

STATE OF NEW HAMPSHIRE

Inter-Department Communication

DATE: May 19, 2010

AT (OFFICE): NHPUC

FROM: Stephen P. Frink ^{SFF}
Assistant Director, Gas & Water Division

SUBJECT: DG 09-038
New Hampshire Gas Corporation
Rate Case Expenses

TO: Commissioners
Docket File
Service List



BACKGROUND

On October 30, 2009, by Order No. 25,039, the Commission approved a permanent rate increase based on the settlement agreement between Staff and New Hampshire Gas Corporation (NHGC or Company) filed on September 30, 2009. The Order allowed for recovery of estimated rate case expenses of \$27,442 over a one-year period commencing November 1, 2009.

On April 29, 2010, by Order No. 25,098 (Docket No. DG 10-048 – NHGC’s 2010 summer Cost of Gas), the Commission approved a revised rate case expense surcharge to recover rate case expenses of \$35,524 and directed the Company to file supporting rate case expense documentation within 30 days in Docket DG 09-038.

On April 29, 2010 NHGC filed copies of redacted (legal) and unredacted (non-legal) invoices in support of rate case expenses totaling \$34,546, and on May 4, 2010 NHGC filed copies of unredacted legal invoices and a motion for protective treatment of those invoices.

STAFF ANALYSIS

Staff reviewed the supporting invoices to confirm that the charges related to the rate case, and that they were reasonable and accurately reported. Although the Company’s rate case expense summary excluded charges that were clearly identified as COG related on legal invoices, not all COG related charges were clearly identified. In addition, there were a number of charges that appear to be unreasonable, either because the cost of the service performed is excessive or the outside legal service provided was unnecessary.

Non Rate Case Expense Charges

Legal invoices are broken out between fees, expenses and adjustments. Fees are calculated based on employee time spent on the service described in a brief narrative, multiplied by the applicable hourly rate. Staff compared service dates and narratives with related material filed with the Commission and determined that a number of legal charges included in the Company's accounting of rate case expenses were related to COG proceedings. In addition to narratives that do not specify the proceeding the services pertain to, some individual charges include narratives that reference both rate case and COG services. In those instances NHGC allocated anywhere from 50% to 90% of the charge to rate case expenses whereas Staff has allocated one-half of the charge to rate case expenses.

Legal invoices from March 2009 through November 2009 include an 'invoice level adjustment' that reduces legal fees and for which the narrative reads 'Adjustment.' The amount of the fee reduction credited to rate case expenses is based on the percentage of fees in a particular month related to the rate case.

NHGC used the same percentage-based allocation methodology to assign non-fee charges to rate case expenses. Staff, however, assigned non-fee charges based on the invoice narrative and what items were filed with the Commission.

Unreasonable Charges

Outside legal services are normally much more costly than if a utility uses in-house resources. For routine filings Staff encourages companies to avoid that additional expense, if possible. The legal invoices reveal that for both COG and delivery rate proceedings the Company employed outside legal counsel to file data responses. For example, a July 30, 2009 Dewey & LeBoeuf, LLP (NHGC's legal counsel) charge of \$552.50 was based on the following narrative:

"Draft cover letters to Consumer Advocate and NHOUC [*sic*] Staff Attorney for filings of data request responses; Arrange for photocopying, scanning, and mailing of cover letters and data request responses."

The cover letter filed on July 30, 2009 consists of two sentences which read: "Enclosed on behalf of New Hampshire Gas Corporation, in the above-captioned proceeding, please find New Hampshire Gas Corporation's Responses to the New Hampshire Public Utilities Commission's Staff Data Requests. Thank you for your attention to this matter." Enclosed were 16 data responses.

Similarly, a September 30, 2009 Dewey & LeBoeuf, LLP charge of \$297.50 is based on the narrative:

"Draft cover letter for filing Staff Data Request Responses with NHPUC (CGA); Arrange for mailing of responses to NHPUC."

Given the disparity in costs for performing essentially the same task, *i.e.*, drafting a cover letter to data responses and arranging for mailing, Staff has only included one-half of the July 30, 2009 charge in its calculation of recoverable rate case expenses.

Another unreasonable cost relates to a request made by Staff at the hearing on permanent rates for a follow-up report by the Company on its efforts to find stimulus or grant funding to build a Liquefied Natural Gas (LNG) plant. Staff asked the Company to submit a report summarizing who it had contacted, the responses it received, and the impact of those responses on the LNG feasibility study it had previously submitted. The report was not a record request. In a conference call with Staff approximately a week following the hearing, NHGC made an oral report regarding its efforts and the results of those efforts. The Dewey & LeBoeuf, LLP invoice following the hearing includes fees of \$3,300 related to the LNG report which NHGC included as recoverable rate case expenses. The report did not require outside legal participation and should not have engendered thousands of dollars in outside legal expenses. Staff considers those costs to be unreasonable and has excluded them in its calculation of recoverable rate case expenses.

Recoverable Rate Case Expenses

NHGC most recent accounting of recoverable rate case expenses is as follows:

Legal Expenses	\$34,377
UPS	\$69
LNG Report	\$600
Less: Audit Related Expenses	<u><\$500></u>
Total Recoverable Expenses	\$34,546

Staff accounting of recoverable rate case expenses is as follows:

Legal Expenses	\$28,205
UPS	\$69
LNG Report	\$600
Less: Audit Related Expenses	<u><\$500></u>
Total Recoverable Expenses	\$28,373

A summary of recoverable rate case expenses filed in DG 10-048, in DG 09-038, and Staff's accounting can be found in Attachment SPF-1. Both NHGC and Staff reviewed and adjusted legal invoices in accounting for recoverable rate case expenses and the monthly bill summary and adjustments can be found in Attachments SPF-2 and SPF-3, respectively. A side-by-side comparison of the NHGC and Staff adjustments to the legal invoices used to determine total recoverable rate case expenses can be found in Attachment SPF-4.

STAFF RECOMMENDATION

NHGC should be allowed to recover \$28,373 of rate case expenses, \$6,173 less than what NHGC has identified as recoverable rate case expense.

The Company should limit use of outside legal services and should require legal invoices to segregate charges by docket number when applicable.

Legal invoices for which NHGC requested protective treatment should be returned to the Company and NHGC should withdraw its motion. Although Staff requested and reviewed the unredacted invoices, Staff did not rely on those invoices in determining recoverable rate case expenses.

The Company should contact Staff if it has any questions regarding Staff's review and recommendations on recoverable rate case expenses. Barring a written objection by the Company within 30 days, the Commission should issue an order approving recovery of \$28,373 of rate case expenses. If the Company files a written objection, it should state its reasons and the issue should be addressed at hearing prior to the 2010-2011 winter COG hearing.

**New Hampshire Gas Company
Rate Case Expense
DG 09-038**

Filed in Summer COG (DG 10-048)		Filed May 5, 2010 (DG 09-038)		Staff Recommendation	
Summary of Rate Case Expense		Summary of Rate Case Expense		Summary of Rate Case Expense	
Legal Expenses	Amount	Legal Expenses	Amount	Legal Expenses	Amount
Jan-09	\$2,475	Jan-09	\$2,475	Jan-09	\$2,475
Feb-09	\$1,519	Feb-09	\$1,519	Feb-09	\$1,519
Mar-09	\$6,556	Mar-09	\$6,070	Mar-09	\$6,064
Apr-09	\$3,018	Apr-09	\$4,456	Apr-09	\$2,987
May-09	\$0	May-09	\$0	May-09	\$0
Jun-09	\$0	Jun-09	\$0	Jun-09	\$0
Jul-09	\$1,112	Jul-09	\$1,112	Jul-09	\$846
Aug-09	\$3,544	Aug-09	\$3,544	Aug-09	\$3,544
Sept-09	\$7,082	Sept-09	\$5,550	Sept-09	\$5,393
Oct-09	\$8,893	Oct-09	\$7,690	Oct-09	\$3,559
Nov-09	\$1,155	Nov-09	\$1,155	Nov-09	\$1,011
	\$35,355	Jan-10	\$805	Jan-10	\$805
			\$34,377		\$28,205
UPS Expenses		UPS Expenses		UPS Expenses	
Mar-09	\$8	Mar-09	\$8	Mar-09	\$8
Apr-09	\$7	Apr-09	\$7	Apr-09	\$7
Jun-09	\$54	Jun-09	\$54	Jun-09	\$54
	\$69		\$69		\$69
NorthStar - LNG Report	\$600	NorthStar - LNG Report	\$600	NorthStar - LNG Report	\$600
Total Expense	\$36,024	Total Expense	\$35,046	Total Expense	\$28,873
Less Audit - related	(\$500)	Less Audit - related	(\$500)	Less Audit - related	(\$500)
Total Recoverable Expense	\$35,524	Total Recoverable Expense	\$34,546	Total Recoverable Expense	\$28,373

**New Hampshire Gas Company
Rate Case Expense
NHGC Legal Expense Allocation
DG 09-038**

Source: Legal Invoices filed May 5, 2010

Rate Case Expense - Legal Allocation Summary							
(a)	(b)	(c)	(d)	(c)/(b)*(d)	(f)	(c)/(b)*(f)	(c)+(e)+(g)
Month	Total Fees	Rate Case Portion	Total Expenses	Rate Case Portion	Total Fee Adjustment	Rate Case Portion	Total Recoverable
Jan-09	\$2,475	\$2,475	\$0	\$0	\$0	\$0	\$2,475
Feb-09	\$1,350	\$1,350	\$169	\$169	\$0	\$0	\$1,519
Mar-09	\$6,079	\$5,629	\$477	\$441	\$0	\$0	\$6,070
Apr-09	\$7,800	\$4,872	\$504	\$315	(\$1,170)	(\$731)	\$4,456
May-09	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Jun-09	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Jul-09	\$1,153	\$1,153	\$239	\$239	(\$279)	(\$279)	\$1,112
Aug-09	\$4,413	\$4,413	\$14	\$14	(\$883)	(\$883)	\$3,544
Sep-09	\$8,998	\$7,051	\$72	\$56	(\$1,987)	(\$1,557)	\$5,550
Oct-09	\$11,790	\$10,194	\$51	\$44	(\$2,948)	(\$2,549)	\$7,690
Nov-09	\$1,325	\$1,325	\$162	\$162	(\$331)	(\$331)	\$1,155
Dec-09	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Jan-10	\$0	\$0	\$805	\$805	\$0	\$0	\$805
Total	\$45,382	\$38,461	\$2,492	\$2,245	(\$7,597)	(\$6,329)	\$34,377

Difference between total fees & rate case portion:

Mar-09	(450) COG 3/19/09	\$450 (b)-(c)
Apr-09	(600) COG 4/16/09 (900) 1/2 4/20/09 prep time <u>(1,428) 1/3 4/21/09 hearings</u> (2,928)	\$2,928 (b)-(c)
Sep-09	(900) COG (449) COG (300) COG <u>(298) COG</u> (1,946)	1,946 (b)-(c)
Oct-09	(204) rate case & COG (270) rate case & COG <u>(1,122) rate case & COG</u> (1,596)	1,596 (b)-(c)

**New Hampshire Gas Company
Rate Case Expense
Staff Legal Expense Allocation
DG 09-038**

Source: Legal Invoices filed May 5, 2010

Rate Case Expense - Legal Allocation Summary							
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)
Month	Total Fees	Rate Case Portion	Total Expenses	Rate Case Portion	Total Fee Adjustment	(c)/(b)*(f) Rate Case Portion	(c)+(e)+(g) Total Recoverable
Jan-09	\$2,475	\$2,475	\$0	\$0	\$0	\$0	\$2,475
Feb-09	\$1,350	\$1,350	\$169	\$169	\$0	\$0	\$1,519
Mar-09	\$6,079	\$5,629	\$477	\$435	\$0	\$0	\$6,064
Apr-09	\$7,800	\$3,300	\$504	\$182	(\$1,170)	(\$495)	\$2,987
May-09	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Jun-09	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Jul-09	\$1,153	\$876	\$239	\$182	(\$279)	(\$212)	\$846
Aug-09	\$4,413	\$4,413	\$14	\$14	(\$883)	(\$883)	\$3,544
Sep-09	\$8,998	\$6,840	\$72	\$64	(\$1,987)	(\$1,510)	\$5,393
Oct-09	\$11,790	\$4,738	\$51	\$6	(\$2,948)	(\$1,184)	\$3,559
Nov-09	\$1,325	\$1,325	\$162	\$18	(\$331)	(\$331)	\$1,011
Dec-09	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Jan-10	\$0	\$0	\$805	\$805	\$0	\$0	\$805
Total	\$45,382	\$30,945	\$2,492	\$1,875	(\$7,597)	(\$4,616)	\$28,205

Difference between total fees & rate case portion:

Mar-09	(450) COG 3/19/09	\$450 (b)-(c)
Apr-09	(600) COG DRs filed 4/10/09 (300) COG DRs filed 4/10/09 (600) Revised COG 4/16/09 (900) rate case & COG (2,100) rate case & COG	\$4,500 (b)-(c)
Jul-09	(\$276)	\$276 (b)-(c)
Sep-09	(900) COG (660) COG (300) COG (298) COG	2,158 (b)-(c)
Oct-09	(300) rate case & COG (1,350) rate case & COG (70) rate case & COG (383) rate case & COG (1,650) rate case & COG (3,300) LNG study	7,053 (b)-(c)

**New Hampshire Gas Company
Rate Case Expense
Legal Expense Allocations
DG 09-038**

Source: Legal Invoices filed May 5, 2010

Note: Fee Adjustments do not reflect Fee Discounts

Month	Invoice	Staff Adj	NHGC Adj	Staff Adj. over/(under) NHGC Adj.	Reason for Adjustment
Mar-09	Fee	(450)	(450)	0	3/19/09 COG filing
	Expense	(9)	(35)	27	3/19/09 COG filing
	Expense	(32)		(32)	3/19/09 COG filing
	Expense	(1)		(1)	3/19/09 COG filing
		<u>(491)</u>	<u>(485)</u>	<u>(6)</u>	
Apr-09	Fee	(600)		(600)	4/10/09 COG data responses
	Fee	(300)		(300)	4/10/09 COG data responses
	Fee	(600)	(600)	0	4/17/09 revised COG filing
	Fee	(900)	(900)	0	4/21/09 COG & Rate Case hearings
	Fee	(2,100)	(1,428)	(672)	4/21/09 COG & Rate Case hearings
	Expense	(6)	(189)	183	4/10/09 COG data responses
	Expense	(11)		(11)	4/10/09 COG data responses
	Expense	(4)		(4)	4/10/09 COG data responses
	Expense	(42)		(42)	4/17/09 revised COG filing
	Expense	(3)		(3)	4/17/09 revised COG filing
	Expense	(24)		(24)	4/17/09 revised COG filing
	Expense	(232)		(232)	4/17/09 revised COG filing
		<u>(4,822)</u>	<u>(3,117)</u>	<u>(1,704)</u>	
Jul-09	Fee	(276)		(276)	Excessive
Sep-09	Fee	(900)	(900)	0	9/15/09 COG & Rate Case
	Fee	(660)	(449)	(211)	9/17/09 COG & Rate Case
	Fee	(300)	(300)	0	9/30/09 COG data responses
	Fee	(298)	(298)	0	9/30/09 COG data responses
	Expense	(6)	(15)	9	9/15/09 COG filing
	Expense	(1)		(1)	9/15/09 COG filing
		<u>(2,165)</u>	<u>(1,962)</u>	<u>(204)</u>	
Oct-09	Fee	(300)	(204)	(96)	rate case & COG
	Fee	(1,350)	(270)	(1,080)	rate case & COG
	Fee	(70)		(70)	rate case & COG
	Fee	(383)		(383)	rate case & COG
	Fee	(1,650)	(1,122)	(528)	rate case & COG
	Fee	(3,300)			LNG study - unnecessary
	Expense		(7)	7	
		<u>(7,053)</u>	<u>(1,603)</u>	<u>(5,450)</u>	
Total Adjustments		(14,807)	(7,167)	(7,640)	

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Upon request, Staff may waive receipt of some of its multiple copies of bulk materials filed as data responses. Staff cannot waive other parties' right to receive bulk materials.

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