STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

DG 06-107

NATIONAL GRID plc, NATIONAL GRID USA,
GRANITE STATE ELECTRIC COMPANY and KEYSPAN CORPORATION

Petition For Approval Of Merger Transaction

Order Regarding Settlement Agreement

O R D E R N O. 24,777

July 12, 2007

APPEARANCES: Alexandra E. Blackmore, Esq., on behalf of National Grid, Marla B. Matthews, Esq., of Gallagher, Callahan & Gartrell, P.C., on behalf of National Grid; Steven V. Camerino, Esq., of McLane, Graf, Raulerson, and Middleton, P.A., and Thomas O'Neill, Esq., on behalf of EnergyNorth Natural Gas, Inc. d/b/a KeySpan Energy Delivery New England; Meredith A. Hatfield, Esq., of the Office of the Consumer Advocate, on behalf of residential utility ratepayers; Shawn J. Sullivan, Esq., of Cook and Molan, P.A., for United Steelworkers of America, Local 12012-3; and Edward N. Damon, Esq.. for the Staff of the New Hampshire Public Utilities Commission.

I. PROCEDURAL HISTORY

On August 10, 2006, National Grid plc and its subsidiary, National Grid USA, and EnergyNorth Natural Gas, Inc. d/b/a KeySpan Energy Delivery New England (EnergyNorth) jointly filed a petition seeking approval pursuant to RSA 369:8 and RSA 374:33 of a merger transaction that would result in EnergyNorth becoming a wholly owned indirect subsidiary of National Grid. Accompanying the petition was prefiled testimony by William T. Sherry, Joseph F. Bodanza, David J. Hoffman and Richard J. Levin, and John C. Cochrane. EnergyNorth, a subsidiary of KeySpan Corporation (EnergyNorth and KeySpan Corporation are collectively referred to KeySpan, except as otherwise indicated), serves approximately 84,000 gas customers in south-central and central New Hampshire and in Berlin. National Grid plc and National Grid

USA serve approximately 41,000 electric customers in western and southeastern New Hampshire through their subsidiary Granite State Electric Company d/b/a National Grid (Granite State) (National Grid plc, National Grid USA and Granite State are collectively referred to as National Grid, except as otherwise indicated). There is a very small geographical overlap in the existing service territories of EnergyNorth and Granite State in southeastern New Hampshire but the companies presently have no New Hampshire customers in common.

On August 18, 2006, the Office of Consumer Advocate (OCA) filed a notice of intent to participate on behalf of residential utility consumers pursuant to RSA 363:28. On September 12, 2006, the Commission issued an order of notice scheduling a prehearing conference for October 3, 2006. The order of notice stated that, among other things, the filing raised issues related to whether the transaction would have an adverse effect on the rates, terms, service or operation of EnergyNorth and National Grid subsidiaries operating in New Hampshire.

The United Steelworkers of America, Local 12012-3 (Local 12012-3) and the Utility Workers Union of America, AFL-CIO (Utility Workers Union) filed timely petitions to intervene. One consumer comment opposing the proposed merger transaction was also filed with the Commission. Following the prehearing conference, Staff filed a letter with an agreed-upon proposed procedural schedule and enclosed a letter on behalf of the Utility Workers Union providing additional information regarding the basis for its intervention request and plans for participation.

On October 27, 2006, the Commission issued Order No. 24,690, which approved the proposed procedural schedule and the joint petitioners' waiver of certain procedural rights under RSA 369:8. II (b), and granted the petitions to intervene on a limited basis. On October 31, 2006, National Grid and EnergyNorth each filed a motion for confidential treatment in respect to

certain responses to discovery requests. On December 13, 2006, National Grid filed certain information regarding recent debt issuances by EnergyNorth's and Granite State's affiliates. On December 20, 2006, National Grid filed an update to its synergy savings analysis and related testimony. On January 11, 2007, Staff filed a revised proposed procedural schedule, which the Commission approved by secretarial letter dated January 18, 2007. On February 21, 2007, National Grid filed further proposed revisions to the procedural schedule, which were approved by secretarial letter dated February 22, 2007.

Also on February 21, 2007, The Way Home (an organization that helps low income families find shelter) and Pamela Locke (a residential gas customer of KeySpan), each represented by New Hampshire Legal Assistance, filed consumer comment letters urging that approval of the proposed merger be conditioned on the continuation of the low income gas discount rate program and increases to the low income discount consistent with maintaining the financial integrity of the program. On March 9, 2007, representatives of the state's Community Action agencies filed a joint letter requesting that any merger approval include a more defined plan and budget increases for the utilities' low income energy efficiency programs.

On April 17, 2007, Commission Staff filed a letter, updated on April 20, 2007, which notified the Commission that the joint petitioners, the OCA and Staff had reached a settlement in principle and requested a modification to the procedural schedule. On May 10, 2007, the Commission issued a secretarial letter approving the proposed revised procedural schedule. On May 15, 2007, National Grid filed a comprehensive settlement agreement entered into among the petitioners, OCA and Staff (Settling Parties and Staff), together with supporting testimony by Ronald T. Gerwatowski and Michael D. Laflamme. On the same day, Staff filed supporting testimony by Stephen P. Frink and Steven E. Mullen and Local 12012-3 filed opposition

testimony challenging a provision of the settlement agreement regarding the marking of underground facilities by EnergyNorth. The hearing on the settlement was held as scheduled on May 30, 2007.

II. SUMMARY OF SETTLEMENT

A. Master Settlement Agreement

The settlement agreement is a comprehensive document, consisting of a master agreement and two attachments which are further described below, the Granite State rate plan settlement and the EnergyNorth merger rate agreement. The master settlement agreement provides that National Grid and KeySpan be authorized to consummate the merger described in the merger agreement filed with the joint petition, subject to the additional terms and conditions in the settlement. Pursuant to the merger, a newly created subsidiary of National Grid would merge with and into KeySpan Corporation, which would be the surviving entity and become a wholly owned subsidiary of National Grid USA. As a result of the transaction, EnergyNorth would become an indirect, wholly owned subsidiary of National Grid. At the effective time of the merger, each share of common stock of KeySpan Corporation would be converted into the right to receive $42 in cash per share, payable by National Grid plc. The Settling Parties and Staff stipulated that the merger, subject to the additional terms and conditions, is “lawful, proper and in the public interest” in accordance with RSA 374:33 and will have “no adverse effect on the rates, terms, service or operation” of EnergyNorth and Granite State in accordance with RSA 369:8, II.

The master agreement proposes four other approvals for implementing the merger. First, National Grid would be authorized to include EnergyNorth with National Grid’s other regulated subsidiaries in a regulated company money pool, separate from the money pool used for

unregulated subsidiaries, to become effective upon receipt of all required regulatory approvals and when systems are in place to efficiently implement the billing and accounting for service company charges.

Second, National Grid would be permitted to consolidate the service companies of National Grid and KeySpan, and National Grid and its affiliates would be authorized to adopt KeySpan's formula for allocating service company costs that are not directly charged from the service company, to become effective upon receipt of all required regulatory approvals and when systems are in place to implement the billing and accounting for service company charges efficiently. Pursuant to the master agreement, the Commission would be provided with the proposed cost allocation methodology related to any service company owned by National Grid 30 days in advance of any change to service company allocations that affect service company billings to EnergyNorth or Granite State. In addition, when the new service company cost allocation methodology is filed with the Commission, the Commission would be provided with a cost impact statement summarizing the direct and indirect service company cost allocations for National Grid transmission and distribution operations, using the existing and proposed allocation methodologies.

Third, National Grid would receive authorization to change EnergyNorth's fiscal year to a year ended March 31 in order to match the fiscal year of the other National Grid affiliate companies. Fourth, EnergyNorth would be permitted to pay dividends from its unappropriated retained earnings and undistributed earnings, and accumulated comprehensive income, to the extent of retained earnings, just prior to the close of the merger plus net income earned subsequent to the merger.

The master agreement includes a number of reporting requirements and provisions relating to access to data, including a provision requiring the Commission to be provided a copy of all journal entries that National Grid makes on its books to record the merger. Such entries would be made in accordance with the Commission's accounting rules and generally accepted accounting principles. Upon the consummation of the merger, the Commission would also be provided with a copy of the corporate organization chart showing the new structure of National Grid and its affiliates, including KeySpan affiliates, and their relationship to each other. The Commission would also be provided with the final presentation report of the National Grid/KeySpan merger integration team to management, including a cover letter explaining the context of the presentation and management's acceptance of the report.[1] Finally, Staff would be provided access to the books and records of National Grid and its affiliates, including service companies and unregulated companies as these books and records relate to EnergyNorth and Granite State.

B. Granite State Rate Plan

The Granite State Rate Plan as proposed by the Settling Parties and Staff would establish new distribution rates for Granite State effective on July 1, 2007 or 30 days following the Commission's approval of the merger, whichever is later. Granite State's distribution rates would be subject, from January 1, 2008 through December 31, 2012, to limitations on rate changes for the period. The plan's $2.2 million distribution rate reduction, the establishment of a storm contingency fund, a reliability enhancement program plan and the vegetation management plan, and the customer service commitments are all contingent upon the Commission's approval

[1] This requirement was satisfied by introduction of Exhibit 6 at the hearing. Exhibit 6 consisted of a letter from National Grid dated May 30, 2007 representing that senior managers from National Grid and KeySpan endorsed the recommendations contained in the presentation report enclosed with the letter as the best means for accomplishing the integration efforts identified. The letter stated that it will be the responsibility of the new management team to take the recommendations into account as they move forward with integration after the merger.

of the merger but are not contingent upon the closing of the merger. All other commitments and rate related agreements are, in addition, contingent upon the closing of the merger.[2]

1. Rate Reduction and Rate Design

The Granite State rate plan provides for a $2.2 million distribution rate reduction, to be carried out in two phases. For electricity usage on and after the effective date, Granite State would implement the first phase by reducing its current distribution rates by $1.1 million, with rates adjusted on an equal percentage basis among rate classes and rate design elements. The second phase would be implemented for usage on and after January 1, 2008, by reducing the rates by the second $1.1 million, with rates to be adjusted on the same basis as the first phase.

2. Distribution Rate Plan

Under the Granite State rate plan, the distribution component of Granite State's rates would be "frozen" from the effective date through the end of the rate plan period, subject to (1) any distribution rate changes approved by the Commission to support the annual reliability enhancement program,[3] (2) the second phase rate reduction, (3) adjustments for certain events defined as exogenous to the agreement, and (4) any adjustments to the storm contingency fund.[4]

Granite State would adjust distribution rates upward or downward resulting from defined exogenous events, to the extent the revenue impact is not captured through another rate mechanism approved by the Commission. Exogenous events fall into five categories, further

[2] These commitments and agreements include (1) the distribution rate plan effective from 2008 through 2012 and provisions to remain in effect after that period and until the first distribution rate proceeding thereafter, (2) provisions regarding the exclusion of merger acquisition costs from rates, amortization of costs to achieve the merger, and the capital structure to be imputed to Granite State, (3) earnings reports to be filed with the Commission and the mechanism for stockholders and ratepayers to share earnings, and (4) back-up service charges.

[3] For this purpose, the reliability enhancement program also includes the vegetation management plan.

[4] Another provision permits Granite State to seek special relief to preserve its financial integrity in the event of a catastrophic event during the period of the rate plan which materially and substantially impacts its financial integrity.

described below: state initiated cost changes, federally initiated cost changes, regulatory cost reallocations, excessive inflation and externally imposed accounting rule changes.

Except for excessive inflation, an exogenous event must cause (in the aggregate) a change in Granite State's annual revenue requirement of more than $100,000 in any calendar year during the rate plan period in order for it to result in a distribution rate adjustment. Granite State would be required to file for distribution rate adjustments resulting from exogenous events no later than December 31 of the year in which they are incurred (and no more often than once per calendar year); if Granite State does not make such a filing, Staff and other parties would be free to request that the Commission open a proceeding if they believe that an exogenous event has occurred that should result in a rate decrease. Adjustments would be subject to review by the Commission and, if approved and not suspended by the Commission, they would be implemented for usage on and after April 1 of the following year. In addition, adjustments would be allocated among rate classes based on kilowatt-hour deliveries during the year in which the amounts were accrued and would be collected through a uniform and fully reconciling surcharge or refund factor applied to all kilowatt-hours billed under Granite State's retail distribution rates. When accumulated deferred costs incurred or avoided from such exogenous events reached $150,000, the total cost or credit would accrue interest at the customer deposit rate until reflected in rates.[5] If Granite State's average intrastate rate of return on equity, calculated using the method set forth in the shared earnings mechanism provision, from January 1, 2008 to the end of the last quarter prior to the date of the filing for such adjustment, exceeds 11 percent, Granite State would not be permitted to make a rate adjustment until the average has dropped below 11 percent; if and when the average return dropped below 11 percent, Granite

[5] If the total is less than $150,000 and the effective date of the adjustment is suspended beyond April 1, Granite State would accrue interest at the customer deposit rate for the accumulated accrued amount from April 1 until such time as the amount is reflected in rates.

State would only recover costs on a prospective basis. Granite State agreed to file a certification with the Commission by February 1 for the preceding calendar year confirming that there have been no exogenous events except as identified in the certification.

A “state initiated cost change” for purposes of determining when an exogenous change has occurred is defined as (1) the enactment of any new or amended state or local tax laws, regulations, or precedents governing income, revenue, sales, franchise, or property or any new or amended state or locally imposed fees, excluding the effects of annual changes in municipal, county and state property tax rates and revaluations, and (2) the elimination of any existing state or local tax or fee obligations, and (3) any state legislative or state regulatory mandates which impose new obligations, duties or undertakings, or remove existing obligations, duties or undertakings which individually decrease or increase Granite State’s costs, revenue or revenue requirement. Similarly, “federally initiated cost change” is defined as (2) any externally imposed changes in the federal tax rates, laws, regulations, or precedents governing income, revenue, or sales taxes or any changes in federally imposed fees, (2) any federal legislative or regulatory mandates which impose new obligations, duties or undertakings, or remove existing obligations, duties or undertakings which individually decrease or increase Granite State’s costs, revenue or revenue requirement. The “regulatory cost reallocation” exogenous change is defined as the reassignment of costs and/or revenues now allocated to generation (i.e., stranded costs) transmission or distribution functions to or away from the distribution function by the Commission, Federal Energy Regulatory Commission, New England Power Pool, regional grid operator ISO New England or any other agency having authority over such matters. An “externally imposed accounting rule” would be deemed to have occurred if the Financial Accounting Standards Board or the Securities and Exchange Commission adopts a rule requiring

utilities to use a new accounting rule that is not being used by Granite State as of the effective date of the rate plan.

Adjustments for "excessive inflation" would come into play if (1) the average inflation rate from January 1, 2008 through December 31, 2010, measured by annual changes in the Gross Domestic Product Implicit Price Deflator, or (2) such average inflation rate from January 1, 2008 through December 31, 2011, exceeds 4 percent. In such cases, Granite State would be allowed an increase in its distribution revenues in years 2011 and/or 2012, respectively, equal to the amount by which the rate exceeds 4 percent. The incremental inflation amount would be applied to actual operation and maintenance (O&M) expenses in calendar year 2010 and/or 2011, respectively, excluding reconciliation due to the reliability enhancement program and the vegetation management plans.

After the effective period of the rate plan, no special adjustments to distribution rates for exogenous events would be permitted and distribution rate changes could occur under traditional cost-of-service principles. Beginning in January 2013, Granite State, Staff and OCA would have the right to request the initiation of distribution rate proceedings before the Commission.

The distribution rate plan does not preclude Granite State from proposing to adjust fees, including line extension policies and other tariff charges that are subject to Commission approval or from proposing new services to customers or non-regulated power producers for fees provided such fees are approved by the Commission. All resulting revenue changes would be reflected above the line (i.e., as costs chargeable to customers under Commission-approved rates) in the calculation of Granite State's annual earnings reports unless the Commission otherwise approves. In addition, the settlement would not preclude the Commission from considering a

request to make revenue-neutral distribution rate design changes or to terminate interruptible credits tariff provisions that have been grandfathered and no longer have any cost-basis support.

3. Exclusion of Merger Acquisition Costs from Rates; Amortization of Costs to Achieve; Imputed Capital Structure

The Granite State rate plan provides that, for purposes of cost of service and ratemaking, acquisition premiums from the merger and any prior mergers would be excluded from the distribution cost of service used to develop Granite State's distribution rates and the earnings sharing provisions or in any future ratemaking mechanism.

Granite State would be allowed to amortize the prudently incurred costs to achieve the merger savings allocated to it with a return at Granite State's pre-tax weighted average cost of capital, using the Commission-approved imputed or actual capital structure in effect for each year and rates set forth in the Granite State rate plan, for a period of ten years, beginning January 1, 2008. "Costs to achieve" are defined as costs prudently incurred (1) to meet the legal, regulatory, and accounting/auditing requirements for completing the merger and (2) to combine the companies and realize potential merger savings. In the context of the settlement, "Costs to achieve" are costs that would not have been incurred without the merger. They include personnel costs (including internal labor costs charged directly to the merger-related activities described above and early retirement and severance costs, but excluding costs associated with supplemental executive retirement plans such as golden parachutes), IT integration costs, integration process support costs (including consultant support), facilities consolidation costs, costs associated with combining functions, merger-related consultant costs, insurance tail coverage costs, and transaction costs.

Granite State would record $262,591 of annual cost-to-achieve amortization based on an initial estimate of $2,031,313 in such costs and would separately track, record, and report annually to the Commission by May 1 for the previous calendar year the costs-to-achieve as actually incurred. This annual amortization amount will then be adjusted to reconcile to the actually incurred costs-to-achieve.

Granite State agreed to use an imputed capital structure to calculate its return and income taxes for ratemaking purposes (including earnings reports and triggers for exogenous events) until the end of the effective period of the rate plan or as adjusted by the Commission in a subsequent proceeding, whichever occurs later. The specified imputed capital structure and associated cost rates are:

Debt	50%	7.54%	=	3.77%	
Equity	50%	9.67%	=	4.84%	
				8.61%	overall cost of capital

4. Earnings Reports and Shared Earnings Mechanisms

The settlement calls for Granite State to file interim accumulated earnings reports by May 1 of each year from 2009 through 2012 that calculate the cumulative average return on equity for the period commencing January 1, 2008 and ending December 31 of the year preceding the May 1 filing. In addition, on May 1, 2013, Granite State would file a final accumulated earnings report that determines the actual cumulative average return on equity for the entire rate plan period of January 1, 2008 through December 31, 2012.

The final report would be used in connection with the final determination of whether Granite State has exceeded its allowed return on equity for purposes of the earnings sharing mechanism. For purposes of calculating return and income taxes, Granite State would use the imputed capital structure described above. However, if Granite State's actual average common

equity ratio fell below 50 percent for any of the five years during the rate plan period, any party would be free to contend that the use of the average actual capital structure for the five-year period in the final accumulated earnings report is more reasonable than the use of the imputed capital structure. Granite State would use a five quarter average for determining rate base and equity in the earnings calculation for earnings reports.

Granite State's allowed rate of return on common equity would be 9.67 pursuant to the terms of the settlement. Under the shared earnings mechanism, Granite State would be entitled to retain all of the earnings that exceeded the allowed rate of return up to a maximum of 1.33 percent over the allowed rate of return to provide Granite State the incentive to maximize efficiency and synergy savings from the merger. Although results would be adjusted to reflect established Commission ratemaking principles and will include amortization of costs-to-achieve, there would be no adjustments to actual results to recognize known and measurable changes. The return on common equity would be calculated by dividing the net income available for common equity by the common equity applicable to rate base, which in turn would be calculated by multiplying the required common equity ratio by rate base. Any accumulated earnings as calculated in the final accumulated earnings report over the 1.33 percent maximum allowed rate of return would be shared 50-50 between customers and Granite State. The Commission would determine how to return or credit to customers their share of earnings sharing.

5. Storm Contingency Fund

Effective with implementation of the rate plan, the settlement calls for Granite State to establish a storm contingency fund, to be credited each month by Granite State in the amount of $10,000 ($120,000 annually). The fund would be used to pay for all of the operations and maintenance costs incurred by Granite State as the result of major storms. A major storm is

defined as a severe weather event or events causing 30 concurrent troubles (i.e., interruption events occurring on either primary or secondary lines) and 15 percent of customers interrupted or 45 concurrent troubles. Interest would accrue on positive or negative balances in the fund, calculated in accordance with the tariff provisions regarding interest expense on customer deposits. Commencing April 1, 2009, Granite State would file with the Commission a report detailing the collections credited to the fund, the details of any qualifying storm costs that were charged to the fund during the preceding calendar year, a description of the storm, and a summary of the damage to the distribution system, including the number and length of outages.

Two years after the effective date of the rate plan, the Settling Parties and Staff would evaluate the funding level of the fund to determine its adequacy. If there is a significant negative balance, Granite State would be authorized to request the Commission to approve an increase in the funding level, including a corresponding adjustment to distribution rates.

6. Reliability Enhancement Program and Vegetation Management Plans

Granite State will implement the reliability enhancement program (REP) and vegetation management plan for each fiscal year following the effective date of the rate plan, the purpose of which would be to improve Granite State's reliability performance in order to bring Granite State back to historical performance levels that existed prior to 2005, with the goal of meeting those historical performance levels by the end of fiscal year 2013, March 31, 2013. Staff would review and comment on the annual plans.

REP activities would include (1) feeder hardening measures, i.e., equipment upgrades such as such as replacement of fuse cutouts, crossarms, poles, and transformers; installation of reclosers; lightning protection with bonding, grounding, and lightning arresters installations; and installation of animal guards, (2) augmented tree trimming and clearing, under which enhanced

specifications for hazard tree removal[6] are incorporated into the cycle tree trimming program beyond what is normally included in tree trimming and improving circuit performance related to overhead vegetation, (3) asset replacement, which targets potted porcelain cutouts, oil fuse cutouts, distribution transformers, underground cable, and poles for replacement and includes adding new line reclosers and reconductoring selected feeders with spacer cable and (4) inspection and maintenance which involves a comprehensive overhead assessment of Granite State's equipment and feeders prior to performance of the work related to the reliability enhancement program. Activities associated with the vegetation management plan would be the traditional tree trimming activities reflected in certain existing charge codes.

a) Reliability and Vegetation Management Efforts for Fiscal Year 2008

Granite State would implement what the settlement characterizes as "aggressive" reliability and vegetation management plans for fiscal year 2008, which is already underway, with an anticipated budget of $1,950,000 for operations and maintenance expenses. Granite State would file with the Commission by May 15, 2008 a report of its actual operations and maintenance expenses incurred from implementing the reliability and vegetation management plans in fiscal year 2008. To the extent Granite State incurred less than $1,950,000 in operations and management expense, the difference would be applied to increase the specified "base" operations and management amount[7] for FY 2009; however, if the operations and management expenses exceeded $1,950,000, Granite State would absorb that cost.

The reliability enhancement program for fiscal year 2008 would also have capital investments associated with it. Granite State would be allowed to make up to $950,000 of

[6] The enhanced specification is implemented to reduce overhead interruption risks by removing dead, dying, and damaged limbs from above the conductor, as well as increasing the overhead clearances to fifteen feet outside of residential areas.

[7] For fiscal years 2009 through 2013, the specified base amount is $1,360,000.

capital investments in its reliability enhancement program, the revenue requirement of which will be included in a special capital investment allowance associated with the reliability enhancement program, as described below, effective July 1, 2008. It is expected that Granite State's level of capital investment in REP in fiscal year 2008 will exceed $500,000.

b) Reliability and Vegetation Management Efforts for 2009 through 2013

Beginning with fiscal year 2009, by no later than February 15 for the upcoming fiscal year, Granite State would submit to and discuss with Staff its reliability and vegetation management plans for its review. The plans would (1) describe the activities and targeted expenditures and investments to be implemented during the fiscal year and the extent to which the studies to be performed (described below) were incorporated, and (2) itemize the proposed activities by general category and provide budgets for plan-related operations and maintenance expenses and capital investments. The operations and maintenance expense budgets would assume that operations and management spending associated with the plans would be approximately equal to the base operations and maintenance amount, but Granite State would be authorized to provide for consideration alternative plans with operations and maintenance budgets exceeding the base amount.

After review by Staff, Granite State would take all reasonable steps to implement the plans, taking into account Staff's comments. Review by the Staff explicitly would not relieve Granite State of its obligation to operate its business and maintain safe, reliable service through expenditures and other capital investments in the ordinary course of business that are not set forth in the plans, nor would it bind Staff to a particular position regarding the adequacy and/or effectiveness of the plans.

c) Base Operations and Management Expenses for 2009 through 2013

Actual expenses of implementing the operations-and-maintenance components of the annual reliability and vegetation management plans will be reconciled to the $1,360,000 base amount and would be subject to adjustment as described below. All of the combined expenses, including certain categories of vegetation management efforts that include certain of the activities described in the augmented tree trimming and clearing component of the reliability program, will be counted against the base operations and maintenance amount, along with any operations and management expense related to the reliability enhancement program.

d) Reliability and Vegetation Management Adjustment Provision

During each fiscal year, Granite State would track all operations and maintenance expenses incurred in implementing the reliability and vegetation management plans and would make a reconciliation filing with the Commission no later than May 15 each year. To the extent such actual expenses are less than the base amount, the difference would be refunded or credited to customers for future operations and maintenance expenditures related to reliability enhancement and vegetation management, as the Commission deems appropriate, with interest at the customer deposit rate.

To the extent the reliability enhancement and vegetation management plan submitted for review prior to the fiscal year includes a budget higher than the base amount and Granite State incurs expenses over that amount, the incremental expense would be included in rates, subject to Commission approval, through a uniform adjustment factor on a per kilowatt-hour basis and recovered over a twelve month period, commencing for usage on and after July 1, with interest accruing at the customer deposit rate. Any over or under-recoveries at the end of the twelve month period will be taken into account in the next reliability enhancement and vegetation

management adjustment provision reconciliation period. In lieu of a refund, the Commission could authorize any credits owed to customers to be carried over to the following year's budget.

e) Reliability Enhancement Capital Investment Allowance

Granite State agreed to track all capital investments made in accordance with the reliability enhancement program for fiscal years 2008 through 2013. When making its reconciliation filing for the reliability enhancement and vegetation management adjustment reconciliation, Granite State agreed to will file a report detailing the actual amount of capital investments made in accordance with implementing the reliability enhancement program during the prior fiscal year. The report would include a calculation of the revenue requirement for adding these additional capital investments into rate base, using the imputed capital structure and rates described above. If the investments were made in accordance with the reliability enhancement program, Granite State would be allowed, subject to Commission approval, a permanent increase in its distribution rates to recover the annual revenue requirement for those investments. The permanent reliability enhancement program capital investment allowance would take effect for usage on and after July 1, at the same time as any adjustments are implemented for the preceding fiscal year. Approved base distribution rate increases would be implemented similar to the procedure used to adjust base distribution charges for the rate reduction described above.

f) Annual Report, Plan Deviations, and SAIDI/SAIFI Results

Granite State agreed to file an annual report on the prior fiscal year's activities at the time it makes its reconciliation and rate adjustment filing. In implementing the plans, it is understood that the circumstances encountered during the year may require reasonable deviations from the original plans reviewed by Staff. In such cases, Granite State would include an explanation of

any deviations in the report. For cost recovery purposes, Granite State accepted the burden to show that any deviations were due to circumstances out of its reasonable control or, if within its control, were reasonable and prudent.

Granite State also agreed to report its System Average Interruption Duration Index (SAIDI) and System Average Interruption Frequency Index (SAIFI) results for the prior calendar year. The report would include parallel reporting using the criteria for major storm exclusions from the IEEE Standard 1366 criteria and the definition of major storms.

g) Studies

The settlement obliges Granite State to perform certain studies related to its distribution system and provide Staff with the results and actions it will take as a result of the analyses:

- within one year of merger approval, (1) system studies regarding whether additional fuse placement, recloser placement and potential splitting of distribution circuits is warranted, (2) a vegetation management study that will include, at a minimum, a review of cycle trimming and clearance specifications, and (3) an analysis of all transmission-related outages that occurred from 1999 through 2006 in each of the three major work areas of Granite State; and

- within one year of the effective date of the merger, an analysis of all company-caused human-related outages that occurred from 1999 through 2006 in each of the three major work areas of Granite State.

7. Customer Service Commitments

Granite State expects to convert to its new customer information service system in November 2007. Prior to the conversion, Granite State would meet or exceed a service level of answering 80 percent of calls within 20 seconds under the terms of the settlement.

The settlement signatories agreed that, for a period of at least six months from the first calendar month in which the new customer information service system is implemented, the transition to the new system is likely to slow call answering time. For this transition period,

Granite State agreed meet or exceed a service level of no less than 80 percent of calls answered within 30 seconds, with the understanding that Granite State would be required to provide an explanation to Staff and OCA if performance in any month drops below this level of service during the transition period. In the sixth month of the transition period, Granite State would meet with Staff and OCA to review the status of the project and its impact on service. To the extent that transition difficulties relating to the conversion are continuing, Granite State would be free to seek an extension of the transition period.

After the end of the transition period, Granite State, Staff, and OCA would negotiate appropriate on-going service levels, filing any agreement with the Commission for approval. To the extent an agreement could not be reached, the matter would be referred to the Commission for resolution. Until such time as the new standards shall be established, Granite State would meet or exceed a service level of answering 80 percent of calls within 20 seconds.

Granite State agreed to file an annual report of its service level results. The determination of whether Granite State is in compliance with the applicable standards would be determined on a 12-month reporting basis, aggregating all the calls for the 12 month period, except for the transition periods prior to and during implementation of the new customer information service system, which are measured by the length of the respective period. In addition, Granite State would provide monthly reports of call answering results and at least every six months will meet with Staff and OCA to review its customer service commitment performance.

In addition, Granite State would be required to conduct a statistically valid annual residential customer satisfaction survey and report the results to the Commission. Granite State would select a sample size that yields an error rate of plus or minus 2.5 percent. Using the

results from the survey as the measure, Granite State agreed to maintain its residential customer satisfaction rating at no less than 88 percent.

If the Staff or OCA were not satisfied with Granite State's performance at any time after the close of the merger and believes customer service is being materially compromised by poor performance, under the terms of the settlement Staff or OCA could request the Commission to open an investigation to determine whether additional actions should be taken by the Commission to address Granite State's service quality performance, which could include establishing service quality performance standards with financial penalties associated with future performance, together with consideration of offsets and incentives, if the Commission deems appropriate.

8. Other Provisions

At the end of the effective period of the rate plan, the provisions regarding earnings sharing, the storm contingency fund, the reliability enhancement program and the vegetation management plan would remain in effect until Granite State's first distribution rate proceeding. Until such time, the sharing of earnings above 11 percent will be performed on an annual basis.

Granite State reserved the right to propose back-up service charges applicable to customers installing on-site non-emergency generation for Commission review and approval at such time in the future as may be appropriate.

C. EnergyNorth Merger Rate Agreement

The EnergyNorth merger rate agreement sets forth provisions regarding the rates and certain operational matters involving EnergyNorth that would apply following the merger. Except for the commitments regarding the Cast Iron/Bare Steel replacement program and

emergency response time standards, which are contingent only upon the Commission's approval of the merger, the EnergyNorth Rate Agreement is contingent upon the closing of the merger.

1. First Rate Case and One Year Rate Freeze

EnergyNorth agreed to make its first distribution rate case filing no later than six months from the closing of the merger. In its filing, EnergyNorth would request temporary rates with an effective date for the temporary rates to be no earlier than twelve months from the closing of the merger. Thus, customers would see no change in distribution rates for a period of at least one year from the closing of the merger.

For the first rate case, EnergyNorth would use a test year based on the twelve month period ending with the quarter immediately preceding the close of the merger. To recognize the effect of the merger announcement on EnergyNorth's costs during the test year, EnergyNorth would be allowed to make a normalizing adjustment to test year amounts for the effects of employee attrition caused by the merger announcement during the test period. EnergyNorth also would submit an updated depreciation study with the first rate case filing. The stand-alone (EnergyNorth/KeySpan) pre-merger cost of service would be investigated by the Commission for EnergyNorth as a stand alone entity. The cost of service would be adjusted for known and measurable changes and used as the basis for EnergyNorth's new rates. Except with respect to the merger synergy savings credit described below, the cost of service would not be adjusted for expected savings that are likely to be achieved as a result of the merger. In the cost of service, EnergyNorth would provide to customers a merger net synergy savings credit equal to $619,000 annually. In addition, EnergyNorth would commence the amortization of its allocated share of the costs-to-achieve, as described below. Finally, EnergyNorth will be allowed to include in its

cost of service all of its prudently incurred pro forma test year costs associated with complying with the emergency response time standards described below in section C.7.n.

In the first rate case and any base rate filing occurring within the ten years immediately following the closing date of the merger, EnergyNorth would use a capital structure composed of 50 percent equity and 50 percent debt with interest on the debt determined by using the average rate of borrowings by EnergyNorth. However, if EnergyNorth's actual average common equity ratio falls below 50 percent, any party could contend that the use of the average actual capital structure is more reasonable than the use of the imputed capital structure. During the period prior to the effective date of the rate change arising out of the first rate case, EnergyNorth's AFUDC (accumulated funds used during construction) rate would be unchanged from the rate used in calendar year 2007.

Pursuant to accounting rules, EnergyNorth would pursuant to the settlement be required to perform a market valuation of the assets in its pension and OPEB (other post-employment benefits) plans as of the close of the merger. EnergyNorth would defer recognition of any unrecognized gains or losses resulting from such valuation to a regulatory liability or asset, respectively. The resulting regulatory liability or asset would be amortized to expense over a period equal to the average estimated remaining service lives of the employees in the plan.

The settlement prohibits EnergyNorth from recovering the acquisition premium from the merger (or any prior mergers) in the first rate case or in any other subsequent rate case.

2. Synergy Savings Allowance and Shared Earnings After 10th Year

If EnergyNorth files a second distribution rate case within five years of the close of the merger, it would be allowed the opportunity to prove the actual net synergy savings achieved

from the merger[8] and add back 50 percent of those savings to the cost of service in the second rate case as a savings allowance. After rates are set from the second rate case filing, EnergyNorth would not be permitted to include a savings allowance in any future rate case initiated by EnergyNorth. However, to the extent that a rate case is initiated by another party during the ten-year rate agreement period, EnergyNorth would be permitted to retain the savings allowance in the cost of service in such case. After the tenth anniversary of the closing of the merger, EnergyNorth would no longer be entitled to such savings allowance in future cases.

If EnergyNorth did not file a rate case within five years of the closing of the merger, it would be required to submit a savings proof with the Commission to prove the actual net synergy savings. The savings proof filing would be made no earlier than four years and six months, and no later than five years, from the close of the merger. The filing would be made for the sole purpose of establishing the actual net synergy savings and would have no immediate rate impact. It would provide all of the schedules necessary to perform the savings proof in accordance with the so-called "900 accounts" method. Once the actual net synergy savings are established in the savings proof proceeding, EnergyNorth would be entitled to add back 50 percent of the proven savings as a savings allowance in its next cost of service case initiated during the rate agreement period. However, EnergyNorth would no longer be permitted to include a savings allowance in any cost of service initiated by any party after the rate agreement period.

After the rate agreement period, an earnings sharing mechanism would be established. For each full twelve month period following the rate agreement period,[9] EnergyNorth would file annual earnings reports calculating its return on equity. For purposes of calculating return and

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[8] The method for proving the actual synergy savings would utilize a comparison of EnergyNorth's actual and benchmarked administrative and general expenses charged to the FERC 900 accounts.

[9] To the extent temporary rates went into effect prior to the end of a successive twelve month period after the rate agreement period, these provisions would not be applicable for such partial "year."

income taxes, EnergyNorth would use the Commission-approved imputed or actual capital structure and cost of capital determined using the Commission-approved return on equity and updated cost of debt in effect at that time (referenced in the settlement as the rate agreement sharing threshold). EnergyNorth's allowed rate of return on common equity would be the last Commission-approved return on common equity for EnergyNorth. Although results would be adjusted to reflect established Commission ratemaking principles, there would be no adjustments to actual results to recognize or annualize known and measurable changes. The return on common equity would be calculated by dividing the net income available for common equity by the common equity applicable to rate base, which would in turn be calculated by multiplying the common equity ratio required by this provision by rate base. Annual earnings over the rate agreement sharing threshold would be shared 50 percent for customers and 50 percent for EnergyNorth. Any customer share of such earnings sharing would be returned or credited to customers in a manner determined by the Commission. This earnings sharing mechanism would remain in effect until the effective date of EnergyNorth's first rate change pursuant to the first rate case initiated by any party after the end of the rate agreement period.

3. Amortization of Costs-to-Achieve

Commencing with the first rate case and continuing for a period of ten years from the effective date of the rates from the first rate case, EnergyNorth will be allowed to amortize the prudently incurred costs-to-achieve over ten years, with a return calculated at the pre-tax weighted average cost of capital, using the Commission-approved imputed or actual capital structure in effect for each year and the rate of return established by the Commission. In the first

rate case, $409,203 will be used as the initial annual costs-to-achieve amortization amount.[10] EnergyNorth would separately track, record and report annually to the Commission by May 1 for the previous calendar year the costs-to-achieve actually incurred. This annual amortization amount then will be adjusted to reconcile to costs-to-achieve actually incurred.

4. Comparison to Merger Benefits in New York

The merger also requires the approval of the New York Public Service Commission. Under the EnergyNorth merger rate agreement signed here in New Hampshire, at the time of the filing of the first rate case, EnergyNorth would include an analysis of the economic benefits related to the allocation, calculation, and sharing of synergy savings from the merger that is being provided to New York natural gas delivery customers of KeySpan in the service territories of KeySpan Energy Delivery-LI and KeySpan Energy Delivery-NY. To the extent the synergy savings benefits being provided to New York customers appeared to be more favorable to such customers than the benefits provided to EnergyNorth customers as contemplated in the rate agreement entered into in New Hampshire, EnergyNorth would be required to provide a further total economic analysis demonstrating that the total economic benefits being provided to EnergyNorth customers is at least equal to or better than the total economic benefits provided to New York customers. In performing this economic analysis, EnergyNorth would compare the net present value of the customers' share of net synergies as contemplated in the rate agreement to the net present value of the customers' share of net synergy savings produced by applying the customer share of net synergy savings established in New York. To recognize EnergyNorth's commitment to delay the implementation of required rate relief for one year from the closing of the merger (in contrast to the immediate rate increases being implemented by the New York

[10] As shown in Exhibit 2 to the EnergyNorth merger rate agreement, this figure is the ten-year annualized cost, using an interest rate equal to the pre-tax weighted average cost of capital of 12.37 percent, of the costs-to-achieve estimated in the petition.

companies), the comparison would include an economic valuation of the avoided rate increase ultimately determined by the commission in New Hampshire. To the extent it is determined that the total economic benefits were greater to New York, on a proportional basis, EnergyNorth would be required to provide additional credits to EnergyNorth customers in its first rate case filing to provide the economic equivalent benefit. The other parties to the EnergyNorth rate agreement reserved their rights to perform an independent analysis, take a different position, and argue for a different result in the rate case proceeding before the Commission.

5. Cast Iron/Bare Steel Replacement Program

The settling parties and Staff agreed upon a cast iron/bare steel replacement program (CIBS) plan that would begin for fiscal year 2009 (April 1, 2008 through March 31, 2009) pursuant to the EnergyNorth merger rate agreement. By no later than January 15 of each year, EnergyNorth would provide a copy of its CIBS plan to Staff for review and comment[11] and EnergyNorth would meet with Staff in technical sessions to discuss the plan to be implemented for the subsequent fiscal year. After review by Staff,[12] EnergyNorth would take all reasonable steps to carry out and implement the plan, taking into account the comments of Staff.

The CIBS plan would cover cast iron and bare steel pipe replacements that are prioritized based on factors including leakage, material condition, age and other components affecting pipe integrity, and would not address replacement of cast iron and bare steel pipes required in public

[11] EnergyNorth would not finalize its plans until after the winter frost patrol ends in early April. By May 1, EnergyNorth would finalize actual projects and provide a copy of the final plans to Staff. In addition, the priority rankings of main segments for replacement would be subject to change over the course of the year due to new information. In such case, if EnergyNorth believed it is prudent to change the rankings from the approved plan, it would notify Staff, stating the reasons for the change prior to construction. If Staff did not believe that particular components of the revised plans are reasonable and the matter is not resolved between EnergyNorth and Staff, Staff could object and the matter could be referred to the Commission.

[12] Energy North acknowledged that Staff review would not relieve EnergyNorth of its obligation to operate its business and maintain safe, reliable service through expenditures and other capital investments in the ordinary course of business that are not set forth in the CIBS plan, nor would it bind Staff to a particular position regarding the adequacy and/or effectiveness of the plan.

works projects and/or carried out pursuant to the gas main encroachment policy in effect on January 1, 2007, which EnergyNorth agreed to continue in the ordinary course of business.[13] The CIBS plan would describe the replacement projects, itemizing the proposed replacement projects by general category, along with the targeted amount of investments to be made during the following fiscal year and a budget of no less than the CIBS base amount for capital expenditures described below.

EnergyNorth agreed to engage in an evaluation and selection process to target investments to be proposed in the CIBS plan, as follows:

- It would undertake an annual review of the performance of its distribution system as it relates to the integrity of its cast iron and bare steel pipelines. This review would provide a detailed analysis of leak activity over the preceding ten years on the bare steel and cast iron gas mains and an evaluation of which main segments represent the highest priority segments for replacement. Consideration would be given to the age of the main, the date the leak(s) occurred, leak classification, type of leak, number of clamps used in leak repair, condition of main when repaired, specific leak location, and building types in the area of the main segment.

- Adjustments in the priority of main segment replacement could be made due to planned paving projects, public relations, or identification of new main segments by operating personnel in the field that were not captured through EnergyNorth's data systems.

- Categories of spending would include the following:

    - unprotected bare steel main replacement,

    - cast iron main replacement, and

    - main replacement candidates requested by operating personnel.

- Using the process identified above, EnergyNorth would rank and prioritize those mains to be replaced in the following year and provide its plans to the Commission.

[13] However, EnergyNorth would be authorized to include in its CIBS plan replacement of cast iron and bare steel pipe located in the vicinity of public works projects, where replacement is not required as a part of the project, but permitted for convenience or other reasons.

The CIBS base amount of capital expenditures is $500,000. This amount excludes replacement projects required by public works projects and/or carried out pursuant to the gas main encroachment policy in effect on January 1, 2007. Provided that the investments were made in accordance with the CIBS plan, EnergyNorth would be allowed a permanent increase in its base distribution delivery rates to recover the annual revenue requirement for those investments made in the preceding fiscal year in excess of the CIBS base amount. The permanent capital investment allowance would first take effect for usage on and after July 1, 2009 and annually on July 1 thereafter.

After Staff reviewed the CIBS plan for a given fiscal year, EnergyNorth would track all capital investments made in accordance with the CIBS plan. EnergyNorth would reconcile actual capital expenditures with the CIBS plan's targets at the conclusion of the CIBS plan period.

EnergyNorth agreed that, on May 15 of each year, it would file a report with the Commission detailing the actual amount of capital investments made in accordance with implementing the CIBS plan during the prior fiscal year. The report would include a calculation of the incremental revenue requirement associated with the capital investments into rate base above the CIBS base amount, using the Commission-approved imputed or actual capital structure and cost of capital determined using the Commission-approved return on equity and updated cost of debt in effect at that time. If the Commission has not made a final determination in the first rate case by the time the first adjustment is to be calculated, a reasonable proxy would be used for the rate calculation and an adjustment would be made to the revenue requirement to reconcile to the approved cost of capital rates when the rates from the first rate case go into effect.

EnergyNorth agreed to file its annual CIBS report on the prior fiscal year's activities at the time it makes its rate adjustment filing on May 15. The settling parties and Staff agreed that, in implementing the CIBS plan, the circumstances encountered during the year may require reasonable deviations from the original Plan. In such cases, EnergyNorth would include an explanation of any deviations in the report. For cost recovery purposes, EnergyNorth would have the burden to show that any deviations were due to circumstances out of its reasonable control or, if within its control, were reasonable and prudent.

The CIBS program would remain in place through and beyond EnergyNorth's future rate cases contemplated in the rate agreement, until terminated by the Commission or by mutual agreement at the end of a given fiscal year, with a final capital allowance pertaining to the final year.

6. Call Answering Time

By the end of the first full calendar year following the close of the merger, EnergyNorth would bring its performance regarding call answering time to 80 percent of calls answered within 30 seconds. Thereafter, EnergyNorth would maintain its call answering time at no worse than that level until such time as its customer information system is consolidated with the rest of National Grid. If EnergyNorth believed that it would be imprudent to incur the cost or that it would suffer other unforeseen consequences in order to achieve the standard, it would meet with Staff and the OCA to explain its concerns. If Staff and the OCA agreed with EnergyNorth's concerns, EnergyNorth, Staff and the OCA would negotiate in good faith a new call answering standard. When EnergyNorth's customer information system is consolidated with the rest of National Grid, EnergyNorth, OCA, and Staff agree to negotiate in good faith service quality standards pertaining to customer service.

Each year, EnergyNorth would provide performance reports within 60 days of the end of each calendar year after the close of the merger. These reports would provide EnergyNorth's results regarding whether it has met the standards. The question of whether EnergyNorth is in compliance with the call answering standards would be determined on a 12 month reporting basis, aggregating all the calls for the 12 month period. If Staff or OCA were not satisfied with EnergyNorth's performance and believed customer service was being materially compromised by poor performance, Staff or OCA could request the Commission to open an investigation to determine whether additional actions should be taken by the Commission to address EnergyNorth's service quality performance, which could include establishing service quality performance standards with financial penalties associated with future performance, together with consideration of offsets and incentives, if the Commission deemed appropriate.

EnergyNorth also agreed to provide monthly reports of call answering results to Staff and the OCA. At least every 6 months, EnergyNorth would meet with Staff and the OCA to review its customer service commitment performance. If there were meetings scheduled to discuss customer service quality issues relating to Granite State and similar matters relate to EnergyNorth, EnergyNorth would attempt to coordinate the meetings to discuss both companies at the same meetings.

7. Operating Commitments and Annual Report, Including Emergency Response Time Standards

a) Ownership of System

Unless it obtained the consent of the Commission otherwise, EnergyNorth would continue to own, operate, and maintain the distribution system to the upstream of the customer piping connection to the meter outlet. All meters would be located at the customer's structure unless impractical.

b) Cast Iron Encroachment Policy

Unless it obtained the consent of the Commission otherwise, EnergyNorth would continue to follow its Cast Iron Encroachment Policy PBWK5010.

c) Critical Valves

EnergyNorth agreed to maintain an adequate quantity of primary (critical) distribution valves[14] such that it is reasonably likely in most instances that customer restoration time will not exceed twelve hours duration and isolation areas are limited to no more than 1,250 customers. EnergyNorth would notify the Staff within 60 days of any planned significant change in this program if the quantity of valves decreases by more than 5 percent during an annual program review.

d) Annual Operating Report

By May 1 of each year, EnergyNorth would provide an annual operating report to the Staff, containing the information described below in e), g), h), and n).

e) Aldyl A Pipe

EnergyNorth's current practice regarding replacement of Aldyl A pipe is to monitor performance issues associated with Aldyl A and make replacements if and when a performance issue is identified in a specific location. In the annual report, EnergyNorth would report regarding its Aldyl A replacement pipe activity. The report would identify the reasons for replacements and note any additional remedial actions taken.

f) Contact Information

EnergyNorth agreed to provide a list of names and contact information along with timely updates to the Staff of company personnel designated to have responsibility for gas safety issues and for the management and resolution of gas safety complaints referred by the Staff.

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[14] Distribution valves do not include station valves.

g) Outside Contractor Activities

EnergyNorth would maintain its current practice of inspecting and monitoring outside contractors installing pipeline facilities to ascertain that the facility is installed in accordance with its operations and maintenance manual for safe and reliable operations. EnergyNorth would utilize a combination of in-house supervisors, inspectors including Quality Assurance/Quality Control (QA/QC) personnel, and qualified outside inspection personnel hired by EnergyNorth on a temporary basis, to observe contractor activities. EnergyNorth would maintain a span of control of between three to four crews per company representative.

EnergyNorth recently instituted a self-monitoring program that employs random checking of recently installed pipeline facilities, whether installed by outside contractors or by Company personnel. This is accomplished by "redigging" randomly selected areas of recent installations. The settling parties and Staff agreed that, in each instance of a random redig, EnergyNorth would make a record of the check and describe its findings. EnergyNorth would compile these records of redigs from the previous fiscal year and provide them as a part of its annual report. EnergyNorth agreed to continue this program and not make any material modifications without notifying the Staff and explaining the reasons for such changes.

If at any time after the closing of the merger, the Staff had reason to believe that EnergyNorth were not adequately inspecting and monitoring outside contractors consistent with this section and, after notice and meetings with EnergyNorth setting forth the reasons for the Staff's concerns, EnergyNorth did not take reasonable steps to address those concerns, the Staff could request the Commission to open a docket to investigate EnergyNorth's practices to determine if corrective actions should be taken.

h) Quality Assurance/Quality Control System Program Update

In the annual report, EnergyNorth would provide an update of the improvements resulting from EnergyNorth's QA/QC system program.

i) Marking of Underground Facilities

EnergyNorth agreed to continue to use only in-house personnel for the marking of underground facilities for a period of no less than two years from the closing of the merger. If at any time after two years, EnergyNorth planned to use outside contractors for this activity, it agreed to notify the Staff no later than six months before implementing a change and hold a technical conference. To the extent the Staff had any safety concerns about a proposed change in practice after the technical conference, Staff could request the Commission to open a docket before EnergyNorth implemented the change, in order to address the Staff's concerns. In any such proceeding, EnergyNorth would have the burden of showing that any changes would not result in a degradation to service quality, safety, and reliability.

j) Operator Qualification (OQ) Plan Compliance

EnergyNorth agreed to take steps to maintain its operations after the merger in a manner that meets or exceeds the standards set forth in the OQ merger section of the existing KeySpan OQ Plan revision D.

k) Location of Operation Centers

EnergyNorth would maintain operation centers in Tilton, Nashua, and Manchester, New Hampshire. If EnergyNorth wished to make a material change in the location of these operating centers following the merger or relocate material operating functions from any of these locations, it would provide a plan to the Staff no later than 90 days before implementation, setting forth all the changes and the reasons. If the Staff had any safety concerns about the proposed changes after technical conference(s) with EnergyNorth, Staff could request the Commission to open a

docket before EnergyNorth implements the change, in order to address the Staff's concerns. In any such proceeding, EnergyNorth would have the burden of showing that any changes will not result in a degradation to service quality, safety, and reliability.

l) Peak Shaving Facilities

EnergyNorth agreed to maintain the existing location and operation of its peak shaving facilities and associated supplemental storage. If EnergyNorth wished to make a material change in the location or operation of these facilities following the merger, it would provide a plan to the Staff and OCA, no later than 90 days before implementation, setting forth all the changes and the reasons. If the Staff or OCA had any safety or reliability concerns about the proposed changes after technical conference(s) with EnergyNorth, it could request the Commission to open a docket before EnergyNorth implements the change, in order to address those concerns. In any such proceeding, EnergyNorth would have the burden of showing that any changes will not result in a degradation to service quality, safety, and reliability.

m) Internet Access to Operations Manuals and Procedures.

EnergyNorth would maintain its current practice of allowing the Staff electronic internet access to EnergyNorth's Operations and Maintenance Manual, OQ Compliance Plan, and other safety related procedures maintained by EnergyNorth.

n) Emergency Response Times

Beginning January 1, 2008, EnergyNorth would comply with the following emergency response time standards to respond to emergency calls made to EnergyNorth when the caller is reporting a gas leak or gas odor:

Emergency Response Performance Measures		
Performance Measures	**Response Time**	**Percent to Achieve**

Normal Business Hours	30 Minutes 45 minutes 60 minutes	82% 90% 97%
After hours	30 Minutes 45 minutes 60 minutes	80% 86% 95%
Weekends/Holidays	30 Minutes 45 minutes 60 minutes	76% 84% 94%

The emergency response time standards would be measured annually, but reported quarterly in accordance with Commission regulations.

In its annual report, EnergyNorth would report on its performance against these targets for the year. If it misses the targets, EnergyNorth would be required to provide an explanation. If the Staff were not satisfied with the explanation and believed safety was being materially compromised by EnergyNorth's poor performance, the Staff could request the Commission to open an investigation to determine whether additional actions should be taken by the Commission to address EnergyNorth's performance, which may include establishing performance standards with financial penalties associated with future performance, together with consideration of offsets and incentives, if the Commission deemed appropriate.

To recognize that incremental costs would be incurred to comply with the emergency response time standards and to provide an incentive to EnergyNorth to achieve compliance earlier than required, EnergyNorth would be authorized to earn an incentive for achieving compliance. To the extent EnergyNorth achieved compliance for the 12-month period referenced below, EnergyNorth would be entitled to earn the corresponding one-time incentive set forth below subject to the restrictions described below:

Compliance Period	Incentive
(1) September 1, 2007 through August 31, 2008	$600,000
(2) October 1, 2007 through September 30, 2008	$550,000
(3) November 1, 2007 through October 31, 2008	$500,000
(4) December 1, 2007 through November 30, 2008	$450,000
(5) January 1, 2008 through December 31, 2008	$400,000

Once EnergyNorth achieved compliance for one of the periods specified above, it would be obligated to maintain compliance over the successive rolling 12 month periods identified above, including the final period of calendar year 2008, in order to earn the applicable incentive. Otherwise, the maximum incentive to be paid would be the amount listed for the last 12 month period for which compliance was obtained, if any. If EnergyNorth did not achieve the emergency response time standards for the latest period shown above (i.e., the 12 month period beginning January 1, 2008), no incentive would be earned. Any incentive earned would be deferred and recovered in rates when they are set in EnergyNorth's first rate case or in the next LDAC (local distribution adjustment clause) rate change, whichever is earlier.

In the event of an extraordinary event beyond EnergyNorth's control to which EnergyNorth appropriately responded and the response caused EnergyNorth to miss its emergency response performance measures during that response measurement period, EnergyNorth would have the right to seek relief from the Commission to exclude the emergency response calls received during the event from the calculation of the measures. In such a filing, EnergyNorth would have the burden of proving the extraordinary nature of the event that was beyond EnergyNorth's control and the appropriateness of its response and Staff and the other

parties could take any position they deem appropriate. If such an event were to occur, EnergyNorth agreed to meet and discuss the circumstances with Staff before making any filing.

The settling parties and Staff agreed that this provision resolves all outstanding issues with the Staff regarding any alleged or actual non-compliance by EnergyNorth with emergency response times prior to the Commission's order approving the EnergyNorth merger rate agreement. Upon approval of the Commission of this agreement, Staff agreed that it would not file any complaints or request any investigations directly based on any alleged or actual non-compliance with emergency response times prior to approval.

III. POSITIONS OF THE PARTIES AND STAFF

A. Joint Petitioners (National Grid and EnergyNorth)

The Joint Petitioners requested approval of the settlement because it produces a fair result that satisfies applicable legal standards. If the settlement is approved, National Grid would file compliance tariffs within 30 days of approval and the new rates would go into effect 30 days from issuance of the order. As to the provision in the EnergyNorth merger rate agreement regarding the marking of underground facilities to which Local 12012-3 objected, they said that EnergyNorth has not put forth any plan to change its in-house marking practices and thus this issue does not need to be addressed at this time. EnergyNorth expressed its commitment to following the procedure set forth in the settlement agreement should it seek to outsource the marking function, which would include the opportunity for prior Commission review of the decision.

The merger involves the combination of two very large utility holding companies. In the United States,[15] National Grid is engaged in transmission and distribution of electricity to

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[15] Overseas, National Grid owns and operates the high voltage electricity transmission system in England and Wales and operates the high voltage transmission system in Scotland. It also owns and operates the national transmission

customers in Massachusetts, Rhode Island and New Hampshire[16] and it distributes and sells both electricity and natural gas in New York State. Last year, National Grid purchased the New England Gas Company Rhode Island's natural gas operations from Southern Union Company.

KeySpan subsidiaries operate in four business segments: gas distribution, electric services, energy services and energy investments. Its gas distribution segment consists of six regulated local distribution companies, EnergyNorth in New Hampshire, three in Massachusetts and two in New York.

The merger would result in EnergyNorth's 84,000 customers joining the National Grid organization, which would then serve approximately 4.4 million electric customers and 3.2 million gas customers in New Hampshire, Massachusetts, Rhode Island and New York. The merger would create the third largest energy delivery company in the United States and, as measured by the number of customers, the second largest energy utility organization in the state.

In their petition, the Joint Petitioners stated that the proposed merger complies with applicable New Hampshire standards and should be approved. They seek approval under the statutory standards set forth in both RSA 369:8, II (b) ("transaction will not have an adverse effect on rates, terms, service or operation of the public utility within the state") and RSA 374:33 ("acquisition is lawful, proper and in the public interest").[17] Alluding to the "no net harm" test

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system for high pressure gas in England, Wales and Scotland, and owns a major portion of the gas distribution system in the United Kingdom.

[16] In addition to Granite State, National Grid owns three electric public utilities doing business in New Hampshire, New England Power Company, New England Electric Transmission Corporation, and New England Hydro Transmission Corporation.

[17] By its terms, RSA 374:33 applies to public utility holding companies as defined in the Public Utility Holding Company Act of 1935 (PUHCA). Although PUHCA was repealed by the federal Energy Policy Act of 2005, the Joint Petitioners do not assume that the repeal of PUHCA affects in any way the operative provisions of state law referencing PUHCA for convenience.

the Commission has referenced under both RSA 369:8 and 374:33 in previous merger cases, they concluded that the transaction provides both "no net harm" and a positive benefit.

The Joint Petitioners described a number of benefits to their New Hampshire customers as a result of the merger, primarily synergy savings. They estimated that the combination of National Grid and KeySpan will save on a "steady state," system-wide basis approximately $200 million per year (2007 dollars), which, after taking into account the costs-to-achieve, estimated on a one time basis to be twice the steady state synergy savings (i.e., $400 million), would allow EnergyNorth to realize approximately $12.8 million in net synergy savings in the ten years following the merger. In addition, according to Mr. Cochrane's testimony, the allocation of net savings to Granite State over the ten year period was estimated to total approximately $6.7 million for its distribution business and another $1.6 million through New England Power Company's transmission rates.

According to the testimony of Messrs. Hoffman and Levin, merger-related savings are typically derived from the integration of various corporate functions, cost avoidance, improved utilization of assets and employees, and taking advantage of economies of scale. In their calculation of synergy savings, however, the Joint Petitioners do not count the value of avoided future investments in redundant systems (e.g., billing systems) that would otherwise have to be made absent the merger.[18] The costs-to-achieve the merger–related savings fall into four categories: transaction costs (primarily the fees paid to investment bankers for advice on the merger transaction and to outside legal counsel for advice on the merger transaction and support in regulatory proceedings), personnel costs (primarily the out-of-pocket costs to achieve the reduction in positions, e.g., voluntary or other severance packages, other costs including retention payments to employees deemed necessary for a successful integration, and relocation

[18] Nor, according to testimony at hearing, do they count implementation of "best practices."

and retraining costs), transition costs (the costs incurred to integrate the two companies, e.g., support for organizational redesign and process integration and for communication costs), and information systems costs (the cost associated with integrating systems, consolidating data centers, and connecting telecommunications networks).

The Joint Petitioners' method of estimating synergy savings was derived from a method used in a prior settlement regarding National Grid's 2002 merger with Niagara Mohawk Power Corporation in New York. First, the $200 million of estimated annual synergy savings was allocated to all the United States companies involved in the merger based on their proportionate contribution of transmission and distribution revenues. Next, the steady state annual savings were translated into estimated savings expected during each of the ten years following the merger. This was accomplished by factoring in cumulative phase-in percentages and an assumed weighted average inflation rate of 2.5 percent per year. The $400 million of one-time estimated costs-to-achieve was similarly allocated to the companies and then translated into the costs-to-achieve expected during each of the ten years by applying estimated percentages of the total costs-to-achieve incurred in those years. To arrive at the estimated net synergy savings during the ten year period, the estimated costs-to-achieve were subtracted from the estimated synergy savings.

On December 20, 2006, National Grid provided updated testimony from Messrs. Feibelman and Levin regarding the Joint Petitioners' best estimate of potential merger savings. They reported that the integration team, led by senior executives of National Grid and KeySpan, were currently completing the synergy savings analysis from which it intended to formulate preliminary recommendations for company leadership to decide how best to target specific synergy savings in each function of the business.

The recommended changes that would lead to merger savings and improvements to service quality fall into several main categories: (1) consolidation of the two organizations into a single organization and the elimination of redundant positions, (2) standardization and improvement of business processes and practices and adoption of best practices, (3) consolidation of information technology operations, architecture and business applications, (4) standardization and joint purchase of materials and services to enhance purchasing power and reduce costs, (5) optimization of office and operating facilities, transportation fleets, and material and supply inventory, (6) elimination of overlapping and duplicative costs, such as outside counsel, other professional services and membership dues and fees, and (7) improvements to customer service levels and the expansion of service offerings to customers. Updated savings were quantified based on the companies' current budgets, with labor savings quantified on the estimated full-time equivalent employee reductions and compensation levels, including benefits. Non-labor savings were based on current budgeted expenditures and savings were allocated between operations and maintenance on one hand and capital on the other. Messrs. Feibelman and Levin recognized that offsetting these savings will be significant costs-to-achieve, such as information technology consolidation costs.

While they said the integration team was not certain that 100 percent of the potential savings can be realized, the integration team's work confirmed that the $200 million of synergy savings is an aggressive but reasonable target and supported the continued use of $200 million for the allocation of synergy savings. They concluded that the $200 million estimated level of savings is an appropriate stretch goal for management, and that $400 million of costs-to-achieve is an appropriate estimate for the merger.[19]

[19] In terms of service quality, they stated that the functional integration teams identified a number of initiatives to improve overall service quality, such as virtual call centers that can handle any customer calls in an overflow

At hearing, the Joint Petitioner witnesses discussed the final integration team study of synergy savings, an intensive effort by the companies to identify potential merger savings, entered into the record as an exhibit. They confirmed that the study still supports the $200 million of steady state, annual synergy savings. At hearing, Joint Petitioner witnesses Gerwatowski and LaFlamme emphasized that they anticipated the merger would result in substantial administrative and general expense savings. The assumption is that most if not all of the synergies will be reflected in reduced administrative and general expenses. In addition, based on the Joint Petitioner's recent testimony in the New York merger proceeding, they are confident that the $400 million of one time costs-to-achieve is still an appropriate estimate. They also confirmed that the definition of costs-to-achieve in the settlement agreement is consistent and co-extensive with Mr. Levin's testimony in support of the petition and in his December 2006 update.

Pursuant to the EnergyNorth merger rate agreement, a $619,000 initial rate credit for EnergyNorth's customers is to be reflected in the first rate case. That amount is equal to 50 percent of the estimate of net, steady state savings from the merger allocable to EnergyNorth based on 2005 revenues. Thus, EnergyNorth's customers would enjoy the benefit of full steady state net synergy savings in their rates as soon as they go into effect, instead of having to wait for the synergies to ramp up as they are actually likely to occur.

In the Joint Petitioners' view, stockholders of EnergyNorth should be allowed to share in merger savings both as a matter of fairness and in order to provide an incentive to implement the merger in an efficient way that will maximize synergy savings for the benefit of both customers

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situation, and expansion of self service options available on the companies' websites and interactive voice response units, including electronic bill presentation and payment. Workforce reductions of between 5 percent and 8 percent of the combined pre-merger workforce were expected, with most of the reductions occurring in administrative and general, office and support functions and not in field positions.

and stockholders.[20] National Grid distinguishes the treatment of savings under the EnergyNorth merger rate agreement and the Granite State Rate Plan. During the rate plan's effective period, Granite State would capture its share of the actual savings. If and when Granite State changes its rates after the Rate Plan Period, Granite State obtains no allowance for any synergy savings and customers capture 100 percent of the savings that would be embedded in the cost of service. On the gas side, because EnergyNorth would provide customers with an up-front credit for 50 percent of the estimated synergy savings, when the second rate case is filed that actually has savings reflected in the revenue requirement, EnergyNorth would be allowed to add back its 50 percent share.

In their petition, the Joint Petitioners stated that although EnergyNorth was not earning its authorized return, they proposed delaying EneryNorth's filing for increased distribution rates to recover the higher costs of providing service incurred since its rates were last increased in 1993, and using the synergy savings from the merger to stabilize rates thereafter. Specifically, they proposed to freeze EnergyNorth's distribution rates at current levels for at least 12 months following the merger closing. Under their initial proposal, they would have included an allowance of 50 percent of the net synergy savings when EnergyNorth submitted its first distribution rate filing. The net synergy savings estimate would have been based on the level of savings that the Commission found appropriate and would have continued for 20 years from the merger. EnergyNorth would have retained the net synergy savings for the period prior to the filing in order to limit its underearnings and provide an incentive to continue with current distribution rates. The Joint Petitioners also requested the Commission to authorize EnergyNorth

[20] On this point, Staff indicated that there would not be any synergy savings absent the merger. Without synergy savings, EnergyNorth customers would be paying the full cost of service and their cost in the first rate case would be approximately $1.2 million higher. By sharing in the savings, EnergyNorth customers' costs will be 50 percent lower than what the actual savings are. OCA concurred with Staff.

to defer and amortize the costs-to-achieve over a 20 year period. They said this was reasonable because the costs-to-achieve are incurred early in the process before the synergy savings are fully realized. They also agreed to waive any right to include the recovery of an acquisition premium in EnergyNorth's rates.

The petition described other benefits from the merger in addition to synergy savings. For example, the Joint Petitioners stated that the merger can be expected to produce gas supply savings that would benefit EnergyNorth's customers through lower cost of gas clause charges. Mr. Bodanza stated in his testimony that KeySpan anticipates net gas supply savings through the joint administration of the gas supply portfolios of KeySpan's New England local distribution companies (LDCs) and the Rhode Island natural gas assets and supplies of New England Gas Company.

According to Mr. Bodanza, the gas resource portfolios and customer load profiles of these companies complement each other in ways that make synergy savings possible while also maintaining reliability for all of them. More specifically, the combination of these companies would enable the combined entities to continue to investigate and implement ways to optimize the use of their combined portfolios. When the merger is completed, all of these companies would benefit from the increased scale and purchasing power, geographic diversity of assets and enhanced storage flexibility.

Mr. Bodanza stated that based on KeySpan's preliminary analysis of the New England Gas Company's portfolio, merger-related opportunities should arise for EnergyNorth in connection with increased leverage for upcoming capacity contract renewals with Tennessee Gas Pipeline Company (TGP) and its expansion into the region. He noted that KeySpan's Massachusetts LDCs and the New England Gas Company have signed up for incremental

capacity on TGP's Northeast ConneXion project, as a result of which they may be able to allocate 10,000 MMBtu's per day of this upstream capacity to EnergyNorth for at least one winter season and perhaps longer. Access to such capacity would allow EnergyNorth to avoid the purchase of a more expensive winter peaking supply as long as the allocated capacity is available, with estimated one year savings of approximately $1.1 million.

Mr. Bodanza said that other benefits are difficult to quantify in advance but they would build on existing strategies involving the use of a single operational balancing agreement with TGP, displacement of gas supplies to EnergyNorth, and flexibility with winter trucking. Mr. Bodanza's testimony did not address the opportunities that may become available through the integration of the New England LDCs' portfolios with those of National Grid's and KeySpan's New York LDCs.

The petition described additional benefits from a merger, including (1) the avoidance of costs that would be required absent the merger, (2) provision of increased resources and expertise to the operating companies of the combined organization, and stronger efforts to publicize energy efficiency programs, implement low income programs and coordinate community activities, (3) continuance of more stable rates for EnergyNorth than it could achieve as a stand-alone company, and (4) attention to service quality issues identified for EnergyNorth, such as the development of an enhanced training program for customer service representatives dealing with New Hampshire customers. Finally, the Joint Petitioners asserted that the merger would provide EnergyNorth with broader access to low cost capital and help maintain its financial integrity.[21] They concluded that because the merger is designed to reduce rates,

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[21] According to Mr. Cochrane's testimony, the $42 per share consideration for KeySpan Corporation's shares represents a 16 percent premium above the price of KeySpan's shares during the month prior to the announcement of the merger, which is consistent with premiums paid in other recent utility acquisitions. EnergyNorth will have no

improve service, maintain financial integrity and enhance the operations of EnergyNorth and is intended to provide affirmative benefits, not just maintain the status quo, the merger complies with the applicable New Hampshire legal standards and should be approved.

In testimony filed in support of the settlement, National Grid representatives Gerwatowski and LaFlamme highlighted the benefits of the Granite State Rate Plan:

- a $2.2 million distribution rate reduction for electric customers, which, when fully implemented, will equate to a distribution rate decrease of about 9 percent or a reduction to the total monthly bill of a typical 500 kWh residential customer of about 2.6 percent;

- a five-year electric distribution rate plan that limits future electric distribution rate increases;

- the exclusion of merger acquisition costs from the merger or any prior mergers from Granite State's distribution cost of service or earnings sharing mechanism;

- deferral and ten-year amortization of costs-to achieve;

- the use of an imputed capital structure and cost rates as follows:

  Debt 50% 7.54% = 3.77%
  Equity 50% 9.67% = 4.84%
  8.61% overall cost of capital;

- a sharing mechanism that provides an incentive for Granite State to maximize merger-related savings by allowing Granite State to retain savings up to a specified earnings threshold and share the balance above the threshold equally with customers during the five year plan;

- a reliability enhancement program and vegetation management plan under which Granite State will implement an aggressive plans to improve its infrastructure to enhance reliability, with modest rate adjustments for investments in the system;

- the establishment of a storm contingency fund to mitigate the potential economic impacts of major storms affecting Granite State's customers and service territory; and

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transaction related debt on its balance sheet and none of its assets will be pledged to secure the lenders providing funds to finance the merger.

- customer service commitments with respect to call answering standards.

According to the Joint Petitioner witnesses, the main benefits of the EnergyNorth Merger Rate Agreement are:

- a distribution rate agreement that delays any gas distribution rate increases for a period of one year after the closing of the merger;
- the exclusion of merger acquisition costs from the merger or any prior mergers in any subsequent rate case following the merger;
- a merger savings credit of over $600,000 annually for gas delivery customers that would be used to mitigate any rate adjustments that may be allowed in EnergyNorth's first rate case to be filed within six months following the closing of the merger;
- the use of an imputed capital structure consisting of 50 percent equity and 50 percent debt;
- deferral and 10 year amortization of costs-to-achieve;
- a sharing mechanism that provides an incentive for EnergyNorth to maximize merger-related savings by allowing EnergyNorth to retain 50 percent of any proven merger savings for a period of up to 10 years following the merger, with the other 50 percent credited to customers;
- a cast iron and bare steel pipe replacement plan providing for implementation of an aggressive program to increase the pace of replacing aging infrastructure, with modest rate adjustments for investments in the system;
- a commitment to improve response time to emergency calls when customers report potential gas leaks;
- a commitment for economic equivalence of benefits to New Hampshire gas customers affected by the merger to those of the New York gas customers affected by the merger;[22]
- customer service commitments with respect to call answering standards; and
- other operating commitments set forth in the settlement agreement.

[22] They explained at hearing that the provision for comparing merger savings benefits between those extended to EnergyNorth customers and KeySpan's New York LDCs addresses the concern that New York gas customers could be accorded more favorable treatment than New Hampshire gas customers. Thus EnergyNorth would have the burden to show that the arrangements in New Hampshire are at least as favorable to customers as those in New York.

They reiterated that the merger satisfies the applicable standards, not only having no adverse effects on customers but also positively benefiting them.

They stated in their pre-filed testimony that the Granite State rate plan does not constitute an alternative form of regulation, but to the extent that the Commission might decide the question differently, the plan complies with all applicable Commission standards and requirements. They noted that every rate-related component of the plan has its basis in cost of service ratemaking because the starting point for rates is Granite State's 2006 cost experience and even the special adjustment provisions associated with the reliability enhancement and vegetation management plans are based on cost of service. Recognizing that the earnings sharing mechanism and the five year length of the plan that permits exogenous event adjustments differ somewhat from traditional ratemaking, they point out that even the earnings sharing mechanism is based on a cost of service calculation and the exogenous events triggers are tied to revenue requirement impacts based on a cost of service analysis. They therefore concluded that while the plan is different from a fully litigated cost of service rate case, it is more akin to a cost of service rate case settlement than to alternative regulation.

In any event, they stated that the plan complies with all the requirements of N.H. Code Admin. Rules Puc 206.05 and 206.06 (concerning alternative forms of regulation). They noted that the plan applies to Granite State's electric distribution operations and would not affect current rules regarding default service, stranded cost recovery, transmission cost recovery, and system benefits charge programs. In terms of how the rates under the plan would compare to those determined in a traditional rate case, they asserted that although a fully litigated rate case might change the rate results up or down by some amount, the plan provides rates that are in the range of the result of such a case. Regarding the effect of the plan on the safety, adequacy and

reliability of service, they maintain the plan would have no effect since Granite State would continue to conduct its business as usual and remain fully regulated by the Commission. In their view, by striking a good balance and aligning the interests of all stakeholders, the plan maintains the traditional regulatory balance and does not unfairly benefit or disadvantage utility customers, investors and other stakeholders. Customers would be provided with immediate rate relief and the possibility of sharing in earnings over the sharing threshold while Granite State is given the proper economic signals to operate efficiently and to maximize the synergy savings from the merger. They also concluded that implementation of the plan is consistent with achieving administrative efficiency in the regulatory process and that the plan will certainly have a positive effect on infrastructure improvements.

They asserted that the plan meets all standards for approval under Puc 206.07. First, the rates are not unduly discriminatory and are at a level that allows those to whom a service is marketed to obtain such service. Granite State's current rate classifications remain unchanged and the proposed rate reduction is being allocated on an equal basis. Second, the plan allows Granite State the opportunity to realize a return on its investment that falls within a range that is neither confiscatory nor unduly profitable and that reflects the utility's investment risk. The plan is based on a return on equity of 9.67 percent, a return that has been allowed by the Commission in other recent electric utility rate cases. In addition, the earnings sharing mechanism assures that the plan does not become unduly profitable for Granite State. Third, for the foregoing reasons, the plan is in the public interest, results in just and reasonable rates, and provides Granite State with the opportunity to realize a reasonable return on its investment.

At hearing, they explained in more detail certain provisions of the settlement. For example, the money pool arrangements post merger are expected to be similar to the money pool

that KeySpan now operates, under which the regulated company and unregulated company money pools are segregated in order to prevent an unregulated company from borrowing from a regulated company. Both money pools provide access to low cost capital for the subsidiary companies and under them the parent company can only be a lender. Only the regulated companies can borrow from the regulated company money pool.

For general service company expenses that are not allocated under a specific method, the proposed service company allocation method would adopt KeySpan's approach, under which allocations are made based on revenues, operations and maintenance expense, and assets or investments. National Grid now uses only operations and maintenance expense as a basis for allocating expenses, said to be a less robust allocation method than that employed by KeySpan. In addition, the dividends provision of the main settlement agreement would allow EnergyNorth to pay dividends up to the amounts they would be able to pay absent the merger. The subsidiary approvals necessary to allow the Joint Petitioners to implement the merger efficiently are not conditions to closing the merger pursuant to the merger agreement between National Grid plc and KeySpan Corporation.

They explained that the combined organization would result in an increased presence in New Hampshire. William Sherry has been National Grid's legislative, regulatory and community point of contact in New Hampshire and the post-merger plan is for him to continue in that role as "regional president" for New Hampshire for both Granite State and EnergyNorth. National Grid expects to give attention to New Hampshire's regulatory needs by establishing a regulatory and legal organization for both utilities headed by Larry Reilly. In addition, they reassured Staff that National Grid has engendered a corporate culture in which compliance is taken very seriously and any compliance issues are addressed quickly and effectively in

cooperation with regulators. Compliance with New Hampshire regulatory requirements is an absolute priority even though Granite State's and EnergyNorth's combined customer base would be dwarfed by that in other states. Each state, no matter how big or small, deserves attention, they said. For National Grid, communication regarding regulatory requirements is an important issue and as the date for the merger draws nearer, it would plan to inventory all the regulatory requirements KeySpan is aware of and communicate to the KeySpan companies how National Grid deals with the regulatory requirements on the electric side.

In respect to the marking of EnergyNorth's underground facilities, they said that EnergyNorth is committed to using in-house personnel for no less than two years following the merger. EnergyNorth is reluctant to commit to do that permanently, because technology and processes may change making a different approach preferable.

In response to questions about the intent and effect of the settlement on matters that might be investigated in Docket No. DE 07-064, Energy Efficiency Rate Mechanisms, the Joint Petitioner witness Mr. Gerwatowski stated that although the parties to the settlement did not specifically discuss revenue decoupling mechanisms, the settlement does anticipate that the Commission will take actions in its normal course that would affect Granite State and in such case the exogenous event provisions might be implicated. In agreeing to the five-year Granite State rate pan, National Grid took into account the history of load growth and its expectations regarding normal load growth since the combination of load growth and synergy savings allowed the company to conclude that it could operate its business successfully. Nevertheless, Mr. Gerwatwoski testified that the settlement does not preclude the Commission from requirring decoupling and stated that the reference in the Granite State rate plan settlement to traditional cost of service ratemaking after the effective period of the rate plan does not affect revenue

decoupling, which is a rate design issue. The Joint Petitioner witness Mr. Gerwatwoski spoke for all the settling parties and Staff when he indicated they were reluctant to renegotiate the settlement in an effort to harmonize the settlement with the decoupling investigation precisely, however he stated that "I think we're all in agreement that the Commission is not precluded from moving forward, this agreement is not intended to preclude the Commission from issuing a decoupling order and require Granite State to decouple revenues in some way." Tr. 05/30/07, p. 153. He stated that the docket could have a number of outcomes, some of which would not affect the benefit of the bargain and others of which may trigger the exogenous events provision.

The Joint Petitioners filed two motions for confidential treatment of certain discovery responses. Specifically, EnergyNorth requested confidential treatment and a protective order for the following data requests:

- Staff 1-19, requesting copies of any presentations to investors, Moody's, S&P or Fitch. EnergyNorth stated that the information constitutes confidential, commercial or financial information that is exempt from public disclosure under RSA 91-A:5, IV because disclosure to the public could cause unfair economic or competitive damage to KeySpan Corporation and could potentially lead to a disorderly market in its securities. EnergyNorth maintained that the requested documents contain non-public information about KeySpan Corporation's operations and a variety of detailed, non-public projections that were not prepared in a manner appropriate for public disclosure. EnergyNorth's rationale for confidential treatment is similar to that advanced by National Grid in respect to DPS 21 and Staff 1-19, described below; and
- Staff 1-31, requesting a full accounting regarding a significant Tennessee Gas Pipeline (TGP) contribution to an EnergyNorth distribution system upgrade in the Tilton area, Staff 1-32, requesting all available work papers, assumptions and cost estimates involving a $12 to $16.5

million TGP New Hampshire lateral upgrade, and Staff 1-33, requesting all work papers, assumptions, cost estimates and calculations involving the incremental TGP ConneXion capacity. EnergyNorth claimed that the information requested in these three data requests contains the prices and terms on which EnergyNorth or its affiliates have obtained pipeline capacity to serve its customers, including analyses of proposals to provide such capacity. EnergyNorth maintained that the information is similar to that routinely allowed by the Commission in prior proceedings, including all EnergyNorth cost of gas proceedings, and that release of the information it seeks to protect would likely result in competitive disadvantages for EnergyNorth and its affiliates in the form of less advantageous or more expensive capacity contracts, for which its customers would ultimately bear the burden of increased costs.

EnergyNorth further contended that the information requested in each of the four data requests constitutes trade secrets and affirmed that EnergyNorth and/or KeySpan Corporation does not disclose the information to anyone outside of its corporate affiliates and representatives.

National Grid filed a motion for confidential treatment with respect to information provided in response to Staff data request 1-1, which requested responses to certain State of New York Department of Public Service (NYDPS) information requests in Case No. 06-M-0878, and responses to Staff 1-18 and portions of responses to Staff 1-19, which include substantially the same information provided in certain of the responses to Staff 1-1. National Grid stated that all the information requested the NYDPS responses constitutes confidential, commercial or financial information that is exempt from public disclosure under RSA 91-A:5, IV and that the information requested by the NYDPS and by Staff has not been disseminated publicly or even broadly within the company. Specifically, National Grid requested confidential treatment for the following responses to NYDPS data requests:

- DPS-3, 1(d), consisting of three paragraphs that provide National Grid's internally-prepared, aggregate, preliminary savings estimate calculated during the due diligence period, including estimated synergy savings associated with bad debt expenses not included in the synergy savings analysis presented in this proceeding. National Grid maintained that the response includes information associated with its due diligence process using information supplied by KeySpan pursuant to a non-disclosure agreement. In addition, according to National Grid, public disclosure of National Grid's due diligence and valuation analysis could cause unfair economic or competitive damage to the company by revealing the methodology used by National Grid to complete its valuation analyses and creating an impediment to full disclosure between future potential merger and acquisition participants in transactions of this kind;
- DPS-11, 1(b) consisting of a one-page table prepared by National Grid staff which identifies estimated costs to achieve various initiatives in the areas of HR/Compensation, IT Infrastructure, IT Applications Consolidations, and certain other types of expenses developed as part of the company's due diligence analysis. National Grid stated that the cost-to-achieve figures contain line-item estimates for staffing optimization measures that could be used by parties with economic interests affected by the listed initiatives, such as unions, to create greater negotiating leverage for themselves outside of the established collective bargaining process. National Grid also expressed concern that other companies could use the information to increase recruitment leverage with National Grid and KeySpan employees and that public disclosure could exacerbate the uncertainty faced by employees with adverse impacts on employee retention;
- DPS 21 (and Staff 1-19), consisting of several PowerPoint presentations to various rating agencies related to National Grid's businesses in the UK, USA, and throughout the world as well

as its now-completed acquisition of New England Gas Company's Rhode Island assets and the proposed transaction with KeySpan. The presentations contain future projections regarding corporate strategy, dividend policy, projected investments, UK pension information and regulatory proceedings, projected global debt composition, inter-company balances and expected case movement, business plan and funding information. National Grid argued that it would suffer unfair economic or competitive damage from public disclosure. According to National Grid, the documents contain non-public information about the Group's global operations and a variety of detailed, non-public projections which National Grid has never disclosed to the public and did not prepare with financial disclosure in mind. The financial forecasts contain assumptions and uncertainties not fully reflected in the response and thus the information could provide the marketplace with information that may be incomplete or outdated or otherwise confuse the marketplace. Public disclosure risks difficult to control effects in the marketplace, including disorderly trading in National Grid shares. A related concern is that public disclosure through regulatory discovery could bypass National Grid's internal controls and disclosure processes that guard against such undesirable market impacts. The information has value to others in the marketplace, including potential financiers which could better manage their bidding strategy to realize higher interest rates on planned financings. Finally, disclosure of price sensitive information could result in unfair share trading and adversely affect National Grid's share price;

- DPS-26, 1(a) (and Staff 1-18), consisting of a PowerPoint presentation made to National Grid's board of directors regarding the proposed KeySpan merger, which was originally marked "confidential" to limit circulation to the board only. The presentation describes due diligence efforts, valuation methodology and assessment of the transaction's financial impact on the Group

and includes six appendices that overview KeySpan and its executives and board members, provide a comparative analysis of the proposed transactions at different prices, and describe the proposed tax structure. National Grid made several arguments in support of confidential treatment, including (1) the analysis relies on information KeySpan provided under a formal non-disclosure agreement and public disclosure would cause unfair economic or competitive damage to National Grid, (2) providing information to KeySpan about the method and assumptions used by National Grid to arrive at the offering price for KeySpan prior to the merger closing could detrimentally affect National Grid's administration of the merger and cause harm in future transactions of this kind, and (3) public disclosure of financial forecasts will create the same harm discussed in connection with the request for confidential treatment of the response to DPS 21 and DPS 11; and

- DPS-27 1(f), consisting of a report prepared for National Grid by the Brattle Group requested by National Grid's legal counsel. National Grid contended the report is covered by the attorney/client and work product privileges, which it is willing to waive for the limited production to the Commission without prejudice. The report analyzes certain potential regulatory and legal consequences for a merger between KeySpan and a specific, but unnamed, third party and was performed as part of National Grid's due diligence for this transaction. However, National Grid sought confidential treatment because public disclosure would harm National Grid by providing third parties with proprietary information developed by it during its due diligence phase of the transaction with KeySpan. National Grid also maintained that the information could potentially assist another competitor in devaluing the unnamed third party's perceived ability to enter into certain transactions.

B. Office of Consumer Advocate

The OCA's witness, Kenneth Traum, stated that the OCA supported the settlement because, on the Granite State side, the settlement resolved the issue of Granite State's overearnings and reliability in a timely fashion that avoids additional rate case expense. In addition, both Granite State and EnergyNorth have agreed not to seek recovery of acquisition premiums for this or any prior mergers. On the EnergyNorth side, customers get a $619,000 synergy savings credit in the first rate case while later on EnergyNorth must prove net synergy savings. This is the first merger proceeding in which the OCA has agreed to any recognition of future merger savings and that is because it is satisfied that there is a realistic approach for how net synergy savings are to be proven. Also of importance to the OCA is that the savings will be proven without the loss of New Hampshire jobs. The inclusion of the "most favored nation" clause, the improvements to emergency response times and the customer service commitments are other reasons why the OCA supports the settlement. Further, the OCA pointed out that Granite State's and EnergyNorth's energy efficiency and low income programs remain in place post merger and no reduction in those programs is expected. On the contrary, the OCA expects that the merger will increase the expertise and potential efficiencies that will result in improvements in program areas on both the gas and electric sides.

Regarding the question of the relationship between this docket and Docket No. DE 07-064, the OCA agreed that revenue decoupling was not on the table when the settlement was negotiated, noting that the settlement was reached before the Order of Notice in DE 07-064 was issued. The OCA reserved judgment about whether revenue decoupling would implicate the exogenous events provision. The OCA also stated that the 9.67 percent agreed-upon rate of return on equity for Granite State is reasonable under the Granite State Rate Plan and if the Commission were to adopt a decoupling mechanism that shifted risks from stockholders to

ratepayers, a conflict with the five-year rate plan could result. However, after Mr. Gerwatowski summarized the common understanding of the settling parties on this after a break during which they discussed the matter and he stated the settlement agreement did not preclude the Commission from requiring revenue decoupling and Mr Mullen for the Staff said that he would just agree with Mr. Gerwatowski, the OCA said that he thought he was also going to agree. In addition, since the order of notice issued in DE 07-064 was much broader than revenue decoupling, the OCA stated that there are many possible outcomes and they may or may not affect the settlement. Accordingly, the OCA recommended that the Commission hold off on making a definitive ruling at this time and approve the settlement as is.

C. Staff

Staff presented pre-filed and hearing testimony of Stephen Frink and Steven Mullen in support of the settlement. In Staff's view, the settlement terms allow the Commission to find that the transaction meets either a "no net harm" or "net benefits" standard.

Staff stated that prior to and concurrent with the merger proceeding, the Commission's electric division had been reviewing Granite State's annual earnings levels as well as the trends in its SAIDI and SAIFI reliability indices. Granite State had been earning in excess of its allowed rate of return for the last three years, with the overearnings for calendar year 2006 amounting to over $2 million.[23] In addition, the SAIDI and SAIFI indices showed recent increases in both duration and frequency of interruptions. Staff concluded that it would be opportune and administratively efficient to pursue the earnings and reliability issues in the context of the merger docket. Doing so also saves a great deal of time, money and effort for all parties. Staff also pointed out that although the focus of merger proceedings is typically on the

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[23] This amounts to an earned return on equity of slightly more than 12 percent based on Granite State's actual capital structure, which consists of approximately 83 percent of equity. Using the 50 percent equity, 50 percent debt capital structure agreed to in the Granite State rate plan, Granite State's earned return exceeds 15 percent.

rates and operations of the utility being acquired, where, as here, the acquiring organization already owns a New Hampshire utility, it is relevant to address the rates and operations of that utility in connection with the merger.

The Granite State rate plan addresses the $2 million of overearnings by providing for a reduction in distribution rates by a total of $2.2 million annually. Staff indicated that although it is impossible to predict with certainty the potential outcome of a rate case in the abstract, the rate plan provides an immediate, significant rate reduction while balancing the interests of Granite State, providing for increased reliability and carefully delineating the circumstances under which Granite State may change its rates during the effective. In particular, the exogenous events provisions result in a reasonable balance of risk sharing in exchange for Granite State's agreement to limit rate changes to its distribution rates. According to Staff, the potential risk that the Commission would not be able to call Granite State in to review its rates during the rate plan period is mitigated by the earnings sharing mechanism. Staff stated that it is satisfied that the initial estimates of costs-to-achieve, for both Granite State and EnergyNorth, are reasonable. Staff clarified that under the earnings sharing mechanism, Granite State is, in effect, allowed to retain net synergy savings up to the 11 percent threshold and earnings above 11 percent are shared equally between ratepayers and stockholders. Thus, to the extent savings are achieved, those results will be reflected in their earnings, whatever the level of savings. After the rate plan period, the savings will be totally reflected in Granite State's earnings and cost of service.

There is also a potential risk that a full rate case could have a different outcome than that provided by the Granite State rate plan but that risk can go both ways. Before agreeing to the exogenous event provision for inflation, Staff reviewed recent economic publications indicating

that a 4 percent level of inflation is higher than historical and forecasted inflation rates for the years 1996 through 2012, concluding that the use of 4 percent as the trigger is reasonable.

Staff stated that the 9.67 percent authorized return on equity is the same rate settled on (and now approved) in two other recent rate cases, Unitil Energy Systems and Public Service Company of New Hampshire. Staff stated that even though exogenous events provisions would typically serve to reduce the risk that a company would face in earning its allowed rate of return, the 9.67 percent figure for Granite State is still a reasonable return in relation to those risks. Staff pointed out that the exogenous events provisions work two ways, whether Granite State's costs are going up or down.

Staff commented that although it may appear that the customer service standard is slightly lower under the Granite State rate plan than that currently experienced by Granite State customers, allowing Granite State a slightly lower service level standard while being held to historic customer satisfaction scores should not produce discernible reductions in the level of customer service. In addition, moving to a one-call resolution model, while possibly increasing the length of an individual call, should help keep customer satisfaction at a high level by reducing follow-up calls. Increasing the number of Granite State customers included in the customer satisfaction survey is an added benefit of the settlement. Finally, according to Staff, the opportunity to review customer service standards in the 12 to 24 months following the merger allows for adjustments and corrections to customer service standards, providing further comfort that customer service will not be degraded as a result of the merger.

Regarding the question of the intent and effect of the Granite State rate plan on the issues to be investigated in Docket No. DE 07-064, Staff confirmed that revenue decoupling was not discussed in the settlement negotiations. Rather, the discussion focused on the types of events

that are outside Granite State's control and how they could affect the sharing of risk between ratepayers and stockholders. However, there was no intent to preclude the Commission from adopting any particular resolution of the issues in DE 07-064.

On the EnergyNorth side, Staff stated that its concerns with the Joint Petitioners' original proposal were that (1) if there are substantial savings, EnergyNorth might over earn and customers would not share in those savings until delivery rates were adjusted through a future rate case proceeding, (2) if net savings were never realized, not only would ratepayers not get the benefit of reduced costs but they would be paying additional costs as EnergyNorth would be recovering 50 percent of projected net savings, and (3) projected costs-to-achieve would be amortized over 20 years though actual costs-to-achieve could be considerably less, in which case ratepayers would be paying for costs not actually incurred. In addition, Staff stated that the petition did not address public safety issues that have arisen since the KeySpan Corporation merger with EnergyNorth in 2000, including the increase in the number of leaks on the EnergyNorth system and the time it takes EnergyNorth to respond to odor complaints.

The EnergyNorth merger rate agreement addresses Staff's concerns regarding rates. First, customers will realize the expected merger savings when delivery rates are adjusted after year one, in the first rate case. This is significant because the costs-to-achieve are greatest in the first year and annual savings are at their lowest, as cost-saving measures are implemented over time following the close of the merger. Ratepayers will be credited with substantial net merger savings before those savings are actually, if ever, realized. In addition, the 50 percent equity, 50 percent debt imputed capital structure is more balanced that the current capital structure of 40 percent debt and 60 percent equity and is expected to reduce the overall allowed rate of return, thus avoiding higher rates due to EnergyNorth being disproportionately financed by equity. In

the second rate case filing, or if EnergyNorth makes a savings proof filing, the benchmarked expenses do not include New Hampshire field personnel, thereby eliminating any incentive to reduce field personnel in order to earn 50 percent of those savings in a future rate case. In short, ratepayers will benefit from anticipated merger savings and EnergyNorth would only share in proven merger savings, as ratepayers receive 50 percent of anticipated net merger savings soon after the merger is consummated and EnergyNorth stockholders share in 50 percent of proven net merger savings through a one time rate adjustment at a later date. Staff added at hearing that if EnergyNorth were to come in for a rate case in year ten and added on the savings allowance in year ten, Staff was concerned that that increase in cost of service would carry on beyond year ten. The settlement addresses this issue by virtue of the earnings sharing mechanism that is activated in the event EnergyNorth overearns. Thus, the savings issue will be satisfactorily dealt with during the ten-year rate agreement period.

The EnergyNorth merger rate agreement also addresses Staff's concern regarding customer service. In respect to gas safety, cast iron and bare steel pipes are no longer installed. Because they are the kind of pipes most likely to develop leaks, the settlement provides for the accelerated replacement of the cast iron and bare steel mains and services. The settlement also establishes emergency response times that are consistent with those achieved by EnergyNorth before its merger with KeySpan Corporation in 2000 and by other New Hampshire gas utilities, and with those required by other jurisdictions. Staff noted at hearing that the emergency response times, especially during non-business hours, started to trend up after the 2000 merger.

In addition, unlike when the KeySpan organization acquired EnergyNorth in 2000, National Grid has experience with the Commission and Staff does not expect to see layoffs in New Hampshire. On the contrary, it is expected that EnergyNorth will add personnel in New

Hampshire as it implements the safety measures under the EnergyNorth merger rate agreement. Addressing the possibility that gas supply benefits will be realized from the merger, Staff indicated that based on its review, there is insufficient evidence to conclude that actual gas savings will be realized from the merger. On the other hand, Staff said it did not expect gas supply costs to increase as a result of the merger.

Staff stated that EnergyNorth uses in-house personnel for marking its mains and services, rather than outside contractors, and has performed well in this area. Staff recognized that because in-house personnel are familiar with the system, that can make it easier to locate lines, identify and correct mapping errors and respond to related inquiries, and thus there is an advantage to using in-house personnel to mark lines. Even though there is no regulatory requirement that EnergyNorth do so, EnergyNorth will continue to do marking on an in-house basis for at least the next two years, with notice to the Commission if it seeks to change its practice. Absent a rate case in which the parties will have the opportunity to review actual revenues and expenses, EnergyNorth will not recover any additional costs for improvements to customer service other than the opportunity to recover investments above the base level established in the CIBS program and the incentives related to emergency response time standards.

Staff concluded that EnergyNorth's recent quarterly rate-of-return reports indicate that it is earning approximately 5 percent, well below its allowed rate of return, and thus a rate increase may be appropriate. The one year rate freeze ensures ratepayers will not see an increase in delivery rates until one year after the close of the merger and the new rates will contain a credit for anticipated net synergy savings. EnergyNorth only shares in proven net merger savings, if any, through a one time adjustment to the revenue requirement in its second rate case, after

which net merger savings flow entirely to ratepayers. The settlement also precludes recovery of the acquisition premium, avoiding potential future litigation over that issue. Under the settlement, ratepayers will see improved customer service, as customer calls will be answered more quickly, and public safety should improve as EnergyNorth accelerates the replacement of mains and services prone to leaks and as emergency response times improve.

At hearing, Staff suggested that in its deliberations, the Commission should consider the two aspects of the settlement, one relating to the merger and merger contingent aspects and the other relating to the non-merger contingent aspects. Staff argued that both the elements of the settlement, as to both Granite State and EnergyNorth, are in the public interest and the settlement should therefore be approved. In Staff's view, the settlement does not require the Commission to rule on the precise standard of review in this case, whether it is a "no harm" or "net benefit" standard. Staff maintained that the settlement would satisfy both standards. Staff noted that the Commission reviewed the general concept of a sharing synergy savings between ratepayers and stockholders in the 2000 Consolidated Edison/Northeast Utilities merger docket, in which the Commission approved a settlement agreement that involved a sharing mechanism.

In terms of the process leading up to the settlement, in addition to the Staff and the Joint Petitioners, Staff stated that the OCA and the union intervenors participated actively in the lengthy and numerous technical sessions and settlement discussions. This is a docket in which diverging interests were represented continuously throughout. The process itself has been ongoing since August 2006, when the petition was filed, and a great amount of discovery has been done. From Staff's point of view, the circumstances involving the merger, and those that are not contingent on the closing of the merger, were carefully examined.

Staff further argued that for all the reasons described in testimony, the results of the settlement are favorable to customers and also take into account the legitimate interests of the regulated utilities. In addition, Staff stated it was encouraged by National Grid's testimony about the importance of complying with local regulatory requirements and the measures it would take to make sure it happens. One of the risks of some mergers is that control of the utility passes from locally based management to personnel located outside the state. Staff maintained that such loss of local control is not a significant issue in this docket because management control of EnergyNorth, in effect, left New Hampshire in 2000 following its merger with KeySpan.

Staff commented that the settlement does not resolve the mark-out issue for all time today, but it does resolve a number of other reliability and safety issues. Staff argued that the settlement ought not to be disapproved as a result of the mark-out provision. The question of whether mark-outs should be outsourced is fully preserved for a future proceeding, if EnergyNorth decides to move in that direction. Finally, Staff stated that even though the settlement does not include the specific measures that the New Hampshire Legal Assistance and the Community Action agencies requested for low income programs, National Grid has confirmed that it is committed to low income and energy efficiency programs. Thus, Staff is not concerned that those areas of responsibility will be overlooked in any way. Finally, in terms of the revenue decoupling issue, Staff stated that that bridge can be crossed if and when and it is reached.

D. United Steelworkers of America, Local 12012-3

Local 12012-3 opposed the settlement because it would conditionally permit the use of outside contractors to mark out EnergyNorth's underground gas lines. The union stated that such contractors will not have the same knowledge, expertise and supervision to do mark-outs

correctly as in-house personnel. In the union's opinion, the risks to the public are substantial because a mistake can lead to a leak or an explosion, causing at least an interruption of service and possibly injury and death. The union stated that the current in-house marking crew handles about 15,000 markouts per year and is an integral part of the Dig Safe program. The crew draws on an average of about 14 to 15 years of institutional knowledge to locate and mark lines whose location may not be established in records or by current landmarks.

