

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

**DG 07-033
DG 07-050**

NORTHERN UTILITIES, INC.

**ENERGYNORTH NATURAL GAS, INC. d/b/a
NATIONAL GRID NH**

**2007 Summer Season Cost of Gas Proceeding
Investigation of Indirect Gas Costs**

Order on Motion for Rehearing in DG 07-033 and on Reserved Issue in DG 07-050

ORDER NO. 24,901

September 25, 2008

I. INTRODUCTION

This order addresses an issue common to two pending dockets: DG 07-033, concerning rate adjustments for Northern Utilities, Inc. (Northern) under the cost-of-gas adjustment clause in its tariff, and DG 07-050, an investigation of indirect gas costs incurred by EnergyNorth Natural Gas, Inc. d/b/a National Grid NH (EnergyNorth).¹ The issue is whether, and, if so, to what extent, each utility may specifically recover costs attributed to seasonal fluctuations in wholesale gas purchases, given that both companies also recover working capital costs associated with the lag between payment of wholesale gas costs and the payment of corresponding retail rates by customers. Recovery of such volume-related costs is achieved by calculating interest on deferred gas cost collections using accrued costs and billed revenues.

¹ DG 07-050 was initially captioned “EnergyNorth Natural Gas, Inc. d/b/a KeySpan Energy Delivery New England.” EnergyNorth now does business in New Hampshire as National Grid NH as a result of the parent company merger transaction approved by the Commission in Order No. 24,777 (July 17, 2007). Similarly, in DG 07-033, Northern Utilities is the subject of an acquisition by Unil Energy Systems, which is under consideration in Docket No. DG 08-048.

In DG 07-033, the issue arises by a motion for rehearing of Order No. 24,786 (September 13, 2007) submitted by Northern. DG 07-050 was opened to consider the issue as it relates to EnergyNorth. In Order No. 24,858 (May 23, 2008), the Commission approved a partial settlement agreement that resolved other pending questions, but left unresolved the question of how EnergyNorth should transition to using accrued rather than billed revenues to calculate interest on deferred gas cost collections. Order No. 24,858 did not specify how the Commission would resolve the outstanding issue as to EnergyNorth.

II. REHEARING MOTION IN DOCKET NO. DG 07-033

A. Procedural History

Northern moved to stay Order No. 24,786 on October 1, 2007, which the Commission granted by secretarial letter on October 10, 2007. Northern submitted its rehearing motion on October 15, 2007. The motion also sought clarification of certain aspects of the order.

EnergyNorth, an intervenor, filed a response to the Northern rehearing motion on October 15, 2007. Staff filed an objection to the rehearing motion on October 22, 2007. On October 25, 2007, Northern took exception to a reference in Staff's objection to an "error" that Northern had made when first implementing the revenue accounting method at issue here. Northern contended that no error had occurred and Staff filed a revised objection to the rehearing motion on November 16, 2007. Northern responded to Staff's revised pleading on November 20, 2007.

B. Summary of Motion

Northern contends that Order No. 24,786 was arbitrary and capricious because it rejected a rate calculation method the Commission had consistently found to be just and reasonable for approximately 30 years. Northern also complains that Order No. 24,786 lacked any financial

calculations to substantiate the Commission's determination that the utility had been over-recovering its costs associated with working capital needs.

According to Northern, the reason Order No. 24,786 lacks any calculations to support its conclusions is that the Commission erred in determining that the utility is subjecting its customers to double recovery of any costs. Order No. 24,786 referred to the "6.33-day lag, as calculated by Northern's most recent lead-lag study, that covers the difference between the Company's payment of gas costs to suppliers and the Company's receipt of applicable retail revenue from customers." Order No. 24,786 at 12. Northern recovers the carrying costs of this 6.33-day lag. According to the Northern rehearing motion, the Commission improperly disregarded unrebutted testimony from Company witness Joseph Ferro that this recovery does not fully compensate Northern for "mismatches that occur between the Company's actually incurred gas costs and the monthly billed revenues." Northern Rehearing Motion at 3; *see* Order No. 24,786 at 12 (describing the 15-day lag as arising out of "seasonal fluctuations in gas volumes") and 13 (agreeing with Staff that "the phenomenon is essentially the result of Northern receiving less than a full month of revenue in the first month of both the winter and the summer COG periods"). It is Northern's position that in order to compensate the utility for costs arising out of "volumetric swings" that occur within each of the two seasonal periods created by the COG mechanism, Northern is entitled to recover interest on the difference between incurred gas costs and billed revenues. This recovery, according to Northern, complements rather than duplicates the recovery of costs associated with the lag between paying suppliers and receiving revenue from customers.

Northern directs the Commission's attention to Exhibit 9 as introduced at hearing. According to Northern, this exhibit demonstrates that the Company will suffer approximately

\$75,000 in financial harm on an annual basis by complying with Order No. 24,786 because it will be required to advance revenues that are associated with gas consumed in November (a month in which gas consumption is on the rise) but that are not billed to all customers during November. Northern contends that the result of advancing these revenues is that the beginning balance in the rate reconciliation account for the winter COG period will be artificially high.

It is further Northern's position that there would be an additional harm to the utility of nearly \$200,000 in the first year alone if the Company is required to transition to the new method for calculating COG balances by using a November 2005 starting balance that includes 1 1/2 months of revenues (i.e., by imputing revenue from bills that are issued in November).

According to Northern, the effect of such a requirement would be to confiscate its property without just compensation, by improperly reducing the interest it can recover from customers on incurred costs, in violation of applicable constitutional principles. *See Duquesne Light Co. v. Barasch*, 488 U.S. 299, 307 (1989) ("The guiding principle has been that the Constitution protects utilities from being limited to a charge for their property serving the public which is so "unjust" as to be confiscatory) (citation omitted).

Finally, Northern directs the Commission's attention to a description at page 14 of Order No. 24,786 of how COG balances will be calculated in the future. In relevant part, the order provides:

Revenues billed in the first month related to prior month sales would not be included in the first month's revenues under accrual accounting. October sales billed in November will not be recorded as November revenue The summer COG reconciliation will be similarly adjusted to record October sales billed in November as October sales and adjust the summer period ending balance accordingly.

According to Northern, these statements from Order No. 24,786 describe how the current accounting works and does not reflect the changes specified in the order.

C. Position of EnergyNorth

In its capacity as an intervenor in DG 07-033, EnergyNorth filed a pleading in response to the Northern motion. EnergyNorth noted that it had indicated in DG 07-050 that it was willing to accede to Staff's view on the question of using accrued revenues to calculate COG fund balances for interest recovery purposes. *See* Order No. 24,858 at 14 (approving partial settlement agreement in DG 07-050) and Partial Settlement Agreement in DG 07-050 at 1-2 (indicating that EnergyNorth "intends to accept the final outcome of the issue as determined in Docket DG 07-033 regarding Northern, Utilities, Inc." but reserved the right to contest "how a transition from the old method to the new should be accomplished"). EnergyNorth characterized Order No. 24,786 as ambiguous on the transition question, reporting that informal contacts with Staff suggested that the transition would result in a permanent undercollection of interest in the deferred gas cost reconciliation balance. Therefore, EnergyNorth agreed with Northern that unless the ambiguity is resolved the resulting rate mechanism would be unconstitutionally confiscatory.

D. Staff Objection to Motion

Staff urges the Commission to deny Northern's motion, disagreeing with Northern on the sufficiency of the evidence to support the result in Order No. 24,786. Staff draws the Commission's attention to its report referenced at footnote 2 of the underlying order, relating to Northern's calculation of carrying charges on COG balances. Staff also points out that on page 9 of the order, the Commission describes Staff's contention that Northern's lead-lag study already reflects a lag of 15.2 days between the consumption of gas and the reading of customer meters.

According to Staff, this evidence, taken together, provides sufficient quantitative analysis to support Order No. 24,786.

Concerning the transition issue, Staff disagrees with the assertion that Order No. 24,786 is ambiguous. According to Staff, revenues in the first month after the transition – i.e., November 2005 – must reflect a full month of November sales regardless of when those sales are billed. Thus, in Staff’s view, there is no rational basis for the assertion that Northern may have to match 1.5 months of revenue with one month of gas costs in the first month of the transition.

Staff appears to agree with Northern that certain language on page 14 of Order No. 24,786 requires correction. According to Staff, the relevant sentence should read: “The summer COG reconciliation will be adjusted to record October sales billed in November as October sales and revenue and adjust the summer period ending balance accordingly.”

According to Staff, although the first month of the transition will not yield a mismatch of costs and revenues, there will be a reduction in interest as the result of the transition from billed to accrual accounting. Specifically, with respect to October 2005 only, the transfer in of October unbilled revenue from November is not offset by the transfer out of September unbilled revenue because accrued revenue accounting does not begin until the next month. Staff characterizes this reduction in recoverable interest charges as not only appropriate but necessary in order to accomplish the purpose of the accounting change. Staff asserts that the reduction is not confiscatory but, rather, simply corrects an error that was made when the current accounting method was first implemented and only a half month of revenue was included in the calculation of the initial monthly reconciliation.

This last assertion – that the reduction in recoverable interest in question is justified because it corrects an earlier error – prompted a letter from Northern that was filed on October

25, 2007. In its letter, Northern complains that the record is devoid of any factual evidence to support the asserted error.

The Northern letter, in turn, prompted Staff to submit an amended objection to the Northern rehearing motion on November 16, 2007. Staff's revised pleading is identical to its prior submission except for a change to the justification for reducing the amount of recoverable interest. According to the revised Staff submission,

the addition of the October unbilled revenue to the October billed revenue is appropriate because without that adjustment the starting balance for accrued revenue accounting will overstate Northern's actual under-collection, or conversely understate Northern's actual over-collection, by an amount equal to the revenues billed in November for usage in October. Thus, the lower starting balance will eliminate a benefit (i.e., high interest receipts due to the failure to recognize October unbilled revenue) that the Company was never entitled to.

Staff Amended Objection of November 16, 2007 at 5.

Northern objected on November 20, 2007 to Staff having amended its objection.

According to Northern, Staff was seeking to "reform its rationale and promote a brand new basis for its flawed transition methodology." Northern Response of November 20, 2007 at 2.

Northern further complained that it had not been "accorded the same procedural due process granted to KeySpan [i.e., Energy North, in DG 07-050] in order to adequately and affirmatively address Staff's changing positions on the transition methodology." *Id.* at 4. According to Northern, it should have an opportunity to cross-examine Staff on the assertions in its most recent pleadings.

E. Commission Analysis

RSA 541:3 authorizes us to grant rehearing of a prior decision when the movant has demonstrated good cause for doing so. Apart from restating arguments that had previously been considered and rejected in full, Northern's chief basis for rehearing on this question is the

allegation that a lack of supporting calculations deprives the decision of a sufficient basis in the evidence. We disagree. As Staff notes, the detailed analysis provided by Staff contains sufficient quantitative analysis to support the decision. The analysis itself is not replicated in Order No. 24,786 because the question decided is one of accounting methods as opposed to any dispute over what calculations the methods would actually yield. We remain convinced that our determination in Order No. 24,786 is sound with respect to the underlying question of double recovery of gas supply costs and that the new accounting method is just and reasonable

The dispute over transitioning to the new accounting method raises more serious concerns, however. We agree with Northern that it has not received a full and fair opportunity to cross examine Staff so as to ascertain fully, for itself and for the record, the full basis for Staff's position on the appropriate transition. Accordingly, it is our determination that good cause has been shown for rehearing on this question.

Rather than schedule a pre-hearing conference and take other steps toward an evidentiary hearing at this time, we believe it is appropriate to determine whether the parties and Staff can achieve settlement on the transition question. We therefore direct Staff to convene the necessary discussions with the parties and submit a report to the Commission by December 12, 2008. Upon our review of such report, we will determine the appropriate next procedural steps.

III. DOCKET NO. DG 07-050

Hearings in this docket closed on November 8, 2007. On November 20, 2007, Staff moved to reopen the record for the purpose of filing surrebuttal testimony. On November 30, 2007, EnergyNorth filed a response noting that it did not object to Staff's request but sought an opportunity to conduct discovery and file responsive testimony.

At various junctures in DG 07-033 and DG 07-050, there has been discussion of whether the two proceedings should be consolidated in whole or in part in light of the issues that are common to both cases. At present, the two cases align well inasmuch as the issue on which we are granting rehearing in DG 07-033 is the only issue remaining outstanding in DG 07-050. Therefore, although we are not formally consolidating the two proceedings, we direct the parties to DG 07-050 to participate in the informal discussions Staff will convene in DG 07-033 to explore the possibility of an agreed-upon resolution that would be common to both dockets. As in DG 07-033, we will await Staff's report on or before December 12, 2008 and make an appropriate further determination thereafter.

Based upon the foregoing, it is hereby

ORDERED, that the motion of Northern Utilities, Inc. for rehearing in Docket No. DG 07-033 is **GRANTED IN PART** and **DENIED IN PART** as set forth more fully in the order herein; and it is

FURTHER ORDERED, that Docket No. DG 07-050 is reopened for the purposes described herein.

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

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Clifton C. Below
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary