2004 AMA, (ii) disclosure of this information would be harmful to KeySpan and its customers because other parties who might in the future provide similar services could become aware of the economic terms acceptable to KeySpan, thereby depriving KeySpan of the opportunity to obtain the best possible terms for such service, (iii) this information constitutes confidential commercial information of KeySpan and EKT and (iv) KeySpan does not disclose this information to anyone outside of its corporate affiliates and their representatives.

In its 1-44 Motion, KeySpan states that it is seeking protective treatment for certain financial terms and the names of unsuccessful bidders revealed in KeySpan's evaluation of the bids responding to a request for proposals that ultimately resulted in the execution of the Gas Resource Portfolio Management and Gas Sales Agreement (2003 Asset Management Agreement or 2003 AMA) entered into by KeySpan and EKT and dated April 1, 2003. KeySpan provided such information in response to Staff Data Request 1-44. KeySpan asserts that: (i) it agreed to maintain the confidentiality of the proposals of the unsuccessful bidders, (ii) it is contractually obligated to maintain the price provisions of the 2003 AMA with EKT, (iii) disclosure of this information and similar information in the other respondents' bids would be harmful to KeySpan and its customers because other parties who might in the future provide services similar to those provided by EKT could become aware of the economic terms acceptable

to KeySpan, thereby depriving KeySpan of the opportunity to obtain the best possible terms for such service, (iv) this information constitutes confidential commercial information of KeySpan and (v) KeySpan does not disclose this information to anyone outside of its corporate affiliates and their representatives.

B. Office of Consumer Advocate

In connection with the IRP, OCA expects to review issues such as whether the dispatch is consistent and economic and gives ratepayers the lowest cost supply possible for the period. OCA states it shares Staff's concerns regarding efficiency and the current asset management arrangement. OCA has not objected to KeySpan's 1-43 or 1-44 Motions.

C. Staff

Staff states that demand forecasting and supply planning is the foundation upon which proper gas dispatch is based and the IRP provides important context for the dispatch decisions KeySpan makes. According to Staff, the seasonal cost of gas (COG) filings, adjusted to reflect current market conditions, should reflect KeySpan's long-term planning.

In addition, Staff states that prior to its acquisition in 2000, ENGI had filed an IRP that Staff and the Commission found to be reasonable; KeySpan and Northern Utilities submitted seasonal COG filings which satisfied Commission filing requirements and hedging policies; and ENGI, with little exception, adhered to the supply plans on which the COG filings were based. Staff asserts that since ENGI's acquisition in 2000, resource planning has changed. According to Staff, although the seasonal COG filings have changed very little in format and content, KeySpan no longer considers monthly dispatch schedules to be a supply plan and has not adhered to those schedules. Staff believes dispatch decisions made for KeySpan, particularly its utilization of 151 day DOMAC FCS supplies, have resulted in greater price volatility and

costs. According to Staff, KeySpan believes that it has been prudent in its planning and gas dispatch and that Staff has failed to recognize the savings realized through the asset management agreement with EKT.

Staff notes that the Commission hired Liberty Consulting Group to assist in reviewing and evaluating KeySpan's demand forecasting and supply planning. Liberty will also perform a cost benefit analysis of the asset management agreement.

Staff's position is that KeySpan may have been imprudent in its gas dispatch and that this investigation is necessary to determine if that was or is the case and, if so, the degree to which customers have been harmed. It is also Staff's position that KeySpan's current supply planning and dispatch does not adequately address Commission policy regarding economic dispatch and price risk management.

With Liberty's assistance, Staff expects to fully resolve all supply planning and dispatch issues prior to the next COG proceeding and, if appropriate, propose disallowances related to imprudence in any of the COG periods since the 2002/03 winter period.

Staff has not objected to KeySpan's 1-43 or 1-44 Motions.

III. PROCEDURAL SCHEDULE

The following schedule reflects the approved revisions to the proposed procedural schedule which was originally submitted to the Commission in Staff's Status Report:

Staff and Intervenor Data Requests	October 29, 2004
KeySpan Data Responses	November 12, 2004
Technical Session	November 19, 2004
Staff and Intervenor Data Requests	November 29, 2004
KeySpan Data Responses	December 9, 2004

Continued Technical Session	December 14, 2004 at 9 am
Management Audit at KeySpan Offices	December 15 and 16, 2004
Staff and Intervenor Testimony	January 24, 2005
KeySpan Data Requests	February 4, 2005
Staff and Intervenor Data Responses	February 17, 2005
Technical Session/Settlement Discussion	February 18, 2005
KeySpan Testimony	February 25, 2005
Staff and Intervenor Data Requests	March 4, 2005
KeySpan Data Responses	March 18, 2005
Hearing	March 22-23, 2005

The Commission has reviewed the procedural schedule set forth above and reaffirms that it is reasonable.

IV. RULING ON 1-43 AND 1-44 MOTIONS

Based on KeySpan's representations and the Commission's previous treatment of similar information in *EnergyNorth Natural Gas, Inc. d/b/a Keyspan Energy Delivery New England*, Order No. 24,323 (May 7, 2004), slip op. at 24, we are persuaded that the benefits of non-disclosure in this case outweigh the benefits to the public of disclosure as to the 1-43 Motion. As to the 1-44 Motion, we are similarly persuaded that the financial terms and details of the proposal should be protected. We do not find a basis, however, to protect the identities of the unsuccessful bidders. The arguments propounded by Keyspan regarding financial terms, bidding strategies and competitive pressures, while sound as they relate to the contents of the proposals themselves, do not justify protection of the names of bidding parties. We will, therefore, deny the 1-44 Motion as to the identities of the unsuccessful bidders and grant it in all other respects.

The information over which protection is granted is exempt from public disclosure pursuant to RSA 91-A:5, IV and Puc 204.06. Our grant of the 1-43 Motion and partial grant of the 1-44 Motion are subject to the on-going authority of the Commission, on its own motion, or on the motion of Staff, any party, or any member of the public, to reconsider these determinations should circumstances so warrant.

Based upon the foregoing, it is hereby

ORDERED, that the procedural schedule as set forth herein is **AFFIRMED**; and
it is

FURTHER ORDERED, that KeySpan's 1-43 Motion is hereby **GRANTED**; and
it is

FURTHER ORDERED, that Keyspan's 1-44 Motion is hereby **GRANTED** in part and **DENIED** in part; and it is

FURTHER ORDERED, that the determinations as to confidential treatment made herein are subject to the ongoing authority of the Commission, on its own motion or on the motion of Staff, any party or any 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 third day of December, 2004.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Michael D. Harrington
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary