

STATE OF NEW HAMPSHIRE  
BEFORE THE  
PUBLIC UTILITIES COMMISSION

Re: KeySpan Energy Delivery New England/ Northern Utilities, Inc.  
Docket No. DG 07-072

**JOINT MOTION TO BIFURCATE PROCEEDING  
AND  
TO DIRECT STAFF TO FILE TESTIMONY**

EnergyNorth Natural Gas, Inc. d/b/a KeySpan Energy New England ("KeySpan") and Northern Utilities, Inc. ("Northern") hereby move the Commission to (1) bifurcate this proceeding and (2) direct the Commission staff ("Staff") to submit prefiled direct testimony prior to requiring testimony from the utilities in this docket.

In support of this two-part motion, KeySpan and Northern state as follows:

**I. Background.**

1. KeySpan and Northern use their overall cost of capital to establish a reasonable and adequate rate of return for the cash working capital requirements needed for gas supply. This long-standing methodology was most recently ratified by this Commission's decision in two revenue-neutral rate redesign dockets. For KeySpan, the docket was DG 00-063; for Northern, the docket was DG 00-046. In each of those proceedings, Staff conducted a detailed review of KeySpan's and Northern's rate design, including gas supply cost recovery and this very issue, and the Commission approved the rate redesign as just and reasonable and in the public interest.

2. In this proceeding, Staff has proposed that the Commission change the approach previously approved by the Commission, so that the rate of return earned by gas utilities on their cash working capital requirements for gas supply purposes would be equal to a short term debt rate, rather than the gas utilities' overall allowed cost of capital.

3. Utility Analyst George McCluskey claims that the gas utilities' working capital is "essentially risk free" and therefore does not reflect the correct return to investors. *See Prefiled Direct Testimony of George R. McCluskey at 11 (Re Northern Utilities, Inc., DG 07-033).*

4. Although Mr. McCluskey has made clear that he believes that the gas utilities should recover only a short term debt rate of interest on their gas supply cash working capital, his testimony and other statements in prior dockets have provided only a glimpse into the apparent basis for his position. As recently as the technical session held in this docket on July 25, Mr. McCluskey indicated that his position is more complex than the gas utilities believe and that it does not rely simply on what he believes to be the "risk free" nature of gas supply working capital.

## **II. Staff Should Be Directed to File Testimony**

5. Staff should be required to prefile its direct testimony prior to testimony from the gas utilities because KeySpan and Northern do not have the burden of production on this issue. It is Staff that seeks to change an approved cost recovery methodology in the face of counter-assertions by the utilities that doing so would result in an underrecovery of costs. It is inappropriate to shift the burden of production away from Staff, which is proposing a change in current ratemaking methodology onto KeySpan and Northern.

6. Moreover, were KeySpan and Northern required to file testimony in this case before the Staff set forth its complete position, they would in effect be required to shadow box — guessing at what Mr. McCluskey might proffer and facing the likely response that they had materially misunderstood Staff's position. To ensure Staff's position is clearly understood and on the record, and to ensure that KeySpan and

Northern have a full and fair opportunity to respond to Staff's assertions, Staff should be required to file its testimony first.

7. In addition, requiring Staff to lead with its testimony (consistent with the burden of production), will help ensure that this proceeding is administered more efficiently. Instead of KeySpan and Northern guessing at Staff's and/or Mr. McCluskey's position in its direct testimony, which would almost certainly necessitate extensive rebuttal testimony followed by multiple rounds of additional discovery and surrebuttal by Staff, the more efficient path is for Staff to file testimony establishing its position and the basis for that position, permitting discovery, and then providing KeySpan and Northern an opportunity to address that position with their own testimonies.

8. The issues that Staff seeks to raise in this docket are extremely significant. If Mr. McCluskey's proposal were adopted, it would constitute a change to long-standing Commission policy and the alteration of a ratemaking process that has previously been found to be just and reasonable with the support of Staff. Due process and simple fairness require that the gas utilities be fully apprised of Mr. McCluskey's proposal before they are required to respond.

9. Although KeySpan and Northern believe it is clear that Staff bears the burden of production and proof in this case, they believe that the Commission could require Staff to submit its testimony first in this proceeding without prejudice to either party's right to dispute the issue of burden of proof at a later stage of the docket, such as at the close of the evidence or at some other appropriate time.

10. Although extensive discovery has been conducted regarding the salient issues during several prior related proceedings, KeySpan and Northern would not object

to a reasonable amount of additional discovery if Staff believes that it still does not have sufficient information to present its direct case.

**II. The Proceeding Should Be Bifurcated for Administrative Efficiency**

11. The Commission's Order of Notice for this proceeding indicated that the docket was "opened to consider, inter alia, issues related to the appropriate carrying charge rates for cash working capital related to gas supply costs and the effective date for such interest rate to the extent it is different from the currently effective rate." Order of Notice at 2. The Commission further stated that because "of the possibility that this docket could result in basing the interest rates applicable to cash working capital on short term borrowing costs of KeySpan and Northern , the Commission may consider whether to apply that method to the electric utilities." *Id.*

12. As is set forth in more detail in a separate Motion to Designate Staff Advocate filed by KeySpan and Northern contemporaneously with this motion, this docket is likely to be highly contentious given Mr. McCluskey's efforts to obtain a change in long-standing ratemaking practice, and because of KeySpan's and Northern's concern that Mr. McCluskey has failed to consider the significant risk of non-recovery the gas utilities face with regard to their seasonally large and always volatile gas supply costs.

13. KeySpan and Northern believe that administrative efficiency, including the need to fully and fairly develop the record and avoid overburdening the utilities with unnecessary discovery and testimony, warrant bifurcating this proceeding into two phases. To expedite consideration of the foundational issue in this case and defer consideration of issues that may not need to be resolved at all (resulting in associated

savings in rate case expense, use of Commission resources and time and effort by the parties), KeySpan and Northern propose that the Commission proceed as follows.

a. The Commission should conduct an initial phase of this docket to determine whether Mr. McCluskey's basic premise is correct – that is, whether the existing practice of applying the overall cost of capital as the return on working capital should be changed to using a short term debt rate. If the Commission were to reject Mr. McCluskey's proposal to make such a change from current practice, the proceeding would end.

b. If the Commission were to adopt Mr. McCluskey's position, the proceeding would move to a second phase. In the second phase, the parties would conduct discovery and present evidence to the Commission regarding the nature of the debt rate (i.e., prime rate, money pool rate or other source of short term debt) that should apply. Consideration of the effective date of any new methodology also may be undertaken in the second phase.

14. If the Commission does not adopt a two phased approach to this proceeding, it will be necessary for all five utilities to file testimony and submit to discovery regarding their short term capital costs, even though that issue may ultimately not be relevant to the proceeding. Such an approach is likely to add substantial unnecessary costs and use of resources for all involved in this proceeding.

#### **IV. Conclusion**

15. KeySpan and Northern believe the parties will be able to agree upon an appropriate procedural schedule upon the Commission's resolution of these procedural issues. Therefore a specific procedural schedule has not been included with this motion.

16. Counsel for KeySpan and Northern have contacted Staff, the Office of Consumer Advocate ("OCA"), Public Service Company of New Hampshire ("PSNH"), National Grid and Unitil Energy Systems ("Unitil") regarding the relief requested in this motion. National Grid, PSNH and Unitil consent to the relief requested. Staff and OCA oppose the request to conduct the proceeding in two phases. Staff agrees to file its testimony first, which OCA supports.

WHEREFORE, KeySpan and Northern respectfully request that the Commission:

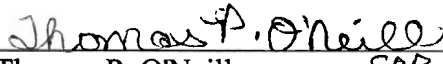
- A. Order the Staff to submit its prefiled direct testimony prior to testimony from the utilities in this docket;
- B. Bifurcate this proceeding into two phases as described above;
- C. Order the parties to confer to attempt to devise a proposed procedural schedule consistent with the foregoing on or before a date certain;
- D. Order the parties to submit separate proposed procedural schedules by a date certain to the extent that they are unable to agree upon a common proposal
- E. Grant such other and further relief as the Commission determines to be consistent with the public interest.

Respectfully submitted,

EnergyNorth Natural Gas, Inc. d/b/a  
KeySpan Energy Delivery New England

By its Attorneys

Date: August 15, 2007

  
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By its Attorneys

Date: August 15, 2007

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Motion has been forwarded this 15<sup>th</sup> day of August, 2007 to the service list in the above-captioned proceedings.

Steven V. Camerino