

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
PUBLIC UTILITIES COMMISSION

IN RE: NEW ENGLAND GAS COMPANY'S :  
RATE CONSOLIDATION FILING : DOCKET NO. 3401

REPORT AND ORDER

On November 1, 2001, the New England Gas Company, a Division of the Southern Union Company ("NEGas"), filed a motion requesting a waiver of the test year filing requirement under Rule 2.6 of the Rhode Island Public Utilities Commission's Rules of Practice and Procedure ("Rules"). In its rate consolidation application filed on November 1, 2001 in this docket, NEGas utilized a test year ending September 30, 2000 for Providence Gas Company ("ProvGas") and a test year ending August 31, 2000 for Valley Gas and Bristol & Warren Gas Company ("Valley"). Rule 2.6 requires that the test year constitute a historic year of actual data for a period ending within nine months of the filing date. However, NEGas' November 1, 2001 rate consolidation application had a test year ending thirteen to fourteen months prior to the filing date.

In support of its motion for a waiver of the test year requirement, NEGas stated the waiver was necessary because NEGas is required to identify and quantify savings associated with the merger of Providence Gas and Valley into Southern Union, which was completed on September 28, 2000. To calculate these merger-related savings, NEGas stated it is necessary to compare the operating costs of the stand-alone companies

to the operating costs of the combined company. The costs of the stand-alone companies as of the merger completion date can easily be determined because the fiscal years of the Rhode Island companies ended at the time of the merger closing.<sup>1</sup>

On November 8, 2001, the Division of Public Utilities and Carriers (“Division”) filed a response to NEGas’ motion requesting a waiver of the test year requirement. Although the Division did not formally object to NEGas’ motion, the Division expressed a number of concerns with NEGas’ approach. First, the Division stated that NEGas should have filed this motion prior to filing its rate consolidation application and that NEGas should not have assumed the Commission would approve the use of a stale test year. Accordingly, the Division recommended that the Commission clarify that any future motions of this type be entertained only prior to the rate application filing. Secondly, in the Division’s view NEGas had failed to articulate a compelling basis for utilizing a stale test year and departing from the Commission’s rules. Although fiscal year 2000 might be the best test year for determining merger-related savings, it was not an appropriate test year for determining NEGas’ revenue requirement. Lastly, the Division expressed concern that the use of a stale test year would complicate the determination of the revenue requirement for NEGas’ rate year ending June 30, 2003.<sup>2</sup>

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<sup>1</sup> NEGas’ motion dated 11/8/01, pp. 2-3.

<sup>2</sup> Division’s letter dated 11/8/01, pp. 1-2.

On November 8, 2001, NEGas requested oral argument on the motion. After due notice, a public hearing was conducted at the offices of the Commission, 89 Jefferson Boulevard, Warwick, on November 16, 2001. The following appearances were entered:

FOR NEGAS:	Robert J. Keegan, Esq. Craig Eaton, Esq.
FOR DIVISION:	Paul Roberti, Esq. Assistant Attorney General
FOR COMMISSION:	Steven Frias, Esq. Executive Counsel

At the hearing, Mr. Keegan, counsel for NEGas, acknowledged that it was a mistake not to have filed a motion for a waiver prior to the rate application filing. Mr. Keegan cited two prior cases in which the Commission granted a waiver of Rule 2.6.<sup>3</sup> Mr. Keegan argued that it would have been difficult to use a more recent test year. For instance, he noted that a test year ending June 30, 2001 would have included three months of financial data from the pre-merger companies. The inclusion of those three months would require numerous accounting adjustments. Also, Mr. Keegan argued that the first nine-month period of the post-merger company had tremendous change that would also require numerous normalizing accounting adjustments.<sup>4</sup> Mr. Keegan acknowledged that a test year ending September 30, 2001 would have been preferable, but that the data for that time period would not be

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<sup>3</sup> Tr., 11/16/01, pp. 9-10.

<sup>4</sup> Id., pp. 15-17.

available until the end of December, 2001 at the earliest.<sup>5</sup> Lastly, Mr. Keegan noted that the Commission must render its decision on the rate application by July 1, 2002, the date Energize Rhode Island II (“ERI-II”) is to expire, and the filing of a new test year would delay the proceeding.<sup>6</sup>

Mr. Keegan acknowledged that a test year not in compliance with Rule 2.6 would require the Division to issue data requests.<sup>7</sup> He also conceded that it was possible to measure merger savings through methods other than the use of a test year ending September 30, 2000.<sup>8</sup>

Mr. Stephen Scialabba, Chief Accountant of the Division, stated that regardless of what test year is used, the rate case would be complicated.<sup>9</sup> Mr. Keegan stated that NEGas would waive its statutory right to have the Commission render a decision in the case by June 1, 2002 and instead grant an extension until July 1, 2002 if the Commission grants its motion for waiver.<sup>10</sup>

After a brief recess, the Commission deliberated upon the pleadings and oral arguments of the parties and issued a bench decision granting NEGas’ motion for a waiver of the test year requirement. At the outset, the Commission expressed displeasure that NEGas did not file its motion prior to filing its rate application and that NEGas had assumed the Commission would grant the motion nonetheless. The Commission

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<sup>5</sup> *Id.*, p. 20.

<sup>6</sup> *Id.*, pp. 21-22.

<sup>7</sup> *Id.*, p. 30.

<sup>8</sup> *Id.*, p. 34.

<sup>9</sup> *Id.*, pp. 46-47.

<sup>10</sup> *Id.*, p. 55.

noted, however, that the Division did not object to the NEGas' motion. In addition, the Commission noted that it has granted test year waiver motions in the past. Furthermore, the Commission acknowledged that NEGas' rate consolidation application is an unusual case and will be a complicated proceeding regardless of what test year is used.<sup>11</sup> The Commission noted that any test year other than one ending September 30, 2001 will require adjustments because of the inclusion of pre-merger data. Also, the Commission found that requiring the filing of a new test year concluding September 30, 2001 would delay the case so that new rates would not go into effect at the conclusion of ERI-II.<sup>12</sup> Therefore, the Commission granted NEGas' motion for a waiver of the test year requirement of Rule 2.6 with respect to the rate consolidation application filed by NEGas in this docket on November 1, 2001.

Accordingly, it is

(17379) ORDERED:

1. The motion of New England Gas Company filed November 1, 2001 for a waiver of the test year requirement of Rule 2.6 of the Public Utilities Commission's Rules of Practice and Procedure is granted.

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<sup>11</sup> Id., p. 57.

<sup>12</sup> Id., pp. 63-64, 67-68.

EFFECTIVE IN WARWICK, RHODE ISLAND PURSUANT TO A  
BENCH DECISION OF NOVEMBER 16, 2001. WRITTEN ORDER  
ISSUED FEBRUARY 28, 2003.

PUBLIC UTILITIES COMMISSION

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Elia Germani, Chairman

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\*Kate F. Racine, Commissioner

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Brenda K. Gaynor, Commissioner

\*Commissioner Racine dissented.