

**STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION**

**RE: ENERGYNORTH NATURAL GAS, INC.
D/B/A KEYSpan ENERGY DELIVERY NEW ENGLAND**

DOCKET NO. DG 07-050

KeySpan's Response to Staff's Motion to Reopen Record

KeySpan submits this Response to Staff's Motion to Reopen Record to correct certain statements in the Commission staff's ("Staff") motion and to provide the Commission with a more complete statement of the events that led to the filing of Staff's unusual request. As described below, Staff's request to reopen the record arises from its recognition that Staff needs to correct a statement contained in its October 19 Surrebuttal Testimony. With this correction, the Staff has now put forth a revised explanation to support its proposed transition method for moving to the use of accrued revenues in calculating the Company's gas cost reconciliation balance. The Company does not object to Staff's request that the record be reopened if KeySpan is provided an opportunity to conduct discovery regarding Staff's new testimony, present testimony in response to Staff's latest position and cross examine Staff's witness, Mr. McCluskey.

DISCUSSION

The sole issue remaining in dispute in this docket relates to how a transition should be accomplished from the current practice of using billed revenues to the use of accrued revenues for purposes of calculating the deferred gas cost reconciliation balance used by KeySpan. That issue arose late in this proceeding—only after the Commission

issued its Order No. 24,786 on September 13, 2007 (the “Northern Order”) regarding Northern Utilities in Docket DG 07-033 (the “Northern Docket”). Prior to the Northern Order, KeySpan had indicated to Staff, both orally and in its prefiled testimony, that the Company expected that it would accept the outcome of the Northern Docket with regard to the issue of whether billed or accrued revenues should be used for cost of gas reconciliation purposes, but that it reserved the right to separately litigate the issue of the specific methodology that should be used to accomplish such a transition. That understanding was reflected in the prefiled testimony of George McCluskey filed on June 22, 2007¹, as further clarified in Mr. McCluskey's response to a Company data request², and was also described in the August 31, 2007 prefiled testimony of Ann Leary.³ In particular, Ms. Leary's testimony stated that the Company was concerned that the Staff might propose a transition method that would be confiscatory to the Company, but that as of the date of her testimony it was not clear what specific transition method the Staff would be proposing. Ms. Leary's testimony, therefore, noted that the Company would respond to the Staff's position once it was fully set forth and could be reviewed by the Company.

Promptly after the Commission issued the Northern Order, Ms. Leary contacted the Staff to determine Staff's understanding of how a transition from billed to accrued revenues should be implemented by KeySpan if it adopted the Northern Order in its entirety. Based on those conversations, it became clear that the transition methodology being proposed by Staff (and which Staff indicated it understood was the Commission's intent in the Northern Order) would have resulted in booking six weeks of gas revenues

¹ See Exhibit 4 at 3-4.

² See Staff's response to data request KeySpan 1-28, attached as Appendix 1.

³ See Exhibit 6 at 3-7.

but only one month of gas costs in the month of (or the month prior to) the transition. Because the Company believed that this methodology had the confiscatory effect about which Ms. Leary had expressed concern in her August 31 testimony, KeySpan filed a pleading⁴ in the Northern Docket in support of a motion for rehearing filed by Northern. In order to explain the basis for the Company's concern in detail, KeySpan included written testimony from Ms. Leary that detailed why Staff's proposal would be confiscatory.⁵

On October 19, Staff filed its surrebuttal testimony in this docket. Although it did not specifically mention the testimony of Ms. Leary that KeySpan had filed in the Northern Docket, it directly responded to her description of the problem caused by Staff's proposed transition method. In particular, Staff's testimony stated "the inclusion of the extra revenue in October 2005 "corrects an error made when the billed revenue accounting methodology was first implemented: namely the inclusion of only a half a month's revenue in the initial month."⁶ This was the first time that Staff had claimed that such an error existed or needed to be corrected. Staff's testimony did not provide any supporting information indicating that such an error actually existed. The only indication of the timeframe of the supposed error was Staff's statement that it occurred "when the billed revenue accounting methodology was first implemented," apparently referring to the time when the cost of gas reconciliation was first adopted.

In order to determine the basis for Staff's claim that its proposed transition method was necessary to correct a prior error, the Company propounded data requests on October

⁴ See KeySpan Energy Delivery New England's Response to Northern Utilities, Inc.'s Motion for Reconsideration, Rehearing and Clarification, dated Oct. 15, 2007, filed in Dkt. DG 07-033.

⁵ Essentially identical testimony was submitted in this proceeding on November 1 and was marked as Exhibit 8 during the hearing.

⁶ Exhibit 5 at 6.

30. The Staff provided responses the next day.⁷ During the few days remaining prior to the hearing in this case, the Company reviewed the PUC orders referred to in the Staff's responses as well as other Commission orders regarding KeySpan and its predecessors to determine if it could find an order that would indicate that only two weeks of revenues had been recognized during any month, i.e., that the error that Staff claimed had occurred did in fact occur. The Company was unable to find any support for the claimed error.

Because the Company was unable to find any substantiation of the error, the Company focused almost the entirety of its cross examination of George McCluskey on that issue during the hearing that occurred on November 5 and 8. Despite repeated questioning, Mr. McCluskey was unable to provide information that would support his position that an error had ever occurred. The following testimony is illustrative:

Q.On Page 6 of your prefiled, Lines 16 to 23, you say that "It's wrong to review [sic, should be "view"] the reduction in interest as a penalty." Do you see that?

A. That's correct.

Q. All right. And, you're saying that's because the reduction in the reconciliation balance by a half month of revenues corrects an error, right?

A. Correct.

Q. All right. Who made that error? Maybe we should start with, can you tell us what the error is?

A. Yes. The error is the use of billed revenue accounting for reconciliation purposes.

Q. Okay. So, when that process began, that was an error?

A. I believe so.

....

⁷ The response were marked as Exhibit 11 in this proceeding.

- Q. So this error that you say that occurred, you don't know when it occurred?
- A. We don't know when it was first implemented. The particular—This current methodology of using, not just billed revenue, but the practice of having half a month's revenue in the beginning of a season, peak or off-peak.
- Q. And, do you have a document to offer me or the Commission that shows me this error occurred?
- A. Well, the current methodology occurred at some point.
- Q. Well, you're assuming that the current methodology started with only a half month of revenue aren't you?
- A. No, I think I said it in the discovery response. The use of billed revenue started in the 1970's. We couldn't say when the practice of using a half month of revenue for the first month of the season began. We have no information to state when that actually first began.

Transcript, 11/5/07, at 74-78.

The practice referred to by Mr. McCluskey of “using a half month of revenue for the first month of the season” is commonly referred to as proration. Upon further questioning, Mr. McCluskey indicated that he had no idea when proration of revenues between the peak and off-peak seasons began, and that he was unaware that it was first implemented in 2001 as one of a number of significant changes to the cost of gas mechanism that resulted from a major rate redesign proceeding which occurred at a time when Mr. McCluskey was not employed by the Commission.⁸ It was not until Mr. McCluskey specifically identified that time period during his cross-examination on November 5 that the Company understood what “error” he was referring to and exactly when he claimed it had occurred.

At the conclusion of the cross examination of Mr. McCluskey on November 5, the hearing was interrupted unexpectedly because of a conflict in the Commission's calendar,

⁸ Transcript, 11/5/07, at 79.

and the Commission scheduled the remainder of the hearing for November 8. Because of the three day interruption, the Company was able to review archived files from prior cost of gas proceedings relating to the time period when Mr. McCluskey claimed the error had occurred. After an extensive effort, the Company located testimony and gas cost reconciliation filings that directly demonstrated that the “error” that Mr. McCluskey had testified needed to be corrected had, in fact, never occurred.

In its closing argument counsel for the Staff conceded that the error relied on by Mr. McCluskey did not exist. Having conceded that the error did not exist, however, Staff counsel closed by arguing that the transition method proposed by Staff was nevertheless necessary because it was the proper accounting treatment to accomplish the transition, regardless of the absence of any prior error. Because Staff bore the burden of proof in this proceeding, the order of closing arguments left no opportunity for the Company to respond. As a result, the hearing ended with this last minute change in Staff position, which had not been the focus of the hearing and on which there had been no discovery.

Staff’s request that the Commission reopen the record to allow Mr. McCluskey to correct his prior testimony is commendable. However, Staff’s motion creates the impression that Mr. McCluskey’s error resulted from a failing on the part of Ms. Leary or the Company to provide Staff with necessary information in a timely manner. In fact, given the extremely limited time available to the Company once Staff clarified the timeframe of the alleged error, the Company acted expeditiously to review its archived files and provide direct proof that that the claimed error never occurred. It was only the

serendipity of the unexpected three day break in the hearing that afforded the Company the opportunity to find the information in time for this proceeding at all.

REQUEST FOR RELIEF

As noted above, the Company focused almost the entirety of its cross examination of Mr. McCluskey and the direct testimony of Ms. Leary on the error that Mr. McCluskey claimed was the basis for the transition method proposed by Staff. If, as appears to be the case from Mr. McCluskey's revised surrebuttal testimony, he is now relying exclusively on a claim that the proposed transition method is proper from an accounting standpoint and he no longer claims that it is necessary to correct a prior error, the issue before the Commission is one of gas cost accounting expertise pure and simple, rather than prior regulatory treatment, and the Company should be afforded an opportunity to present a witness with appropriate expertise in such matters. In order to be able to present a complete record on this issue, the Company would need to be able to conduct limited discovery on Staff and present responsive prefiled testimony from a Company representative from its accounting department. That individual is expected to be someone other than Ms. Leary.

For the foregoing reasons, KeySpan does not object to the Staff's request to reopen the record in this proceeding if the Commission orders the parties to propose a procedural schedule that will provide KeySpan with an opportunity to conduct discovery on Staff's revised position and to submit responsive testimony, followed by a hearing on the merits.

Respectfully submitted,

EnergyNorth Natural Gas, Inc. d/b/a
KeySpan Energy Delivery New England

By its Attorneys

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Date: November 30, 2007

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Response has been forwarded this 30th day of November, 2007 to the service list in the above-captioned proceeding.

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