

DG 02-045

**ENERGYNORTH NATURAL GAS, INC. D/B/A
KEYSPAN ENERGY DELIVERY NEW ENGLAND**

2002 Summer Cost of Gas Proceeding

**Order Granting Motion for
Protective Order and Confidential Treatment**

O R D E R N O. 23,968

May 10, 2002

I. PROCEDURAL HISTORY

On March 15, 2002, EnergyNorth Natural Gas, Inc. d/b/a KeySpan Energy Delivery New England (Company), a public utility engaged in the business of distributing natural gas in southern and central New Hampshire, filed with the New Hampshire Public Utilities Commission (Commission) its summer cost of gas filing for the period May 1, 2002 through October 31, 2002.

On March 18, 2002, the Commission issued an Order of Notice setting a hearing for this docket. A hearing in this docket was held at the Commission on April 12, 2002. During the hearing, Staff submitted a record request for a copy of an Asset Management Agreement between KeySpan and El Paso Merchant Energy and requested that Exhibit 7 be reserved for that document.

On April 19, 2002, the Commission issued Order No. 23,951 Approving the Cost of Gas Rate and Local Distribution

Adjustment Clause, and ordering that KeySpan provide the Commission with monthly reports of the projected over/under calculations together with resulting revised rates and tariff pages.

On April 18, 2002, KeySpan provided to the Commission a redacted copy of the Asset Management Agreement between KeySpan and El Paso Merchant Energy. On April 22, 2002, KeySpan submitted a Motion for Protective Order and Confidential Treatment and a full copy of the Asset Management Agreement.

In its motion, the Company states that (1) KeySpan is contractually obligated to maintain the confidentiality of certain provisions of the agreement; (2) release of the information is likely to result in a competitive disadvantage to the Company; and (3) the information is not public knowledge, is generally protected by KeySpan, and has not been published elsewhere. Commission Staff supports the motion.

II. COMMISSION ANALYSIS

N.H. Admin. Rule Puc 204.06 provides that "the Commission shall grant confidentiality upon its finding that the documents sought to be made confidential are within the exemptions permitted by RSA 91-A:5,IV, or other provisions of law based on the information submitted. . . ." RSA 91-A:5, IV

provides an exception to the general rule of public disclosure for "confidential, commercial or financial information."

Interpreting this provision, the New Hampshire Supreme Court has instructed agencies of state government to construe this exemption narrowly, applying a balancing test in order to determine whether "the asserted private, confidential, commercial or financial interest" is outweighed by "the public's interest in disclosure." *Union Leader Corp. v. New Hampshire Housing Fin. Auth.*, 142 N.H. 540, 552-53 (1997).

In applying this balancing test, the Commission must determine whether confidential treatment is appropriate for the contractual agreement between KeySpan and El Pasco Merchant Energy. In *Re EnergyNorth Natural Gas, Inc. d/b/a Keyspan Energy Delivery New England*, DG 02-045, Order No. 23,950 (April 12, 2002), the Commission found that the terms of gas supply agreements negotiated by a jurisdictional gas distribution company are sensitive commercial information and warrant confidential treatment. Additionally, in *Re Granite State Electric Company*, 84 NH PUC 310, 312 (1999), the Commission found that similar information contained in an unredacted copy of a transition service supply contract was "commercially sensitive terms and proprietary, and . . . the information, if made public, would create a competitive

disadvantage that outweighs the benefit to the public of disclosure."

Based on KeySpan's representations and the Commission's previous treatment of similar information, we find that the benefits to the Company of non-disclosure in this case outweigh the benefits to the public of disclosure. The Commission finds that the information is exempt from public disclosure pursuant to RSA 91-A:5,IV and Puc 204.06.

Based upon the foregoing, it is hereby

ORDERED, that the Motion for Protective Order and Confidential Treatment with respect to the Asset Management Agreement between KeySpan and El Paso Merchant Energy requested by Staff is APPROVED; and it is

FURTHER ORDERED, that the protection afforded by this order extends to any additional discovery, testimony, argument or briefing relative to the confidential information; and it is

FURTHER ORDERED, that in future filings, KeySpan shall continue to submit, concurrent with its request for confidential treatment, both redacted and unredacted filings which the Commission shall protect from disclosure during the pendency of its review of the request for confidentiality, pursuant to N.H. Admin. Rules Puc 204.06; and it is

FURTHER ORDERED, that the determination as to protective treatment made herein is subject to the ongoing authority of the Commission, on its own motion or on the motion of Staff, any party or any other member of the public, to reconsider this Order in light of RSA 91-A, should circumstances so warrant.

By order of the Public Utilities Commission of New Hampshire this tenth day of May, 2002.

Thomas B. Getz
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary