

DG 06-098

NORTHERN UTILITIES, INC.

2006 Long-Range Integrated Resource Plan

Prehearing Conference Order

O R D E R N O. 24,666

September 12, 2006

APPEARANCES: Patricia French, Esq., of NiSource Corporate Services for Northern Utilities, Inc.; McLane, Graf, Raulerson, & Middleton, by Steven V. Camerino, Esq., on behalf of EnergyNorth Natural Gas, Inc. d/b/a KeySpan Energy Delivery New England; Rorie Hollenberg, Esq., of the Office of Consumer Advocate, on behalf of residential ratepayers; and Edward N. Damon, Esq., for the Staff of the New Hampshire Public Utilities Commission.

I. PROCEDURAL HISTORY

On June 30, 2006, Northern Utilities, Inc. (Northern) filed with the New Hampshire Public Utilities Commission (Commission) its 2006 Long-Range Integrated Resource Plan (IRP) for its Maine and New Hampshire divisions, together with a petition to convene a joint hearing to be conducted by the Commission and the Maine Public Utilities Commission (MPUC) for the purpose of reviewing the IRP.¹ Northern also submitted as part of its filing a motion for confidential treatment of the analysis used in Northern's resource evaluation.

On July 11, 2006, the Office of Consumer Advocate (OCA) filed notice of its intent to participate in this docket on behalf of residential utility consumers consistent with RSA 363:28. On July 26, 2006, the Commission issued an order of notice scheduling a prehearing conference for on August 15, 2006. On August 11, 2006, petitions to intervene were filed by EnergyNorth

¹ The filing of the IRP satisfied one of the terms contained in the Stipulation and Settlement (Settlement) approved by the Commission in Docket No. DG 05-080, Order 24,627 (June 1, 2006). The Settlement also provided for a capacity reserve equal to 30 percent of Northern's total capacity-exempt transportation load in its Maine and New Hampshire Divisions which, under the Settlement, may be reconsidered as part of the IRP review process.

Natural Gas, Inc. d/b/a KeySpan Energy New England (KeySpan) and Hess Corporation (Hess).

The prehearing conference was conducted as scheduled.

II. PRELIMINARY POSITIONS OF THE PARTIES AND STAFF

A. Northern Utilities, Inc.

Northern stated that it seeks coordinated treatment of the IRP by the Commission and the MPUC. Northern is agreeable to including the transcript of the August 2, 2006 technical conference held in the MPUC companion docket, Docket No. 2006-390, in the record of the present docket. Finally, Northern will file revisions to Schedules IV-2 and 5 of the IRP in this docket.

B. KeySpan

KeySpan stated that it is interested in the issue of the capacity reserve margin, which is related to the subject of Docket No. DG 06-033, Capacity Reserve Charge (a docket in which KeySpan is a party), and is expected to be taken up as part of the present docket. Nevertheless, KeySpan states that the issue of the capacity reserve margin should be treated separately from the issue of the Capacity Reserve Charge. KeySpan intends to monitor the present docket.

C. Office of Consumer Advocate

OCA agrees to the procedural schedule outlined by Staff.

D. Staff

Staff stated that it and the OCA attended an initial case conference and technical conference in MPUC Docket 2006-390 conducted by MPUC Staff at Portsmouth, NH on August 2, 2006. In accordance with Maine practice, a court reporter was present to transcribe the proceedings. According to Staff, it is anticipated that the transcript will comprise part of the record in both the Maine and New Hampshire dockets.

Staff explained that at the case conference on August 2, 2006, a partial procedural schedule was agreed upon, as follows:

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|---|--------------------|
| Deadline for discovery on Northern's filing | August 23, 2006 |
| Discovery responses due | September 8, 2006 |
| Technical conference/technical session | September 19, 2006 |

Staff noted that it will file with the Commission a proposed revised procedural schedule in DG 06-033 after the September 19, 2006 technical conference/technical session.² According to Staff, the participants agreed that the level and measurement of Northern's reserve capacity will have first priority at the September 19, 2006 session, with other matters to be addressed, time permitting.

Staff recommended that this partial procedural schedule be adopted in the present docket as well, with a proposal for additional procedural steps to be filed with the Commission after the September 19 joint technical conference/technical session. Staff stated that the proposed procedural schedule will optimize the coordination of this docket with DG 06-033.

Staff also recommended that intervenors in DG 06-033 be notified of the September 19, 2006 technical session in the present docket. Staff noted that the MPUC procedural order in Docket No. 2006-390 contemplates separate hearings on the IRP, with coordinated discovery and technical sessions, an approach that Staff supports in the present docket.

