

# Orr&Reno

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April 18, 2007



Malcolm McLane  
(Retired)

**Via Hand Delivery**

Ms. Debra A. Howland  
Executive Director and Secretary  
New Hampshire Public Utilities Commission  
21 South Fruit Street, Suite 10  
Concord, NH 03301

***Re: DG 07-033, Northern Utilities, Inc.  
Summer Cost of Gas***

Dear Ms. Howland:

Enclosed please find an original and 7 copies of Northern Utilities, Inc.'s Motion to Defer Issues and to Enlarge Time for Filing Rebuttal Testimony for filing with the Commission in the above-captioned docket. Please let me know if there are any questions about this matter. Thank you.

Very truly yours,

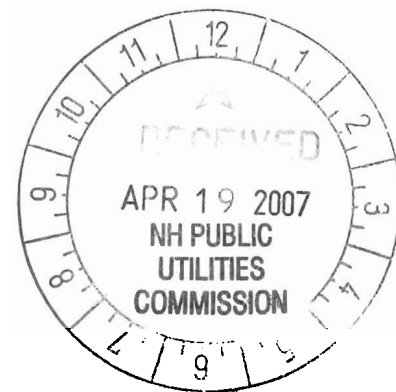
Susan S. Geiger

cc: Service List  
Enclosure  
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**THE STATE OF NEW HAMPSHIRE**  
**BEFORE**  
**THE PUBLIC UTILITIES COMMISSION**  
**DG 07-033**  
**NORTHERN UTILITIES, INC.**  
**SUMMER 2007 COST OF GAS**



**EXPEDITED MOTION OF NORTHERN UTILITIES**  
**TO DEFER ISSUES RAISED BY STAFF IN PREFILED TESTIMONY OF**  
**GEORGE R. MCCLUSKEY AND TO ENLARGE TIME**  
**FOR FILING NORTHERN'S REBUTTAL TESTIMONY**

NOW COMES Northern Utilities, Inc. ("Northern"), by and through its undersigned attorneys, and respectfully moves that the New Hampshire Public Utilities Commission ("the Commission") defer for consideration in another proceeding the issues raised by George R. McCluskey's prefiled testimony which was filed in the above-captioned docket on April 16, 2007. In support of this Motion, Northern states as follows:

1. Northern made its Summer 2007 Cost of Gas ("COG") filing on March 15, 2007.
2. In its Order of Notice dated March 20, 2007, the Commission stated that on March 13, 2007, Commission Staff ("Staff") and the Office of Consumer Advocate ("OCA") filed a report with the Commission expressing the belief that Northern is over-collecting the costs of timing differences between costs and revenues and recommending a modification of the COG reconciliation calculation. The Order of Notice established a technical session (which was held as scheduled on April 12, 2007) and deadlines for Staff

and Intervenor Testimony (April 16, 2007) and Company Rebuttal Testimony (April 19, 2007).

3. On April 16, 2007, Staff filed with the Commission the prefiled testimony of George R. McCluskey. Among other things, the prefiled testimony advocates for significant changes in the long-standing methodology and rates which Northern applies in calculating its COG. In addition, in support of various aspects of his position, Mr. McCluskey's prefiled testimony refers to three separate Commission dockets (involving three different electric utilities) to which Northern was not a party and in which Northern did not participate.

4. Given the short time period between the filing of Mr. McCluskey's prefiled testimony and the deadline for Northern's rebuttal testimony (3 days), Northern has insufficient time within which to conduct any meaningful discovery to investigate Mr. McCluskey's claims or to prepare its rebuttal testimony. Staff, on the other hand, has engaged in discovery through informal technical sessions held in December and March and issued one set of written discovery on April 6, 2007. Many of Northern's responses to data requests relating to its working capital calculation are not due until *after* the hearing on this matter.<sup>1</sup> However, without the benefit of those responses, Staff has nonetheless challenged the legitimacy of Northern's working capital calculation and has opined prematurely on Northern's approved working capital calculation. Procedurally, it makes no sense for the Commission to go forward with Northern's COG prior to the deadline for responses to discovery regarding a material aspect of Staff's testimony.

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<sup>1</sup> On April 6, Staff issued 21 data requests to Northern. Staff asked that Northern file responses to the first 11 requests by April 16. These requests went to traditional cost of gas and gas supply questions. Staff also requested that Northern's responses to questions 1-12 through 1-21 be due April 27. These requests went to Northern's working capital calculation.

5. Notwithstanding the fact that it has only had a short period of time to review Mr. McCluskey's prefiled testimony, Northern has solid objections to it that, for due process considerations and to ensure that the Commission has full and complete information on this issue, it should be given time to develop fully. As proposed, Staff's proposed changes to the COG will have a confiscatory and inequitable effect on Northern, will fail to protect Northern as required for its working capital needs, and should be rejected for many reasons. Northern outlines a few of its objections below for the purposes of supporting this Motion.

6. First, the current COG method has been in place for approximately 30 years. Year in and year out, the Company, the Staff, the Office of Consumer Advocate and the Commission have reviewed the calculations made under the COG and have approved the method as a just method for setting cost of gas rates.

7. Second, every gas utility in the state has the same approximately 30-year old COG methodology that Northern has, and year in and year out, those companies, the Staff, the Office of Consumer Advocate and the Commission have reviewed the calculations made under the COG and have approved the method. Thus, any change in Northern's method by the Commission will most likely affect the COG of other utilities that have not been made parties to this case and will prejudice both Northern and those companies because the Commission will not have had the benefit of simultaneous or joint presentation of evidence and positions on the same issue by similarly situated gas utilities. The disfavored outcome of disparate and inconsistent treatment of this issue is thus made more likely.

8. Third, the Commission has commenced a proceeding (DG 07-050), separate and apart from the summer COG filing made by Energy North Natural Gas, Inc. d/b/a KeySpan Energy Delivery New England (“KeySpan”), to consider an issue that is exactly the same as that set forth in Mr. McCluskey’s prefiled testimony, as well as other unrelated issues.

9. Northern submits that it is inequitable to permit the KeySpan review to be conducted in a later proceeding that is separate from KeySpan’s COG, while Northern is forced to litigate similar and very significant issues in the context of its COG, and under a tight schedule that does not afford Northern the time and process it requires to conduct meaningful discovery, prepare its rebuttal testimony or to present complete information to the Commission.

10. Fourth, Northern has substantive issues with Mr. McCluskey’s testimony that it requires additional time to develop fully. For instance, Mr. McCluskey alleges that Northern’s lead-lag study was conducted improperly. *Staff Testimony* at 7, line 7. However, Northern’s lead-lag study was reviewed by Staff and the Commission, was not challenged and was approved by the Commission in Northern’s 2002 base rate proceeding. The study was prepared properly and accurately in measuring customer and company behavior. Nevertheless, it does not reflect timing changes, volumetric changes in gas use, or other unpredictable changes in the marketplace. It does not account for non-payment by customers during the winter moratoria, for example. Northern’s position is that a lead-lag study cannot be adjusted for timing differences and differences in billings due to the broad volumetric changes that occur from the summer to winter gas

seasons. That is why the COG is constructed to enable gas utilities to receive interest on actual payments of gas costs and its billings/recoveries.

11. With a broad brush, Mr. McCluskey applies his reasoning for the default service adjustment clause for electric utilities to the cost of gas adjustment clause for gas utilities. Northern disagrees. The broad volumetric changes that occur in the gas industry make its 30-year old clause justifiable and distinguishable from the electrics.

12. In order to make this evidentiary demonstration to the Commission in rebuttal to Staff's position, Northern must through discovery learn more about the electric company adjustment mechanisms and what Staff believes they are intended to recover. Northern must conduct discovery on Mr. McCluskey's assertion that the lead-lag study previously approved by the Commission was "conducted improperly," present the prefiled testimony of its consultant located in Ohio, John Skirtich, and then make Mr. Skirtich available for questioning by the Commission.<sup>2</sup> Even if discovery could be conducted and prefiled testimony filed before the COG hearing (which Northern cannot do), Mr. Skirtich is not available to be in Concord for Monday's hearing. As a matter of due process, Northern is entitled to develop its response to Mr. McCluskey's testimony.

13. Fifth, Mr. McCluskey asserts that electric utilities Until, National Grid and PSNH have accepted accrual accounting under Commission-approved settlements for default service and transmission rates. Although such actions are not binding upon Northern and do not justify a change in the calculation of a 30-year COG, Northern has insufficient time to investigate Mr. McCluskey's assertions or even understand fully the

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<sup>2</sup> Northern notes that Staff witness Cunningham reviewed the lead-lag study for Northern's 2002 rate case but Mr. Cunningham has not filed testimony in this case does not appear to have been consulted by Mr. McCluskey. Moreover, while Mr. Skirtich has been a witness for lead-lag studies for many years, Mr. McCluskey's background and expertise in reviewing or creating lead-lag studies is unknown.

significance of Mr. McCluskey's assertions until it has the opportunity for discovery. Although Northern has not fully investigated the electric companies' reconciliation mechanisms, Northern strongly suspects these mechanisms may be both calculated differently and be used for a different purpose than a gas utility cost of gas, particularly because of the distinct volumetric changes due to seasonality of use that is not common to electric utilities. It is also important to note that neither the default service rates nor the transmission rates for PSNH have been in place and consistently approved for 30 years as is the case with Northern's COG. In these circumstances Northern is entitled to more time to develop a rebuttal to Mr. McCluskey's assertions.

14. Sixth, in his assertion that now the accrual method is appropriate for the COG (which has been calculated on the billing month method since its inception), Mr. McCluskey has asserted that there is a 15.2 lag day built into Northern's interest on under/over collections because Northern billed its customers and received payments throughout a month. However, this assertion is incorrect. Northern has only billed customers for (on average) 1/2 month of that month's gas costs. For instance, Cycle 1 customers will not even be billed for 29 days of that month's consumption until early the next month. The current COG appropriately applies billing month sales / revenues. In fact, the mismatching each month of the associated revenues and costs is an under/over collection for gas utilities that truly generates the need for recovery of carrying costs on that under/over collection. The COG has been appropriately calculated for the last 30 years. Because of this, Northern should be permitted further time in order to present this position appropriately for the Commission's consideration.

15. Seventh, Mr. McCluskey asserts that the electric companies use prime rate on their adjustment clause collections, but asserts that Northern should use the short term debt interest rate. This ignores that the Commission has approved the monthly prime rate for COG because it more accurately reflects market lending rates. Northern should therefore be permitted to conduct discovery on Mr. McCluskey relative to this obvious inconsistency.

16. Finally, additional time is required to prepare because Mr. McCluskey and Staff have not disclosed to Northern or the Commission the effect of their conclusions upon the calculation of Northern's COG rates, whether for this period or for application in the future. Nowhere in his testimony does Mr. McCluskey indicate what the supply-related working capital factor should be. Nowhere does Mr. McCluskey set forth a mathematical derivation of what he believes the "new" cost of gas calculation should look like. Nowhere does Staff provide legal justification for a change in the Commission's long-standing precedent that calculates the cost of gas just as Northern has in its Summer 2007 Cost of Gas. Nowhere does Staff indicate whether it is seeking a retroactive or prospective application of its recommended changes to the Commission's long standing COG methodology.

17. In view of the foregoing, in particular the short period of time within which to prepare in advance of Monday's hearing, Northern respectfully requests that the Commission defer its consideration of the issues raised in Mr. McCluskey's prefiled testimony and open a separate docket to consider those issues. Northern also respectfully requests that the Commission extend the deadline for the submission of Northern's

rebuttal testimony to a date that is consistent with a procedural schedule to be adopted in a separate docket.

18. In the event that the Commission determines not to open a separate proceeding to consider the matters raised in Mr. McCluskey's prefiled testimony, Northern respectfully requests alternatively that the deadline for filing its rebuttal testimony in the instant docket be extended by at least another day (i.e. until April 20, 2007).

19. Counsel for Northern has contacted Attorneys Anne Ross and Rorie Hollenberg for the purpose of seeking their concurrence with the relief sought in this motion. On behalf of Commission Staff, Attorney Ross indicated that Staff will not concur with any request to defer the matter to permit Northern to conduct discovery on Staff's position, but does not object to Northern's alternative to file its rebuttal testimony on April 20, 2007. On behalf of the Office of Consumer Advocate, Attorney Hollenberg indicated that the OCA does not agree with Northern's deferral request. As of the time of the filing of the within Motion, Attorney Hollenberg had not indicated a position on Northern's alternative request to extend the deadline for its rebuttal testimony

WHEREFORE, Northern respectfully requests that the Commission:


- A. Grant the relief requested in paragraph 17 above;
- B. In the alternative, grant the relief requested in paragraph 18, above; and
- C Grant such further relief as it deems equitable and just.

Respectfully submitted,  
**NORTHERN UTILITIES, INC.**

By its Attorneys,

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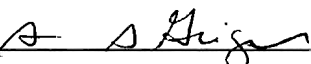
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Dated: April 18, 2007

Certificate of Service

I hereby certify that a copy of the foregoing Motion has on this 18<sup>th</sup> day of April, 2007 been sent by electronic mail and hand delivered to persons listed on the Service List.

By:   
Susan S. Geiger