STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

DG 07-101

ENERGYNORTH NATURAL GAS, INC. d/b/a
KEYSPAN ENERGY DELIVERY

Petition for Approval of a Firm Transportation Agreement
with Tennessee Gas Pipeline Company

Order Approving Settlement Agreement

O R D E R N O. 24,825

February 29, 2008

APPEARANCES: Sarah B. Knowlton, Esq., of McLane, Graf, Raulerson, and Middleton, and Thomas P. O'Neill, Esq., on behalf of EnergyNorth Natural Gas, Inc. d/b/a KeySpan Energy Delivery New England; Kenneth E. Traum, of the Office of the Consumer Advocate, on behalf of residential utility ratepayers; and Edward N. Damon, Esq. for the Staff of the New Hampshire Public Utilities Commission.

I. PROCEDURAL HISTORY

On September 14, 2007, EnergyNorth Natural Gas, Inc. d/b/a KeySpan Energy Delivery New England (EnergyNorth or the Company) filed with the Commission a petition for approval of a firm transportation agreement with Tennessee Gas Pipeline Company (TGP) to provide EnergyNorth additional capacity of 30,000 MMBtus[1] per day on the Concord Lateral. The Concord Lateral is TGP's northernmost branch pipeline off its main pipeline, originating in Dracut, Massachusetts and terminating in Concord. In connection with the agreement, TGP would construct and operate the facilities necessary to render firm transportation service and EnergyNorth would incur an annual demand cost of $4,380,000. Service would commence on the latter of November 1, 2009 or the date on which TGP is able to render service to EnergyNorth for a primary term of twenty years. The filing was accompanied by supporting

[1] An MMBtu is one million British thermal units of heat energy.

testimony of Elizabeth D. Arangio, Director of Gas Supply Planning, Theodore Poe, Jr., Manager of Energy Planning, John S. Stavrakas, P.E., Director of Engineering, and Paul M. DeRosa, Lead Pricing Analyst.

On October 4, 2007, the Office of Consumer Advocate (OCA) filed its notice of intent to participate in this docket on behalf of residential utility consumers consistent with RSA 363:28. On October 9, 2007, the Commission issued an order of notice establishing a pre-hearing conference, which was held at the Commission on November 8, 2007. The order of notice specified that the following issues, among others, would be investigated: (1) whether EnergyNorth's investigation and analysis of the alternatives for satisfying the resource need is reasonable; and (2) whether EnergyNorth's entry into the long term arrangement with TGP for additional pipeline capacity is prudent and in the public interest. Following the pre-hearing conference, the Company, OCA and Staff met in a technical session and agreed upon a proposed procedural schedule that was submitted by Staff on November 13, 2007, and approved by secretarial letter the following day. Revisions to the procedural schedule proposed by the parties and Staff were granted by secretarial letters on January 3, 15 and 29, 2008. On November 16, 2007, EnergyNorth filed a motion for protective order and confidential treatment regarding its response to Staff's data request Tech1-3.

Staff filed the testimony of John B. Adger, Jr. and Yavuz Arik of Liberty Consulting Group (Liberty) on January 10, 2008. Their testimony evaluated EnergyNorth's proposal to enter into the agreement with TGP and certain alternative options. On February 1, 2008, EnergyNorth filed the surrebuttal testimony of Elizabeth D. Arangio. A settlement agreement between EnergyNorth and Staff was filed on February 8, 2008. On February 13, 2008, EnergyNorth filed a motion for protective order and confidential treatment regarding certain responses to Staff's data requests and attachments to the Company's surrebuttal testimony. A hearing on the settlement agreement was held on February 14, 2008. On February 29, 2008, Staff filed its recommendation supporting the Company's requests for confidential treatment.

II. SETTLEMENT AGREEMENT

Under the settlement agreement, EnergyNorth and Staff agreed that the Company's decision to enter into the TGP agreement is prudent and consistent with the public interest. Accordingly, the Company and Staff agreed that the TGP agreement should be approved. In addition, the settlement agreement provided that the Company, Staff and OCA will participate in a planning conference in or around July 2009 in which the Company will present to the OCA and the Staff its plans to meet its incremental gas supply need associated with the Concord Lateral upgrade for the 2009/2010 heating season. Particular questions to be addressed include the following:

- What the Company has done, and what it intends to do, to ensure the broadest possible array of alternatives for firm, peaking gas supplies delivered to Dracut for the ensuing winter season;
- How the Company expects to use all of the capacity available to it on the Concord Lateral for the ensuing winter season to minimize costs to its customers in New Hampshire.

The Company will also describe its plans to issue a request for proposal to potential suppliers to meet its overall portfolio needs for the 2009-2010 heating season. Review by the Staff and OCA of the Company's plans does not relieve the Company of its obligation to prudently operate its business and obtain gas supplies on a least cost basis nor does it bind Staff or OCA to a particular position regarding the adequacy and/or effectiveness of the Company's plans.

III. POSITIONS OF THE PARTIES AND STAFF

A. EnergyNorth

EnergyNorth supported its petition with testimony describing the proposed agreement with TGP and the analysis undertaken by the Company resulting in its conclusion that the proposed agreement is needed and is the least cost alternative under a range of pricing and demand scenarios, and compares favorably to the range of reasonably available alternatives based on price and non-price factors. The Company's analysis focused on a comparison of the proposed agreement with TGP with certain on-system peaking options available to the Company involving the addition or expansion of supplemental storage and vaporization facilities.

The Company also considered the possibility of using demand-side management options to satisfy the forecasted need but concluded that such options could not provide the level of resources required to meet forecasted customer demand over the Company's planning horizon. The Company stated that the customer participation rates and money needed to achieve the necessary incremental savings over and above the savings already achieved by existing energy efficiency programs and included in the demand forecast would be extraordinary and not realistically achievable. The Company also expressed concern about the reliability of demand-side management options to meet peak day demands.

According to EnergyNorth, its base case design day forecast submitted in Docket No. DG 06-105 shows a minimum need for incremental peak day delivery capability of 5,310 MMBtus per day on the peak day beginning in 2009/2010, increasing to 19,660 MMBtus per day by 2010/2011. In addition, the forecast shows a minimum need for incremental peak season supply totaling 53,300 MMBtus per day beginning in 2008/2009, increasing to 128,000 MMBtus per day by 2010/2011.

According to EnergyNorth, capacity on the Concord Lateral is currently fully subscribed. TGP's upgrade of the Concord Lateral would create incremental capacity that EnergyNorth could use to transport gas supplies from Dracut, where the Tennessee Gas Pipeline interconnects with both the Maritimes & Northeast Pipeline and Portland Natural Gas Transmission System, to the Company's citygates in New Hampshire. The Company stated that the upgrade would allow the Company to purchase gas supply at Dracut from a number of sources, thus increasing the reliability and diversity of supply within the Company's overall portfolio.

To facilitate the proposed agreement, TGP would need to construct a new mid-point compressor station and expand its existing meter station to accommodate the incremental volumes eligible for transport on the Concord Lateral. EnergyNorth stated that TGP's costs of completing the Concord Lateral upgrade are reflected in the rate negotiated by the Company and TGP. For the twenty-year period covered by the proposed agreement, EnergyNorth would pay TGP a fixed monthly reservation (demand) rate of $12.17 per dekatherm[2] and the maximum applicable commodity rates under TGP's Federal Energy Regulatory Commission (FERC) schedule FT-A, exclusive of surcharges and applicable fuel and lost and unaccounted for charges, in exchange for which the Company would be provided with a maximum daily transportation quantity of 30,000 MMBtus on a peak day and peak season basis.[3]

The proposed arrangement with TGP is documented by a Precedent Agreement dated August 29, 2007 between the Company and TGP to which is attached a Gas Transportation Agreement (For Use Under FT-A Rate Schedule) and a Firm Transportation Negotiated Rate

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[2] A dekatherm (Dth) is equivalent to one MMBtu or ten therms.

[3] Since the total contract cost is the same regardless of the number of units purchased by the Company from TGP between the minimum needed quantity of 19,660 MMBtus per day and the contract quantity of 30,000 MMBtus per day, the Company chose to enter an agreement for the maximum capacity available from TGP given its investment to complete the Concord Lateral upgrade. According to EnergyNorth, if the Company had contracted for additional capacity above the specified maximum daily transportation quantity, TGP would have increased the total cost of the contract.

Letter Agreement. The Precedent Agreement memorializes the whole arrangement until such time as the Gas Transportation Agreement is executed before the in-service date of November 1, 2009. The Firm Transportation Negotiated Rate Letter Agreement is filed with FERC and is subject to FERC approval.

In order to compare the relative price and non-price attributes of a pipeline project expanding the capacity available to serve EnergyNorth's service territory versus a distribution project that would add on-system storage and vaporization capabilities, the Company first assessed the type and size of on-system facilities that would be needed. The Company determined that two potential on-system alternatives would provide an additional 25,000 MMBtus per day[4] of incremental vaporization output capability: the construction of new liquefied natural gas (LNG) facilities in Concord to add 0.3 Bcf[5] storage capability, with and without liquefaction, and the construction of new and expanded propane facilities in Concord and Nashua to add 0.15 Bcf of storage capability at each of the locations. In the Company's view, no other alternative would provide the necessary level of resources required to meet forecasted customer demand over the Company's long term planning horizon or that would interconnect directly with the Company's distribution system on a safe and reliable basis.[6]

Next, the Company prepared capital and operating cost projections for the alternatives to the Concord Lateral upgrade and calculated the levelized, annual costs of the alternatives, exclusive of supply costs, for comparison to the annual demand charges for the Concord Lateral upgrade. Finally, the Company developed a linear-programming (LP) model designed to

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[4] According to the Company, this was the largest on-system capability that could be added without a costly distribution system upgrade.
[5] A Bcf is one billion cubic feet gas and is approximately equivalent to 1,000,000 dekatherms of heat energy.
[6] The Company stated it also met with both Portland Natural Gas Transmission System and Maritimes and Northeast Pipelines LLC to discuss the possibility of a direct connect to the Company's distribution system but it quickly concluded that a direct connection was not a viable option.

identify the most cost-effective resource addition, inclusive of projected supply costs. The output of the LP model indicated that the Concord Lateral upgrade is a more cost effective alternative for meeting the identified need for incremental capacity than any of the on-system alternatives. Specifically, EnergyNorth's annual total contract cost for the proposed agreement with TGP would be $4,380,000, compared to approximately $8.1 million for an LNG facility without liquefaction, approximately $11 million for a new LNG facility with liquefaction, and $6.5 million for a propane facility.

The Company also concluded that non-price factors weighed in favor of the Concord Lateral upgrade and against the alternatives. For example, the use of on-system alternatives would require trucking necessary to transport LNG or propane to the Company's facilities, which the Company believed presented safety and reliability concerns not implicated by the Concord Lateral upgrade. The Company also stated that there is a greater likelihood of operational contingencies with the use of on-system alternatives than with a pipeline facility, including the need to carefully mix supplies of propane-air with pipeline supplies of natural gas in order to prevent harm to customer appliances.

Based on its review of EnergyNorth's analysis, Liberty concluded that if peak period supplies are available on a firm basis at Dracut for an average premium of $12 per MMBtu or less over the Henry Hub price, which is a realistic assumption in Liberty's view, then those supplies are the most cost effective solution to EnergyNorth's peaking problem at this time. Liberty recommended that EnergyNorth be required to demonstrate that supplies will be available on a firm basis at the inlet to the Concord Lateral on terms that are competitive with its on-system alternatives for peaking supplies.

The Company responded that the recommended showing can be made. The Company contacted four suppliers which are active at Dracut and with which the Company has done business to obtain non-binding indicative pricing information for the 2009-2010 heating season. Although the pricing which the Company received varied, depending on the load factor of the need, the Company stated that the pricing information was consistent with its experience buying firm supplies delivered at Dracut. In the Company's view, the pricing is indicative of what the market expects gas supplies to cost in 2009-2010 based on today's market and, as evidenced by the wide range of indicative pricing received, there are likely costs built into the pricing to allow for the unknowns of what may or may not materialize in the 2009-2010 market at Dracut.

The Company stated that one of the three suppliers responding to the Company's request provided a price quotation very near the pricing assumptions made by the Company. However, the Company did not recommend locking into a contract now. First, the Company noted that the most recent studies and reports corroborate the market expectation that due to incremental gas supplies entering the Northeast, the basis price for gas supply is expected to decrease over time. Second, the volumes the Company quoted to the suppliers reflect minimum usage of the proposed contract. The Company has not taken into account the effects of adding the TGP contract into its overall portfolio and the changes it would have on existing resources. For example, the addition of the Concord Lateral capacity to the Company's portfolio could enable the Company to purchase supply at Dracut in lieu of its current citygate service, and the addition of the Concord Lateral capacity could allow the Company the opportunity to optimize the use of its existing underground storage and to supplement LNG and propane supplies, including its dedicated LNG liquid contract with Distrigas. In the Company's view, it would be prudent to issue the request for proposals for the necessary supply in the spring or summer of 2009. The

Company explained that notwithstanding the proposed settlement agreement, it remained under an obligation to prudently purchase its gas supplies, including the purchase of supplies in 2009.

EnergyNorth explained that TGP had recently filed its application for FERC approval and it expects to receive FERC approval in early 2009. This would allow construction of the necessary facilities in the spring and summer of 2009, in time for increased firm transportation service commencing November 1, 2009.

In closing, the Company stated that it had identified an incremental need for citygate deliverability of gas to reliably serve its customers. The Company conducted an in depth analysis of various options to meet that demand and has determined that the Concord Lateral upgrade and the proposed arrangement with TGP is the most prudent and cost effective means of meeting that need. The Company requested that the Commission find the settlement agreement to be in the public interest and to approve it in its entirety. Since the Company needs to notify TGP by the end of February if it is not going to proceed with the proposed arrangement, the Company requested an order approving the settlement agreement by that time.

B. OCA

The OCA stated that although it did not sign the settlement agreement between the Company and Staff, that fact should not be interpreted as opposition by the OCA to the settlement. According to the OCA, resource constraints prevented the OCA from devoting sufficient time to the docket and gaining sufficient comfort with the settlement. OCA stated it would like to see more emphasis placed on demand side management and energy efficiency options as part of any solution to increased gas demand in the future.

C. Staff

Staff stated it supports the settlement agreement for the reasons discussed by Liberty Consulting Group. Liberty Consulting Group was engaged by the Commission to evaluate the proposed agreement with TGP and review EnergyNorth's analysis in support of its proposal. Of particular relevance to this docket, Liberty had recently advised the Staff of the Connecticut Department of Utility Control (DPUC) in connection with a proposal for an LNG-based peaking facility that was approved by the DPUC and recently commenced operation.

Liberty restricted its evaluation of the alternatives to the LNG with liquefaction option because of service quality issues associated with the use of propane air in some locations and because the LNG without liquefaction option presents issues of access to and terms for the provision of LNG supply that could compromise its viability as an option. Liberty stated, for example, that the Company's contracts for LNG supply limit the quantities available during peak winter months and the availability of sufficient trucks for transporting LNG from the source to the Company's peaking facilities can be a binding constraint. In addition, according to Liberty, it is widely understood that providers of LNG give better prices to customers which have their own liquefaction capability, thus making it a more attractive option in this respect.

Liberty did not analyze a demand-side management alternative for meeting the incremental capacity need because it did not have any data that would have allowed that alternative to be put into the mix of choices. Accordingly, it took no position on the Company's rationale for excluding demand-side management as an option at this time. Liberty agreed with the OCA that, besides demand-side management programs, the use of interruptible rates is an alternative that could be examined in connection with meeting a peaking demand.

Liberty identified several concerns and shortcomings regarding EnergyNorth's analysis. For example, it found that the Company had double counted some of the component costs of the on-system alternatives and had used several inappropriate parameters for its revenue requirements analysis, further increasing the apparent costs of the on-system alternatives. Liberty also had some methodological questions about the Company's optimization analysis which it addressed with the Company.

Liberty, with Staff's assistance, adjusted the Company's analysis at each stage. Based on information provided by EnergyNorth and information from its Connecticut experience, Liberty estimated that approximately $56 million would be required for a 0.3 Bcf tank with 25,0000 MMBtu sendout capacity and liquefaction capability. Liberty observed that smaller facilities would be even more costly per unit of capacity because of costs that do not vary in size. Comparing the levelized annual capacity costs derived from its analysis, Liberty stated that the estimated capacity cost of the Concord Lateral upgrade, adjusted in order to make a fair comparison, was $3.7 million while the on-system LNG with liquefaction alternative was estimated to be approximately $6.5 million, a difference of approximately $2.8 million.

One of the important adjustments regarding the supply costs of the alternatives being analyzed was to the estimated basis differential[7] for gas delivered to the inlet of the Concord Lateral. Prices at that location are necessary to run the Company's LP optimization model since the Company's proposed arrangement with TGP and one of its current gas supply resources require it.

[7] Basis differential is the observed difference in price between gas available at a receipt point and gas delivered to a delivery point, in this case from Henry Hub to the inlet of the Concord Lateral at Dracut. According to Liberty, a large differential reflects the value of pipeline transportation between a gas source and New England during periods of transportation constraints, such as when the weather is very cold.

Liberty explained that the Company added $2.30 per MMBtu to the Henry Hub price during the winter months as the estimated basis differential. Liberty expressed concern that while a $2.30 per MMBtu basis differential may be appropriate for baseload supplies, it is not representative of the market differentials that would be likely during periods of peak demand.

According to Liberty, the data suggest that the daily basis between Henry Hub and either Dracut or TGP Zone 6 is approximately $0.50 except on cold winter days when the differential goes much higher. Liberty concluded that the $2.30 per MMBtu number is much too low to be applied to the peaking supplies that are an important part of the analysis. Liberty stated that the basis differentials observed during the very cold month of January 2004 should be considered indicative of what they would be when the incremental capacity would be called on. Liberty noted that although the basis differential went as high as $57 during January 2004, the weighted average basis differential for EnergyNorth's spot purchases in that month was approximately $12 per MMBtu. Liberty observed that even though basic gas prices are higher, and oil prices are much higher, than they were in 2004, it relied on the $12 per MMBtu value for its analysis because that number has actually been observed.

According to Liberty, the on-system LNG with liquefaction alternative would allow EnergyNorth to buy gas during the summer when the basis differential is only about $0.50 to $0.60 per MMBtu. Although hard to predict, the basis differential associated with the proposed arrangement with TGP may be higher if supply has to be purchased in the winter. Liberty stated that the difference between the estimated capacity costs of the two alternatives, approximately $2.8 million, is in effect available to offset this higher basis differential.

After making its suggested changes to the inputs and parameters involved in the Company's analysis, Liberty recomputed the levelized revenue requirements associated with each alternative and repeated the Company's optimization analysis to see how the results would change when Liberty's values were substituted for the Company's.

In retesting the higher basis as a surcharge on the incremental Concord Lateral capacity, Liberty found that for 2009-2010 the optimization model still picked the Concord Lateral option over the LNG with liquefaction alternative. When Liberty reran the model with 2011-2012 gas prices and the 2004 basis differential, the model still picked the Concord Lateral option. Testing even higher differentials, Liberty found that with a basis differential of $16.93 per MMBtu (which is 40% higher than that experienced in January 2004) the model split the requirements between the Concord Lateral and Liberty's LNG with liquefaction alternative. Liberty also found that the model was still splitting the requirement at $21.93 per MMBtu, though more of it would be supplied by the LNG alternative.

Liberty concluded that the proposed agreement with TGP provides cost effective access to sources of peak period supplies that the Company requires. Liberty agreed with the Company that, besides the question of cost, there are some attractive aspects of the Concord Lateral upgrade option, including the fact that the availability of that capacity would allow the Company to make certain adjustments within the portfolio that might lower other costs and have the effect of offsetting some of the cost of the proposed agreement with TGP. Liberty stressed that the Concord Lateral upgrade is not a resource that the Company can use to meet its requirements for peaking capacity but rather is a means of providing access to potential sources of peaking capacity that are in addition to the Company's existing on-system peaking plants.

Liberty recommended that the Company be required to show that those supplies will be available on a firm basis at Dracut on terms that are competitive with its on-system alternatives for peaking supplies. In Liberty's view, for the period of interest in Liberty's analysis, if peak period supplies are available on a firm basis at Dracut for an average premium of $12 per MMBtu or less over the Henry Hub price, then those supplies are the most cost effective solution to EnergyNorth's peaking problem at the present time. Accordingly, Liberty recommended that the Company be required to show that firm peaking supplies can be made available over the next five years at Dracut at a price that would not upset the comparisons made in its analysis. Liberty expressed confidence that on the basis of its experience with the New England gas markets, such a showing could be made and thus concluded that the Company's proposal to enter into the TGP contract should be approved once the requisite showing was made.

At hearing, Liberty confirmed that EnergyNorth had made the showing Liberty had recommended. Liberty first noted that one of the suppliers approached by the Company had provided a quote that was in the acceptable range and two others expressed a willingness to offer firm supply at Dracut but at a daily price. Liberty also noted that two motivated sellers were not asked for indicative pricing due to on-going negotiations regarding other supply arrangements. Finally, Liberty confirmed that longer term studies suggest that winter period basis differentials will decline because of increases of LNG supply to New England from projects such as Canaport and Neptune and because of increased capacity available to the Northeast from multiple pipeline projects.

Liberty discussed the planning conference provided for in the settlement agreement. At the planning conference to be held in July 2009, the Company will review its approach to obtaining supply before issuing requests for proposals. The objective will be to look at the widest possible array of supply alternatives, which will likely include call options priced at monthly or daily indexes and delivered peaking services. The Company will also discuss the anticipated use of all Concord Lateral capacity and on-system peaking facilities.

Liberty also noted that questions regarding the Company's longer term options for meeting its growing requirement for peak period capacity remain to be addressed. Liberty stated that continued load growth in the future will pose a problem similar to that addressed by the Company's proposed agreement with TGP. Liberty stated that capacity choices involve long lead times[8] and if the Company can foresee a requirement for additional capacity as soon as three years from now as indicated by one forecasting model used for some of the discovery responses submitted by the Company in this docket, the time to start planning for the next increment of capacity is now. Liberty urged that given the lengthy nature of the facility siting and approvals process, consultations to support the possible development of on-system options should begin soon. Liberty opined that those issues could be addressed as part of the Company's integrated resource planning process.

IV. MOTIONS FOR PROTECTIVE ORDER AND CONFIDENTIAL TREATMENT

A. Motion for Protective Order and Confidential Treatment Regarding Response to Staff Data Request Tech 1-3, filed on November 16, 2007

EnergyNorth requested that the Commission issue a protective order giving confidential treatment to certain computer source code and ancillary computer files in response to Staff's Data Request Tech 1-3, which requested discovery of the text files for the linear programming (LP) computer model used by the Company to evaluate the proposed Concord Lateral and potential alternative projects. EnergyNorth asserted that the text files requested were developed internally by EnergyNorth and have commercial value, and if publicly disclosed, the model, or services based on the model, could be sold to gain a commercial advantage. EnergyNorth claimed that such disclosure would be giving away EnergyNorth's own work product, resulting

[8] As an example, Liberty related that even with a site in hand and a willing community, it took a Connecticut gas utility six and a half years to go from the initial proposal to the DPUC for an LNG-based peaking facility to the facility being placed in service.

in a commercial disadvantage to the Company. EnergyNorth maintained that the LP model it developed constitutes confidential commercial information and stated it does not disclose the information to anyone outside of its corporate affiliates and their representatives. EnergyNorth requested that the protective order also be extended to any discovery, testimony, argument, or briefing relative to the confidential information.

B. Motion for Protective Order and Confidential Treatment Regarding Information Provided in Certain Responses to Staff's Data Requests and Attachments to Surrebuttal Testimony, Filed on February 13, 2008

EnergyNorth requested that the Commission issue a protective order giving confidential treatment to Staff data requests 1-20 (an attachment that includes a summary of bid responses for the fall 2007 RFPs for supplies), 2-23 (daily effective degree day data for Manchester), 2-24 (Attachment E contains bidder and price quotes for the Dracut 20,000 dth RFP dated July 31, 2007), 2-27 (Attachments A-E include daily and monthly Henry Hub pricing and Attachments F-J include daily Dracut pricing between September 2003 and September 2007), 2-28 (Attachments A-F include monthly pricing for propane for the past 5 years), 2-29 (Attachments A-F contain purchases by supplier and price in January 2004), 2-34 (correspondence with AES/Granite Ridge re potential purchase of incremental services), Tech 2-1 (Attachment A contains time-series Platt's/Inside FERC monthly settlement prices), and 3-22 (Amendment No. 2 to the natural gas firm peaking agreement with Granite Ridge), as well as attachments 2-8 to the surrebuttal testimony of Elizabeth D. Arangio (attachments contain listing by name of gas suppliers solicited as part of the RFP process, price quotes for the 2009/2010 peak season at Dracut, and market intelligence on projected costs of natural gas from third-party consultants).

The Company asserted that with the exception of its response to Staff 2-23 and Tech 2-1, all of the listed data responses, as well as attachments EDA-2 through 8, contain pricing information and responses to requests for proposals that constitute confidential information that is exempt from public disclosure under RSA 91-A. In addition, EnergyNorth claimed it has a contractual obligation to keep the information provided by potential gas suppliers in the RFP responses confidential and that the release of that information would likely have a negative impact on the responses and information in future RFPs. EnergyNorth stated that this information is similar to that which the Commission has routinely provided protective treatment in a number of cost of gas and other proceedings. EnergyNorth maintained that the information provided in response to Staff 2-23 and Tech 2-1 is proprietary to third-party vendors and that it had an obligation to maintain the information in confidence under its arrangements with those vendors. EnergyNorth stated that it maintains the pricing information and the information provided by third party vendors confidentially and does not generally make it available to third parties. The Company asserted that release of the information for which confidential treatment is sought is likely to result in a competitive disadvantage for the Company in the form of less advantageous or more expensive gas supply contracts since suppliers possessing the confidential information would be aware of EnergyNorth's expectations regarding gas supply contracts and other contract terms, and would be unlikely to propose to supply such goods and services on terms significantly more advantageous to the Company.

Finally, EnergyNorth requested that Staff's outside consultant be prohibited from using the confidential information for any purpose other than for services provided to the Commission and, specifically, that the consultant return to the Commission or EnergyNorth at the conclusion of the consultant's services all materials containing any of the confidential material and be prohibited from using the confidential information for any other client it may have or for its own purposes.

At hearing, Staff requested that the Company provide additional support for granting confidential treatment for certain of the items identified by the Company in its motion, relating to Henry Hub pricing and Dracut pricing (2-27), propane pricing (2-28), and certain monthly settlement prices (Tech 2-1). The Company responded that this information is obtained from various third parties with which the Company has a contractual obligation to maintain the information in confidence.

V. COMMISSION ANALYSIS

A. Merits

N.H. Code Admin. Rules Puc 203.20(b) provides that the Commission will approve a disposition of any contested case by settlement if the Commission determines that "the result is just and reasonable and serves the public interest." For the reasons set forth below, we find that the settlement agreement satisfies these standards and we therefore approve it.

We note that the decision of whether to approve the proposed arrangement between EnergyNorth and TGP is an important one involving a long term commitment of substantial ratepayer dollars, $4,380,000 for 20 years, not including the supply costs. Moreover, as reflected in its direct testimony in Docket No. DG 06-105, Staff had initially expressed skepticism about using a new pipeline project, which is often associated with high fixed capacity costs and low variable commodity costs, to meet a low load factor, i.e., peaking demand increment, which is normally satisfied at least cost with peaking capacity and associated supplies.[9] Under such rather unusual circumstances, we believe it is reasonable to review the prudence of the Company's proposal in advance of the final decision to enter the proposed arrangement rather than after the fact as is customary.

[9] Liberty also maintained that EnergyNorth's requirement is for peak period supplies which is normally met by peaking capacity.

The Company has performed a detailed analysis of the alternative supply oriented solutions with input from its pricing analyst, engineers, and gas planners, and documented the analysis at some length in testimony. In cooperation with Staff, Liberty, an outside expert with recent relevant experience with the costs of constructing and operating LNG-based peaking plants, has reviewed the Company's analysis and carefully evaluated the proposed agreement between EnergyNorth and TGP in light of a likely on-system, LNG-based peaking alternative. Liberty changed the Company's inputs and parameters about which it had doubts, addressed methodological questions about the Company's LP optimization model with the Company, and reran the model before finally satisfying itself that the Company's fundamental conclusion, namely that the proposed agreement with TGP represents the preferred solution for meeting the Company's need for incremental capacity, is sound. The Company and Liberty have conducted thorough evaluations and reached the same conclusions. We are persuaded that, as agreed to in the settlement, the Company's decision to enter into the TGP agreement is prudent and consistent with the public interest.

Of course, decisions must still be made about the supplies that will be acquired to take advantage of the incremental capacity on the Concord Lateral. That will be the focus of the planning conference between the Company, Staff and OCA to be held in July 2009. The Company recognizes, and we agree, that notwithstanding the settlement, it remains under an obligation to prudently purchase its gas supplies, including the purchase of supplies in 2009. Beyond the issues to be discussed at the planning conference, Liberty noted that capacity choices of the kind faced by the Company in this case require long lead times and advance planning.

B. Motions for Protective Order and Confidential Treatment

The Right-to-Know Law provides each citizen with the right to inspect all public records in the possession of the Commission. *See* NH RSA 91-A:4, I. The statute contains an exemption, invoked here, for "confidential, commercial, or financial information." RSA 91-A:5, IV. Our applicable rule, N.H. Code Admin. Rules Puc 203.08, is designed to facilitate the implementation of the statute as it has been interpreted by the courts. In most cases, a balancing test is used to determine whether confidential treatment should be granted. *See e.g., Union Leader Corp. v. New Hampshire Housing Fin. Auth.*, 142 N.H. 540 (1997).

We note that Staff has concluded that grounds exist for granting the two motions for confidential treatment and that much of the information for which such treatment is sought is similar to information for which the Commission has granted confidential treatment in the past. In addition, the information in these responses are not publicly available elsewhere. As to such information, in balancing the interests for and against public disclosure of the information for which confidential treatment is sought, we are persuaded on the basis of the record in this docket that the interests of EnergyNorth, and ultimately its ratepayers, as well as the legitimate interests of third parties in non-disclosure outweigh the public's interest in obtaining access to the information.

We will therefore grant confidential treatment to the extent set forth above. Consistent with past practice, the confidential treatment provisions of this order are subject to the on-going rights of the Commission, on its own motion or on the motion of Staff, any party or any other member of the public, to reconsider in light of RSA 91-A, should circumstances so warrant.

Based upon the foregoing, it is hereby

ORDERED, the settlement agreement is approved; and it is

FURTHER ORDERED, that the motions for protective order and confidential treatment are granted to the extent set forth above.

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of February, 2008.

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

Attested by:

ChristiAne G. Mason
Assistant Executive Director & Secretary