Staff explained that it expects to conduct a thorough and comprehensive review of Northern's IRP filing and has already issued a first round of discovery on Northern by letter dated August 8, 2006. Staff does not object to Northern's motion for confidential treatment on the usual condition regarding the Commission's right to reconsider should circumstances warrant.

² In that docket the procedural schedule has been suspended pending an initial review of Northern's IRP and the submission of a proposed revised procedural schedule which will allow the Commission to render a decision on the Capacity Reserve Charge prior to its proposed effective date of November 1, 2006.

III. MOTION FOR CONFIDENTIAL TREATMENT

In its motion for confidential treatment, Northern requested that the Commission issue an order requiring that the schedules supporting Northern's "Sendout" runs be treated as confidential, commercial information and in the nature of a trade secret, and not be made a part of the public record in this proceeding. Northern stated that in order to provide background information for its analysis of the needs of the combined portfolio for the Maine and New Hampshire Divisions in the IRP, it included a "Confidential Sendout Model" which included Run 1 and Run 2. According to Northern, the Sendout Model evaluates resource options on a total portfolio basis and must be included in order to support the analyses undertaken by Northern to establish and justify its best-cost portfolio. Northern stated that it considers information in the Sendout analysis, which contains the negotiated prices for its gas supply portfolio and competitively sensitive natural gas commodity pricing information, to be confidential business and trade secret information.

Northern stated in its motion that it does not disclose the information for which it seeks protection outside a close circle of Northern employees with a need to know, and that release of the information would likely result in competitive and negotiation disadvantages for Northern, and possibly its suppliers; would impair Northern's future bargaining position with suppliers and resource providers; and would likely be beneficial to a competitor of Northern. Northern seeks to protect the information on a continuing basis in order to protect trade, contractual and financial secrets that are closely-held by Northern.

IV. COMMISSION ANALYSIS

We grant the pending petitions to intervene inasmuch as the parties have demonstrated "rights, duties, privileges, immunities or other substantial intervals" that may be affected by the

proceeding. We have also reviewed the partial procedural schedule as proposed herein and determine that it is reasonable. Following the technical Session on September 19, 2006, the parties are requested to file a proposed procedural schedule governing the remainder of this docket. Finally, Commission Staff is directed to send a copy of this order to intervenors in DG 06-033 in accordance with its suggestion.

In its Docket No. 2006-390 procedural order, the MPUC expressed a preference for proceeding with joint technical conferences for purposes of developing a record that both jurisdictions could use in their respective proceedings and determined that any formal hearings regarding the IRP that may be necessary before either the Maine or New Hampshire Commissions would be conducted more efficiently separately in each forum. This general approach is reasonable and acceptable to us.

Regarding Northern's motion for confidential treatment, Northern cites as its authority RSA 91-A and N.H. Code Admin. Rules Puc 204.07. The latter is an outdated citation; the Commission's current rule on motions for confidential treatment is Puc 203.08.

The 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 exemption, invoked here, for "confidential, commercial or financial information." RSA 91-A:5, IV. In most cases, a balancing test weighing the interests of the company against the public's right to obtain the information for which protection is sought is used to determine whether confidential treatment should be granted. *See e.g., Union Leader Corporation v. New Hampshire Housing Finance Authority*, 142 N.H. 540 (1997).

We note that no parties objected to the motion for confidential treatment and that the information for which protective treatment is sought is similar to information for which the

Commission has granted protective treatment in the past. In balancing the interests for and against public disclosure of the information for which confidential treatment is sought, we are persuaded on the basis of the record in this docket that the interests of Northern and ultimately its ratepayers in non-disclosure outweigh the public's interest in obtaining access to the information. We will therefore grant the motion for confidential treatment. Consistent with our practice, the protective treatment provisions of this Order will be subject to the ongoing rights 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.

Based upon the foregoing, it is hereby

ORDERED, that the pending motions to intervene are granted; and it is

FURTHER ORDERED, that the procedural schedule as proposed herein is hereby adopted; and it is

FURTHER ORDERED, that Northern's Petition to Convene Joint Hearing is denied in part and granted in part, as set forth above; and it is

FURTHER ORDERED, that Northern's Motion for Protection is granted as set forth above.

By order of the Public Utilities Commission of New Hampshire this twelfth day of
September, 2006.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Clifton C. Below
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary