

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DG 07-129

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

2008 Summer Season Cost of Gas

**Order Approving Cost of Gas Rates and
Apportioning the Interest Earned on
Over-Recovery of Environmental Remediation Costs**

ORDER NO. 24,849

April 23, 2008

APPEARANCES: Steven V. Camerino, Esq., of McLane, Graf, Raulerson, and Middleton, and Thomas P. O'Neill Esq., Senior Counsel, 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; and Edward N. Damon, Esq. for the Staff of the New Hampshire Public Utilities Commission.

I. PROCEDURAL HISTORY

On January 11, 2008, pursuant to *EnergyNorth Natural Gas, Inc. d/b/a KeySpan Energy Delivery New England*, Order No. 24,797 (October 31, 2007), the Commission issued an order of notice opening the 2008 summer period Cost of Gas (COG) docket for EnergyNorth Natural Gas, Inc. d/b/a KeySpan Energy Delivery New England (EnergyNorth or the Company) and setting a prehearing conference for January 31, 2008. Order No. 24,797 approved EnergyNorth's 2007-2008 winter period COG rates and reserved two issues for further inquiry and consideration in EnergyNorth's 2008 summer period COG proceeding, *i.e.*, the application of interest earned on the environmental remediation cost (ERC) over-recovery about which Staff had submitted pre-filed testimony in DG 07-093 and the inclusion of "occupant account" costs in COG rates.

On January 16, 2008, the Office of the Consumer Advocate (OCA) notified the Commission of its participation; no other parties sought to participate in the proceeding. On February 7, 2008, the Commission issued a secretarial letter approving the procedural schedule.

On March 14, 2008, EnergyNorth filed proposed rate adjustments pursuant to the COG clause in its tariff for the 2008 summer period, May 1, 2008 through October 31, 2008. The filing was accompanied by supporting attachments and the direct testimony of Ann E. Leary, manager of pricing – New England, and Theodore E. Poe, manager of energy planning. Also on March 14, EnergyNorth filed a motion for protective order and confidential treatment regarding certain materials included in the filing.

On March 19, 2008, the Commission issued a supplemental order of notice scheduling a hearing for April 15, 2008. On April 4, 2008, Staff filed a letter regarding the status of the procedural schedule and enclosing its pre-filed testimony on the issue of the application of interest on the ERC over-recovery. On April 7, the OCA filed testimony on the same issue. On April 15, EnergyNorth filed a second motion for protective order and confidential treatment regarding responses to certain Staff data requests. A technical session was held at the NHPUC on April 10 and the hearing was held as scheduled on April 15, 2008.

II. POSITIONS OF THE PARTIES AND STAFF

A. EnergyNorth

Among other things, EnergyNorth witnesses Leary and Poe addressed the calculation of the proposed COG rates and customer bill impacts as well as the reasons for the rate increases. Ms. Leary also testified regarding an oversight that resulted in EnergyNorth's hedging of more summer volumes than authorized under its natural gas price risk management plan and responded to Staff testimony regarding interest earned on an ERC over-recovery.

1. Calculation of the Proposed Firm Sales COG Rates and Bill Impact

Pursuant to the COG clause, EnergyNorth may, subject to the Commission's jurisdiction, adjust on a semi-annual basis its firm gas sales rates in order to recover the costs of gas supplies, capacity and certain related expenses, net of applicable credits, as specified in EnergyNorth's tariff. The average COG rate, which is the COG rate payable by residential customers, is calculated by dividing total costs of approximately \$30 million by projected summer season sales of approximately 25 million therms. Costs include: anticipated indirect gas costs, consisting of working capital, bad debt, and overhead charges; anticipated direct costs, consisting of pipeline transportation capacity, storage capacity and commodity charges; and adjustments, consisting of a prior period under-collection, interest and anticipated savings from price hedging.

EnergyNorth's filing proposes a 2008 summer season residential COG rate of \$1.1870 per therm which represents an increase of \$0.2096 per therm from the average weighted 2007 summer season residential COG rate of \$0.9774 per therm. The impact of the proposed firm sales COG rate is an increase in the typical residential heating customer's summer gas costs of \$60, which represents a 13.3 percent increase above last summer's rates.

EnergyNorth proposed commercial and industrial (C&I) low winter use (LW) and high winter use (HW) COG rates as follows: \$1.1867 per therm for the LW COG rate and \$1.1874 per therm for the HW COG. (C&I LW customers have high load factors while C&I HW customers have low load factors.)

2. Reasons for the Increase in the COG Rates

According to EnergyNorth, the increase in the proposed COG rates, as compared to last summer's rates, is almost entirely due to the increase in actual and anticipated gas costs for upcoming summer season.

3. Violation of Hedging Policy

Due to an oversight, EnergyNorth entered into financial hedges on more volumes than allowed under its approved natural gas price risk management plan. Upon discovering the error, EnergyNorth informed Staff of both the error and planned corrective action. EnergyNorth was able to sell the over-hedged volumes at a profit and applied the resulting gain of \$508,300 against the projected summer gas costs.

Ms. Leary noted that this is the first time such an error had occurred since KeySpan Energy Delivery New England began managing the EnergyNorth's hedging program in 2000 and she testified that the Company has taken the appropriate steps to ensure it will not happen again.

4. Environmental Remediation Cost Recovery

Ms. Leary explained that after fourteen years of expending funds on the remediation and third party recovery process and overcoming significant legal hurdles, EnergyNorth was able to settle with the insurance carrier with the largest exposure for a substantial sum, thereby putting the Company in the position of having recovered more remediation revenue than costs.

EnergyNorth continues to incur substantial remediation costs and by the end of the year, even with the recent settlement proceeds, the Company will again have a negative ERC balance that will need to be recovered from customers.

EnergyNorth does not earn interest on ERC under-recoveries and does not believe it is appropriate to pay interest during the very brief period there is an over-recovery. To credit customers for interest on funds that came from insurance carriers, rather than from customers themselves, would needlessly increase the carrying costs incurred by the Company.

According to EnergyNorth, requiring the Company to pay interest on those recoveries is contrary to the purpose of the mechanism and would penalize the Company for having done a

good job in pursuing the insurance carriers. The Company stated that the Commission encouraged the Company to pursue claims against its insurance carriers, even adjusting the cost recovery mechanism as laid out in the settlement agreement so that insurance recoveries would be applied to reduce carrying costs incurred by the Company.

Ms. Leary testified that the Northern ERC recovery mechanism that requires interest be accrued on over-recoveries does not justify a similar treatment in this instance, as circumstances are different and to do so would contravene the intent of the incentive created by the Commission.

In its closing comments, EnergyNorth stated that the Northern settlement should not provide any guidance whatsoever on this issue, as it would be a bad precedent to take a settlement from another company and apply it to this Company, because settlements are reached for different reasons. According to the Company, the Commission does not know what motivated Northern to compromise on this issue. Furthermore, the Commission and Staff were fully aware of the Northern settlement when the EnergyNorth settlement was entered into and if the Commission had thought that provision was a critical term, it could have applied it then.

5. Occupant Accounts

When a customer moves out of a location served by the Company, EnergyNorth does not shut off the meter at that location; rather, the Company continues to bill that location in the name of “occupant.” Occupant account gas is treated as unaccounted for gas in the COG and recovered from firm sales customers. EnergyNorth believes its occupant account policy is reasonable but acknowledges that Staff has not completed its discovery on the issue. EnergyNorth supports Staff recommendation that a ruling on the issue be deferred. EnergyNorth stated that it had been put on notice as to the existence of the issue but opposed any resolution

that would be applied retroactively, reserving its right regarding such treatment pending a final resolution.

6. Motions for Protective Order and Confidential Treatment

EnergyNorth requested confidential, protective treatment for certain information contained in Schedules 1, 2, 5, 6, 7, and 14 of its 2008 summer season COG filing and, in particular, the commodity and demand charges associated with specific suppliers and certain information related to hedging costs. The Company asserted that this information constitutes trade secrets and should be protected as confidential commercial information. The Company further stated that it does not disclose this information to anyone outside of its corporate affiliates and their representatives. According to EnergyNorth, release of this information would likely result in competitive disadvantage for the Company in the form of less advantageous or more expensive gas supply contracts since gas suppliers possessing the information would be aware of EnergyNorth's expectations regarding gas supply costs and other contract terms and would be unlikely to propose to supply such goods and services on terms significantly more advantageous to EnergyNorth, which could ultimately result in higher prices to customers.

In a second motion, EnergyNorth requested confidential, protective treatment for certain information contained in discovery responses related to revisions to schedules for which confidential treatment was sought in the Company's initial motion, a gas purchase agreement with Nexen Marketing and BP Canada, and a management fee paid to Northeast Gas Markets. EnergyNorth stated that the discovery responses contain pricing and related information that constitutes confidential commercial information which is exempt from disclosure under RSA 91-A. The Company further stated that the information is the same kind that is routinely protected in COG and other proceedings involving the Company. The Company also noted that the

Commission recently recognized the confidential nature of the management fee paid to Northeast Gas Markets in Order No. 24,842. Finally, according to EnergyNorth, release of this information would likely result in competitive disadvantage for the Company in the form of less advantageous or more expensive gas supply contracts since gas suppliers possessing the information would be aware of EnergyNorth's expectations regarding gas supply costs and other contract terms and would be unlikely to propose to supply such goods and services on terms significantly more advantageous to EnergyNorth, which could ultimately result in higher prices to customers.

B. OCA

OCA witness Kenneth E. Traum, Assistant Consumer Advocate, testified that interest earned on the ERC over-recovery should be credited to ratepayers and interest should be calculated by applying the prime rate to the monthly average balance, beginning from the first day of the over-recovery through the last.

Mr. Traum testified that such treatment is consistent with Order No. 23,303 (September 20, 1999) in which the Commission initially approved the recovery/sharing mechanism for prudently incurred ERC. The cost sharing was expected to be approximately 20 percent stockholders, 80 percent ratepayers, with ratepayers responsible for 100 percent of the capital costs and stockholders responsible for 100 percent of the carrying costs. However, there is a notable exception for ERC balances that fall outside of the general perimeters of the agreement. Paragraph 2e of the agreement provides that if the net amount of recoverable ERC in any given year exceeds five percent of gas revenues for the year, the excess amount is carried forward and recovered in a subsequent year, with carrying costs. The dollars above the 5 percent cap, i.e., those costs outside the bounds of the settlement, deferred for recovery accrue interest.

Ratepayers are responsible for 100 percent of those carrying costs as well as 100 percent of the capital costs.

The over-recovery represents monies recovered by EnergyNorth prior to incurring costs that it potentially will be allowed to recover. The OCA maintained that if it is fair for EnergyNorth to recover carrying charges from ratepayers on ERC balances that extend beyond that the recovery period covered in the general provisions of the settlement agreement, it is only fair for ratepayers to be credited with interest when ERC balances are paid in advance of costs, as that also falls outside the recovery period covered in the general provisions of the settlement agreement.

In its closing statement, the OCA stated that it did not oppose implementation of the proposed summer COG rates and deferral of the occupant account issue.

C. Staff

Staff witness Stephen P. Frink, assistant director of the gas and water division, testified regarding the proposed rates, the status of the investigation into EnergyNorth's occupant account policy and ERC cost recovery.

Staff recommended approval of the proposed 2008 summer season COG rate, noting that the forecasted costs appear reasonable. The Commission audit Staff reviewed the EnergyNorth 2007 summer COG reconciliation and found no errors. Although two of the EnergyNorth supporting schedules were incorrect and anticipated gas costs had increased slightly from when the COG was filed, the impact would be offset by Commission approval of the settlement agreement filed in Docket No. DG 07-050, which would result in a lower bad debt expense than presently reflected in the anticipated summer costs. In addition, financial hedges currently held by EnergyNorth and the Company's ability to adjust its rates monthly within 20 percent of the

proposed rates should enable EnergyNorth to accommodate corrected schedules and fluctuations in gas prices to avoid a large over- or under-recovery for the period. Furthermore, because actual gas costs and revenues are reconciled after the period, any issues that might arise during the 2008 summer season can be addressed in 2009 summer COG proceeding.

Staff's investigation into EnergyNorth's occupant account policy is not complete but final responses to Staff's data requests are expected soon. Staff, EnergyNorth and the OCA plan to meet May 28, 2008 to discuss how to proceed, after which a recommendation would be filed with the Commission. Staff noted that in Order No. 24,797 (October 31, 2007), approving EnergyNorth 2007-2008 winter COG rates, the Commission reserved the issue of occupant account costs in the COG rates and did not approve the 2006-2007 winter COG reconciliation pending a resolution. Staff requested that the Commission continue to withhold approval of reconciled gas costs until the issue is resolved.

Order No. 24,797 approved recovery of last year's ERC, subject to the Audit Staff's review. Mr. Frink testified that the audit Staff had completed its review and found last year's costs and recoveries to have been accurately reported. The Commission also reserved judgment regarding how interest earned on the ERC over-recovery should be treated and directed Staff and the Parties to address the issue in this proceeding.

Mr. Frink noted that the Commission did not address how to treat an over-recovery of ERC costs when approving the EnergyNorth ERC recovery mechanism in 1999 and explained that the Staff and parties in that proceeding choose not to address the issue in the settlement agreement or raise it at the hearing because there was a high probability that the situation would never arise and, in fact, the situation has only recently arisen and is temporary. Staff recommended that interest on the ERC over-recovery be calculated by applying the prime rate to

the average monthly over-recovery until such time as the over-recovery, with interest, is offset by ongoing ERC expenditures.

Staff pointed out that in establishing the ERC recovery mechanism, the Commission stated that some sharing of the remediation costs between ratepayers and shareholder is appropriate and that prohibiting carrying costs or rate base treatment of the deferred asset ensures that remediation costs will be borne by ratepayers and shareholders. Staff stated that the EnergyNorth witness in the hearing¹ on the settlement agreement testified that at one point the Company had calculated the sharing at 70 percent ratepayer and 30 percent shareholder, but as the date of the hearing the expectation was for an approximate 80/20 percent sharing.

Staff explained that because the sharing is dependent on a variable interest rate, the anticipated sharing will vary depending on what the interest rate is at the time of the calculation. For example, when the Commission established the Northern ERC recovery mechanism² the expectation was for a 75 percent ratepayer and 25 percent shareholder cost sharing, even though the Northern ERC recovery mechanism served as a model when establishing the EnergyNorth mechanism.

As an incentive to encourage the gas utilities to pursue ERC recoveries from responsible third parties and insurance carriers aggressively, the approved ERC recovery mechanisms reduce the time over which remediation costs are recovered from ratepayers, thereby lowering carrying costs and the percentage of the remediation costs to be borne by shareholders.

Staff responded to three reasons cited by EnergyNorth as to why the Company should be allowed to retain interest earned on the ERC over-recovery: (1) requiring EnergyNorth to pay interest on those recoveries is contrary to the purpose of the mechanism and would penalize the

¹ Held on September 8, 1999 in Docket No. DG 99-060.

² Hearing held on October 7, 1998, Docket No. DR 98-049.

Company for having done a good job in pursuing the insurance carriers; (2) crediting customers for interest on funds that came from insurance carriers, rather than from customers themselves, would needlessly increase the carrying costs incurred by the Company; and (3) the Northern ERC mechanism that requires interest be accrued on over-recoveries does not justify a similar treatment in this instance, as circumstances are different and to do so would be in direct contrast to the intent of the incentive created by the Commission.

Staff testified that its proposal does not penalize the Company, as there are no carrying costs to be reduced when an over-recovery exists and interest earned on the over-recovery will be applied to future remediation costs thereby eliminating costs that would otherwise be financed by shareholders.

Staff testified that the over-recovery is a result of both ratepayer and insurance recoveries. Without the \$13 million in remediation costs recovered to date from ratepayers, there would be no over-recovery. In essence, according to Staff, ratepayers have overpaid remediation costs and should be credited back that over-payment. Rather than issue a credit on customer bills, Staff supported setting the ERC surcharge for the year at zero, with the expectation that interest would be earned on the over-recovery and applied to future costs.

Staff testified that the Commission should not read the provision contained in the approved Northern ERC cost recovery settlement agreement into the approved EnergyNorth settlement agreement. Staff proposed, however, that the EnergyNorth ERC over-recovery be treated in the same manner as was done for Northern. The fact that the Commission approved the Northern ERC recovery mechanism which includes that provision indicates that the Commission did not believe such treatment violated the incentive to pursue insurance recoveries

and provided an appropriate sharing of the remediation costs between ratepayers and shareholders.

Based on EnergyNorth's calculation, its shareholders have borne only 18 percent of the ERC. Staff saw that as an indication that the balance of equities should lie in favor of the ratepayer on the interest issue. And in Staff's view, payment of interest on an over-recovery is necessary to preserve an appropriate sharing of the burden of the ERC between ratepayers and shareholder which was the foundation of the EnergyNorth ERC recovery mechanism settlement.

III. COMMISSION ANALYSIS

We defer the issue of EnergyNorth's occupant account policy to allow further discovery and the opportunity for settlement discussions. Staff, OCA and EnergyNorth are scheduled to meet on the issue May 28, 2008, after which we will expect a report from Staff regarding the status of its investigation and a proposed procedural schedule.

Regarding the issue of applying interest to the ERC over-recovery, we agree with Staff and the OCA that the balance of the equities tends toward ratepayers. Therefore, we require EnergyNorth to apply 80 percent of the interest earned to future remediation costs but permit EnergyNorth shareholders to retain 20 percent of the interest earnings. Interest earnings are to be calculated by applying the monthly prime interest rate applied to the average monthly balance from the first day of the over-recovery through the last day of an over-recovered balance. The 80/20 sharing of the interest earnings between ratepayers and shareholders reflects the sharing anticipated at the time the Commission approved the EnergyNorth ERC recovery mechanism, the continuation of which we find to be appropriate under the circumstances, which were not explicitly anticipated or covered by the settlement agreement.

The Company's successful pursuit of the responsible third parties and insurance carriers has served to reduce the remediation costs to be recovered from ratepayers, as well as the associated carrying costs to be borne by ratepayers. EnergyNorth has pursued those recoveries with the understanding that those recoveries would be applied to the outstanding ERC balances so as to shorten the ratepayer recovery period, thereby reducing carrying costs. Although it is unclear to what extent the incentive mechanism created by the Commission has influenced cost sharing, it appears the incentive mechanism has contributed to lower carrying costs. At the time the Commission issued its order approving the ERC recovery mechanism, it is reasonable to assume that if EnergyNorth were successful in pursuing recoveries from responsible third parties and insurance carriers, the added incentive could result in shareholders bearing less than 20 percent of remediation costs. The fact that EnergyNorth shareholders have borne 18 percent of ERC costs to date indicates that the ERC recovery mechanism is working as intended and that EnergyNorth has been rewarded for successfully pursuing recoveries from responsible third parties and insurance carriers.

The provision that requires ratepayers to pay interest on deferred recoveries is designed to maintain the 80/20 percent sharing while limiting the rate impact, whereas the ERC recovery mechanism is intended to reduce the shareholder burden if EnergyNorth is successful in obtaining ERC recoveries from responsible third parties or insurance carriers. We agree with Staff that accruing interest on the over-recovery and applying it to future costs will reduce carrying costs that would otherwise be borne by shareholders but certainly not to the extent that allowing EnergyNorth to retain those interest earnings would. By allowing EnergyNorth to retain 20 percent of the interest earnings the benefit to shareholders will at the very least be proportionate to the sharing initially anticipated and applying 80 percent of the anticipated

\$250,000 in interest earnings on the over-recovery to future ERC will further reward shareholders by reducing carrying costs that would otherwise be borne by the Company. Finally, based on our review of the record in this docket, and subject to the foregoing determinations and resolution of the outstanding issues in Docket Nos. DG 07-050 and DG 07-072, we approve the proposed summer season COG rates as just, reasonable and lawful pursuant to RSA 378:7.

Regarding EnergyNorth's two motions 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* RSA 91-A:4, I. The statute contains an exemption, invoked here, for "confidential, commercial or financial information." RSA 91-A:5, IV. In most cases, a balancing test 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 no parties have objected to the motions and that the information for which confidential, protective treatment is sought is the same or similar to information for which the Commission has granted such treatment in the past. *See e.g., EnergyNorth Natural Gas, Inc. d/b/a KeySpan Energy Delivery New England*, Order No. 24,842 (April, 4, 2008). In balancing the interests for and against public disclosure of the information for which confidential, protective treatment is sought, we are persuaded on the basis of the record in this docket that the interests of EnergyNorth and ultimately its ratepayers in non-disclosure outweigh the public's interest in obtaining access to the information. We therefore grant the motions. Consistent with our practice, the protective treatment provisions of this order will be 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, that EnergyNorth's proposed 2008 summer season COG rates for the period May 1, 2008 through October 31, 2008 are **APPROVED** as set forth in this Order, effective for service rendered on or after May 1, 2008, as follows:

	Cost of Gas	Minimum COG	Maximum COG
Residential	\$1.1870	\$0.9496	\$1.4244
C&I, Low Winter Use	\$1.1867	\$0.9494	\$1.4240
C&I, High Winter Use	\$1.1874	\$0.9499	\$1.4249

FURTHER ORDERED, that EnergyNorth may, without further Commission action, adjust the approved COG rates upward or downward monthly based on EnergyNorth's calculation of the projected over- or under-collection for the period, but the cumulative adjustments shall not vary more than twenty percent (20%) from the approved unit cost of gas; and it is

FURTHER ORDERED, that EnergyNorth provide the Commission with its monthly calculation of the projected over- or under-collection, along with the resulting revised COG rate for the subsequent month, not less than five (5) business days prior to the first day of the subsequent month. EnergyNorth shall include a revised tariff page 84 - Calculation of Cost of Gas Adjustment for firm sales and revised firm rate schedules under separate cover letter if EnergyNorth elects to adjust the COG rate, with revised tariff pages to be filed as required by N.H. Code Admin. Rules Puc 1603; and it is

FURTHER ORDERED, that the over- or under-collection shall accrue interest at the monthly prime lending rate as reported by the Federal Reserve Statistical Release of Selected Interest Rates; and it is

FURTHER ORDERED, that interest on the ERC over-collection shall accrue interest at the monthly prime lending rate as reported by the Federal Reserve Statistical Release of Selected Interest Rates, with 80 percent of the accrued interest to be applied to environmental remediation costs and 20 percent to be retained by EnergyNorth; and it is

FURTHER ORDERED, that the two pending motions for protective order and confidential treatment are GRANTED as set forth in this Order; and it is

FURTHER ORDERED, that EnergyNorth shall file properly annotated tariff pages in compliance with this Order no later than 15 days from the issuance date of this Order, as required by N.H. Admin. Rules, Puc 1603.

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

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Clifton C. Below
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary