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STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

May 3, 2007 - 10:12 a.m.  
Concord, New Hampshire

RE: DG 07-050  
ENERGYNORTH NATURAL GAS, INC. d/b/a  
KEYSPAN ENERGY DELIVERY NEW ENGLAND:  
Indirect gas costs.  
(Prehearing conference)

PRESENT: Donald M. Kreis, General Counsel  
(Presiding as Hearings Examiner)

Diane Bateman, Clerk

APPEARANCES: Reptg. KeySpan Energy Delivery New England:  
Steven V. Camerino, Esq. (McLane, Graf...)

Reptg. Residential Ratepayers:  
Kenneth E. Traum, Asst. Consumer Advocate  
Office of Consumer Advocate

Reptg. PUC Staff:  
F. Anne Ross, Esq.

Court Reporter: Steven E. Patnaude, CCR

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## I N D E X

4

PAGE NO.

5 STATEMENTS BY:

6

Mr. Camerino 5, 7, 20, 36

7

Ms. Ross 6, 9, 13, 35, 37

8

Mr. Traum 7, 11, 18, 34

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## E X H I B I T S

15

EXHIBIT NO.

D E S C R I P T I O N

PAGE NO.

16

1 (ID)

Inter-Department Communication  
to NHPUC Commissioners from  
Stephen P. Frink (03-29-07)

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1 P R O C E E D I N G S

2 MR. KREIS: Good morning, everybody. I  
3 am Donald Kreis, the General Counsel of the Public  
4 Utilities Commission. And, I have the honor of  
5 conducting, pursuant to Rule Puc 203.14(c) and RSA 363:17,  
6 today's prehearing conference in docket number DG 07-050,  
7 which is a docket that concerns EnergyNorth Natural Gas,  
8 Inc., d/b/a KeySpan Energy Delivery New England, here and  
9 after referred to by me as "KeySpan".

10 This order -- This proceeding arises out  
11 of Order Number 24,688, which the Commission issued on  
12 October 27th of last year. In that order, the Commission  
13 reserved, pending further inquiry, a decision on what  
14 methodology it would use to determine over and/or under  
15 collections in the interest costs on cash working capital,  
16 as well as the appropriate bad debt percentage used for  
17 cost of gas calculations.

18 On March 29th of this year, the Staff of  
19 the Commission filed a memorandum. In that memorandum,  
20 Staff reported on the results of its discussions with  
21 KeySpan regarding the reconciliation methodology,  
22 associated interest, and bad debt percentage applied to  
23 gas costs. It appears that the Staff and the Company did  
24 not reach an agreement on these issues, so the Staff

{DG 07-050} [Prehearing conference] (05-03-07)

1 recommended that the Commission open a new docket to  
2 include as -- and to include as part of the investigation  
3 of supply-related working capital costs, the lead/lag  
4 study used by KeySpan to calculate its cash working  
5 capital requirement, and the interest rate that the  
6 Company applies to that requirement.

7 That's why we're here. So, let's begin  
8 by taking appearances.

9 MR. CAMERINO: Good morning, Mr. Hearing  
10 Examiner. My name is Steve Camerino, from McLane, Graf,  
11 Raulerson & Middleton, on behalf of KeySpan Energy  
12 Delivery New England. And, with me today is Thomas  
13 O'Neill, Senior Counsel for KeySpan.

14 MR. KREIS: Welcome.

15 MR. TRAUM: Good morning, Mr. Hearing.  
16 Examiner. Representing the Office of Consumer Advocate,  
17 Kenneth Traum.

18 MS. ROSS: Good morning, your Honor.  
19 Anne Ross, representing the Commission Staff. And, with  
20 me today is Stephen Frink, the Assistant Director of the  
21 Gas/Water Division.

22 MR. KREIS: Okay. I note that an  
23 affidavit of publication is on file, and that we've  
24 received no intervention requests. And, my first question

{DG 07-050} [Prehearing conference] (05-03-07)

1 for the Parties and Staff is, in what order are we going  
2 to hear from the Parties and Staff today?

3 MR. CAMERINO: We don't have a position  
4 on that. I'm happy to go first. I know this is a docket  
5 that was opened at the request of the Commission Staff.  
6 But, at least for purposes of statements of position, we  
7 don't have any problem proceeding first, if that is  
8 amenable.

9 MR. KREIS: Sure. And, Mr. Camerino, at  
10 the risk of being a troublemaker, related to that query is  
11 the underlying question of which party thinks it has the  
12 burden of proof and which party will be going forward with  
13 testimony first, and that sort of thing?

14 MR. CAMERINO: We do have partial  
15 agreement on that. I think, as to the burden of proof,  
16 I'm going to assume that the parties may not agree on who  
17 bears that burden. That there may be a dispute as to  
18 that. But, although, to be honest, it may be a  
19 distinction without a difference, by the time that the  
20 proceeding is over. So, I'd prefer not to even address  
21 that today, although I can, if the Commission would like.

22 As to who is going to provide testimony  
23 first, we have an almost completely agreed upon procedural  
24 schedule, and the Staff will be providing their testimony

{DG 07-050} [Prehearing conference] (05-03-07)

1 first. The schedule, although the dates aren't firmly set  
2 yet, anticipates discovery, a couple rounds of discovery,  
3 a tech session, testimony by the Staff, questions by the  
4 Company, and testimony by the Company, and I think perhaps  
5 questions then by the Staff. And, I didn't mean to leave  
6 the OCA out. My understanding is the OCA would file at  
7 the same time as the Staff. So, we have a process, even  
8 if we, again, I'm assuming, might not agree on who bears  
9 the burden.

10 MR. KREIS: Well, having raised that  
11 issue now, and having noted that the Parties and Staff are  
12 aware of that issue, if I am correctly inferring that  
13 everybody has agreed not to resolve that issue at this  
14 point, I would be happy to recommend to the Commission  
15 that we simply proceed and either resolve that issue later  
16 or hope that it resolves itself. Is that to everybody's  
17 pleasure?

18 MS. ROSS: I guess what I would suggest  
19 is that Staff believes that it's the Company's burden to  
20 demonstrate that its rates are reasonable and that its  
21 cost of gas rate, in particular, is reasonable. And, the  
22 Staff has raised concerns with its current methodology on  
23 several points. And, having raised that concern, we now  
24 believe that -- we acknowledge that we have a burden to

1 explain our concerns with the methodology, but, having  
2 done that, we believe it's the Company's burden to  
3 demonstrate that its current methodology is reasonable or  
4 that the methodology proposed by Staff is unreasonable.

5 MR. KREIS: Mr. Traum, do you have  
6 anything you want to say about that?

7 MR. TRAUM: I'd agree with Ms. Ross,  
8 and, at the same time, want to say that I think, because  
9 of the way the procedural schedule appears that we'll be  
10 able to work it out, that maybe it's not an issue that has  
11 to be addressed at this point in time.

12 MR. CAMERINO: And, Mr. Kreis, if I  
13 could, now that the Staff has stated its position, I think  
14 it's important for me to have on the record, so that the  
15 Commission sees it, the Company's point of view. I think,  
16 first of all, the reason that I think it may end up being  
17 a distinction without a difference is that the way I  
18 understand the burden of proof, it's really a question of  
19 who has the burden of going forward. And, once a party  
20 has put in the record any substantive basis for their  
21 position, at that point, effectively, the burden shifts to  
22 the other side to overcome that, or the Commission engages  
23 in a preponderance of the evidence type analysis. And, if  
24 somebody put in substantive evidence and there was no

1 response at all, it would bear a substantial risk of loss  
2 almost by default.

3 We don't have any reason to expect the  
4 Staff isn't going to be able to put in substantive  
5 evidence. And, so, once they meet their burden of going  
6 forward, I think the Company would recognize that it has  
7 to respond to that. So, that's my reason for my comment  
8 about "distinction without a difference".

9 As to substance, the reason we don't  
10 agree is that there is a disagreement on the four issues  
11 in this docket as to whether they have been properly  
12 raised and when they were raised. And, it is true that,  
13 when the Company last adjusted its winter cost of gas  
14 rates, it put in place -- it put in its filing new  
15 indirect gas costs and sought an adjustment in rates based  
16 on those costs. And, so, under the normal statutory  
17 process of proposing a change in rates, the Company would  
18 bear the burden to support that filing.

19 In that case, there were two issues that  
20 were held aside for further consideration. And, so, the  
21 Company may agree that, on those two issues, because  
22 they're part of a proposed change by the Company, it bears  
23 the burden. There are two other issues that were raised  
24 by the Staff after that proceeding and after the rates



1 were approved by the Commission. That's a change that the  
2 Staff is seeking, the Company is not seeking a change in  
3 rates, and, therefore, the Staff would bear the burden on  
4 those. And, that issue of how many issues we have in this  
5 case and whether they have been properly raised and when  
6 they were raised is actually at the core of the  
7 significant dispute in this docket. And, again, something  
8 the Commission will ultimately decide I assume in its  
9 final order.

10 MR. KREIS: And, so, my question for all  
11 of you at this point is, to what extent do we need to deal  
12 with those issues today or does the Commission need to  
13 deal with any of those issues before you folks go forward  
14 with the procedural schedule that you will presumably  
15 obtain approval of?

16 MS. ROSS: May I address that comment?

17 MR. KREIS: You may.

18 MS. ROSS: The order of notice does  
19 describe all four issues that have been discussed in  
20 Staff's report that was filed on March 29th. So, it's our  
21 position that the scope of this proceeding involves all  
22 four issues; the two that were specifically reserved in  
23 the last cost of gas proceeding and the two additional  
24 issues which we believe are very interrelated, which are

1 the working capital issues, which are also included in  
2 here.

3 What I would like to suggest, now that  
4 I've listened to the Company's attorney, I would like to  
5 suggest that Staff state its position today first, since  
6 we're going to be entering an exhibit into this docket,  
7 which is Staff's March 29th report, and then allow KeySpan  
8 to respond after we've done that, just so that it's a part  
9 of the record. With regard to when we make a  
10 determination on the scope, I'm comfortable with allowing  
11 the Commission to do that later. The Company has already  
12 agreed to allow discovery to proceed on those issues, so I  
13 don't think that we need to have an initial ruling on it.

14 MR. KREIS: Okay. I think I might be  
15 hearing two slightly different things, so I'd like to  
16 clarify. There are four issues, Mr. Camerino alluded to  
17 four issues, and is it anybody's position that any of  
18 those four issues are simply out of bounds in this docket?

19 MR. CAMERINO: That would be the  
20 Company's position, but I probably ought to explain that.  
21 And, I do plan to get into this in my opening statement.  
22 But the Company has agreed that the Company can conduct  
23 discovery on all four issues, because it's our view that  
24 the Staff can send the Company data requests at any time,

{DG 07-050} [Prehearing conference] (05-03-07)

1       whether or not there was a docket pending. And, so, we  
2       don't want to stand in the way of the Commission's  
3       investigative process.

4                       It is the Company's position, however,  
5       that the Company's rates cannot and should not be adjusted  
6       with regard to two of those issues. And, we -- it's our  
7       current thinking that we'll be submitting a pleading to  
8       that effect. I don't know how to cast it. Perhaps, it's  
9       a motion in limine of some sort or to limit the scope, but  
10      we expect to be addressing that. But that relates to the  
11      relief that the Commission can order in this docket, not  
12      the scope of discovery. And, so, it won't affect the  
13      initial stages of the case.

14                     MR. KREIS: And, is everybody -- Mr.  
15      Traum.

16                     MR. TRAUM: So far, the discussion has  
17      been about four issues. There is a fifth issue. And,  
18      that is one that the OCA had raised in the predecessor  
19      docket, DG 06-121, relating to whether or not any changes  
20      to indirect gas costs amount to single-issue ratemaking.  
21      And, in the Commission Order Number 24,688, on Pages 17  
22      and 18, the Commission expressly laid out that we can  
23      request a full rate case if we continue to view this issue  
24      as single-issue ratemaking. So, I'm just laying out that

{DG 07-050} [Prehearing conference] (05-03-07)

1 this is still a potential fifth issue.

2 MR. KREIS: Interesting. So, all I'm  
3 trying to do here is to assure myself that you all are  
4 aware of what issues and problems are in play here. And,  
5 that we either do or do not need to straighten out any of  
6 that at that phase of the docket. And, it sounds like you  
7 all know what the issues are. You have different opinions  
8 about what the -- how those issues should bear on the  
9 Company's rates. And, I think I hear you saying that that  
10 can -- that those pinballs can work their way through the  
11 machine as this docket progresses, rather than being  
12 addressed, resolved, argued about today. Would that be a  
13 fair statement?

14 MS. ROSS: Yes, that's Staff's position.

15 MR. TRAUM: And, the OCA agrees with  
16 that.

17 MR. CAMERINO: The Company is  
18 comfortable with that.

19 MR. KREIS: Super. I apologize for  
20 belaboring that stuff, but my personal view, in my  
21 professional opinion, though, is that it's really a good  
22 idea to kind of get these things out on the table at the  
23 get-go, so that everybody is aware that these problems are  
24 out there, might come up, and, in some instances, might

1 benefit from resolution at an earlier, rather than a  
2 later, phase of the docket. But I think that those kinds  
3 of decisions, at least in the first instance, are best  
4 left to your discussions amongst yourself, because it's  
5 really a question of efficiency, rather than justice.  
6 And, sometimes these things need to be resolved early and  
7 sometimes it's great to just leave them till the end. So,  
8 you know what you're doing, and I trust you.

9 With that, why don't we hear the  
10 positions of parties. Now, Ms. Ross, I heard you suggest  
11 that Staff go first.

12 MS. ROSS: Yes.

13 MR. KREIS: Is everybody happy with  
14 that? I'm happy with that.

15 MS. ROSS: Thank you. And, good  
16 morning. The Staff would like to begin the statement of  
17 its position by entering an exhibit in this docket, which  
18 is the March 29th report by Staff that was filed in DG  
19 06-121. But I noticed, when I checked the docket book  
20 this morning, that it was not -- it was not entered into  
21 this docket. So, I would like to ask that it be marked as  
22 "Exhibit 1" in this docket.

23 MR. KREIS: We can certainly mark it.  
24 And, just so everybody is clear, because I'm really into

{DG 07-050} [Prehearing conference] (05-03-07)

1 clarity, what we're doing is marking an exhibit for  
2 identification, and, presumably, at the very end of this  
3 docket, the Commission will decide either to enter or not  
4 to enter that exhibit into evidence.

5 (The document, as described, was  
6 herewith marked as Exhibit 1 for  
7 identification.)

8 MS. ROSS: Thank you. Let me begin by  
9 just setting the stage for this docket. In the winter  
10 cost of gas docket, which was DG 06-121, there were some  
11 changes made, there were a number of changes made to the  
12 indirect gas costs in that filing, and they were made at  
13 KeySpan's request. And, because of the compressed time  
14 frame in that docket, Staff was not able to fully analyze  
15 a number of those issues. And, at hearing, Staff  
16 identified two specific concerns, which had to do with  
17 timing issues and interest recovery on deferrals and that  
18 interplay with that deferral interest recovery and the  
19 cash working capital allowance that KeySpan also recovers  
20 in its cost of gas proceeding.

21 It was Staff's position then, and it  
22 remains Staff's position, as it's described in this March  
23 29th report, that there is a double recovery occurring  
24 between the working capital recovery and the interest on

{DG 07-050} [Prehearing conference] (05-03-07)

1 the deferred balances during the winter period. And, this  
2 same double recovery continues during the summer period,  
3 because the mechanisms are consistent from winter periods  
4 to summer periods. That issue was specifically reserved  
5 by the Commission in the winter cost of gas docket.

6 The second issue that was identified and  
7 specifically reserved by the Commission was the bad debt  
8 allowance allowed in the cost of gas -- winter cost of gas  
9 proceeding. And, it went from roughly, these are  
10 approximate numbers, 1 percent to a proposed 3 percent by  
11 KeySpan, which was pared back somewhat to roughly two and  
12 a half percent for purposes of the winter cost of capital  
13 -- cost of gas filing. However, the parties -- the  
14 Commission specifically reserved that issue as well.

15 The additional issues that are described  
16 in the Staff's March 29th letter both relate to the cash  
17 working capital mechanism, as well as the bad debt  
18 mechanism. And, they are, one, the effect of changing the  
19 amount of lag, which is a timing difference in the  
20 lead/lag study, which is the basis for the working capital  
21 calculation. And, the other issue that was raised is the  
22 actual interest rate that's applied, once you determine  
23 what amount of cash working capital the Company needs to  
24 have to carry for a certain period.

1                   It's Staff's position that those two  
2 issues, because they were raised in the Staff's report,  
3 should be applicable to the current period, which is May,  
4 May 1, 2006 forward, because that's what we've just  
5 reconciled in this, in the summer cost of gas proceeding.  
6 And, although the report was not formally filed in that  
7 proceeding, it's Staff's position that the Company was on  
8 notice of those issues prior to that hearing, and,  
9 therefore, we will ask the Commission to make any  
10 adjustments that result from this proceeding to the  
11 current summer cost of gas mechanism.

12                   MR. KREIS: You said, I just want to  
13 make sure I understand, you said "May 1st, 2006"?

14                   MS. ROSS: Yes.

15                   MR. KREIS: So, you mean reconciling  
16 back --

17                   MS. ROSS: Right.

18                   MR. KREIS: -- to a year ago.

19                   MS. ROSS: Because each of these cost of  
20 gas proceedings always reconcile over and under recoveries  
21 from the prior proceeding. So, what's at play in the 2007  
22 Summer Cost of Gas proceeding, which we just completed, is  
23 the reconciliation for the 2006 numbers. So, just so you  
24 understand Staff's position, the two additional issues --



1       yes, and this, just to quote you some language from the  
2       order we just issued in the summer cost of gas, it says  
3       "We find Staff's recommendation to be reasonable and,  
4       accordingly, we will defer ruling on the 2006 summer  
5       season reconciliation and how any such gas costs should be  
6       recovered pending the decision in DG 07-050", which is  
7       this docket. So, the Commission acknowledged in its  
8       current order that we would be examining issues that might  
9       impact that 2006 summer reconciliation. And, that's the  
10      basis for Staff's position on the second two issues, which  
11      are interest recovery and the lead/lag study underlying  
12      the cash working capital.

13                               And, beyond that, I would just refer the  
14      Hearings Officer to the Staff's March 29th report for a  
15      more detailed description of Staff's position on those  
16      issues. But, in a nutshell, the Staff doesn't believe  
17      it's appropriate to charge a cost of capital interest rate  
18      on working capital. It believes it's a short-term  
19      borrowing, and it should be -- it should just be at the  
20      Company's cost of that borrowing. And, with regard to the  
21      lead/lag study, Staff has concerns that the lag may be due  
22      to imprudent collection policies by the Company, and,  
23      therefore, may not be appropriate, it may be too long, and  
24      maybe increasing the cost of working capital, based on

{DG 07-050} [Prehearing conference] (05-03-07)

1 poor collection practices, and therefore potentially may  
2 be disallowed. Thank you.

3 MR. KREIS: Thank you. Okay.  
4 Understanding that the order of these presentations is  
5 without prejudice to which party bears the ultimate burden  
6 of going forward and/or burden of proof, it looks like Mr.  
7 Traum wants to speak next.

8 MR. TRAUM: I think that's only  
9 appropriate, because the OCA's position very much  
10 parallels Staff. Just like in Exhibit 1, the Staff  
11 report, the OCA had concurred with Staff in many of the  
12 findings they had made in that report. Beyond that, and  
13 with regards to the different areas of dispute in this  
14 docket, I'll summarize some of our initial positions at  
15 this point in time.

16 We believe that the Company is  
17 recovering the 15 day lag between average customer usage  
18 and billing twice, once through the lead/lag study  
19 utilized for working capital purposes and by using the  
20 billed revenues in the CGA reconciliation. And, this can  
21 be corrected by moving to unbilled or accrued revenues for  
22 purposes of the reconciliation.

23 A second issue relates to the carrying  
24 cost rates to be applied to working capital. We should --

{DG 07-050} [Prehearing conference] (05-03-07)

1 We believe it should reflect the Company's cost of its  
2 short term borrowings through its Money Pool. And, after  
3 recognizing the significant variations in working capital  
4 needs from month to month to sales level fluctuations,  
5 most of the requirements we would expect are funded  
6 through this short-term basis or the Money Pool.

7 Third, with regard to the bad debt  
8 percentage for indirect gas cost purposes, we recognize  
9 that the bad debt rate has varied significantly over the  
10 past several years, and as the Company's collection  
11 activity has varied. And, for example, the number of  
12 payment arrangements has increased 50 percent just from  
13 2005 to 2006. And, since we don't know what a reasonable  
14 ongoing percentage will be, we would support leaving the  
15 rate at about 1 percent, as it had previously been set.  
16 And, again, this percentage is similar to Northern's.  
17 And, then, we just add into the mix that the Company can  
18 charge a late payment fee of up to one and a half percent  
19 on customers.

20 And, finally, as I mentioned previously,  
21 we're, at this point, simply reserving our rights to argue  
22 that any change in indirect gas costs relates to  
23 single-issue ratemaking. Thank you.

24 MR. KREIS: Thank you, Mr. Traum.

{DG 07-050} [Prehearing conference] (05-03-07)

1 Mr. Camerino.

2 MR. CAMERINO: Thank you. First of all,  
3 I would just note that I think that, in hearing the Staff  
4 and the Consumer Advocate's positions, I think the  
5 Commission can understand why it is that the Staff would  
6 bear the burden of proof on these issues to some extent,  
7 because it isn't possible for the Company to respond until  
8 the Staff and the OCA have put forward what their  
9 positions are and what the basis for it is. But, once  
10 that has occurred, obviously, the Company will have the  
11 obligation to respond to that.

12 With regard to the substance of the  
13 issues, the Company recognizes that there are two issues  
14 in this docket that were held over properly from DG  
15 06-121, which is the last cost of gas -- winter cost of  
16 gas docket, and those issues remain unresolved. Those are  
17 the issues of the use of billed versus accrued revenues to  
18 calculate deferred gas cost balances and the issue of the  
19 level of uncollectible accounts, which is sometimes  
20 referred to as "bad debt". Frankly, I'm not sure why  
21 "uncollectible accounts" are considered "bad debt", but  
22 that is the phraseology that gets used.

23 KeySpan agreed with the Staff that those  
24 two items would be included at specified levels or in a

{DG 07-050} [Prehearing conference] (05-03-07)

1 particular manner in that winter cost of gas docket, on  
2 the understanding that the rest of the Company's indirect  
3 gas costs would be going into effect, and that those two  
4 issues would be left open. Just for purposes of clarity,  
5 I'm going to refer to that now, and probably in the future  
6 in this docket, as an "oral settlement agreement". There  
7 was an overhaul of the indirect gas costs of the Company  
8 that were put into place, not at KeySpan's request, but at  
9 the request of the Commission Staff and its consultant,  
10 and all of those costs were updated. And, on agreement,  
11 two costs were held out of the case.

12 And, subsequently, after that docket was  
13 concluded, the Staff raised two new issues that it had not  
14 previously identified. And, it has spent a lot of effort  
15 since then trying to shoehorn those two issues into the  
16 two that were raised previously. The two new issues are  
17 the calculation of the net lag that's used to calculate  
18 working capital, the working capital allowance, and the  
19 rate of return that's applied in calculating the working  
20 capital allowance. Those are new issues. The fact that  
21 they relate to working capital doesn't make them old  
22 issues.

23 The Company is prepared to respond, as I  
24 indicated earlier, to discovery regarding these issues,

{DG 07-050} [Prehearing conference] (05-03-07)

1 because we respect the Staff's and the Commission's  
2 ability to ask the Company questions about matters that  
3 relate to the Commission's authority. But that doesn't  
4 mean that we agree that the rate should be adjusted for  
5 the two issues that are new issues.

6 In particular, the Company believes that  
7 it does agree to some extent with the Consumer Advocate's  
8 position about single-issue ratemaking. And, we made it  
9 clear in the winter cost of gas docket that we didn't  
10 believe that an adjustment of all of the indirect gas  
11 costs was single-issue ratemaking. In fact, it looks at a  
12 very broad spectrum of costs, essentially all of the costs  
13 that are included in the cost of gas docket. At that  
14 time, the direct costs were being adjusted and all of the  
15 indirect gas costs were being adjusted. That's not  
16 single-issue ratemaking.

17 What is single-issue ratemaking is to  
18 come in after the fact and pick individual costs that you  
19 would now like to adjust downward, without looking at any  
20 of the other costs and seeing if they should be adjusted  
21 upward. That's single-issue ratemaking.

22 We also don't believe that the  
23 Commission can adjust costs retroactively after they have  
24 been booked. There was specific discussion about the two

1 costs that were held open. And, we understand that, to  
2 some extent, those relate to prior periods. I think there  
3 has to be a discussion because the two categories of costs  
4 actually may need to be treated somewhat differently. But  
5 we don't dispute that the intention was that there would  
6 be some kind of what I'll call "reconciliation" of those  
7 backward, in the fact that these issues are taking some  
8 time to resolve wouldn't prejudice parties.

9 But, as to the two new issues, we don't  
10 agree that they can be reconciled backwards. In fact, in  
11 particular, with regard to the interest rate, we think  
12 those are booked costs, and you don't look backward in  
13 time. And, the Company made its concern known about that  
14 in great deal in the summer cost of gas docket, when the  
15 Staff attempted to raise that issue.

16 MR. KREIS: So, what you're really  
17 saying, when you refer to those costs have been "booked",  
18 it's retroactive ratemaking now to adjust them?

19 MR. CAMERINO: That's correct.  
20 Although, that is only a small part of the Company's  
21 objection. The Company doesn't believe that, even  
22 prospectively, those two new categories of costs should be  
23 adjusted.

24 MR. KREIS: Understood.

1                   MR. CAMERINO: And, most important, to  
2 go back to my reference to the "oral settlement", the  
3 Company would not have updated its indirect gas costs if  
4 it thought that the Staff could then come back and, one at  
5 a time, start picking away at those costs, without looking  
6 at the totality. We don't think that was the intent when  
7 the indirect gas cost mechanism was put in place. We  
8 don't think that was the intent when we made the filing.  
9 And, we don't think that was the intent when we agreed  
10 with the Staff that the two issues identified in the  
11 winter cost of gas docket could be left open.

12                   Finally, just to be clear, as I've said,  
13 this isn't just a procedural objection. We believe also  
14 that the Staff's position on the issues is simply wrong.  
15 And, when I say that, I want to be -- I want to clarify  
16 with regard to one issue. We still believe that there is  
17 a fairly good likelihood that, on this issue of what the  
18 Staff refers to as the "double count", that there is a  
19 potential for settlement there. The other issues, we  
20 don't believe that's the case. But there's no point going  
21 into detail here, but we've made it clear to the Staff  
22 that we are simply not in a position yet to finally  
23 resolve the so-called "double counting" issue, but we are  
24 hopeful that, before this docket is completed, that that



1 will be one that the parties will reach agreement on.

2                   So, I've raised a lot of procedural  
3 issues. Let me just outline for the Commission what we  
4 expect to be doing procedurally to address those concerns.  
5 As I noted before, we expect to file some kind of motion  
6 to limit the scope of the issues in this case, or at least  
7 as to what types of remedies might be pursued. It's not  
8 our intent to cut off discovery on those issues.

9                   If the Commission is going to proceed  
10 with the additional issues in this docket, the two new  
11 issues that I've described, we believe that this docket  
12 should be consolidated with Northern's cost of -- Northern  
13 Utilities' cost of gas docket, for purposes of addressing  
14 the rate of return issue, the issue that the Staff  
15 described as the "interest rate on working capital". We  
16 think that the issues are largely the same, and that  
17 KeySpan would be prejudiced by a decision on that issue in  
18 the Northern docket. And, there has been a procedural  
19 schedule essentially agreed to with the Staff here, which  
20 they have been aware of for quite some time, that involves  
21 discovery and testimony. And, to have that issue decided  
22 in the Northern case, before KeySpan has had a chance to  
23 do discovery and to file its testimony, we think would be  
24 highly prejudicial and would result in the Commission

1 potentially reaching a decision that it hadn't had the  
2 chance to really give due consideration to.

3           So, we expect to file a Petition to  
4 Intervene in Northern's cost of gas docket, and to seek  
5 partial consolidation with this docket. We also expect to  
6 move for rehearing of the Commission's order in the summer  
7 cost of gas docket, that's DG 07-034. The Commission, in  
8 that order, described the four issues, and we think that  
9 the description and the effective dates that were  
10 described were both incorrect, and they're -- even if they  
11 accurately reflect what the Commission meant to say, which  
12 I think may not be the case, I think the Commission may  
13 have misspoken, we do not agree to the statements made by  
14 the Commission, and think that the order with regard to  
15 those four issues needs to be reconsidered.

16           MR. KREIS: The docket number on that  
17 again?

18           MR. CAMERINO: I don't have an order --

19           MR. KREIS: I just need a docket number.

20           MR. CAMERINO: The docket is DG 07-034,  
21 and the order was issued on April 27th.

22           MR. KREIS: All right.

23           MR. CAMERINO: And, finally, I would  
24 just say that the Staff's approach to these issues,

{DG 07-050} [Prehearing conference] (05-03-07)

1 because these are issues really of quite broad  
2 significance, and we think that the way the Staff is  
3 approaching them has been to essentially try to divide and  
4 conquer and has, you know, they have raised them now in  
5 the Northern docket. And, in one context, they have  
6 raised them with KeySpan. And, we think they need to be  
7 handled together. Otherwise, we think that KeySpan will  
8 be unfairly disadvantaged. We think that the Commission  
9 will have an incomplete and inadequate record. And, we  
10 think the Commission should be concerned with deciding  
11 something of this magnitude on that basis. We think that  
12 a better process, with normal discovery, testimony, and a  
13 chance to have the issues considered fully is what's  
14 needed. And, so, we think the two, with regard to the two  
15 utilities, that the Commission should consider the issues  
16 coincidentally. Thank you.

17 MR. KREIS: Let me ask you a couple of  
18 questions. If you and I both slip on a banana peel, and  
19 we both -- and you sue Mr. Traum and I sue Ms. Ross, and  
20 some novel issue of negligence law in New Hampshire comes  
21 up in both of those cases, we don't have the right to  
22 intervene in each other's civil proceeding. So, why do  
23 you and Northern have the right to intervene and even  
24 potentially consolidate cases simply because they raise

1 the same issues, because you're both gas utilities doing  
2 the same kind of business and are regulated by the same  
3 agency?

4 MR. CAMERINO: Well, I think there's a  
5 couple of reasons. First of all, you would recognize that  
6 the Commission is different from a court of general  
7 jurisdiction. And, the Commission regularly takes  
8 intervention from parties whose interests may be affected  
9 by the outcome. That's at the very core of what the  
10 Commission does. But the biggest reason is that the  
11 Commission is making a policy decision. There's issues of  
12 law where, frankly, the Commission is either right or  
13 wrong. And, if you get it wrong in the Northern docket,  
14 and Northern doesn't appeal, and you then apply the same  
15 law to KeySpan, and you get it wrong again, KeySpan has a  
16 remedy, and that is to go to the Supreme Court and say "we  
17 know Northern didn't appeal that decision, but we're  
18 appealing it." And, the court will act accordingly. So,  
19 I think our interests are protected there. If you make a  
20 policy decision, the court's not going to overturn that.  
21 The Commission has a lot of discretion there.

22 And, so, we think it's very important  
23 that, particularly with regard to policy matters, that the  
24 Commission hear what the Company has to say. That the

1 last aspect. which may not go directly to your question,  
2 but is not unimportant, is that you're aware that,  
3 obviously, parties make decisions all the time as to what  
4 issues to appeal. Companies have a long-term relationship  
5 with this Commission and they don't appeal orders lightly.  
6 Frankly, I don't believe KeySpan, since the acquisition of  
7 EnergyNorth, has appealed any order to the Supreme Court.  
8 And, I think you can assume that there have been some  
9 orders that maybe the Company had wished had gone a  
10 different way. So, it doesn't do that lightly.

11 And, so, if the Commission, having  
12 decided something in Northern, then just decides to do  
13 that again to KeySpan, KeySpan's rights may not be fully  
14 represented. And, that doesn't mean that it's been  
15 treated fairly, the fact that it doesn't seek -- has the  
16 right to seek further redress. But I think the policy  
17 point is really probably the main one.

18 MR. KREIS: Thank you. My other  
19 question has to do with this "oral settlement agreement"  
20 that you referenced. Where -- Where did that oral  
21 settlement agreement come into existence?

22 MR. CAMERINO: When you say "where", can  
23 you -- I need you to clarify that.

24 MR. KREIS: Well, it could have been in

1 a conversation informally or was it placed on the record  
2 somewhere?

3 MR. CAMERINO: I'll sort of go through  
4 three steps. There were discussions with the Staff. And,  
5 one of things, you know, these issues get refined when you  
6 file pleadings. And, so, I want to be careful what I say  
7 about this, because I want to be very respectful of things  
8 that are said off the record by parties. And, so, as to  
9 exactly how we characterized this, when we put forward our  
10 position and request for how the Commission should deal  
11 with this, that will have had more consideration than I  
12 have a chance to give it today, but there were  
13 discussions. There are e-mails on some aspects of what  
14 I'm referring to. And, finally, I believe, although I  
15 haven't gone back and checked this yet, that there is  
16 material on the record that reflects how the Staff and the  
17 Company contemplated the indirect gas costs being dealt  
18 with, but I can't sit here today and characterize that.  
19 And, I can assure you -- I would be surprised if the word  
20 "settlement" was used anywhere. So, it has to do with an  
21 understanding that all of the costs, but these two, would  
22 be adjusted.

23 MR. KREIS: And, the parties to this  
24 oral settlement agreement are?

{DG 07-050} [Prehearing conference] (05-03-07)

1                   MR. CAMERINO: My recollection is that  
2                   the understanding as to how these matters would be dealt  
3                   with was the Staff and the Company. I do not recall the  
4                   Consumer Advocate participating in those. But, when I go  
5                   back and review them, I may find otherwise. And, just to  
6                   be clear, what I'm raising is a question of "whether the  
7                   Staff may now raise these issues, if it agreed to  
8                   something different in the past?"

9                   MR. KREIS: And, what legal theory would  
10                  preclude the Staff from raising those issues?

11                  MR. CAMERINO: I guess I'm not prepared  
12                  at this point to answer that. Other than I would think,  
13                  at a minimum, as a matter of significant Commission  
14                  policy, it would not want its Staff to reach agreement  
15                  with a utility and then act otherwise afterwards.

16                  MS. ROSS: Your Honor, I would like to  
17                  respond to two issues that have been raised.

18                  MR. KREIS: And, I will allow that.

19                  MS. ROSS: Thank you.

20                  MR. KREIS: These issues are not going  
21                  to be decided by me. And, so, by raising them here, I'm  
22                  just sort of making sure they get placed on the record,  
23                  because I think that that's a troublesome concept, and I  
24                  don't really know how it gets resolved. But the idea that

1 the Staff of the Commission, which is not an entity and  
2 has no separate legal existence, other than as part of an  
3 entity called the "Public Utilities Commission", could do  
4 anything that would either bind them or the Commission in  
5 the future, is -- that's a troublesome issue. And, by  
6 "troublesome", I mean "unresolved", at least as far as I  
7 know.

8 MR. CAMERINO: Well, I want to be very  
9 clear here. First of all, you, through your questions,  
10 are asking me to go down a road that I hadn't planned to  
11 go down today, but I feel that I need to answer your  
12 questions. So, I've tried to be careful in what I say.

13 MR. KREIS: And, I understand that  
14 whatever answer you're about to give is without prejudice  
15 to your ability to elaborate on that answer or to give --

16 MR. CAMERINO: No, no. My point is, I  
17 think you're leading me down a road, at least for purposes  
18 of today, that is putting us in even more conflict than I  
19 would have liked to have been with the Staff. I can  
20 understand that, you know, they can't just leave  
21 unresponded to some of the things I'm saying to you, but  
22 they were not part of my planned presentation, and I  
23 wasn't asking the Commission to resolve those today. And,  
24 I have -- I have answers to a lot of your questions you're



1 raising, in terms of what you say is a "troubling" issue.  
2 I just don't think it would be productive to get into that  
3 today, when the Company hasn't decided how it wants to  
4 address that. And, when the Staff hears what the  
5 Company's concerns are, it may -- it may respond in  
6 certain ways as well. Many times disputes are, you know,  
7 brought under, you know, more manageable conditions, once  
8 the parties have a chance to talk. And, we haven't really  
9 done that here. So, you're kind of probing in areas that  
10 maybe aren't that fruitful today.

11 MR. KREIS: I understand. And, I  
12 ultimately want to be of service to the parties in helping  
13 them know what the issues are. I want to -- well, when I  
14 conduct a prehearing conference, one of my purposes is  
15 making sure that all the issues are joined, so that  
16 everybody knows what they're dealing with, so they can't  
17 argue later that they were unfairly surprised or that  
18 their due process rights were compromised.

19 Now, having said that, and having teased  
20 out a couple of issues from your semi-willing legal brain,  
21 I'm perfectly willing to let any of these sleeping dogs  
22 lie, if that's everybody's pleasure.

23 MR. CAMERINO: I think, I understand the  
24 Staff may have to say something at this point, I'd rather

{DG 07-050} [Prehearing conference] (05-03-07)

1 leave it where it is. It is not a mystery to the Staff or  
2 the Commission, frankly, after the hearing we had in the  
3 summer cost of gas docket, that the Company is very  
4 unhappy about this docket and how it came to pass, as to  
5 the two new issues, and that will unfold as we go forward.

6 MR. KREIS: Okay. Mr. Traum, and then  
7 Ms. Ross.

8 MR. TRAUM: Thank you, sir. Just want  
9 to weigh in on the issue of whether or not there was an  
10 oral settlement. To the extent there was, if there was  
11 one, the OCA was not a participant to that. We have taken  
12 the position in this proceeding that this was single-issue  
13 ratemaking, and that was our position. And, I find it  
14 very interesting now that the Company tries to use their  
15 single-issue ratemaking argument to attempt to preclude a  
16 couple of issues here. And, they refer back to an initial  
17 report by Liberty Consulting for the Staff. And, you  
18 know, when I look back at the language that the Company  
19 had originally quoted from that Staff report, it was that,  
20 dated August 12, 2005, the author stated "Our concern is  
21 that ENGI's rate structure may no longer reflect the costs  
22 that the Company incurred when conducting its business",  
23 "ENGI's rate structure". And, to me, that means, well,  
24 should costs be recovered through the CGA through indirect

1 gas costs or through base rates? And, that was the  
2 primary basis for our original argument, that you can't  
3 just raise indirect gas costs on one side and ignore what  
4 that means with regards to the rate structure on the other  
5 side on the distribution rates. And, that's still a valid  
6 argument. For the Company now to say "well, that should  
7 be interpreted as only these two items", it should be  
8 addressed that way, not -- that it should be everything or  
9 nothing.

10 MR. KREIS: Thank you. Ms. Ross.

11 MS. ROSS: I just wanted to weigh in on  
12 two issues. The first is the request by KeySpan that this  
13 docket be consolidated with the Northern docket. And,  
14 Staff opposes that request, because the two companies are  
15 different. They have different management and different  
16 ways of conducting their businesses, and their costs of  
17 providing their services are different. And, although we  
18 wouldn't object if KeySpan wants to intervene in some  
19 capacity, so that it's aware of what's going on in the  
20 Northern case, and we would note that KeySpan, to the  
21 extent it believes it's an interested party, has a right  
22 to request a rehearing of any decision that the Commission  
23 issues in the Northern case. So, KeySpan is certainly  
24 able to protect itself against what it views as, you know,

{DG 07-050} [Prehearing conference] (05-03-07)

1 any errors in analysis or policy, for that matter, that  
2 might come out in the Northern docket. And, KeySpan is  
3 also able to argue that any decision in the Northern  
4 docket is not binding on KeySpan, because KeySpan is a  
5 different company with different characteristics. And,  
6 for that reason, Staff would not support a consolidation  
7 of those dockets. Not to mention the fact that the  
8 dockets involve different issues, and some issues overlap,  
9 but there are other issues that don't. And, it would just  
10 become unmanageable to try to run those two cases  
11 together.

12 MR. KREIS: Okay. Before you get to  
13 your second issue, let me just say that I understood Mr.  
14 Camerino to essentially put you on warning that at some  
15 point in the future he plans on making that request. He  
16 has not made it yet, correct?

17 MR. CAMERINO: Yes. Just to be clear  
18 for the Commission, we recognize we have to file a  
19 Petition to Intervene and we would have to file a Motion  
20 for Rehearing, etcetera, etcetera. So, it's my view, to  
21 add to the list of things that the Commission doesn't have  
22 to decide today or coming out of this conference, it's the  
23 various issues that I raise that will be coming.

24 MR. KREIS: Okay. And, that's all

{DG 07-050} [Prehearing conference] (05-03-07)

1 perfectly appropriate for this little confab, because  
2 vetting the issues at a prehearing conference is why we  
3 bother to do these things. But, just so you all know,  
4 that issue has simply just been warned here. It hasn't  
5 been formally raised. So, your argument in favor of  
6 consolidation, Mr. Camerino, and your argument against  
7 consolidation, Ms. Ross, are just sort of shots across the  
8 bow. And, ultimately, there will be more opportunity to  
9 really argue about it.

10 Okay, your second issue.

11 MS. ROSS: My second issue just has to  
12 do with the discussion around some sort of an "informal"  
13 or "oral settlement". And, again, it goes to my earlier  
14 point. The cost of gas -- winter cost of gas proceeding  
15 is a very fast turnaround. A filing comes in, and a month  
16 or so later there's a hearing. And, very shortly after  
17 the hearing, there's an order. In that circumstance, it  
18 is not possible to identify fully or analyze fully  
19 substantial rate changes that may have occurred. In that  
20 case, there were a number of changes having to do with the  
21 indirect gas costs. Staff was able, in that short time  
22 frame, to identify two. In fact, the bad debt allowance,  
23 once we began looking at the working capital, flows  
24 directly into the working capital through the lead/lag

{DG 07-050} [Prehearing conference] (05-03-07)

1 study. So, the two issues are connected. We didn't --  
2 Staff didn't have time to make that connection in the  
3 context of the cost of gas proceeding. And, frankly, when  
4 Staff began to look at the amount of dollars that were  
5 being recovered in the cash working capital mechanism, as  
6 part of its analysis of the double recovery issue, it  
7 realized that there was a very high interest rate being  
8 applied to the cash working capital allowance.

9 So, both of those issues, although they  
10 were not specifically flagged by Staff in the winter cost  
11 of gas filing, are directly connected to the issues that  
12 were identified. And, frankly, the pressure of these cost  
13 of gas proceedings creates some difficult regulatory  
14 issues going forward, in terms of giving the Company  
15 notice of concerns and finding a way to litigate fully  
16 those concerns not in the cost of gas proceedings, which  
17 occur every six months, and which are all very fast-track  
18 proceedings. And, that's just an issue that maybe this  
19 docket will cause the Commission to even consider broader  
20 remedies for the problems of not being able to litigate  
21 fully substantive ratemaking issues in cost of gas  
22 proceedings.

23 But, at any rate, the Staff would like  
24 to be clear that its litigation strategy in cost of gas

1 proceedings should never be construed as a "settlement" or  
2 any type of estoppel with regard to issues. It was  
3 Staff's litigation strategy to discuss with the Company  
4 the position Staff would take with regard to what we view  
5 as a placeholder in a cost of gas proceeding, and that is  
6 a rate that must go into effect and that is fully  
7 reconcilable in the next period.

8 So, I just want to be clear that Staff  
9 did not settle anything. When we do enter into a  
10 settlement agreement, it is written and it is signed and  
11 it is filed with the Commission. That was not a  
12 settlement agreement.

13 MR. KREIS: Doesn't sound like this is  
14 going to be a boring docket. Has everybody said  
15 everything they feel they need to say at this time on  
16 those issues, again, stressing that all you're really  
17 doing is firing helpful shots across each others' bow,  
18 rather than formally raising these issues for resolution  
19 in whatever order ultimately emerges out the prehearing  
20 conference?

21 (No verbal response)

22 MR. KREIS: I will interpret silence as  
23 assent to that proposition. So, given all of these  
24 interesting issues that you all confront, and given the

{DG 07-050} [Prehearing conference] (05-03-07)

1 need to conduct discovery and develop evidence, what's  
2 your pleasure now? Would you like to talk about a  
3 procedural schedule now? Would you like to recess the  
4 prehearing conference and meet and submit something later?

5 MR. CAMERINO: I think we ought to  
6 recess the prehearing conference, and we're close to  
7 having a final procedural schedule, we just have to play  
8 with a few dates, and we can submit that afterwards.

9 MR. KREIS: Well, I think that that's  
10 how we should do it then, unless anybody has any objection  
11 to that?

12 (No verbal response)

13 MR. KREIS: And, hearing none, is there  
14 anything else that we need to raise on the record, before  
15 you folks have your technical session?

16 MS. ROSS: We'll all set. Thank you.

17 MR. KREIS: Super. Well, I thank you  
18 all for indulging my interest in using this prehearing  
19 conference as a useful mechanism for really getting stuff  
20 out on the table. I know that not every prehearing  
21 conference here goes that way. But, in this docket, in  
22 particular, it seems to raise some important issues that  
23 are not of a routine nature and it goes to sort of the way  
24 the Commission conducts proceedings like this. And, I

{DG 07-050} [Prehearing conference] (05-03-07)



1       just wanted to make sure that we all know what they are,  
2       and now we do.

3                       So, with that, we will leave this  
4       prehearing conference adjourned. Thank you.

5                       (Whereupon the prehearing conference was  
6       adjourned at 11:04 a.m. and the Staff  
7       and Parties convened a technical session  
8       thereafter.)

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