

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DG 11-212

NEW HAMPSHIRE GAS CORPORATION

Winter 2011-2012 Cost of Gas

Order Approving Cost of Gas Rates and Other Charges

ORDER NO. 25,281

October 28, 2011

APPEARANCES: Meabh Purcell, Esq., of Dewey & LeBoeuf LLP, on behalf of New Hampshire Gas Corporation and Alexander F. Speidel, Esq., for the Staff of the Public Utilities Commission.

I. PROCEDURAL HISTORY

On September 21, 2011, New Hampshire Gas Corporation (NHGC or Company), a public utility distributing propane-air gas service to approximately 1,100 customers in Keene, filed its proposed cost of gas (COG) and fixed-price option (FPO) rates for the 2011-2012 winter COG period. NHGC's filing included the direct pre-filed testimony of Brian R. Maloney, an employee of Rochester Gas and Electric Corporation (RG&E), an affiliated company providing certain management services to NHGC. Additionally, NHGC requested a waiver of N.H. Code Admin. Rules Puc 1203.05, which requires rate changes to be implemented on a service-rendered basis, and filed a motion for confidential treatment of a gas storage lease agreement submitted as part of its COG filing. On September 23, 2011, the Commission issued an order of notice setting a hearing in the matter for October 20, 2011. On October 11, 2011, NHGC filed a motion for confidential treatment for certain responses to Staff data requests. On October 18, 2011, NHGC

submitted an update to its original filing. No parties intervened in the docket and the hearing was held on October 20, 2011, as scheduled.

II. POSITIONS OF THE PARTIES AND STAFF

A. NHGC

NHGC witness Maloney testified regarding: (1) the calculation of the proposed COG rate and resulting customer bill impacts; (2) the reasons for the change in COG rates; (3) gas supplies and supply reliability; and (4) the request for waiver of the rule requiring rate changes on a service-rendered basis.

1. Calculation of the COG Rate and Customer Bill Impacts

According to its updated filing, the Company's proposed non-FPO winter 2011-2012 COG rate is \$2.1678 per therm, which was calculated by taking the total anticipated period costs of \$2,171,644 and subtracting the expected revenues from the FPO program of \$346,534, as described below. The remaining \$1,825,110 was then divided by the total projected non-FPO gas sales of 841,907 therms. Total anticipated costs, in turn, are derived by adding the estimated total cost of the forecasted propane send-out of \$2,134,869 to the prior period under-collection of \$33,215 and interest of \$3,560. The proposed rate represents an increase of \$0.3701 per therm over the weighted average COG rate of \$1.7977 per therm last winter. For a typical residential heating customer, this rate would equal an increase of about 21 percent in gas costs, and an overall increase of \$386, or 15 percent, after factoring in customer and other charges.

As for NHGC's FPO customers, the enrollment period for the FPO ended October 19, 2011; approximately 17 percent of NHGC customers have enrolled. Transcript of October 20, 2011 Hearing (Tr.) at 10. Based upon the historical usage of the customers that have subscribed,

NHGC expects FPO volumes to be about 155,000 therms. For the FPO, NHGC proposes a rate of \$2.2357 per therm, a \$0.0679 premium over the non-FPO rate. The expected revenues of \$346,534 from the FPO are derived by multiplying the expected usage of 155,000 therms by the proposed rate of \$2.2357 per therm. (No FPO was offered by NHGC during the 2010-2011 peak period heating season, so no direct FPO bill comparison can be made.)

2. Reasons for the Increase

Mr. Maloney's pre-filed testimony indicated that the primary reason for the increase for customers is the increase in market prices of propane compared to last winter, coupled with increases in pipeline fees. *See* Hearing Exhibit 1, Direct Testimony of Brian Maloney at 7. NHGC based the spot prices for its propane on the Mont Belvieu propane futures settlement prices as of October 14, 2011, as presented in Schedule E of NHGC's updated filing submitted on October 18, 2011.

3. Gas Supply and Supply Reliability

NHGC has implemented its propane purchasing stabilization plan as approved in *New Hampshire Gas Corp.*, Order No. 24,617 (April 28, 2006). Under that plan, NHGC has hedged 700,000 gallons of propane at a weighted average cost of \$1.7949 per gallon, or \$1.9616 per therm. NHGC has indicated, in Schedule C of its October 18, 2011 updated filing, that about 63% of its propane needs have been pre-purchased.

Mr. Maloney indicated, in his updated testimony, that the temporary disruptions at the Selkirk propane terminal occurring in September 2011 have ended, allowing the NHGC FPO program to go forward for the 2011-2012 winter heating season. *See* Hearing Exhibit [2], Supplemental Direct Testimony of Brian Maloney at 3. Mr. Maloney also testified that NHGC

has contracted for 51,000 gallons of net propane storage capacity approximately 40 miles from NHGC's gas plant, to provide additional offsite storage capabilities enhancing NHGC system reliability. *See* Hearing Exhibit 1, Direct Testimony of Brian Maloney at 9.

4. Rate Changes on a Bills-Rendered Basis

NHGC requested that the Commission waive N.H. Code Admin. Rules Puc 1203.05(b), which requires that rate changes be implemented on a service-rendered basis. Mr. Maloney, in his pre-filed testimony, testified that it would be less confusing to NHGC customers, who are accustomed to being billed on a bills-rendered basis, and that the current NHGC billing system would have to be replaced at a substantial cost to allow for service-rendered billing. *See* Hearing Exhibit 1, Direct Testimony of Brian Maloney at 9.

5. Motions for Confidential Treatment

As part of its COG filing, NHGC submitted a lease agreement with a lessor providing offsite propane gas storage to NHGC, which included pricing and other terms for the agreement. NHGC, by way of a motion filed with its initial COG filing, requests that this information be granted confidential treatment. (This material was submitted as part of an Appendix 4 to the COG filing, sent under separate cover). NHGC argues that, if this information were disclosed, potential lessors of gas storage facilities would be aware of the terms secured by NHGC for its storage needs. According to NHGC, disclosure of these terms could cause competitive harm to the lessor serving NHGC, could discourage future counterparties of NHGC from entering into contracts for fear of such competitive harms, and might undermine NHGC's bargaining position for such contracts required in the future. As such, NHGC contends that disclosing its confidential commercial information would cause it, and its lessor, competitive disadvantage and

that the information should, therefore, be exempt from disclosure under RSA chapter 91-A, and otherwise be treated as confidential.

NHGC is also required to file certain gas supply hedging information with the Commission. NHGC, by way of a motion filed with its COG filing (in relation to its responses to Staff's data requests on October 11), requests that this information be granted confidential treatment. More specifically, the information NHGC seeks to protect is its response to Staff Data Request 1-1, in Attachment Staff 1-1. This attachment lists the quantities of propane to be pre-purchased by NHGC for hedging purposes, settlement prices for these pre-purchased quantities, and pricing offers made to NHGC by a propane supplier. Any pages of the above-identified schedules that are not specifically identified are part of the Company's non-confidential filing and are, therefore, not within the scope of the motion.

NHGC argues that releasing this information will result in a competitive disadvantage to it in the form of less advantageous or more expensive gas supply contracts. According to NHGC, if gas suppliers possessed this information they would be aware of the Company's gas supply costs and terms and would not be likely to propose terms as beneficial as those in existence. As such, NHGC again contends that disclosing its confidential commercial information would cause it competitive disadvantage and that the information should, therefore, be exempt from disclosure under RSA chapter 91-A, and otherwise be treated as confidential.

B. Staff

Staff, in its closing, stated that it supported the Company's revised and updated COG and FPO rates as they are filed. Tr. at 14. According to Staff, the Company's sales forecast for the 2011-2012 peak period was consistent with past experience, and the propane supply plan was

consistent with those used by the Company in prior years. Tr. at 14. Staff also noted that there will be a reconciliation of forecast and actual propane costs for the 2011-2012 peak COG period that will be filed prior to the 2012-2013 winter COG proceeding, and that any concerns that may arise related to the Company's 2011-2012 gas planning and dispatch may be raised and addressed in next winter's COG proceeding. Tr. at 14-15. Staff also lauded the Company for its seamless transition to management by its affiliates RG&E and New York State Electric and Gas Corporation, and its successful efforts in finding an offsite supplemental propane storage facility. Tr. at 15.

III. COMMISSION ANALYSIS

After careful review of the record in this docket, we find that NHGC's proposed winter COG rates will result in just and reasonable rates as required by RSA 378:7. Accordingly, we approve such rates.

NHGC has requested a waiver of N.H. Code Admin. Rules Puc 1203.05, which provides that rate changes are to be implemented on a service-rendered basis. On the other hand, subsection (c) of the rule specifically contemplates waivers of this requirement in appropriate circumstances and requires utilities seeking to implement rate changes on a bills-rendered basis to address issues such as potential customer confusion, implementation costs, the matching of revenue with expenses and the objective of adequate customer notice. As a result of prior Commission waivers of Puc 1203.05, NHGC customers are accustomed to rate changes on a bills-rendered basis and a change in that policy may result in customer confusion. In addition, NHGC's current billing system is not designed to accommodate billing on a service-rendered

basis and such a change would necessitate modifying or replacing the existing billing system at some cost to NHGC. Based upon these considerations, we grant NHGC's request for a waiver.

In considering NHGC's motions for confidential treatment, we apply the New Hampshire Supreme Court's three-step analysis . *Unitil Corp. and Northern Utilities, Inc.*, Order No. 25,014 (Sept. 22, 2009) at 3 (*citing Lambert v. Belknap County Convention*, 157 N.H. 375, 382 (2008)). First, we evaluate whether there is a privacy interest at stake that would be invaded by the disclosure; when commercial or financial information is involved, this step includes a determination of whether an interest in the confidentiality of the information is at stake. If no such interest is at stake, the Right-to-Know law requires 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.*

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. *Id.* 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).

We note that no party has objected to the requests for confidential treatment. The information NHGC seeks to protect relates to: (1) pricing and other terms for a storage lease agreement, and (2) propane gas supply costs and availability relating to hedging. As noted by NHGC, potential lessors of gas storage facilities would be aware of the terms secured by NHGC for its storage needs if these terms were disclosed. Disclosure of these terms could cause competitive harm to the lessor serving NHGC, could discourage future counterparties of NHGC from entering into contracts for fear of such competitive harms, and could undermine NHGC's bargaining position for such contracts required in the future. Likewise, gas suppliers who may obtain NHGC's propane hedging information would be aware of the NHGC's gas supply costs, and the terms of its supply agreements. These suppliers may, then, be less likely to propose terms as beneficial as those in existence. Moreover, we note that protection of this information may redound to the benefit of ratepayers to the extent NHGC is able to negotiate more favorable arrangements. Accordingly, we conclude that in both instances, there is a privacy interest at stake which would be invaded by disclosure.

As to the public's interest in disclosure, the information at issue concerns the contracts and cost information of the Company. This information relates to the Company's financial arrangements with various counterparties, but does not reveal anything about the functions of the Commission. *See Until Corp. and Northern Utilities, Inc.*, Order No. 25,014 (Sept. 22, 2009) at 3. While the information is, in some sense, informative about the finances of the utility, which are subject to the Commission's scrutiny, we nevertheless conclude that any public interest in disclosure is slight. This is so because little if any information about the Commission, including the processes by which it reviews such information, or the conclusions drawn therefrom, would

be discerned by disclosure. Balancing the above interests, we conclude that in both instances, the Company's interest in privacy outweighs the public's interest in disclosure. Accordingly, we grant NHGC's motions for confidential treatment. Consistent with Puc 203.08(k), our grant of the motions for confidential treatment 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 NHGC's 2011-2012 winter non-FPO COG rate of \$2.1678 per therm and FPO COG rate of \$2.2357 per therm for the period November 1, 2011 through April 30, 2012 are APPROVED, effective November 1, 2011 on a bills-rendered basis; and it is

FURTHER ORDERED, that NHGC may, without further Commission action, adjust the approved winter COG rates upward by 25 percent or downward so far as is necessary based upon its projected over- or under-collection, consistent with *New Hampshire Gas Corp.*, Order No. 24,962 (April 30, 2009); and it is

FURTHER ORDERED, that NHGC (1) provide the Commission with its monthly calculation of the projected over- or under-calculation, along with the resulting revised COG rates for the subsequent month, not less than five business days prior to the first day of the subsequent month and (2) include a revised tariff page 24 - Calculation of Cost of Gas and revised rate schedules if NHGC elects to adjust the COG rates; and it is

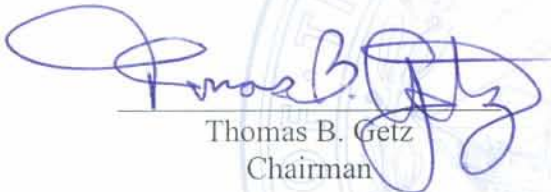
FURTHER ORDERED, that the over- or under-collection accrue interest at the monthly prime lending rate as reported by the *Wall Street Journal*, with such rate adjusted each quarter

using the rate reported on the first business day of the month preceding the first month of the quarter; and it is

FURTHER ORDERED, that NHGC's request for waiver of N.H. Code Admin. Rule Puc 1203.05 (b) is GRANTED; and it is

FURTHER ORDERED, that NHGC 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. Code Admin. Rules Puc 1603.

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



Thomas B. Getz
Chairman



Clifton C. Below
Commissioner

Attested by:



Debra A. Howland
Executive Director