STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

DG 10-249

NEW HAMPSHIRE GAS CORPORATION

Winter 2010-2011 Cost of Gas

Order Approving Cost of Gas Rates and Other Charges, and

Petition to Suspend Fixed-Price Option

ORDER NO. 25,164

October 29, 2010

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 15, 2010, New Hampshire Gas Corporation (NHGC or Company), a public utility distributing propane-air service to approximately 1,100 customers in Keene, filed its proposed cost of gas (COG) and fixed-price option (FPO) rates for the 2010-2011 winter COG period. NHGC's filing included the direct pre-filed testimony of Jennifer Boucher, manager of regulatory economics for Berkshire Gas Company (Berkshire), 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. On September 20, 2010, the Commission issued an order of notice setting a hearing in the matter for October 14, 2010. On October 1, 2010, NHGC submitted an update to its original filing that included a petition to suspend its proposed FPO rates for the period of November 1, 2010 through April 30, 2011, due to a temporary embargo at the Selkirk, New York terminal of the Enterprise TE Products Pipeline Company LLC (Selkirk Terminal).

On October 8, 2010, NHGC filed a motion for confidential treatment for certain responses to Staff data requests. On October 13, 2010, NHGC submitted a second update to its original filing; on October 14, the Company provided an affidavit of publication stating that the order of notice had been published on September 22. No parties intervened in the docket and the hearing was held, as scheduled, on October 14, 2010.

II. POSITIONS OF THE PARTIES AND STAFF

A. NHGC

NHGC witnesses Boucher, Michael D. Eastman and David Grande 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, in light of the temporary embargo at the Selkirk terminal; (4) the petition for suspension of the FPO program during the winter 2010-2011 COG period; (5) the request for waiver of the rule requiring rate changes on a service-rendered basis; and (6) an upcoming transition in the management of NHGC from Berkshire Gas Company of Pittsfield, Massachusetts (Berkshire Gas) to New York State Electric and Gas Corporation of Rochester, New York (NYSEG), and Rochester Gas & Electric (RG&E), also of Rochester.

1. Calculation of the COG Rate and Customer Bill Impacts

According to its updated filing, the Company's proposed single winter 2010-2011 COG rate, applicable to all customers, is $1.6356 per therm, which was calculated by taking the total anticipated period costs of $1,663,142 and dividing them by the total projected firm gas sales of 1,016,812 therms. Total anticipated costs, in turn, are derived by adding the estimated total cost of the forecasted propane purchases of $1,688,434 to the prior period over-collection of $26,933 and interest of $1,641. The proposed rate represents an increase of $0.1456 per therm over the weighted average, non-FPO COG rate of $1.4900 per therm last winter. For a typical residential heating customer, this rate would equal an increase of about 10 percent in gas costs, and an overall increase of $121.67, or 5.1 percent, after factoring in customer and other charges.

2. Reasons for the Increase

Ms. Boucher's supplemental testimony, filed on October 13, indicated that the primary reason for the increase for customers is the increase in market prices of propane compared to last winter, coupled with the embargo at the Selkirk Terminal, which will result in higher supply costs for propane. *See* Hearing Exhibit 4, Direct Testimony of Boucher at 4-6. NHGC based the spot prices for its propane on the ClearPort propane futures settlement prices as of October 8, 2010. *See* Hearing Exhibit 4, Direct Testimony of Boucher at 4. For the months of November and December, 2010, broker, pipeline, and transportation fees are adjusted to reflect the impact of the Selkirk embargo, discussed further below. *See* Hearing Exhibit 4, Direct Testimony of Boucher at 4.

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 $1.3613 per gallon, or $1.4877 per therm. *See* Hearing Exhibit 2, Direct Testimony of Boucher at 4. NHGC estimates that about 65% of its propane needs have been pre-purchased. *See* Transcript of October 14, 2010 Hearing (Tr.) at 14-15.

On August 27, 2010, a propane leak occurred at Gilboa, New York, on the Enterprise TE Products Pipeline Company LLC pipeline leading to the Selkirk Terminal. Due to the leak, the Selkirk Terminal has been temporarily closed by an embargo, and consequently, NHGC has been forced to secure propane supplies from its Propane Purchasing Stabilization Plan supplier, Texas Liquids, at a terminal approximately 165 road miles to the west of the Selkirk Terminal, at Watkins Glen, New York. *See* Hearing Exhibit 3, Direct Testimony of Boucher at 1-5. NHGC expects a trucking cost differential of approximately $0.12 per gallon, as well as significant trucking wait time and detention charges (totaling approximately $0.04 per gallon) to be incurred as a consequence of the Selkirk Terminal embargo, for its duration, and at a reduced level for a short period thereafter. *See* Hearing Exhibit 4, Direct Testimony of Boucher at 4-5, and Tr. at 24.

However, NHGC does not expect any supply disruption to its customers, nor does it expect the Selkirk Terminal embargo, and the associated $0.16 per gallon trucking surcharge, to extend beyond January of 2011. Tr. at 12 and 24-25. NHGC has also reached an agreement in principle with Berkshire Gas to lease additional space at Berkshire's storage facility in Pittsfield, Massachusetts, during the contingency of the embargo. *See* Hearing Exhibit 4, Direct Testimony of Boucher at 7, and Tr. at 17. After the expected end of the embargo at the beginning of January 2011, the forecasted trucking fee from the Selkirk Terminal will be $0.0575 per gallon, while the forecasted pipeline fee, to the Selkirk Terminal after the end of the embargo, will be $0.1125 per gallon. The trucking fee is also subject to a surcharge based on the price of diesel fuel.

4. Suspension of FPO

On October 1, NHGC filed a motion to suspend NHGC's FPO program, originally established by Commission Order No. 23,764 (August 24, 2001), and modified by Order No. 24,516 (September 19, 2005). Given the temporary embargo of the Selkirk Terminal, NHGC expects that a continuation of the FPO program would result in a subsidy of FPO customers by non-FPO customers, in that the non-FPO COG rate would increase to approximately $1.80 per therm, or 20%. *See* Hearing Exhibit 3, Direct Testimony of Boucher at 4-5, and Tr. at 10. If the FPO program were to be suspended, the incremental costs resulting from the Selkirk Terminal embargo could be borne by both FPO and non-FPO customers. *See* Hearing Exhibit 3, Direct Testimony of Boucher at 4-5. If the FPO program were to be suspended, customers who participated in the FPO program last winter would experience a rate increase of $0.2954 per therm; the average residential heat customer participating in the FPO program last winter would thereby see an increase in their total costs for the 2010-2011 COG period of approximately $261, or 12%. *See* Hearing Exhibit 4, Direct Testimony of Boucher at 5. In comparison, customers that did not participate in the FPO program last winter would experience a $0.1456 per them rate increase if the FPO program were to be suspended; the average residential heat customer not participating in the FPO program last winter would thereby see an increase in their total costs for the 2010-2011 COG period of approximately $122, or 5%. *See* Hearing Exhibit 4, Direct Testimony of Boucher at 6.

NHGC has informed its customers of the potential suspension of the FPO program by a letter mailed on October 3-4. Tr. at 11-12. NHGC received four calls from its customers regarding the potential suspension of the FPO program; these customers sought reassurance that delivered gas supplies would be reliable during the upcoming winter heating season, which the Company provided. Tr. at 12.

5. 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. Ms. Boucher, in her 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 Boucher at 8.

6. Management Transition to NYSEG and RG&E

NHGC also informed the Commission of plans, expected to be enacted as of November 1, 2010, to transfer managerial control and responsibility for NHGC's operations from Berkshire Gas to NYSEG and RG&E. Beginning on November 1, NYSEG and RG&E will begin daily oversight of the field operations for NHGC, and various business affiliate services currently provided by Berkshire Gas; NYSEG provided these services to NHGC from 1998 until 2003, at which point responsibility was transferred to Berkshire Gas. Tr. at 6-7 and 22. NHGC, NYSEG, RG&E, and Berkshire Gas are currently all affiliated companies under the control of Iberdrola USA. Tr. at 22. Berkshire Gas is being sold by Iberdrola USA to an unaffiliated third-party utility, with NHGC remaining under Iberdrola USA control, thereby necessitating the transfer of managerial responsibility. Tr. at 22-23. The services to be provided by NYSEG and RG&E will be governed by affiliate service agreements, as is the current practice at NHGC, and the legal status of NHGC will not be changed as a consequence of the proposed managerial transfer. Tr.

at 17-19, and 22-23. There are no expected changes in NHGC in-house staff or operating costs resulting from the managerial transfer. Tr. at 18-19. NHGC would have the right to use Berkshire Gas' off-site supplemental storage facilities in Pittsfield, Massachusetts for propane until April 30, 2011; after that date, however, it is uncertain if continued availability of the Pittsfield facility to NHGC would be possible. Tr. at 19-20.

7. Motion for Confidential Treatment

As part of its COG filing, NHGC is required to file certain gas supply contract 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 8), requests that this information be granted confidential treatment. More specifically, the information NHGC seeks to protect is its response to Staff Data Request 1-6, in Attachment Staff 1-6. 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 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

Mr. Wyatt testified that Staff had completed its review of the COG forecast for the upcoming winter period and recommended approval of the proposed rates. Tr. at 28. Mr. Wyatt noted that the forecast is consistent with those filed and approved in previous winter periods. Tr. at 28. Also, Mr. Wyatt stated that Staff had reviewed and audited the 2009 COG filing and found no exceptions. Tr. at 28. Mr. Wyatt noted that the COG results from this winter will be subject to Staff reconciliation and audit review. Tr. at 28. Mr. Wyatt also expressed Staff's confidence in its ability to work with the NYSEG-RG&E-NHGC management team. Tr. at 30. Nonetheless, Staff expressed its expectation that NHGC would find a suitable alternative, if necessary, for the Berkshire Gas supplemental propane storage facility. Tr. at 30-31.

Mr. Frink testified that Staff supported the Company's request to suspend its FPO program for the 2010-2011 winter heating season. Tr. at 28. Mr. Frink noted that NHGC had properly hedged its supply; however, the FPO pricing proposed by the Company was based on trucking supply from the Selkirk Terminal. Tr. at 29. Given the Selkirk Terminal embargo, if the FPO program were to be offered by NHGC this winter, non-FPO customers would be in effect providing a subsidy to FPO customers. Since the FPO rate would not be adequate to cover the expected increased trucking costs, and the higher market prices for propane resulting from the Selkirk Terminal embargo, retaining the FPO would result in higher prices solely for the non-FPO customers. Tr. at 29. Also, demand for the FPO program could outstrip FPO-earmarked supplies, if the FPO were to continue this winter. Tr. at 29.

Staff, in its closing, stated that it supported the Company's revised and updated COG rates as they are filed. Tr. at 32. Staff also reiterated its concurrence with the Company's judgment in suspending the FPO program given the Selkirk Terminal embargo. Tr. at 32.

III. COMMISSION ANALYSIS

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

As to NHGC's waiver request, N.H. Code Admin. Rules Puc 1203.05 provides that, in general, rate changes are to be implemented on a service-rendered basis. Subsection (c) of the rule, however, 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, the 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.

As to NHGC's request for suspension of the FPO program during the Winter 2010-2011 COG period, we find that, given the uncertainties related to the temporary Selkirk Terminal embargo, and the likelihood of resulting incremental costs being shouldered by non-FPO customers if the FPO program were not suspended, the Company would be justified in suspending the program.

As to NHGC's motion for confidential treatment, in determining whether commercial or financial information should be deemed confidential and private, we consider the three-step analysis applied by the New Hampshire Supreme Court. *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, 382-83 (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).

As in previous COG hearings, no party has objected to the request for confidential treatment. We begin our analysis by noting that the information NHGC seeks to protect relates to supply costs and availability. Gas suppliers who may obtain the information would be aware of the Company'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, 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 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 suppliers, but does not reveal anything about the functions of the Commission. *See Unitil 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 the Company's interest in privacy outweighs the public's interest in disclosure. Accordingly, we grant NHGC's motion for confidential treatment. Consistent with Puc 203.08(k), our grant of the motion 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 2010-2011 winter COG rate of $1.6356 per therm for the period November 1, 2010 through April 30, 2011 are APPROVED, effective November 1, 2010 on a bills-rendered basis; 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 rate 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 rate; and it is

FURTHER ORDERED, that NHGC may, without further Commission action, adjust the approved winter COG rate upward by 25 percent or downward so far as is necessary based upon its projected over- or under-collection; 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's petition for suspension of the FPO program during the 2010-2011 Winter COG heating season 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-ninth day of October, 2010.

Thomas B. Getz	Clifton C. Below	Amy Ignatius
Chairman	Commissioner	Commissioner

Attested by:

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Assistant Secretary

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

WITH THE EXCEPTION OF DISCOVERY, FILE 7 COPIES (INCLUDING COVER LETTER) TO:

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