The union maintained that the Settling Parties and Staff have provided no explanation of why the Joint Petitioners cannot prove the safety and reliability of their outside contractors as part of this docket. In addition, National Grid's practice is to use outside contractors[24] and the union can conceive of no rational set of circumstances where the outside contractors would be acceptable. The union supports the other safety-related provisions of the EnergyNorth rate agreement, but stated that the settlement leaves the mark-out issue as an unfortunate loose end, leaving open the possibility that a safety issue will arise in the future.

E. Comments of Non-Parties

The Way Home and Pamela Locke, both of whom are represented by New Hampshire Legal Assistance, filed comments urging that EnergyNorth's low income programs be continued and modestly expanded to meet the growing needs of low-income customers. They acknowledged that EnergyNorth has successfully operated the programs. Nevertheless, The Way Home suggested increasing KeySpan's budget for the low income gas energy efficiency program consistent with the Community Action agencies' capacity to serve additional low income households in KeySpan's service territory. Ms. Locke suggested that any merger approval be conditioned on National Grid's and KeySpans's agreement to continue KeySpan's

[24] The union testified that mark-outs were privatized following the merger of Niagara Mohawk into National Grid.

low income gas discount rate program and to increase to the discount (from 15 percent off the total bill to 20 percent) consistent with maintaining the financial integrity of the program.

The Community Action agencies stated that it appears that low income energy efficiency programs will still be part of the goals but requested that any merger approval include a more defined plan for the utilities' low-income energy efficiency programs and an increase in budget for the programs. The Community Action agencies emphasized that it would be highly beneficial to the program and to low-income clients if a budget increase were specified in the merger.

IV. COMMISSION ANALYSIS

A. Standard of Review

N.H. Code Admin. Rules Puc 203.20 (b) provides that the Commission shall approve disposition of any contested case by settlement "if it determines that the result is just and reasonable and serves the public interest." *See also* RSA 541-A:31, V(a). In general, the Commission encourages parties to attempt to reach a settlement of issues through negotiation and compromise "as it is an opportunity for creative problem-solving, allows the parties to reach a result more in line with their expectations, and is often a more expedient alternative to litigation." *Unitil Energy Systems, Inc.,* Order No. 24,677 (October 6, 2007), slip op. at 17-18, quoting from *Concord Electric Company*, 87 NH PUC 694, 708 (2002) and *Concord Electric Company,* 87 NH PUC 595, 605 (2002), and orders cited therein. However, even where all parties enter into a settlement agreement, the Commission cannot approve it "without independently determining that the result comports with applicable standards." *Id.*

The Joint Petitioners sought approval of the merger under the standards set forth in RSA 369:8, II (b) and RSA 374:33. RSA 369:8, II (b)(1) provides:

> [t]o the extent that the approval of the commission is required by any other statute for any corporate merger or acquisition involving parent companies of a [jurisdictional] public utility . . . the approval of the commission shall not be required if the public utility files with the commission a detailed written representation no less than 60 days prior to the anticipated completion of the transaction that the *transaction will not have an adverse effect on rates, terms, service, or operation of the public utility within the state.*

(Emphasis added.) RSA 374:33 provides in relevant part:

> [n]o . . . public utility holding company as defined in section 2(a)(7)(A) of the Public Utility Holding Company Act of 1935 shall directly or indirectly acquire more than 10 percent, or more than the ownership level which triggers reporting requirements under 15 U.S.C., section 78-P, whichever is less, of the stocks or bonds of any other public utility or public utility holding company incorporated in or doing business in this state, unless the commission finds that such *acquisition is lawful, proper and in the public interest.*[25]

(Emphasis added.)

Alluding to the "no net harm" test employed under both RSA 369:8 and 374:33 in previous merger cases, the Joint Petitioners maintained that the transaction would result in both "no net harm" and a positive benefit. The settlement recites that the merger, subject to the additional terms and conditions set forth in the settlement, meets both statutory standards without regard to the standard of review the Commission may deem to be applicable. They further agree that the settlement sets no standard of review (e.g., "no net harm" or "net benefit") the Commission should apply in future mergers.

In this case a number of the settlement terms, the non-merger-contingent provisions, apply even if the merger does not actually close. For example, the Granite State Rate Plan's $2.2 million distribution rate reduction, the establishment of the storm contingency fund, the reliability enhancement and vegetation management programs, and the customer service commitments are all contingent upon approval of the merger but are not contingent upon the

[25] As the Joint Petitioners note, the Public Utility Holding Company Act of 1935 (PUHCA) was repealed by the federal Energy Policy Act of 2005. We agree with the Joint Petitioners that the repeal of PUHCA does not affect the operative provisions of state law referencing PUHCA for convenience.

closing of the merger. Similarly, the EnergyNorth merger rate agreement provides that the CIBS program and the emergency response time standards are contingent only upon approval of the settlement. We are thus obliged to review these provisions under standards other than those specifically applicable to mergers. In this regard, we stated in *Merrimack County Telephone Company*, 87 NH PUC 278, 281 (2002), "we have general supervisory authority over utilities operating in this state, requiring us to assure that the rates are just and reasonable and imposing on us the obligation to assure citizens of this state that the transactions as in issue here are in the public interest." *See also Hampton Water Works, Inc.*, 87 NH PUC 104, 108 (2002).

As a precaution the Joint Petitioners analyzed the plan in the context of the alternative form of regulation (AFOR) rules. An alternative form of regulation is defined as "a method of utility rate regulation pursuant to RSA 374:3-a other than methods which are based upon cost of service, rate base and rate of return." N.H. Code Admin. Rules Puc 206.01 (a). While it is true that the Plan contains certain elements that are not typically found in traditional cost of service regulatory schemes, i.e. an earnings sharing mechanism and a five year rate plan period that permits exogenous event adjustments, not every departure from traditional ratemaking methods is subject to the AFOR rules. In this case, we agree with the Joint Petitioners that the plan remains sufficiently grounded in cost of service ratemaking principles to not require analysis as an alternative form of regulation. Accordingly, we do not review the plan or other provisions of the settlement under the standards specific to AFOR plans, relying instead on our more general public interest standard.

In applying these standards, we consider all the interests involved and all the circumstances in determining what is reasonable. *See Grafton County Electric Light and Power Co. v. State*, 77 N.H. 539, 540 (1915); *Parker-Young Co. v. State*, 83 N.H. 551, 561-562 (1929);

see also Appeal of Pinetree Power, 152, N.H. 92, 97 (2005). Consistent with the foregoing, we have reviewed the settlement in conjunction with the entire record and, for the reasons discussed below, conclude that the merger-contingent settlement provisions satisfy both the "no adverse effect" standard under RSA 369:8 (b) and the "public interest" standard of RSA 374:33. We also conclude that the non-merger-contingent provisions are just, reasonable and in the public interest. We will therefore adopt the terms of the settlement.

The settlement is very comprehensive and for the sake of simplicity we discuss separately below the provisions of the settlement affecting Granite State and EnergyNorth.

B. Granite State Rate Plan

On a per books basis, Granite State is overearning by approximately $2 million per year. Its return on equity is slightly greater than 12 percent based on Granite State's actual capital structure and more than 15 percent based on the hypothetical capital structure set forth in the rate plan, compared to its currently authorized 10 percent return on equity, approved as part of a settlement in its 1995 rate case. *See Granite State Electric Co.*, 81 NH PUC 359 (1996). Granite State's earnings could of course be investigated in the course of a full-blown distribution rate case. The outcome of such a case, however, cannot be predicted with certainty and without question rate cases are time-consuming and expensive for all parties involved. The rate plan avoids the uncertainty, time and expense of a rate case by providing for distribution rate reductions totaling $2.2 million, slightly more than the amount of Granite State's reported overearnings. The rate reductions would be implemented through adjustments among rate classes and rate design elements (i.e., customer charges and distribution charges) on an equal percentage basis. At the same time, the plan does not preclude us from making revenue neutral distribution rate design changes as we may deem appropriate in the future. The reductions

equate to a distribution rate decrease of about 9 percent or a reduction to the total monthly bill of a typical 500 kWh residential customer of about 2.6 percent.

Subject to certain exceptions, Granite State's reduced distribution rates are "frozen" during the five-year rate plan period. Adjustments up or down may be made for several defined categories of exogenous events outside Granite State's control. Under the plan, such adjustments are subject to our review and approval.

During the hearing, the witnesses discussed the effect of the plan on Docket No. DE 07-064, which we recently opened to investigate the merits of instituting for electric companies appropriate rate mechanisms such as revenue decoupling which would have the effect of removing obstacles to and encouraging investment in energy efficiency. That docket will examine the policy choices associated with decoupling and other possible approaches, including an assessment of the evidence supporting the implementation of such measures and an evaluation of the applicability of such mechanisms.

The witnesses confirmed that revenue decoupling was not discussed during the settlement discussions. Though not filed until May 15, the settlement was executed on May 1, nearly two weeks before we issued an order of notice formally commencing the revenue decoupling investigation. The witnesses stated, and we agree, that the plan does not preclude us from adopting a decoupling order for Granite State or other energy efficiency rate mechanisms. They also indicated that adoption of such measures might implicate the exogenous events provisions of the plan, resulting in changes up or down to the distribution rates established pursuant to the plan. The OCA stated, in addition, that the 9.67 percent agreed-upon rate of return on equity for Granite State is reasonable under the Rate Plan but if we were to adopt a decoupling mechanism that shifted risks from stockholders to ratepayers, a conflict with the five-year rate plan might

result. All the witnesses agreed that it is premature to predict the possible impact of the outcome of DE 07-064 on Granite State and urged us to approve the settlement presented, and not to condition our approval of the settlement on the outcome. We approve the settlement but note that we do not interpret such approval to limit in any way actions we may take in Docket No. DE 07-064, or any utility specific proceeding arising out of that investigation, including the possibility of requiring revenue decoupling.

The rate plan provides that acquisition premiums from the merger and any prior mergers will be excluded from the distribution cost of service used to develop Granite State's distribution rates and the earnings sharing provisions or in any future ratemaking mechanism. This provision is consistent with a longstanding policy disfavoring the recovery of acquisition premiums from ratepayers, *see EnergyNorth Natural Gas, Inc.*, 85 NH PUC 360, 367-368 (2000); *Hampton Water Works, Inc.*, 87 NH PUC 104, 109, (2002), and it clarifies that the prohibition will apply to acquisition premiums left over from any prior mergers.

The rate plan allows Granite State to amortize the prudently incurred costs to achieve the merger savings allocated to it, with a return, and using the Commission-approved capital structure, for a ten year period. Initially, Granite State will record amortization of $262,591 of the costs it incurs to achieve merger savings, but that amount is subject to adjustment depending on the costs-to-achieve actually incurred. We understand that the amortization amount in effect from time to time is subject to our review and approval. Based on the information in the record, we have no basis for questioning the reasonableness of the estimate of costs-to-achieve or the allocation method. We will therefore accept the estimate and the allocation.

Granite State's current actual capital structure consists of approximately 17 percent debt and 83 percent equity. The plan provides, however, that Granite State will use an imputed

capital structure for ratemaking purposes consisting of 50 percent debt and 50 percent equity. For purposes of the rate plan, the weighted cost of debt is valued at 3.77 percent and, based on a 9.67 percent rate of return on equity, the weighted cost of equity is valued at 4.84 percent, for an overall allowed cost of capital of 8.61 percent. In our view, the imputed capital structure under the rate plan is more appropriate than Granite State's current actual capital structure in that it provides a more reasonable allocation between debt and equity and, in so doing, lowers costs to Granite State's customers. We also note that for purposes of the earnings sharing mechanism discussed below, if Granite State's actual average common equity ratio falls below 50 percent for any of the five years of the rate plan, any party may contend that the use of the average actual capital structure for the five year period in the final accumulated earnings report is more reasonable than the use of the imputed capital structure.

We are also persuaded that the 9.67 percent rate of return on equity falls within the zone of reasonableness and represents an appropriate return for investors facing the risks associated with a franchised distribution utility. It is a figure consistent with two recent electric utility distribution rate cases, *see Unitil Energy Systems, Inc.*, Order No. 24,677 (October 6, 2006) and *Public Service Company of New Hampshire*, Order No. 24,750 (May 25, 2007), companies with risks associated with their distribution operations that are not dissimilar to those faced by Granite State. Under the rate plan, Granite State bears all the risk that earnings may fall short of 9.67 percent. To provide Granite State with an incentive to maximize efficiency and synergy savings from the merger, the rate plan allows Granite State to retain earnings exceeding 9.67 percent, but there is a limit to retention of savings above 11 percent, after which earnings are to be shared equally between ratepayers and stockholders.

Absent special provisions, net synergy savings resulting from a merger would typically flow to stockholders before a rate case and to ratepayers after a rate case. The terms of the rate plan do not relate directly to the matter of synergy savings. However, as Staff indicated at hearing, to the extent synergy savings are achieved, those results will be reflected in Granite State's earnings, whatever the level of savings, and after the rate plan period, the savings will be fully reflected in Granite State's earnings and cost of service.

The concept of a storm contingency fund is not new and we have approved its use on terms similar to those contained in the Rate Plan in other recent cases. *See Public Service Company of New Hampshire*, Order No 24,750, *supra*. In addition, we support the provision to re-evaluate the funding level after two years to avoid potentially large positive or negative balances in the fund. Accordingly, we accept inclusion of the storm contingency fund as part of the rate plan.

As suggested by Staff's testimony, there has been a negative trend in Granite State's recent SAIDI and SAIFI results. To address the important issue of reliability, the rate plan provides for an aggressive reliability enhancement program as well as continuation of a traditional vegetation management program. Inclusion of these programs in the rate plan is appropriate. Allowing Granite State to request rate adjustments to recover certain costs related to its reliability enhancement and vegetation management plans is reasonable in light of Granite State's agreement to essentially "freeze" its distribution rates while at the same time addressing its declining reliability performance and continuing to carry out its duty to provide safe and reliable service.

Lastly, the rate plan imposes certain customer service commitments on Granite State in the form of call answering standards. We agree with Staff that although it may appear call

answering times will be allowed to decline slightly under the Plan compared to the level of service currently experienced by Granite State customers, allowing Granite State a slightly lower level of service while being held to historic customer satisfaction scores should not produce discernible reductions in the level of customer service. In addition, moving to a one call resolution model, while possibly increasing slightly the length of an individual call, should help keep customer satisfaction at a high level by reducing follow-up calls. And in any event, the rate plan provides for the opportunity to review customer service standards in the future and allows for adjustments and corrections to customer service standards, providing further comfort that customer service will not degrade as a result of the merger.

C. EnergyNorth Merger Rate Agreement

In contrast to Granite State, EnergyNorth is currently reporting underearnings. Staff stated that it is earning approximately 5 percent on equity, which is well below its authorized return of 9.83 percent. *See EnergyNorth Natural Gas, Inc.*, 78 NH PUC 117 (1993). In dollar terms, this would amount to a revenue requirement deficiency of something more than $12 million. *See* Joseph F. Bodanza testimony, Schedule JFB-1.

Similar to the Granite State rate plan, the EnergyNorth merger rate agreement prohibits EnergyNorth's recovery of the acquisition premium from the merger or any prior mergers. The two agreements also contain similar provisions for the calculation of costs-to-achieve. In other respects, the EnergyNorth merger rate agreement takes a different approach to the setting of delivery rates than the Granite State rate plan.

Consistent with the petition, the rate agreement postpones any delivery rate increase for at least one year following the merger closing. EnergyNorth may file the first rate case within six months of the merger. The test year would be based on the 12-month period ending with the

quarter immediately preceding the merger closing and rates will be based on the stand-alone EnergyNorth/KeySpan pre-merger cost of service. In the first rate case and any subsequent base rate cases filed within the ten year rate agreement period, EnergyNorth will use a capital structure composed of equal parts of debt and equity unless its actual average common equity ratio falls below 50 percent, in which case any party may argue for use of the average actual capital structure. Staff testified that the proposed imputed capital structure is more balanced that the current capital structure of 40 percent debt and 60 percent equity, and is expected to reduce the overall allowed rate of return, thus avoiding higher rates due to EnergyNorth being disproportionately financed by equity. A rate of return on equity is not specified in the rate agreement and we understand that that would be one of the issues to be decided in the first rate case.

The rate agreement provides for the sharing of net synergy savings between ratepayers and stockholders. The witnesses at hearing discussed the rationale for such a sharing. The Joint Petitioners emphasized that stockholders should be allowed to share in merger savings as a matter of fairness and in order to provide an incentive to maximize synergy savings for the benefit of both customers and stockholders. Staff stated that there would be no synergy savings absent the merger. Without synergy savings, EnergyNorth customers would be paying the full cost of service and their cost in the first rate case could be approximately $1.2 million higher than under the rate agreement. By sharing in the savings, EnergyNorth customers' costs will be 50 percent lower than what the actual savings are. OCA concurred with Staff.

In the first rate case, customers obtain the benefit of a net synergy savings credit in the cost of service of $619,000 annually. The amount of the credit is based on an estimate of the net, steady state savings from the merger allocated to EnergyNorth. Based on the information in the

record, we have no basis for questioning the reasonableness of the estimate or the allocation and we will accept the reasonableness of the credit. In addition, since, as Staff noted, ratepayers will be credited with significant net merger savings before those savings are actually, if ever, realized, the provision is to the advantage of ratepayers.

In order to allow stockholders to share in synergy savings, the rate agreement allows EnergyNorth the opportunity to prove, pursuant to the method set forth in the rate agreement, the net synergy savings realized through the merger and then to add back 50 percent of those savings in the second rate case. Following the first rate case, ratepayers will receive the benefit of projected net synergy savings through a credit to the overall cost of service equal to 50 percent of those projected savings. If there are no savings as a result of the merger, customers will pay the full cost of service following a second rate case. If the merger does result in savings, which means that the cost of service is lower than it would otherwise have been absent the merger, then half of those savings will be added back to the cost of service to allow stockholders to share in the merger savings. EnergyNorth's ratepayers are guaranteed a financial benefit through a credit on projected merger savings following the first rate case, 50 percent of any actual merger savings following a second rate case and all merger saving in all subsequent rate cases. Stockholders will receive 50 percent of realized merger savings between the second and third rate cases. Stockholders, who have financed the merger, bear the risk of any failure to achieve the projected merger savings but will share in 50 percent of realized merger savings for a limited period of time. This aspect of the rate agreement provides a reasonable level of compensation to stockholders for achieved merger savings, savings that benefit ratepayers. The OCA testified that the rate agreement contains a realistic approach for how net synergy savings are to be

proven. According to the OCA, this is the first merger proceeding in which the OCA has agreed to any recognition of future merger savings.

Similar to the Granite State rate plan, the rate agreement allows EnergyNorth to amortize its prudently incurred costs to achieve the merger savings, with a return and using the Commission-approved capital structure, for a ten year period. In the first rate case, the estimated costs to achieve merger savings will be used to arrive at the annual amortization level of $409,203 but in subsequent rate cases that amount is subject to adjustment depending on the costs-to-achieve actually incurred. As with the Granite State rate plan, we understand that the amortization amount in effect from time to time is subject to our review and approval.

Following the rate agreement period, an earnings sharing mechanism will become effective and remain in effect until delivery rates are reset again. As Staff pointed out, if EnergyNorth were to file a rate case in the last year of the rate agreement period and added the savings allowance to the cost of service, the increase in the cost of service would carry on beyond the rate agreement period. This provision helps to limit the sharing of net synergy savings beyond the effective period of the rate agreement.

The merger also requires the approval of the New York Public Service Commission. To ensure that New Hampshire ratepayers are treated at least as favorably as ratepayers in New York, the rate agreement we approve here establishes a method for comparing the merger benefits provided under the rate agreement with merger benefits in New York and if necessary requires EnergyNorth to provide additional credits to customers in the first rate case to provide the equivalent economic benefit. Although EnergyNorth will perform the analysis in the first instance, the other parties may argue for a different result.

The rate agreement addresses concerns of Staff related to the original proposal. The petition proposed that prior to EnergyNorth filing its first rate case all synergy savings would accrue to EnergyNorth and EnergyNorth would be allowed to add 50 percent of the forecasted annual savings to its cost of service in future rate cases. Under that proposal, ratepayers would not share in merger savings until a rate case was initiated. The rate agreement addresses that concern by requiring EnergyNorth to file a rate case within six months of the merger and include a 50 percent credit of forecasted merger savings.

Of greater concern was the proposal to add 50 percent of forecasted merger savings to the cost of service in future rate cases. Substantial merger savings have been forecast but the initial proposal contained no provision for determining whether or not savings have been achieved or the amount of savings. If there were no merger savings or savings below 50 percent of those forecast, not only would there be no or limited financial benefit to ratepayers through a reduced cost of service, but also ratepayers would suffer financial harm through higher rates resulting from adding 50 percent of projected savings to the cost of service. If merger savings were between 50 and 100 percent of those forecast, ratepayers would be receiving less than 50 percent of the savings. If merger savings exceeded those forecast, ratepayers would receive greater than 50 percent of the savings. The rate agreement requires a merger savings proof that ensures stockholders will only share in realized savings and that the savings will be shared equally with ratepayers. It also sets a limit on how long merger savings will be shared between stockholders and ratepayers, whereby ratepayers receive the full benefit of the merger savings when a third rate case is filed.

Maximization of net synergy savings can serve ratepayer interests by helping to lower rates over the long run but that goal can potentially undermine ratepayer interests in reliability,

safety and quality of service if the acquired utility does not maintain these goals as priorities. The original proposal did not address safety and reliability concerns, concerns Staff had brought to our attention prior to the merger filing. The rate agreement contains operating and reporting requirements that address those concerns. Of particular note are emergency response standards set forth in the rate agreement and required spending on cast iron and bare steel main replacement. The rate agreement contains detailed provisions intended to ensure that reliability, safety and customer service are improved.

For example, according to Staff, EnergyNorth reported a service level of 80 percent of calls answered in 40 seconds for 2002 through 2004, 80 percent of calls answered in 120 seconds for 2005, and 80 percent of calls answered in 40 seconds in 2006. As a condition of the merger, EnergyNorth is required to meet or exceed a call center performance standard of 80 percent of calls answered within 30 seconds by the end of the first full calendar year following the merger close, a clear improvement over the level of customer service provided since the KeySpan Corporation/EnergyNorth merger in 2000. As part of the merger integration plan, EnergyNorth's customer information system will be consolidated with the National Grid system some time after the merger. At that point, Staff will work with EnergyNorth to develop a more comprehensive set of customer service standards, including any appropriate changes to the service level.

The EnergyNorth merger rate agreement contains numerous provisions relating to reliability and safety. The CIBS replacement program and specification of specific emergency response times address Staff's concerns regarding the increase in gas leaks and emergency response times. According to Staff, the CIBS replacement program is designed to accelerate the replacement of the cast iron and bare steel mains and services, the pipes most likely to develop leaks. The mandated emergency response times are consistent with those achieved by

EnergyNorth prior to the KeySpan Corporation/EnergyNorth merger and by other New Hampshire gas utilities, and with requirements established in other states.

Local 12012-3 supported all the safety and reliability provisions of the rate agreement, with one major exception. The union's objection to the provision regarding mark-outs of underground gas facilities is the one area of disagreement between any of the parties involved in the docket. Under the rate agreement, EnergyNorth will continue to use exclusively in-house personnel for the marking of underground facilities for a period of not less than two years from the merger closing. Thereafter, if EnergyNorth plans to use outside contractors for this activity, it will notify the Staff. If Staff has any safety concerns, it may request the Commission to open a docket before EnergyNorth implements the change. EnergyNorth would have the burden of showing that any changes will not result in a degradation to service quality, safety and reliability.

The union supports the use of in-house personnel for safety reasons. It argued that the rate agreement leaves the mark-out issue as loose end, leaving open the possibility that a safety issue will arise in the future. The union maintained that the settling parties and Staff have not explained why the Joint Petitioners cannot prove the safety and reliability of outside contractors as part of this docket. In addition, the union can conceive of no rational set of circumstances where the outside contractors would be acceptable.

The rate agreement expressly preserves the status quo regarding the use of in-house personnel for a minimum of two years and provides us the opportunity to review any safety concerns arising out of a change of plans, before such plans could be implemented. Accordingly, we will not reject the settlement nor do we conclude that it is necessary or appropriate to condition our approval of the settlement so that the use of in-house personnel is made a permanent feature of EnergyNorth's operations. In so ruling, however, we wish to make clear

that we will not allow a change in plans to adversely affect safety and reliability and we will carefully scrutinize any proposal to outsource the mark-out function that may come before us.

D. Other Matters

In their petition, the Joint Petitioners described their preliminary expectations for gas supply savings that may result from the merger. They stated, among other things, that the merger would enable the combined entities to continue to investigate and implement ways to optimize the use of their combined gas portfolios. At hearing, Staff indicated that based on its review, there is insufficient evidence to conclude that actual gas savings will be realized from the merger. On the other hand, Staff said it did not expect gas supply costs to increase as a result of the merger. The settlement does not address this issue one way or another. We expect EnergyNorth to continue to investigate ways to reduce gas supply and capacity costs recovered from ratepayers under the cost of gas clause. At the same time, good communication by EnergyNorth about its plans for optimizing the combined gas portfolios is imperative. We will therefore direct EnergyNorth to keep Staff informed on a timely basis about such plans.

We are encouraged by National Grid's plans for ensuring its responsiveness to local needs and are further encouraged by the hearing testimony of the National Grid witnesses about the importance the organization places on compliance with state regulatory requirements and the organization's general strategies and practices encouraging compliance. Of course, good intentions alone do not assure compliance. Although National Grid has experience with the regulatory scheme in New Hampshire on the electric side, New Hampshire's gas industry requirements will be new to the organization. One of the risks of a merger is the loss of local experience as the companies' operations are integrated. We emphasize our expectation that the

implementation of National Grid's integration plans be accomplished with strict attention to compliance with New Hampshire's gas industry and other regulatory requirements.

As part of the approval of the settlement, the Joint Petitioners seek approval for (1) EnergyNorth's participation in National Grid's regulated company money pool, (2) the consolidation of KeySpan's and National Grid's service companies, and (3) National Grid's and affiliates' adoption of KeySpan's three part formula for allocating service company costs that are not directly charged by the service company. Beyond stating generally that these measures will allow National Grid to implement the merger efficiently and committing to comply with the affiliate contracts statute, RSA 366:3, and our affiliate transactions rules, N.H. Code Admin. Rules Puc 2100, they provided few details about the proposed arrangements. We have no objection to these measures in principle. Consistent with the settlement, we will, however, monitor the Joint Petitioners' filing of specific affiliate arrangements, which will be subject to our review, before making any determination with respect to them.

New Hampshire Legal Assistance on behalf of its clients and the Community Action Agencies urged that the merger be conditioned on the continuation and expansion of the utilities' low income programs. The settlement does not address these issues. However, as the OCA pointed out, Granite State's and EnergyNorth's energy efficiency and low income programs will remain in place post merger and no reduction in those programs is expected. On the contrary, the OCA expects that the merger will increase the expertise and potential efficiencies that will result in improvements in program areas on both the gas and electric sides. We note, in addition, that EnergyNorth recently agreed to increase its low income energy efficiency budget by $200,000 as part of the settlement of the thermal billing investigation, *see EnergyNorth Natural Gas, Inc.*, Order No. 24,752 (May 25, 2007). New Hampshire Legal Assistance and the

Community Action agencies may urge the expansion of the utilities' low income programs in the context of dockets specifically devoted to the review and approval of such programs. We are satisfied that the public interest does not require the additional conditions.

E. Motions for Confidential Treatment of Certain Discovery Requests

The Right-to-Know Law, RSA 91-A, 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, invoked here by both EnergyNorth and National Grid, for "confidential, commercial, or financial information." RSA 91-A:5, IV. In *Union Leader Corp. v. New Hampshire Housing Finance Authority*, 142 N.H. 540 (1997), the New Hampshire Supreme Court provided a framework for analyzing requests to employ this exception to shield from public disclosure documents that would otherwise be deemed public records. There must be a determination of whether the information is confidential, commercial or financial information "*and* whether disclosure would constitute an invasion of privacy." *Id*. at 552 (emphasis in original, citations omitted). The "asserted private confidential, commercial, or financial interest must be balanced against the public's interest in disclosure, . . . since these categorical exemptions mean not that the information is *per se* exempt, but rather that it is sufficiently private that it must be balanced against the public's interest in disclosure." *Id*. at 553.

Whether information is "confidential" is an objective test; it is not based on the subjective expectations of the party generating the information. *Id*. at 553. More recently, the Court has expounded upon its analytical approach to balancing the interests for and against public disclosure of information in the context of a claim that public disclosure would constitute an invasion of privacy under RSA 91-A: 5, IV:

> [w]e engage in a three-step analysis when considering whether disclosure of public records constitutes an invasion of privacy under RSA 91-A:5, IV. First, we

> evaluate whether there is a privacy interest at stake that would be invaded by the disclosure. If no privacy interest is at stake, the Right-to-Know Law mandates disclosure.
>
> Next, we assess the public's interest in disclosure. Disclosure of the requested information should inform the public about the conduct and activities of their government. Finally, we balance the public interest in disclosure against the government interest in nondisclosure and the individual's privacy interest in nondisclosure.

Lamy v. New Hampshire Public Utilities Comm'n, 152 N.H. 106, 109 (2005) (citations omitted).

If public disclosure of confidential, commercial or financial information would harm the competitive position of the person from whom the information was obtained, the balance would tend to tip in favor of non-disclosure. *See Union Leader Corp. v. New Hampshire Housing Finance Authority*, 142 N.H. at 554 (citing *National Parks and Conservation Ass'n v. Kleppe*, 547 F.2d 673 (1976)). Similarly, harm to ratepayer interests from public disclosure is another reason that may justify confidential treatment. *See e.g., Public Service Company of New Hampshire*, Order No. 24,695, slip op. at 31 (2006). On the other hand, the fact that information directly tells the public about what the Commission is "up to" weighs in favor of public disclosure. *Lamy,* 152 N.H. at 111. Information from the Commission's files that does not relate to the Commission's conduct and activities and is used solely to discover additional information about the agency, i.e., the "derivative" use of information, while not absolutely exempt from public disclosure, ordinarily weighs little in favor of public disclosure. *Id.* at 113 (referring to customer contact information and the possibility it could be used to seek information from those customers).

The Commission's rule on requests for confidential treatment, N.H. Code Admin. Rules Puc 203.08, is designed to facilitate implementation of this balancing test. Consistent with RSA 91-A, the Commission requires petitioners to: (1) provide the material for which confidential

treatment is sought or a detailed description of the types of information for which confidentiality is sought, (2) reference specific statutory or common law authority favoring confidentiality, and (3) provide a detailed statement of the harm that would result from disclosure to be weighed against the benefits of disclosure to the public.

According to EnergyNorth, its responses to Staff 1-31 and 1-32 regarding system upgrades and capacity contain information that, if publicly disclosed, would likely harm its competitive interests and the interests of ratepayers who would ultimately bear the burden of increased contract costs resulting from disclosure. We have routinely upheld confidential treatment for such information on similar grounds in cost of gas dockets, *see e.g., EnergyNorth Natural Gas, Inc. d/b/a KeySpan Energy Delivery New England*, Order No. 24,744, slip op. at 7-8 (2007), and we do so here.

In addition, none of EnergyNorth's responses nor any of the data request responses for which National Grid seeks confidential treatment were introduced into the record for our consideration and, to our knowledge, were not relied on by the parties to support their positions on the settlement. Because this information is sensitive financial and commercial information and does not shed any appreciable light on the Commission's conduct and activities, we find that EnergyNorth's and National Grid's asserted interests in non-disclosure of outweigh the interest in public disclosure. In the absence of any objection to the motions for confidential treatment that might assert a persuasive interest in public disclosure, we grant the motions. Consistent with our practice, the confidential treatment provisions of this order are subject to our on-going authority, on our own motion or on the motion of Staff, any party or any other member of the public, to reconsider the protective order in light of RSA 91-A, should circumstances so warrant.

In reaching this conclusion, we note that the validity of EnergyNorth's and National Grid's argument for confidential treatment of information provided to ratings agencies contained in response to Staff 1-19 and DPS 21 is not clearly self evident. The companies object to public disclosure of such information by the Commission even though the ratings agencies themselves may publicly disclose the same information in connection with the publication and discussion of their ratings. Apparently, they worry about public disclosure of the information without the additional filter provided by the ratings agencies, experts in interpreting and publishing financial data, or by themselves, experts in the preparation of information for public dissemination consistent with federal securities laws. Nevertheless, on the basis of the record before us, we are not prepared to conclude that their concerns are wholly unfounded or are outweighed by the interest in public disclosure.

F. Conclusion

We have discussed the substantive terms of the settlement in some detail above and our reasons for concluding that the settlement meets applicable standards. In addition, the fact that the parties involved in this docket represented a diversity of interests and that the issues were diligently explored and negotiated at length gives us further confidence that the result of the settlement are reasonable and in the public interest.

Based upon the foregoing, it is hereby

ORDERED, that the settlement is APPROVED; and it is

FURTHER ORDERED, that the motions for confidential treatment are granted as discussed above; and it is

FURTHER ORDERED, that Granite State shall file a compliance tariff with the Commission on or before August 1, 2007.

By order of the Public Utilities Commission of New Hampshire this twelfth day of July, 2007.

Thomas B. Getz Chairman	Graham J. Morrison Commissioner	Clifton C. Below Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary