

THE STATE OF NEW HAMPSHIRE



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May 16, 2007

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



Re: Docket No. DG 07-050  
Energy North Natural Gas, Inc. d/b/a KeySpan Energy Delivery New  
England

HEARINGS EXAMINER'S REPORT

Dear Ms. Howland:

As directed by the Commission, pursuant to RSA 373:17 and N.H. Code Admin. Rules Puc 203.14(c), I conducted the pre-hearing conference in the above-referenced docket on May 3, 1007. Please treat this letter as my report.

F. Anne Ross, Esq. represented Commission Staff. Kenneth Traum appeared on behalf of the Office of Consumer Advocate. Steven V. Camerino of McLane, Graf, Raulerson & Middleton, P.A. represented Energy North Natural Gas, Inc. d/b/a KeySpan Energy Delivery New England (Key Span). The clerk noted the filing of the requisite affidavit concerning publication of the order of notice. There were no intervention requests.

The Commission opened this docket not at the request of KeySpan but as the result of a report submitted by Staff on March 29, 2007 as previously directed in Order No. 24,688 (October 27, 2006). Order No. 24,688 concerned cost-of-gas (COG) adjustments to KeySpan's retail rates to be effective over the ensuing six months. The Commission determined that it could not approve reconciliation of the utility's 2005-06 COG until certain issues, raised by Staff but left unresolved in that proceeding, were addressed. *Id.*, slip op. at 16.

The unresolved issues identified in Order No. 24,688 were (1) "KeySpan's process of charging interest costs through its COG mechanism, once through the reconciliation mechanism and a second time through the cash working capital allowance," *id.*, and (2)

“KeySpan’s efforts to collect unpaid amounts, or an appropriate bad debt percentage,” *id.* at 17.<sup>1</sup>

Staff’s March 29 report addressed these issues. With respect to the former issue, Staff concluded that KeySpan is “fully compensated” for costs associated with working capital through the Company’s working capital rate adjustment, notwithstanding timing differences between the receipt of revenues and the payment of gas supply costs, and thus “that the combination of [KeySpan’s] working capital and reconciliation rate adjustments over-collects the costs of timing differences.” Staff Report at 3-4. With respect to the latter issue, Staff concluded “that the increase in bad debt percentage was due largely to reduced efforts in pursuing EnergyNorth delinquent accounts following the acquisition of EnergyNorth by KeySpan in November 2000.” *Id.* at 5. Staff noted that in late 2005 KeySpan increased its collection efforts, causing its bad debt percentage to drop from 2.98 percent to 2.24 percent. Expecting additional improvements, Staff recommended an allowance of 2 percent for bad debts when calculating KeySpan’s indirect gas costs.

The Commission issued an order of notice April 10, 2007, opening this docket to consider these issues and scheduling the May 3, 2007 prehearing conference.

At the pre-hearing conference, I asked the parties and Staff to state positions on burden of proof, given that the proceeding had been commenced at Staff’s request rather than upon petition of the utility. KeySpan took the position that Staff has the burden of proof, particularly the burden of going forward with the evidence. Staff contended that a utility bears the burden of demonstrating that its rates are just, reasonable and lawful. However, the parties and Staff appeared to be in agreement that the Commission can and should defer any ruling on this issue until later in the proceeding.

KeySpan further contended that Staff’s report improperly sought to bring before the Commission not the two issues held out in Order No. 24,688 but four issues: (1) the use of billed rather than accrued revenues in the reconciliation of gas costs, (2) the level of the utility’s uncollected debt, (2) questions surrounding the lead/lag study used to determine the appropriate working cash allowance for the Company, (3) and the rate of return applicable to the working capital allowance. According to KeySpan, an “oral settlement agreement” entered into between KeySpan and Staff was to the effect that only the first two issues would remain open for purposes of reconciling previously incurred COG costs and revenues.

KeySpan indicated that it planned to file a motion to limit the scope of the proceeding and to consolidate this case with a similar proceeding opened as to Northern Utilities to consider the rate of return applicable to working capital allowances. Both Staff and OCA took exception to

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<sup>1</sup> The Commission also left unresolved the question of whether certain environmental remediation costs were prudently incurred. Order No. 24,688, slip op. at 20. This issue is not under review in Docket No. DG 07-050.

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KeySpan's procedural assertions; OCA further indicated that it intended to raise a fifth issue: whether the determination of indirect gas costs constitutes improper single-issue ratemaking.

Despite these significant disagreements about threshold issues, the parties and Staff indicated that the Commission should not rule on these questions at this time, awaiting instead a recommendation from the parties and Staff with respect to a procedural schedule. I concluded the prehearing conference and left the parties and Staff to conduct a technical session for that purpose.

It appears that this will be an unusually contentious proceeding. I indicated to the parties and Staff that I was troubled by the notion of an "oral settlement agreement" between a utility and Commission Staff that would have the effect of precluding the Commission from considering certain issues in this or any subsequent proceeding. I pointed out that Staff is not an entity and, as such, has no authority independent of the agency itself. However, given the Commission's longstanding preference for negotiated resolutions of contested issues, and the apparent agreement of the parties and Staff that no rulings need be made at this time, I recommend that the Commission simply consider the procedural schedule that emerged from the technical session and approve it if reasonable.

Staff's report of the technical session is on file, as is a motion by KeySpan to consolidate this proceeding with Docket No. DG 07-033, on a limited basis, consistent with the position the utility took at the prehearing conference. Since these filings post-dated the prehearing conference I do not consider them in this report.

The parties may contact me at 271-6006 if there are any questions or concerns about the foregoing. I apologize for the tardiness of this report, which I attribute to the press of business related to pending legislation of interest to the Commission.

Sincerely,

A handwritten signature in black ink, appearing to read "Donald M. Kreis", written in a cursive style.

Donald M. Kreis  
General Counsel

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**FILING INSTRUCTIONS:    PURSUANT TO N.H. ADMIN RULE PUC 203.02(a),**  
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