STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

DG 09-050

ENERGYNORTH NATURAL GAS, INC.
D/B/A NATIONAL GRID NH

2009 Summer Season Cost of Gas

Order Approving Cost of Gas Rates and
Occupant Account Settlement Agreement

O R D E R N O. 24,963

April 30, 2009

APPEARANCES: Thomas P. O'Neill, Esq., for EnergyNorth Natural Gas, Inc. d/b/a National Grid NH; Rorie E.P. Hollenberg, Esq., of the Office of the Consumer Advocate, on behalf of residential utility ratepayers; and Edward N. Damon, Esq. and Matthew J. Fossum, Esq., for the Staff of the Public Utilities Commission.

I. PROCEDURAL HISTORY

On March 16, 2009, EnergyNorth Natural Gas, Inc. d/b/a National Grid NH (EnergyNorth or Company), a public utility that distributes natural gas in 29 cities and towns in southern and central New Hampshire and the City of Berlin, filed its cost of gas (COG) and other rate adjustments for the 2009 summer period. In addition, EnergyNorth filed two motions for confidential treatment regarding specific schedules in the 2009 COG filing. EnergyNorth's filing included the direct testimony and supporting attachments of Ann E. Leary, manager of pricing – New England and Theodore E. Poe, Jr., lead analyst.

On March 20, 2009, the Commission issued an order of notice scheduling a hearing for April 9, 2009. On March 23, 2009, Staff filed a settlement agreement regarding occupant accounts on behalf of Staff, EnergyNorth and the Office of Consumer Advocate (OCA), together with a joint statement of support. The filing satisfied the Commission's requirement that a status

report be filed regarding Staff's investigation into EnergyNorth's occupant account policy, pursuant to *EnergyNorth Natural Gas, Inc. d/b/a KeySpan Energy Delivery New England*, Order No. 24,849 (April 23, 2008).

On March 26, 2009, the Office of Consumer Advocate (OCA) notified the Commission of its participation in the docket on behalf of residential ratepayers consistent with RSA 363:28. There are no other intervenors in this docket. On April 3, 2009, Staff filed the direct testimony of Robert J. Wyatt, Senior Utility Analyst and a hearing on the COG and occupant account settlement was held as scheduled.

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, customer bill impacts, reasons for the rate decreases, accounting for hedging gains or losses and Staff's proposed change to the monthly rate adjustment mechanism. Ms. Leary also testified regarding the occupant account settlement agreement.

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 $15 million by projected summer season sales of approximately 23 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 over-collection, interest and anticipated losses on price hedging.

EnergyNorth's filing proposes a 2009 summer season residential COG rate of $0.6722 per therm, which represents a decrease of $0.5924 per therm from the average weighted 2008 summer season residential COG rate of $1.2646 per therm. The impact of the proposed firm sales COG rate, combined with prior increases in the Local Distribution Adjustment Charge and delivery rate, is an overall decrease in the typical residential heating customer's summer gas costs of $174, which represents a 32 percent decrease from last summer's cost of $544.

EnergyNorth proposed commercial and industrial (C&I) low winter use (LW) and high winter use (HW) COG rates as follows: $0.6707 per therm for the LW COG rate and $0.6727 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 Decrease in the COG Rates

According to EnergyNorth, the decrease in the proposed COG rates, as compared to last summer's rates, is primarily due to the dramatic decrease in the six-month New York Mercantile Exchange (NYMEX) futures price strip for the 2009 summer period, resulting from the current state of the economy and its impact on energy prices.

3. Accounting for Hedging Gains and Losses

Currently, EnergyNorth records the underground storage hedging gains or losses as part of its underground storage inventory account, thus impacting the average underground storage unit pricing. EnergyNorth is proposing to change this process and record the underground storage hedging gains or losses in a separate account and amortize it over the winter months based on the projected monthly underground storage withdrawals contained in the winter season

COG filing. As a result, the underground storage hedging gains or losses will be recovered during one heating season.

4. Position on Staff's Proposed Monthly Rate Adjustment Mechanism

Ms. Leary testified that the Company supported the change to the COG adjustment mechanism proposed by Staff. In its closing comments, EnergyNorth stated that the change would provide the Company additional flexibility and, in fact, would have been very beneficial had it been in effect during the 2008 summer period.

5. Occupant Accounts Settlement Agreement

Ms. Leary also testified regarding a settlement agreement addressing the issue of occupant accounts, an issue held over from prior COG proceedings. Historically, EnergyNorth and its predecessors have been using a so-called "soft off" process for terminating service to a particular customer. In that process, when a customer requested a termination of service, a final meter reading would be taken and a final bill would be sent to the customer. The physical connection to the premises, however, is not severed. Although there is no longer a named customer at the premises, gas continues to flow to the premises and there may be minimal usage, for example, to keep pilot lights on. When cumulative usage at such a property would exceed 13 ccf, the Company would create a new account in the name of "Occupant." The Company would then begin billing in the name of "Occupant" until a named customer would be recorded or service to the property physically terminated.

EnergyNorth has been recovering the cost of the gas used at these occupant account properties through its COG filings as part of unaccounted for gas. In Order 24,797 (October 31, 2007) in Docket DG 07-093 it was noted that in 2006 occupant account usage amounted to approximately 400,000 therms. Such significant usage led to increased costs borne by the

Company's named customers. In order to reduce the amount of occupant account gas, Staff, the Company and OCA entered the settlement agreement, the terms of which are summarized as follows.

The settlement agreement provides that the use of the "soft off" process is reasonable and may continue, and that the creation of occupant accounts when usage exceeds 13 ccf per month is appropriate. Under the settlement agreement, the Company is now required to establish a process for obtaining landlord information from residential and small commercial customers who occupy the premises as tenants. With the permission of the landlord, the Company is to use this information to transfer an account to the name of the landlord, rather than to "Occupant," upon the termination of service by a tenant, thereby reducing the number of occupant accounts.

Also, under the settlement agreement the Company, instead of providing notice of termination pursuant to the requirements of N.H. Code of Admin. Rules Puc 1203.11, may "treat occupant accounts in a manner consistent with the Commission's rules that apply to accounts where service is provided to a tenant and the customer of record is the owner/landlord of the premises." Under this provision of the settlement agreement, at occupant account properties the Company is to provide written notice of its intent to terminate service. The notice, which may be mailed or hand-delivered, is to state that there is no customer of record and that the Company must be contacted within 10 days to establish a customer account or the service will be terminated without further notice. Under this same provision, the Company is also required to make "reasonable efforts" to determine the date upon which a customer initially established residence at that location. This will permit a more accurate accounting of occupant accounts and will ensure that customers are billed for the gas they actually use.

Along with the Company's new responsibilities regarding occupant accounts are new reporting requirements. Occupant account gas use may continue to be treated in the same manner as unaccounted for and company use gas, but it is to be reported as a discrete line-item in the Company's COG filings. The Company is to provide information about the number of occupant accounts at the time of the filing, as well as the number opened and closed in the prior twelve months and the arrearages for all occupant accounts then in existence. This new reporting will tie in to a new incentive mechanism regarding occupant accounts.

Under the incentive mechanism, the Company is to review the occupant account gas usage during the prior year and compare that usage to a predetermined benchmark. For the first year, the benchmark has been set at 85 therms per year per account. The 85 therms represent the historical usage expected on an occupant account prior to when service could reasonably be expected to be terminated or a customer of record established. The benchmark is subject to recalculation annually based upon the average of the three prior years. The three-year average will be based upon a formula assigning a 75% weight to the gas usage at occupant accounts during a 60-day period and the remaining 25% to the usage during a 90-day period. These times reflect the Company's belief that most occupant accounts would be physically shut off within 60 days, thereby capping use, but that some may remain open for 90 days.

Under the settlement agreement, should the Company limit the amount of gas used to less than the benchmark, it would be entitled to an incentive recovery. To the extent it does not, it would be subjected to a disallowance. More particularly, for the first 20 therms over the benchmark, the disallowance would be 50% of the volumetric cost of the gas used. After the first 20 therms, all gas costs would be subjected to a 100% disallowance. On the other side, for the first 20 therms below the benchmark, the Company would recover the cost of the gas, as well

as an incentive equal to 50% of the volumetric cost of the gas used. For any amounts below that, the Company would recover the cost of the gas and an incentive equal to 100% of the costs.

The adjustments resulting from this incentive or disallowance go into effect for the summer, or off-peak, period of 2010. Any incentive or disallowance is to be reported as a line-item adjustment on the Company's COG reconciliation filings. To the extent that anyone may seek to change the incentive mechanism, it is to be treated as a request to change the recovery of one or more of the indirect gas costs recovered through the COG.

In addition to the above, the settlement agreement contains two other provisions. First, in recognition of the impact that occupant accounts have had upon delivery revenues and upon the Company's revenue requirement for delivery service, the Company was to reduce its test year revenues in its general rate case, DG 08-009, by $32,072. This was to be the only adjustment to the Company's delivery revenues resulting from occupant accounts. Lastly, the Company has agreed that a one-time benefit of $256,308 will be applied to its low income assistance program customers on a per capita basis.

6. Motions for Protective Order and Confidential Treatment

EnergyNorth requested confidential treatment of certain information contained in Schedules 1, 2, 5, 6, 7, and 14 of its 2009 summer season COG filing. The schedules concern, respectively: costs associated with the summary of supply and demand forecasts; contracts ranked on a per-unit cost basis; details of demand costs per unit; details of commodity costs per unit; hedged contracts; and demand and commodity supply cost information included in the 2008 summer COG reconciliation. 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. Therefore, it argues, the information constitutes "confidential, commercial or financial information," as defined in RSA 91-A:5, IV, which is expressly exempt from the public disclosure requirements of RSA chapter 91-A, the Right-to-Know law.

In a second motion, EnergyNorth requested confidential treatment of 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 chapter 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, and that the Commission recently recognized the confidential nature of the management fee paid to Northeast Gas Markets in Order No. 24,842.

B. OCA

The OCA did not object to the Company's COG filing and recommended approval of the proposed occupant account settlement agreement. Regarding Staff's proposed changes to the monthly COG rate adjustment mechanism, the OCA supported Staff's proposal to increase the

upper bandwidth limit to 25% of the initially approved COG rate but expressed concern regarding Staff's proposal to remove the lower bandwidth limit. The OCA noted that eliminating the lower bandwidth may violate the provision of RSA 378:7 that requires notice and an opportunity for a hearing with regard to a change in rate. The OCA suggested that setting a lower limit, such as 100 percent of the approved rate, would more closely comply with the statute than to have no limit on the Company's ability to decrease monthly COG rates without further Commission action.

C. Staff

Staff witness Robert Wyatt, Senior Utility Analyst, testified regarding the proposed rates, accounting for hedging gains or losses and the monthly rate adjustment mechanism. Stephen Frink, Assistant Director of the Gas & Water Division testified regarding Staff's investigation into EnergyNorth's occupant account policy and the occupant account settlement agreement.

Mr. Wyatt testified that Staff had completed its review of the EnergyNorth COG forecast for the upcoming summer period and recommended approval of the proposed rates. Staff noted that the forecast is consistent with those filed and approved in previous summer periods. Also, Staff stated that it had reviewed and audited the 2008 COG reconciliation and concluded the costs were reasonable and accurately reported. Staff noted that actual gas costs will continue to be fully reconciled, reviewed and audited at the end of each COG period.

Staff supported the Company's proposed change in accounting for hedging gains and losses related to natural gas storage supply. The change will shift those gains and losses from the storage average inventory cost to the COG period in which the storage supply are forecast to be utilized and, therefore, the period over which the hedges are intended to apply. Mr. Wyatt testified that the change will have a minimal impact on future COG rates.

Staff also recommended a modification to the monthly over/under adjustment mechanism. Mr. Wyatt testified that currently, without further Commission action, EnergyNorth, as well as the other regulated gas utilities in New Hampshire, can adjust the COG rate upward or downward within a +/- 20 percent bandwidth of the initially approved COG rate in order to reduce monthly over- or under-collections in the period. He explained that, during the 2008 summer period, EnergyNorth experienced substantial fluctuations in actual and projected gas costs. The Company increased the COG rate to the maximum allowed and filed a revised COG calculation to establish a rate that would eliminate the projected under collection. Following a duly noticed hearing, the Commission approved the proposed rate increases effective August 1, 2008. *See* Order No. 24,881 (July 31, 2008). Subsequent to the filing, actual and projected gas costs dropped to such an extent that reducing the approved rates by the maximum allowed without further Commission action was insufficient to eliminate the projected over-collection. Because of the limited time remaining in the summer period there was insufficient time to file and process a second revised COG.

Staff's proposed modification is slightly different from one proposed, then tabled for further study, in the winter 2008/2009 COG proceeding (Docket No. DG 08-106). The new proposal is to increase the upper bandwidth adjustment limit to 25% of the initially approved rate and eliminate the lower bandwidth adjustment limit. EnergyNorth, as well as the other gas utilities, would continue to file the required monthly over/under reports five business days before the beginning of each month during each COG period.

Mr. Wyatt testified that the modification should satisfy the Commission's statutory requirements regarding rate changes. He stated that the modification will enable the Company to more efficiently react to gas price volatility in the same period in which it occurs, thus reducing

end-of-period revenue imbalances and associated carrying costs which are carried forward to future COG periods. The extra 5% added to the upper bandwidth will allow for additional adjustment range when tracking upward market price volatility, helping to reduce projected under-collections. By eliminating the lower bandwidth limit completely, the Company will be able to lower gas rates as much as necessary to track downward movement in market prices, helping to reduce over-collections. In cases where a revised COG filing can be avoided, it would reduce administrative costs while increasing administrative efficiency.

As a signatory to the occupant account settlement agreement, Staff explained that the agreement seeks to balance the cost savings that can be realized through the "soft off" process with the additional gas costs related to occupant account usage. Staff noted that Northern Utilities, Inc. (Northern) does not use a "soft off" process; Northern simply locks the meter when a customer discontinues service. Such a policy requires staffing and supporting equipment and services to be able to perform those shut-offs and imposes the additional cost of scheduling and turning on the meter when a costumer requests service at an address. Those costs are offset by eliminating occupant account usage and the gas costs that would otherwise occur. Staff testified that it does not oppose the "soft off" process but that occupant account usage should be limited to a reasonable amount. The recovery mechanism provided for in the settlement ensures that ratepayers will only be charged a "reasonable" amount, as it only allows recovery of gas usage on those accounts for a limited period of time. The provision also allows ratepayers and the Company to share in the savings if EnergyNorth is able to reduce occupant account usage below what would be expected to occur within the expected time frame for shut off. Staff also stated that the $256,308 credit represented the amount customers paid in excess of a reasonable amount for such accounts.

Staff recommended approval of the proposed 2009 summer season COG rates, noting that the forecasted costs appear reasonable. In addition, financial hedges currently held by EnergyNorth, and the Company's ability to adjust its rates monthly up to a prescribed limit without further Commission action, should enable EnergyNorth to accommodate 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 2009 summer season can be addressed in 2010 summer COG proceeding.

III. COMMISSION ANALYSIS

A. Cost of Gas Rates

Regarding the Company's COG rate, based on our review of the record in this docket, for the reasons stated by Staff in its recommendation, we approve the proposed 2009 summer season COG rate as a just and reasonable rate pursuant to RSA 378:7.

As to the proposed change to the adjustment mechanism, Staff and the Company have both supported a change, to which the OCA does not object, to the upper limit of the "bandwidth" applicable to the COG rate from 20 to 25 percent of the established rate. We note that this type of adjustment to the COG rate without further Commission action was introduced in 1998 and has been in existence, in some form, for over 10 years. *See, e.g., EnergyNorth Natural Gas, Inc.*, Order 22,890 (March 31, 1998). It has generally proved to be a useful means to limit or eliminate over- and under-collections, match costs to the period in which they are incurred, and reduce "rate-shock" and carrying costs, all while reducing administrative costs for the Company as well as the Commission. Further, changes to the COG rate serve the goal of matching prices to fluctuations in the natural gas markets – a matter substantially out of the control of the Company.

The use of the "bandwidth" to match costs and recoveries, while generally successful has, on occasion, been amended to accommodate changes in energy markets. For example, the bandwidth was once established at 10 percent above or below the set rate, but in 2000 was revised to the current 20 percent. *See EnergyNorth Natural Gas, Inc.*, Order 23,580 (October 31, 2000). This was done to account for increased volatility in the marketplace which had rendered the 10 percent limit unsuitable. In recent history, the volatility in the marketplace has again necessitated a review of the bandwidth to determine whether it meets the goals for which it has been established. A review of the Company's recent history demonstrates that the bandwidth may no longer supply sufficient flexibility to fulfill its intended purposes.

As noted by Mr. Wyatt, in the Summer 2008 period, the Company, in response to rapidly rising prices, adjusted its COG rate to the maximum allowed and was still unable to match the prices in the marketplace. The Company, therefore, filed for a mid-period revised COG. Once the mid-period COG rate was approved, prices dropped precipitously and the Company was restricted by the 20 percent lower bandwidth adjustment limit which was not sufficient to match the drop. The result was an over-collection for the period. Similar fluctuations occurred in the Winter 2008/2009 period with similar results. In such a marketplace, providing the Company greater flexibility would permit it to better fulfill the intent of the COG bandwidth. Because participation in the marketplace of commodities such as natural gas is, as we have noted, inherently speculative, *see id*. at 12, and thus open to unforeseen fluctuations, we conclude that permitting the Company greater flexibility in light of the volatility in the markets is a reasonable means to meet the objectives of the COG adjustments. Should the markets appear to stabilize in the future, we may yet revisit this matter. For the time, however, we conclude that increasing the upper bandwidth limit from 20 to 25 percent of the approved rate is proper.

With regard to the lower limit, the OCA raised an issue about eliminating the lower limit entirely. OCA stated that setting the lower limit as "no limit" might not comply with the requirements of RSA 378:7 pertaining to a change in rates. April 9, 2009 Transcript (Trans.) at 57. OCA suggested that the statutory requirements could be satisfied "if you identified the lower limit as '100 percent limit,' as opposed to a 'no limit.'" Trans. at 57.

RSA 378:7 provides, in pertinent part:

> Whenever the commission shall be of opinion, after a hearing had upon its own motion or upon complaint, that the rates, fares or charges demanded or collected, or proposed to be demanded or collected, by any public utility for service rendered or to be rendered are unjust or unreasonable, or that the regulations or practices of such public utility affecting such rates are unjust or unreasonable, or in any wise in violation of any provision of law, or that the maximum rates, fares or charges chargeable by any such public utility are insufficient, the commission shall determine the just and reasonable or lawful rates, fares and charges to be thereafter observed and in force as the maximum to be charged for the service to be performed . . . .

The OCA does not contend that the rates, fares or charges, or that the regulations or practices of the Company are, or would be unjust, unreasonable or in violation of law if the Company lowered its rates under the proposed adjustment mechanism. Instead, the OCA suggests only that the objectives of proper notice and hearing may not be met in the absence of an undefined lower limit. We do not understand RSA 378:7 to impose such a requirement.

First, we note that while a hearing is contemplated by the statute, notice is not discussed or defined. Notice is, however, referenced in another statute related to rates and charges. RSA 378:3 states:

> *Unless the commission otherwise orders*, no change shall be made in any rate, fare, charge or price, which shall have been filed or published by a public utility in compliance with the requirements hereof, except after 30 days' notice to the commission and such notice to the public as the commission shall direct.

(Emphasis added). Under this provision, notice of 30 days is required prior to a change in rates, unless otherwise ordered by the Commission. For years, notice that COG rates could be raised or lowered was contained in the Commission's orders setting the rate and the bandwidth for a given period. The Commission has thus "otherwise ordered" what notice is necessary. There is no contention that this notice has been insufficient. The issue appears to be that without a firm lower number, customers would not have notice of exactly how low their rates may go.

Initially, it is not clear how a notice stating a 100 percent lower limit would be functionally different that stating that there is no lower limit. In either case, the COG rate could be lowered to the extent necessary to reflect the price of gas in the marketplace, regardless of what that price might be. Customers would, in either event, be on notice that the commodity portion of their bills could be lowered to the degree necessary to track the prices in the marketplace. Moreover, we are not persuaded that stating that the lower limit is a "100 percent limit" would provide any more informative notice to customers than an indication that there simply is no lower limit.

Accordingly, because there is no contention that having no lower limit would result in rates that are unjust or unreasonable, or in violation of law, or that they would otherwise violate RSA 378:7, we conclude that a defined lower limit is not required by that statute. Furthermore, as RSA 378:3 permits the Commission, by order, to alter the notice required, and as the Commission has been doing so in COG matters for many years, we conclude that the notice provided by this order that the COG rate may be lowered so far as is necessary, is appropriate. For the same reasons stated in reference to the alteration of the upper limit, we conclude that a change to the lower limit is justified.

Thus, we will order that the Company's COG rate for the Summer 2009 period as proposed are appropriate and that the Company is permitted to adjust the rates up by 25 percent without further Commission action. Further, the Company may adjust the rate downward so far as is necessary without further Commission action. Should such latitude in rate adjustments become unnecessary or inappropriate in the future, we may revisit the matter for further adjustments and refinements.

B. Occupant Account Settlement

As to the occupant account settlement agreement, under N.H. Admin. Rules Puc 203.20(b) the Commission shall approve the 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." *Concord Electric Company*, 87 NH PUC 694, 708, Order No. 24,072 (2002) (quotation omitted). However, even where all parties join a settlement agreement, the Commission cannot approve it without independently determining that the result comports with applicable standards. *Id*. The issues must be reviewed, considered and ultimately judged according to standards that provide the public with the assurance that a just and reasonable result has been reached. *Id*.

Through the use of this settlement agreement, the issue of excessive use of gas at occupant account properties is to be finally resolved. We agree with the parties that the agreement is a just and reasonable means to resolve this issue.

First, we note, as did Mr. Frink, that there are certain cost savings to be achieved by the use of the "soft off" process and that so long as the occupant account usage is controlled, those benefits would accrue to the ratepayers. As such, we agree that the "soft off" process may continue. We also agree that the establishment of an occupant account at places where usage exceeds 13 ccf reasonably reflects the possibility of some gas being used in a nominally vacant property.

Additionally, we agree with the parties that requiring the Company to capture landlord information so that billing may be transferred to the landowner, upon the agreement of the landlord, rather than to some unnamed "Occupant" will decrease the amount of occupant account gas. Further, this provision will give landlords a convenient option for protecting their property from damage due to freeze-ups during the winter months, and will increase the likelihood of landlords contacting the Company with information on a new tenant, allowing the Company to establish service in the tenant's name and ensuring that the gas being used will be billed to the party actually using it.

We also find the notice of termination provisions in Puc 1203.12 applicable in these circumstances. Puc 1203.12, governs disconnections in tenant/landlord situations. If an account is being billed in the name of "Occupant," it means that the Company is without information about the occupant of the property, as is the case when service is provided in the name of the landlord to a tenant occupied building. In this regard we find that the settlement agreement appropriately defines the obligations of the Company relative to the termination of service at occupant account properties.

As to the so-called "incentive" mechanism, we understand the purpose of this provision is to encourage the Company to be diligent, or as Ms. Leary stated, "aggressive," Trans. at 40, in

avoiding excessive use of gas at occupant account properties. We also understand from Mr. Frink's testimony, that the Company had a history of permitting these accounts to linger creating costs that would be inappropriately passed back to paying customers. Trans. at 44. We agree that curtailing this practice is a worthy goal. As noted, for the first year, the benchmark has been set at 85 therms per year per account, representing the historical usage expected on an occupant account prior to when service could reasonably be expected to be terminated, or a customer of record established. The benchmark is subject to recalculation annually based upon the average of the three prior years. The adjustments to the benchmark will help to encourage the Company to limit these accounts or risk cascading amounts of disallowed costs. While we agree that for now this mechanism is appropriate, we will review the Company's performance under this provision as future filings are made to ensure that this incentive is effective in reducing occupant account usage. Additionally, because the Company's new reporting requirements will aid in determinations of whether it is complying with the incentive program, we approve of those provisions.

In regard to the adjustment to the Company's revenues, Mr. Frink testified that the $32,072 adjustment was determined by estimating what the revenues would have been had the above incentive mechanism been in place during the Company's test year and then dividing that amount in half. Trans. at 45-46. While we recognize that this number is an estimate, we find that it is a reasonable one based upon the circumstances and the parties' expectations about the Company's performance under the incentive mechanism.

Finally, regarding the one-time payment of $256,308 to low income assistance program customers to make up for the extra costs ratepayers have shouldered related to the occupant accounts, we agree that such a payment is reasonable and in the public interest. Issuing a credit

to all customers would have a negligible impact on bills, whereas applying the credit to the low income assistance program customers – *i.e*. those customers with a demonstrated financial need – should provide those customers a credit of approximately $40. We conclude that compensating these customers for the inequity created by the untended occupant accounts is just and reasonable. Accordingly, for the reasons stated, we will approve the parties' occupant account settlement agreement.

C. Motions for Confidential Treatment

Regarding EnergyNorth's motions for confidential treatment, the Right-to-Know law, RSA chapter 91-A, provides that every citizen has the right to inspect all governmental records in the possession of public agencies, except as specifically prohibited. RSA 91-A:4, I. The Commission is a public agency subject to the Right-to-Know Law. *See, e.g., Lamy v. N.H. Pub. Utils. Comm'n*, 152 N.H. 106 (2005). The Commission must, therefore, disclose the documents in its possession that are not specifically exempted from disclosure. RSA 91-A:5, IV states, in relevant part, that records of "confidential, commercial or financial information" are exempt from disclosure. We note that in this instance no parties have objected to the motion for confidential treatment, and that the information for which such treatment is sought is similar to information for which the Commission has granted confidential treatment in the past. *See, e.g. EnergyNorth Natural Gas, Inc.*, Order 24,909 (October 29, 2008).

In analyzing whether the information sought to be protected is "confidential, commercial or financial information" we must review "both whether the information sought is confidential, commercial, or financial information, *and* whether disclosure would constitute an invasion of privacy." *Union Leader Corp. v. N.H. Housing Fin. Auth.*, 142 N.H. 540, 552 (1997) (quotations omitted). "Furthermore, 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 (citation omitted). In assessing the public's interest in disclosure, we note that disclosure should inform the public of the conduct and activities of its government, and that if it does not serve that purpose disclosure is not warranted. *Lambert v. Belknap County Convention*, 157 N.H. 375, 383 (2008). Additionally, the burden of proving whether the information is confidential rests with the party seeking non-disclosure. *Goode v. N.H. Legislative Budget Assistant*, 148 N.H. 551, 555 (2002).

In furtherance of the Right-to-Know law, the Commission's rule on requests for confidential treatment, N.H. Code Admin. Rules, Puc 203.08, is designed to facilitate the balancing test required by the relevant case law. The rule 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. N.H. Code Admin. Rules, Puc 203.08(b).

Applying the above considerations, we conclude that the information here is of a sufficiently sensitive nature that it need not be disclosed. Here, disclosure of EnergyNorth's expectations about pricing, supply, and demand of natural gas would reveal the internal business decisions of the company and, at the same time, injure its bargaining position with its potential future suppliers of gas. As such, disclosure would invade EnergyNorth's privacy interest and damage its competitive position, potentially to the detriment of ratepayers. *See Union Leader*, 142 N.H. at 554. Further, there is no indication that disclosure of the information will inform the

public about the workings of the Commission, and no party or person has objected to the confidential treatment or asserted that disclosure would inform the public about the activities of the government. *See Lambert*, 157 N.H. at 383. Accordingly, in balancing the interests of the company in protecting its information with the public's interest in disclosure, we conclude that the information may be protected and we grant EnergyNorth's motion. Consistent with Puc 203.08(k), our grant of this motion is subject to our on-going authority, on our own motion, on the motion of Staff, or on the motion of any member of the public, to reconsider our determination.

Based upon the foregoing, it is hereby

ORDERED, that EnergyNorth's proposed 2009 summer season COG rates for the period May 1, 2009 through October 31, 2009 are APPROVED as set forth in this Order, effective for service rendered on or after May 1, 2009, as follows:

	Cost of Gas	**Maximum COG**
Residential	$0.6722	$0.8403
C&I, Low Winter Use	$0.6707	$0.8384
C&I, High Winter Use	$0.6727	$0.8409

FURTHER ORDERED, that EnergyNorth may, without further Commission action, adjust the COG rate based upon the projected over-/under-collection for the period, the adjusted rate to be effective the first of the month and not to exceed a maximum rate of 25 percent above the approved rate with no limitation on reductions to the COG rate; 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 the parties' occupant account settlement agreement is APPROVED; and it is

FURTHER ORDERED, that the two pending motions for 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 thirtieth day of April, 2009.

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

Attested by:

Debra A. Howland
Executive Director