

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DG 09-038

NEW HAMPSHIRE GAS CORPORATION

Petition for Rate Increase

**Order on Rate Case Expenses and
Motion for Protective Treatment of Rate Case Expense Information**

ORDER NO. 25,118

June 24, 2010

I. BACKGROUND

On February 27, 2009, New Hampshire Gas Corporation (NHGC or Company) filed a notice of intent to increase its distribution revenues. NHGC provides propane-air delivery service to roughly 1,100 customers in Keene. On October 30, 2009, the Commission issued Order No. 25,039, which approved a settlement agreement between Staff and the Company authorizing new permanent delivery rates effective November 1, 2009 as part of a multi-year rate plan. Hence, the Commission approved recovery of \$27,442 in rate case expenses, and \$45,371 to recover the difference between temporary and permanent rates. NHGC therefore designed a surcharge in the amount of \$0.059 per therm to recover the \$72,813 total over twelve months.

NHGC notified the Commission, on March 15, 2010, that it had completed the temporary rate reconciliation and had received a final billing for its rate case expense.¹ NHGC reported that its revised total expenses to be recovered were \$35,524 in rate case expenses and \$45,626 in temporary rate reconciliation, for a total of \$81,149 for recovery in a twelve-month surcharge. Accordingly, NHGC requested an adjusted surcharge of \$0.0851 per therm.²

¹ The reconciliation and rate case filing is found in Docket No. DG 10-048.

² See Exhibit 1 Attachment 3 Calculation of Rate Case Expenses and Temporary Rate Reconciliation DG 10-048.

Staff stated at hearing in Docket No. DG 10-048, the Company's summer cost of gas proceeding, that it had reviewed the temporary rate reconciliation and rate case expenses and that they appeared reasonable. Because final documentation supporting rate case expenses had not been filed, Staff suggested that any issues arising following its review of the rate case expense documentation could be addressed by the Commission prior to the winter cost of gas (COG) filing. Transcript of April 10, 2010 Hearing in DG 10-048 at 15-16. In Order No. 25,098, (April 29, 2010) the Commission approved the COG rates and directed the Company to produce supporting documentation for its rate case expenses within thirty days.

On April 29, and May 4, 2010, the Company filed redacted invoices relating to outside legal services and other rate case expenses. Accompanying the May 4, 2010 filing was a motion for protective treatment covering the unredacted invoices for outside legal services. The filing noted that in reviewing its legal invoices NHGC discovered that some COG-related expenses inadvertently had been included for recovery as rate case expenses and, thus, the requested rate case expenses were reduced to \$34,546, of which \$34,377 was for legal expenses.

On May 19, 2010, Staff filed a memorandum stating that some of the expenses were unclear and some did not appear to be necessary. For example, one invoice for drafting cover letters and arranging for the mailing of data responses resulted in a bill of \$552.50. Staff also stated that legal services relating to a possible Liquefied Natural Gas plant were not appropriate for recovery as a rate case expense. Staff recommended recovery of \$28,205 in legal expenses, for a total of \$28,373 in rate case expenses. Staff recommended no other adjustments. Staff did recommend, however, that the Company limit outside legal expenses in the future and require legal invoices to segregate charges by docket number where applicable.

On June 10, 2010, Staff filed an updated recommendation noting that Staff and the Company had discussed the allocation of legal expenses between the rate case and the COG

proceedings and had reached agreement with regard to the rate case expenses. The updated Staff recommendation supported a total rate case expense recovery of \$30,519. Regarding the motion for protective treatment, Staff stated that it had reviewed the information in the unredacted legal invoices, but did not rely on it and, therefore, recommended that the invoices be returned to the Company and that the motion be withdrawn.

II. COMMISSION ANALYSIS

A. Rate Case Expenses

Under RSA 365:38-a, the Commission, “may allow recovery of costs associated with utility proceedings before the commission, provided that recovery of costs for utilities and other parties shall be just and reasonable and in the public interest.” The Commission has historically treated prudently incurred rate case expenses as a legitimate cost of business and thus appropriate for recovery. *See, e.g., Lakes Region Water Company, Inc.*, Order No. 24,954 (March 27, 2009).

The Company sought recovery of \$34,546 in rate case expenses; Staff recommended recovery be limited to \$28,373 and subsequent discussions led to an agreed upon recommendation of \$30,519. Staff’s recommendation is to exclude approximately \$4,000 from rate case expenses for work that did not relate to the rate case and for work that did not seem reasonably charged, recommendations that we adopt. We are concerned, moreover, that outside legal counsel is involved in ministerial tasks such as drafting and submission of cover letters, at a high billing rate. In this case we will not reject the agreed upon level of recovery reached between the Company and Staff, though we urge the Company to take all necessary measures in the future to limit use of outside counsel to those times when it is truly necessary. We remind the Company that it ought to apply the same cost cutting focus on rate case expenses as it would to other utility expenses. We will not impose on ratepayers the costs of work that could have been handled in a more cost-effective manner.

Regarding the temporary rate reconciliation, we approve recovery of the temporary rate reconciliation amount of \$45,626 as identified in NHGC's 2010 summer COG filing in Docket DG 10-048. In that proceeding, Staff recommended approval of the temporary rate reconciliation, and stated that if an issue arose pending its final review the Commission could address the issue at that time. As Staff's recommendation does not identify any issues with the temporary rate reconciliation, we accept Staff's initial finding that the temporary rate reconciliation is reasonable.

B. Motion for Protective Treatment

In its May 4, 2010 motion for protective treatment, the Company argued that the legal invoices contain "material, non-public, confidential financial information that should not be released on the public record." Citing RSA 91-A:5, IV, NHGC contends that the information is confidential, proprietary and commercially sensitive and that disclosing it will place its outside counsel at a competitive disadvantage. Specifically, the information that has been redacted, and for which protection is sought, relates to the hourly rate and number of hours on particular tasks completed by the Company's legal counsel. The total amounts for the tasks are not redacted, but only the hours and the rate charged. While Staff stated it had not relied on the redacted information in its analysis and recommended that the Company withdraw the Motion, we find that the better course is to retain the invoices as part of the record in this proceeding.

We recently addressed the confidential nature of billing information in *EnergyNorth Natural Gas, Inc. d/b/a National Grid NH*, Order No. 25,064 (Jan. 15, 2010). There we noted that in determining whether commercial or financial information should be deemed confidential, we consider whether there is a privacy interest at stake that would be invaded by the disclosure. *Id.* at 11. Second, when a privacy interest is at stake, the public's interest in disclosure is assessed. *Id.* Finally, when there is a public interest in disclosure, that interest is balanced

against any privacy interests in nondisclosure. *Id.* The Commission's rule on requests for confidential treatment, Puc 203.08, similarly addresses this balancing test. N.H. Code Admin. Rules Puc 203.08(b); *see also Unital Corp. and Northern Utilities, Inc.*, Order No. 25,014 (September 22, 2009) at 3.

Though it does not state expressly in its motion why it would be competitively disadvantaged by disclosure, we have noted that divulging such information may discourage consultants from working with a company because they would be concerned about the release of information they believed to be confidential. *EnergyNorth Natural Gas, Inc. d/b/a National Grid NH*, Order No. 25,064 (Jan. 15, 2010) at 9, 11. We presume the same interest applies here for the Company's legal counsel. Regarding the public interest, we have stated that there is a public interest in the information since it has a bearing on the rates set by the Commission and paid by customers, and thus disclosing it would inform the public to some extent about the actions of the Commission. *Id.* at 11-12. Finally, in balancing these interests, we conclude, as we have previously, that the interest of the Company in the confidentiality of the information for which protection is sought outweighs the interest of the public in disclosure. *Id.* at 12. First, we note the Commission has previously ruled that billing rate information is properly treated as confidential. *Id.*; *see also Unital Energy Systems, Inc.*, Order No. 24,742 (April 13, 2007) at 3-5. Moreover, redacted, publicly available versions of all the documents contain some information concerning the costs of the underlying engagements. Finally, disclosing the information may place the Company and its service providers at a disadvantage with respect to those with whom it would do business, ultimately causing harm to the Company's ratepayers in future rate cases. Accordingly, we grant the Company's motion for protective treatment of its outside legal invoices.

Based upon the foregoing, it is hereby

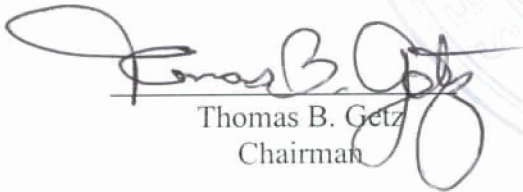
ORDERED, that NHGC rate case expenses of \$30,519 are approved for recovery; and it is


FURTHER ORDERED, that that the temporary rate reconciliation under collection of \$45,626 is approved for recovery; and it is

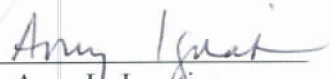
FURTHER ORDERED, that the redacted information contained in the NHGC invoices described above is protected from disclosure subject to reconsideration at a future date should circumstances warrant; and it is

FURTHER ORDERED, that a final reconciliation of the approved rate case expenses and temporary rate reconciliation under recovery and rate case expense surcharge revenues be filed prior to the 2011 summer COG and any over- or under-recovery be credited or charged to the COG.

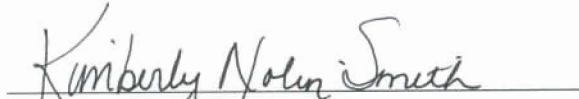
By order of the Public Utilities Commission of New Hampshire this twenty-fourth day of June, 2010.


Thomas B. Getz
Chairman


Clifton C. Below
Commissioner


Amy L. Ignatius
Commissioner

Attested by:


Kimberly Nolin Smith
Assistant Secretary