

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DG 10-017

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

Permanent Rate Proceeding

**Order Granting Motion for Confidential Treatment, and
Granting Recovery of Certain Rate Case Expenses**

ORDER NO. 25,280

October 25, 2011

I. BACKGROUND

On March 10, 2011, by Order No. 25,202, the Commission approved a settlement agreement in this docket that, among other things, established new permanent rates for EnergyNorth Natural Gas, Inc. d/b/a National Grid NH (EnergyNorth). The Commission also authorized EnergyNorth to recover rate case expenses incurred in the instant docket and directed EnergyNorth to file an accounting of its rate case expenses in accordance with the settlement agreement.¹

A. Rate Case Expenses

On May 13, 2011, pursuant to the provisions of the approved settlement agreement, EnergyNorth submitted to Staff and OCA its proposal to recover \$1,508,508 in rate case expenses. On July 22, 2011, in response to Staff discovery, EnergyNorth updated its filing to seek recovery of \$1,523,903 in rate case expenses, having incorporated the adjustments recommended by Commission Audit Staff. On August 26, 2011, Staff filed a letter and recommended that the Commission eliminate \$411,090 from EnergyNorth's requested rate case expenses based upon six adjustments and allow EnergyNorth to recover \$1,112,811, through a

¹ A more complete description of the procedural history of this proceeding may be found in Order No. 25,202.

per-therm volumetric surcharge collected over a 12-month period, through the Local Distribution Adjustment Charge approved as part of the Cost of Gas proceedings. On September 8, 2011, EnergyNorth filed a response to Staff's recommendation, in which EnergyNorth assented to Staff's proposed adjustments to rate case expenses. (In its Winter 2011-2012 Peak Period Cost of Gas Filing, filed under Docket No. DG 11-192, EnergyNorth has estimated that a volumetric surcharge of \$0.0116 per therm would enable EnergyNorth to collect the \$1,112,811 in rate case expenses recommended by Staff, for the 12-month period beginning on November 1, 2011, if the rate case expenses were approved by the Commission by that date.)

On August 26, 2011, OCA filed a response to EnergyNorth's rate case expense request. OCA asked the Commission to deny \$1,158,664 in expenses and authorize EnergyNorth to recover only \$365,239 (rounded whole-dollar figure). On September 8, 2011, EnergyNorth responded to OCA's arguments, urging the Commission to deny OCA's request to adjust EnergyNorth's rate case expenses and approve recovery of its rate case expenses, as adjusted and supported by Staff.

B. Confidentiality

On August 15, 2011, EnergyNorth filed a motion for confidential treatment regarding hourly billing rate information provided to the Staff and OCA in the form of invoices attached to EnergyNorth's rate case expense reimbursement request. EnergyNorth provided copies of redacted invoices to Staff which, in turn, distributed the invoices to all parties on the service list in this docket as an attachment to its recommendation of August 26, 2011.

II. POSITIONS OF THE PARTIES

A. ENERGINORTH

In its motion for confidential treatment, EnergyNorth requests the Commission grant

confidential treatment to hourly billing rate information contained within its rate case expense invoices submitted to Staff and the OCA. EnergyNorth argues that the information is competitively sensitive and is expressly exempt from public disclosure pursuant to RSA 91-A:5, IV. EnergyNorth states that the information sought to be protected is not publicly available and that disclosure would put EnergyNorth's attorneys and consultants at a competitive disadvantage by divulging to competitors the rates they charge for their services. EnergyNorth stated by way of example that release of hourly billing rates would harm their consultants' competitive position when bidding or negotiating for business in the future.

With respect to rate case expenses, EnergyNorth argued that OCA had participated in substantially similar procedures for the examination of rate case expenses by OCA and Staff in prior cases. EnergyNorth asserted that these procedures, in which, following a settlement agreement, the OCA and Staff examine a utility's rate case expenses in advance of the issuance of OCA's and Staff's recommendations, were consistent with due process and statutory requirements and the administrative rules of the Commission. EnergyNorth noted that Staff, as part of its recommendation filed on August 26, 2011, provided all parties in this docket redacted copies of the supporting material used in its recommendation, including all invoices. EnergyNorth also noted that OCA had been supplied the same information in unredacted form on May 13, 2011. EnergyNorth expressed concern that separate filing requirements for rate case expenses would likely result in additional litigation and associated costs, without added discernible benefit to customers. Further, EnergyNorth argued that any change in the process for requesting recovery of rate case expenses should be applied to all utilities on a prospective basis.

EnergyNorth defended its rate case expenses as reasonable and prudently incurred and stated that although it requested recovery of a total of \$1,523,903, it did not contest the dollar

amount of \$1,112,811 recommended by Staff. EnergyNorth stated that the expenses comprised legal, consulting, and administrative expenses that related only to Docket No. DG 10-017 and were direct expenses that are not otherwise recovered by EnergyNorth through its existing rates. EnergyNorth stated that the amount of the expenses is reasonable given the length of the case and nature of the issues involved.

EnergyNorth asked the Commission to reject OCA's argument that EnergyNorth's rate case expenses ought to be reduced based on the timing of the rate case filing, the dollar amount sought for recovery (as compared with the amount of the rate increase agreed to by EnergyNorth as part of the settlement agreement, the OCA operating budget, and the rate case expenses incurred by other New Hampshire utilities in the past), and EnergyNorth's method of engaging outside consultants. EnergyNorth stated that if OCA believed EnergyNorth should not have filed another rate case, it could have opposed the settlement agreement incorporating the rate increase.

EnergyNorth also argued that its methods used for retaining outside consultants and legal counsel were appropriate, and complied with EnergyNorth's corporate policies and procedures, and rejected OCA's proposed reductions in recovery for such expenditures. Specifically, EnergyNorth argued that its failure to execute a separate written agreement with its outside counsel for the engagement related to the rate case in this docket, until several months after the petition was filed, was harmless error, in light of EnergyNorth's long association with the outside counsel, with Staff's suggested remedy (discussed below) as the appropriate Commission response. EnergyNorth rejected OCA's assertions related to the retention of outside experts for matters related to revenue decoupling, and argued that the retention of experts by EnergyNorth in connection with this rate case issue was reasonable and prudent, irrespective of the withdrawal of EnergyNorth's decoupling proposal (made in connection with the settlement agreement).

EnergyNorth also rejected OCA's position that its supporting documentation filed as part of its retention of the Oliver Wyman, Inc. consultancy, in connection with the bad debt issues of the rate case, was inadequate. Accordingly, EnergyNorth requested that the Commission deny OCA's recommendation in its entirety and approve the rate case expenses recommended by Staff.

B. OCA

OCA did not take a position regarding the merits of EnergyNorth's motion for protective order, though OCA did argue that the Company failed to comply with the Commission's rules related to the filing of confidential information in an adjudicative proceeding. OCA requested that the Commission deny EnergyNorth recovery of \$1,158,664 in rate case expenses (rounded whole-dollar amount). OCA recommended that the Commission allow EnergyNorth to recover only \$365,239 (rounded whole-dollar amount) in rate case expenses.

OCA argued that EnergyNorth's filing of a new rate case and incurrence of \$1,523,903 in expenses so soon after its last rate case concluded was not just, reasonable, or in the public interest. OCA took issue with EnergyNorth's use of sole-source contracts for its consultants because OCA must use formal public competitive bidding when procuring consultants. OCA stated that EnergyNorth's lack of a written contract for its outside legal counsel (the McLane law firm) for several months during the preparation of EnergyNorth's rate case (until July 20, 2010) was in violation of EnergyNorth's internal procurement policies. OCA recommended that, in light of what OCA viewed to be past violations of these procurement policies for outside legal counsel, the Commission disallow all legal fees accrued before the execution of the July 20, 2010 agreement, or legal fees, or \$320,610.53.

OCA also argued that all costs related with Concentric Energy Advisors, Inc.'s (Concentric's) preparation of EnergyNorth's revenue requirement (totaling \$130,621) in the rate case should be disallowed, primarily because EnergyNorth should have used internal resources for this task, and also because EnergyNorth did not, in OCA's view, apply its sole-source internal procurement policies, in failing to seek outside bidders for Concentric's services. OCA also argued for the disallowance of 50% (\$118,970.75) of the total costs incurred (\$237,941.50) through EnergyNorth's retention of an expert on decoupling ratemaking, in light of EnergyNorth's abandonment of the decoupling proposal during the course of the rate case, in the context of EnergyNorth's sale to a third party announced in November 2010, and the "unreasonable" amount charged by the expert consultant, Analysis Group. OCA also argued that, for failure to properly itemize its invoices, all expenses (\$156,832.14) charged by EnergyNorth's bad debt expert consultant, Oliver Wyman, Inc., should be disallowed.

OCA argued that, following these deductions resulting in a subtotal of \$730,478.79, a 50% across-the-board disallowance be applied "to account for the unjustness and unreasonableness of these expenses by sharing them equally between shareholders and ratepayers," resulting in a recommended OCA proposal for recovery of \$365,239 (rounded whole-dollar figure). OCA also requested that in all future rate cases the Commission require that EnergyNorth use a competitive bidding process and engage the provider with the lowest bid unless there is an adequate justification for doing otherwise. In light of EnergyNorth's failure to competitively bid for services, OCA sought disallowance of interest recovery on EnergyNorth's approved rate case expenses.

Lastly, OCA stated that EnergyNorth failed to comply with Commission rules and argued that the Commission should require EnergyNorth to file all future rate case expense filings with

the Commission. OCA also requested that the Commission formally commence rulemaking pursuant to RSA 365:8, X relative to standards and procedures for determination and recovery of rate case expenses.

C. Staff

Staff recommended that the Commission disallow \$411,090 in expenses and authorize EnergyNorth to recover \$1,112,811 in expenses; EnergyNorth has assented to Staff's recommendation.² In its recommendation, Staff outlined six requested reductions to EnergyNorth's rate case expense recovery, and made note of the need for the Company to seek competitive bids for the services of outside consultants and legal counsel, in keeping with its internal policies on such procurement.

For three categories of outside consulting services incurred as part of the rate case, specifically, cost of service study, rate design, and lead/lag study services provided by Management Applications Consulting, Inc. (total costs \$221,427), Staff recommended that 10% of these costs, or \$22,143, be disallowed by the Commission, on the basis that this would be a conservative proxy for likely cost savings if these services were acquired through an open bidding process. Likewise, for the legal costs charged by the McLane law firm, for which no outside bids were taken, Staff recommended a 10% reduction (of \$59,822 from \$598,219, to \$538,397), for the same reasons.

Staff argued that all expenses incurred, after the November 2010 announcement of EnergyNorth being sold to a third party, through its retention of Analysis Group in developing the revenue decoupling requirement, should be disallowed, as incurring such costs after the announcement of the sale was imprudent. This disallowance would total \$65,884, for a reduced

² There is a \$2 discrepancy in calculations, between \$1,112,811 (Staff recommendation) and \$1,112,813 (actual result of subtracting the Staff adjustments of \$411,090 from the EnergyNorth updated proposal figure of \$1,523,903); \$1,112,811 is hereby accepted as the Staff proposal figure.

recovery of these expenses totaling \$172,058. Staff also argued for the disallowance of all revenue requirement expenses (totaling \$112,447) incurred by EnergyNorth, on the basis that EnergyNorth, or its parent company/sister utilities, should have had sufficient in-house expertise to calculate a revenue requirement for the rate case, or, in the alternative, utilize experts providing services to sister utilities through the staggering of rate cases. For return on equity services provided by Concentric, Staff argued, based on costs assessed by competitors in past rate cases, and EnergyNorth's failure to use competitive bidding to procure these services, that the full amount (\$197,035) was unreasonable, and Staff recommended a 50% reduction in the allowance for recovery of these costs, with \$98,518 to be recovered.

Lastly, Staff, with regard to the \$156,832 in costs incurred in connection with bad debt issues examined by outside consultant Oliver Wyman, Inc., argued for a 33% reduction in these expenses, on the basis of Staff's opinion that a significant portion of the consultant's services were used by EnergyNorth to improve its ongoing collection practices, making such expenses impermissible for rate-case-expense recovery. Staff's recommendation would reduce this component of EnergyNorth's expenses by \$52,277, for \$104,555 in recovery (compared with the original request for \$156,832 in recovery).

III. COMMISSION ANALYSIS

A. Confidentiality

RSA 91-A:5, IV states, in relevant part, that records of "confidential, commercial, or financial information" are exempted from disclosure. *See Unital Corp. and Northern Utilities, Inc.*, Order No. 25,014, 94 NH PUC 484, 486 (2009). In determining whether commercial or financial information should be deemed confidential, we first consider whether there is a privacy interest that would be invaded by the disclosure. *Id.* Second, when a privacy interest is at stake,

the public's interest in disclosure is assessed. *Id.* Disclosure should inform the public of the conduct and activities of its government; if the information does not serve that purpose, disclosure is not warranted. *Id.* Finally, when there is a public interest in disclosure, that interest is balanced against any privacy interests in non-disclosure. *Id.* This is similar to the Commission's rule on requests for confidential treatment. *See* N.H. Code Admin. Rules Puc 203.08.

The Commission has previously found hourly billing rate information to be exempt from disclosure. *See, Unitil Energy Systems, Inc.*, Order No. 24,746, 92 NH PUC 109, 114 (2007). Disclosure of the hourly billing information for which protection is sought by EnergyNorth would reveal internal business decisions and financial information, could harm EnergyNorth, Management Applications Consulting, Inc., Analysis Group, Concentric Energy Advisors, Inc., Oliver Wyman, Inc., and the McLane law firm, and could result in a competitive disadvantage to EnergyNorth's service consultants and legal counsel. As such, disclosure would invade the privacy interests of EnergyNorth, its consultants, and the McLane law firm, and could damage competitive positions, potentially to the detriment of ratepayers. Further, there is no indication that disclosure of the information would inform the public about the workings of the Commission. In balancing the interests of EnergyNorth, its consultants, and the McLane law firm in protecting information with the public's interest in disclosure, we find that the privacy interests in non-disclosure outweigh the public interests in disclosure and, therefore, 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.

B. Rate Case Expenses

The Commission has historically treated prudently incurred rate case expenses as a legitimate cost of business appropriate for recovery through rates. *See EnergyNorth Natural Gas, Inc., d/b/a National Grid NH*, Order No. 25,064 (Jan. 15, 2010). After a review of EnergyNorth's rate case expenses, Staff recommends disallowance or reduction of six expense items totaling \$411,090 and reduction of the total rate case expenses to \$1,112,811.

EnergyNorth does not object to Staff's proposed reductions. OCA recommends that the Commission disallow \$1,158,664 and approve \$365,239 in expenses. EnergyNorth objects to OCA's recommendation.

With regard to Staff's recommendation that EnergyNorth's recovery for the cost of service study, rate design, and lead/lag study services provided by Management Applications Consulting, Inc. (total costs \$221,427) be reduced by 10%, or \$22,143, it is conceivable that EnergyNorth could have realized cost savings had it used competitive bidding in the first instance to procure these services. We find Staff's recommendation reasonable under the circumstances of this case, recognizing that the Company agrees to the result but not the underlying rationale.

Staff, on the basis of its knowledge of other, comparable rate cases, recommends a 50% reduction in EnergyNorth's recovery of costs incurred by its return on equity consultant, Concentric, in that these costs were unreasonable in comparison to the costs assessed by Concentric's competitors, and EnergyNorth failed to seek cost control through competitive bidding. We adopt Staff's recommended disallowance of \$98,518, again recognizing that the Company agrees to the result but not to the underlying rationale.

We now address Staff's and OCA's requests, where they overlap. Staff, in its recommendation, and OCA, in its Summary of Relief Requested in section A.a., both recommend reductions in EnergyNorth's recovery for rate case expenses incurred by its legal counsel, the McLane law firm, totaling \$598,219. Staff focuses on EnergyNorth's failure to use competitive bidding to procure these services (while acknowledging EnergyNorth's failure to secure a written agreement with the McLane law firm until July 20, 2010, per its policies), and recommends a 10% disallowance to reflect lost opportunities for cost savings. OCA urges a disallowance of all costs incurred by the McLane law firm before July 20, 2010, arguing that the absence of a written agreement prior to the incurrence of costs for the rate case made such expenses improper.

EnergyNorth did not take advantage of the potential opportunities for cost control offered by competitive bidding for legal services. However, we do not find OCA's proposed remedy to be reasonably related to the potential level of cost savings resulting from competitive bidding, nor do we find total disallowance of all expenses incurred prior to execution of the July 20, 2010 written agreement to be a fair remedy for EnergyNorth's actions, given that such expenses were itemized and related to the rate case.³

Staff and OCA (in section A.c. of its Summary of Relief) are in concurrence that all costs incurred by EnergyNorth's revenue-requirement consultant should be disallowed, totaling \$112,447. We agree with Staff's and OCA's position that EnergyNorth, its parent company, National Grid, and its sister utilities of the National Grid corporate family collectively had the resources to develop a revenue requirement analysis internally, without incurring additional rate case expense for recovery from EnergyNorth ratepayers.

³ We acknowledge that, on the suggestion of Audit Staff, as also recommended by Staff and OCA, that EnergyNorth accepted a \$3,444 reduction in recovery of costs incurred by the McLane law firm for Commission Audit-related costs.

Staff and OCA also argue that, in light of EnergyNorth's pending sale to a third party, announced in November 2010, that expenses incurred by Analysis Group, EnergyNorth's revenue decoupling consultant, should be reduced. OCA, in section A.d., recommends a 50% across-the-board reduction of recovery for these expenses, while Staff recommends a disallowance of all expenses incurred after the November 2010 sale announcement (\$65,884). We agree that, as of the date of EnergyNorth's November 2010 announcement, further costs generated in connection with the revenue decoupling proposal were questionable in light of Energy North's retreat from its initial position, and we find Staff's approach of disallowing expenses incurred by Analysis Group after the announcement to be reasonable. OCA's position that expenses generated before November 2010 were imprudent, however, is not supported by the record.

Staff and OCA (in section A.e.), both seek reductions in EnergyNorth's recovery of expenses incurred by its consultant Oliver Wyman, Inc. for the bad debt matters, with Staff seeking a one-third reduction of \$52,277 for what it viewed to be services outside of the purview of the rate case, and OCA seeking a total disallowance of these expenses (\$156,832), on the theory that Oliver Wyman, Inc. failed to properly verify and itemize its costs and fees. We rely on the opinion of Staff, including Audit Staff, regarding these expenses, and agree that some of these costs were, in fact, incurred outside of the purview of the instant rate case, but cannot accept OCA's suggested remedy of total disallowance as reasonable.

We now turn to OCA's remaining arguments. In section B., OCA appears to argue that EnergyNorth's expenses, following the application of OCA's proposed reductions discussed above, should be further reduced by 50%, in order to "account for the unjustness and unreasonableness of these expenses by sharing them equally between shareholders and

ratepayers.” In light of EnergyNorth’s statutory and constitutional rights to seek rate increases, and having found it just and reasonable to increase EnergyNorth’s revenue requirement in the instant docket, we cannot agree that EnergyNorth’s rate case expense recovery can be arbitrarily reduced by half for alleged “unjustness” or “unreasonableness.” Such a course of action would not be supported by the record or legally sound. We therefore deny OCA’s request.

In section C., OCA urges the disallowance of interest on rate case expenses due to the Company’s purported failure to abide by competitive bidding procedures, though EnergyNorth made no request for interest. Accordingly, the request to disallow interest is not supported by the record.

In sections D. and E., OCA proposes requirements for future rate cases and in section I. it proposes a rulemaking. Though we have denied the bulk of OCA’s requests for reduction in rate case expenses as they have been presented, we share the concerns of OCA and Staff that the expenses in this and many cases are a burden on ratepayers and that the standards for recovery could benefit from greater delineation. In Docket No. DG 08-009, an EnergyNorth rate case, the Commission directed Staff to review rate case expenses in New Hampshire by industry “with attention to factors such as use of inside versus outside counsel and experts, use of competitive bidding practices, and possible models in use elsewhere.” Staff filed its report on June 30, 2010. While it would be beyond the scope of this proceeding to implement OCA’s specific proposals, some may have merit and a rulemaking docket, which we will undertake, is the appropriate forum to consider the Staff report and proposals such as those made here by OCA.

In sections F., G. and H., OCA focuses on the posting of the Company’s rate case request on the Commission’s website and on the confidential treatment of the request. To the extent such issues are not moot, they will be addressed separately as administrative matters. However,

we note with respect to section H. that Staff provided redacted copies of NationalGrid's updated rate case expense request and supporting materials to all parties as part of its recommendation filed on August 26, 2011. The Company also filed a motion for confidential treatment regarding the unredacted version of these supporting materials, which we have approved in this Order. On a going forward basis, however, we conclude that the better practice is for utilities to provide copies of their rate case requests not only to Staff and OCA but to the parties to a proceeding, with requests for protective treatment (and accompanying redactions) as appropriate, and we will take the steps necessary to implement this practice.

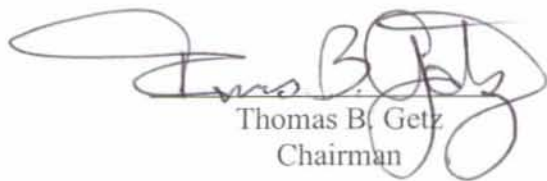
In conclusion, we will approve EnergyNorth's requested rate case expenses as reduced by \$411,092. This results in a total approved rate case amount of \$1,112,811. We will address the matter of recovery of these expenses in the upcoming Winter Cost of Gas Order in Docket No. DG 11-192.


Based upon the foregoing, it is hereby

ORDERED, that, EnergyNorth's motion for confidential treatment is hereby granted; and it is

FURTHER ORDERED, that EnergyNorth is authorized to recover \$1,112,811 in rate case expenses through a 12-month volumetric surcharge to customer bills, as part of the Local Distribution Adjustment Charge of the Cost of Gas, to be addressed in a separate order under Docket No. DG 11-192.


By order of the Public Utilities Commission of New Hampshire this twenty-fifth day of
October, 2011.


Thomas B. Getz
Chairman


Clifton C. Below
Commissioner


Amy L. Ignatius
Commissioner

Attested by:


Debra A. Howland
Executive Director

