

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

DOCKET NO. 2002-385

December 23, 2002

PUBLIC UTILITIES COMMISSION
Amendment to Uniform System of
Accounts for Gas Utilities Regarding
Annual Report Requirements
(Chapter 410)

ORDER ADOPTING RULE
AND STATEMENT OF
FACTUAL AND POLICY BASIS

Welch, Chairman; Diamond and Nugent, Commissioners

I. SUMMARY

Through this Order, we adopt amendments to Chapter 410, Uniform System of Accounts for Gas Utilities, establishing that annual reporting requirements will be as prescribed by the Commission on report forms that will be sent to each gas utility annually and making other housekeeping modifications. The rule also now states that gas utilities may request a protective order pursuant to 35-A M.R.S.A. §1311-A and M.R.Civ.P. Rule 26(c) to keep sensitive business information contained in their annual reports confidential for a specified period of time.

For general informational purposes, we also discuss comments we received on the confidentiality of information required in the annual report.

II. INTRODUCTION

Chapter 410 of the Commission's rules establishes a uniform system of accounts and specifies annual report filing requirements for natural gas utilities. The current rule's statement of natural gas utility filing requirements is inadequate and has resulted in the filing of very dissimilar annual reports by Maine's three local distribution companies (LDCs).

On July 9, 2002, we issued a Notice of Rulemaking (NOR) in which we proposed amendments to the requirements of Chapter 410 to better match the current regulatory and market structures. In particular, in light of the competitive nature of the gas market, we requested comment from interested persons on the sensitivity of information that would be provided to the Commission, as contained in an illustrative annual report form attached to the NOR.¹

¹ In substantial part, this form derived from current and former pages of the FERC Forms 2 and 2A, Annual Reports for Major and Non-major Gas Interstate Pipelines for general information and balance sheet, income statement and common schedule summaries and supporting details. It includes the FERC's discontinued pages involving gas sales reporting (because gas sales are now an LDC function, rather than

Consistent with rulemaking procedures, interested persons were provided an opportunity to provide written comments on the proposed rule.² Maine Natural Gas Corporation (MNG), Bangor Gas Company, L.L.C. (BGC), Northern Utilities, Inc. (NUI), Portland Natural Gas Transmission System (PNGTS) and the Office of Public Advocate (OPA) commented on the proposed rule. These comments are discussed below.

III. BACKGROUND

A. Statutory Requirements

Title 35-A M.R.S.A. § 504(2), entitled “Filing of information”, requires that a balance sheet, together with other information as the Commission may prescribe, shall be verified by an officer or owner of the public utility and filed with the Commission three months after the accounts have been closed. Section 502(3), entitled “Blank forms furnished,” states that the Commission shall prepare suitable blank forms for carrying out the purposes of this Title and shall, when necessary, furnish them to each public utility.

B. Current Rule

The existing rule establishes uniform accounting, annual financial reporting, and auditing provisions for gas utilities. This rulemaking revises the existing rule to better match the current environment. For instance, Subpart C currently requires that each gas utility file “its annual FERC Form report” with the Commission on or before the first day of April each year. This requirement was established when there was only one natural gas LDC in Maine that, with the Commission’s approval, provided annual report information on a combination of pages from both past and present FERC report forms. While this worked when Maine had one LDC, which had the documentation and resource to comply, it makes less sense now that Maine has three LDCs, each with different internal and external accounting policies and requirements.

The FERC regulates interstate pipelines, such as Maritimes & Northeast Pipeline, LLC. and Portland Natural Gas Transmission System (PNGTS), and requires annual report filings in its prescribed format. However, because Maine’s intrastate natural gas utilities (i.e. LDCs) are not regulated by, or required to file annual reports with, the FERC, this requirement does not provide them with a logical or clear indication

an interstate pipeline one) as well as pages for LDCs to report on requirements from other Maine Commission rules, such as promotional and advertising activity (Chapter 830), affiliate dealings (Chapter 820), numbers of customers by class, numbers of meters by city or town, liquefied petroleum gas operations, auxiliary peaking facilities, gas purchases and industrial interruptible, off-peak and firm sales.

² Since no party requested one, we did not hold a hearing on this proposed rulemaking.

of what information must be filed annually with this Commission. As a result, the filings made by each natural gas utility have varied greatly and do not provide consistent information needed for regulatory oversight. Therefore, in this rulemaking, we revise our rule to clarify the requirements. In addition, we gathered comment on the contents of a proposed form that we believe will establish clear, consistent reporting requirements for Maine's gas utilities.

C. Confidentiality of Gas Utility Annual Report Information

Confidentiality was first raised as an issue when Maine Natural Gas (MNG, formerly CMP Natural Gas) requested that its 1999 annual report information, which includes detailed financial, system plant and customer information, be kept confidential due to the increasingly competitive nature of the natural gas industry in Maine. The Commission assigned this matter Docket No. 2000-331 and obtained comments from other LDCs and the Public Advocate in that docket. Maine's other LDCs concurred with MNG's request indicating that, for competitive reasons, the annual report information is sensitive and should be kept confidential. Accordingly, Northern Utilities, Inc. and Bangor Gas Co. requested the same treatment for their annual reports. The Hearing Examiner issued orders keeping all 1999, 2000 and 2001 annual reports filed by the LDCs confidential pending further consideration of the issue. See Invitation to Comment and Temporary Protective Order for Natural Gas Utility 1999 Annual Reports (April 13, 2000) and Protective Order Governing Local Distribution Company Annual Reports, Docket No. 2000-331 (Mar. 30, 2001) and (Mar. 29, 2002).

The comments in this docket help us understand what information Maine's natural gas utilities consider proprietary. In issuing protective orders, the Commission must balance the utility's claim of need for protective treatment to avoid harm with the public interest in having public utility information accessible to the fullest extent possible.

III. PROPOSED RULE CHANGES AND RELATED COMMENTS

A. Section 1: Applicability

Consistent with our current rulemaking practice, we have added a statement of the applicability of this rule. Maine's statutes are written broadly to include as a utility every legally authorized entity owning, controlling, operating, or managing gas plant or other facilities used for the transportation, distribution, or sale of natural gas within the State for compensation. See 35-A M.R.S.A. §§ 102(8), (9), (10) and (13). See also, Chapter 45 "Natural Gas Pipeline Utilities" and Chapter 47 "Gas Utilities." Because of the overlapping nature of the descriptions contained in these statutory

provisions, we use the term “natural gas utilities” to encompass them all for purposes of this rule.³

PNGTS objects to the rulemaking's inclusion of interstate pipelines in its applicability and reporting provisions. PNGTS argues that the Maine PUC impermissibly seeks to assert jurisdiction over interstate natural gas pipeline companies that are exclusively regulated by the Federal Energy Regulatory Commission (FERC) by requesting that federally regulated interstate pipelines file annual reports with the Maine PUC. However, PNGTS states that, in support of access to public information, it “will endeavor to provide the Commission with a copy of its filed Form 2A on or about each filing date.” PNGTS maintains that in doing so, it “is not submitting to the jurisdiction of the MPUC for reporting purposes.”

As stated in the Notice of Rulemaking, our annual report provision does not interfere with federal authority. We are not requiring the FERC regulated interstate pipelines to report any information not already submitted to the FERC, nor are we requiring a different format or filing date. Therefore, the language in the rule provides the least intrusive means to obtain specific information from all public natural gas utilities operating in Maine. In doing so, we are acting within our authority. PNGTS's filing, as described in its comments, will satisfy the reporting requirement as required by this rule.

B. Section 2: Uniform Accounting System

This section exists in the current rule and has been revised only to substitute the encompassing term “natural gas utility,” for the use of one or both of the overlapping terms “gas utility” and “natural gas pipeline utility.” Other than the views expressed by PNGTS, described above, we received no comments on these proposed changes.

C. Section 3: Other Records

A section heading was created for this provision, which exists in the current rule, for organizational purposes and easier reference. It has been revised only to use the term “natural gas utility” in place of “gas utility.” We received no comments on these proposed changes.

³ The term “natural gas utility” also appears in 35-A M.R.S.A. § 4710, “Eminent domain,” defined for purposes of that section as “an intrastate natural gas pipeline utility or a gas utility other than [propane gas utilities for which the commission's jurisdiction is limited to safety matters by] Section 4702.” Our usage herein is not limited to intrastate natural gas pipeline utilities.

D. Section 4: Annual Reports

Section C of the current rule has been reorganized into Section 4, Subsections A, B, C and D. We received no comments on this reorganization and adopt the provisions explained below without modification.

1. Subsections A and B: Account Closing Date and Annual reports

Subsections A and B are provisions contained in the current rule that have been reworded and separated into distinct subsections for organizational purposes and to improve clarity. We have omitted the reference to an "annual FERC Form" for the reasons discussed above and allow the use of a form report similar to the one attached to this rulemaking. In addition, Subsection B states that the Commission will send a blank report to each natural gas utility by January 30 each year, tracking recent Commission practice. These provisions are otherwise unchanged from the current rule.

NUI supports the Commission's efforts to standardize the annual reports that are filed by natural gas utilities in Maine stating that standardization will assist the Commission Staff with its review of all the utilities to ensure that the services provided are safe, reasonable and adequate.

We make no modification from our proposed rule.

2. Subsection C: Interstate natural gas pipelines

Subsection C delineates special reporting provisions for interstate natural gas pipelines. Interstate pipelines are not explicitly addressed in the current rule. Previously, Maine's sole interstate pipeline, Granite State Gas Transmission System, which brought gas into Maine from the south to serve the state's only LDC, provided copies of its FERC form on request.⁴ We proposed that the rule hereafter state that interstate pipelines operating in Maine may file a copy of their FERC form with us or simply notify the Commission when they have filed their FERC annual report and indicate how the public may access it. As PNGTS's comments reflect, the recently

⁴ Maine's broadly worded statutory definitions of gas utility include interstate pipelines, making them subject to the state's annual reporting obligation. Title 35-A M.R.S.A. §102(8) provides that a gas utility includes "...every person.... owning, controlling, operating, or managing any gas plant for compensation within this state...." Similarly, Title 35-A M.R.S.A. § 102(10) provides that a natural gas pipeline utility includes "...every person...owning or operating for compensation within this State any pipeline, including pumping stations, storage depots and other facilities, for the transportation, distribution or sale of natural gas, or any person or corporation which has applied to the Federal Energy Regulatory Commission for a certificate of public convenience and necessity or to the Public Utilities Commission for a certificate of authorization to operate a natural gas pipeline within the state."

constructed interstate pipelines that operate in Maine, Portland Natural Gas Transmission System and Maritimes and Northeast Pipeline, recognize the strong degree of public interest in access for Maine citizens to public information about their operations within the state and will be cooperative with this reporting provision. We have used care in drafting this provision to avoid unreasonable or onerous requirements, establishing that these entities may either file a copy of their FERC annual report with the Commission or notify the Commission when it has filed its FERC annual report with instructions on how it may be viewed or obtained. We make no modification from our proposed rule.

3. Subsection D: Confidential Information

Subsection D establishes the procedures that may be used by natural gas utilities to obtain protection of confidential information and requires that utilities file a redacted version of the report for public viewing. A utility may request that the Commission issue a protective order to keep certain sensitive business information confidential, i.e., not available for public viewing. We note that this request could be made either in advance of filing the annual report or simultaneous with the filing. However, in the latter case, the utility should be on notice that it will be required, in the event the information governed by the protective order differs from its request, to file a revised redacted version.

This subsection also establishes that certain basic information, such as corporate affiliation, contact information, and municipalities in which the utility serves, be considered non-confidential.

Historically, we have not kept annual reporting information confidential, consistent with the principle that public utility activities should be open to public scrutiny. Since public utilities previously were complete monopolies within defined service territories, this policy had little or no competitive ramifications. However, portions of telephone, electric and natural gas utility service have been opened to competition.

Beginning in the mid-1990's, we adopted a competitive franchise policy for gas utilities serving in Maine that subjects Maine LDCs to competition from one another for customers and service areas. See *Mid-Maine Gas Utilities, Inc.* and *Central Maine Power Company, Petition for Approval to Furnish Gas Service In and To Areas Not Currently Receiving Service*, Docket No. 96-786 (Dec. 17, 1998). In doing so, we acknowledged that gas utilities compete vigorously in Maine for both residential and commercial/industrial loads with alternative fuels, such as oil, electricity and wood. The competitive franchise policy means that natural gas utilities also compete for customers with other natural gas utilities.

In this context, we recognize that, given the degree of competition, gas utility annual report information may provide competitors with sensitive, proprietary information resulting in harm to the gas utility and its ratepayers. Thus, in this

rulemaking we explored whether allowing full public access to sensitive annual report information is harmful to gas utilities and their customers, and, if so, how it may be best protected. We do not expect that keeping the entire annual report confidential will be warranted. It is our policy and obligation to make public utility information available to the public, unless good reason exists to keep information confidential.

We issued a proposed annual report form with our Notice of Rulemaking and requested comment on its contents, as well as on the need for confidential treatment for any of the information in the proposed form.⁵ We invited comments on what, if any, information on the annual report should be kept confidential; why it should or should not be; and, if confidential treatment is granted, how long the information should be kept from the public.

We also invited parties to comment on our expectation that any portions of the 1999, 2000, and 2001 natural gas utility annual reports that are determined in this rulemaking not to require continued protection, but that are currently being afforded protection, would be released upon the conclusion of this rulemaking.

The OPA commented that while it recognizes that increased competition in the gas industry may give rise to legitimate concerns about the confidentiality of certain proprietary business information of gas utilities, the proposed rule goes much further than simply allowing a company to protect specific information that may be sensitive. The OPA asserted that the rule invites natural gas utilities to request blanket confidentiality for all aspects of their annual reports with the exception of just four routine informational items outlined in Section 4(D)(2). The OPA recommended that the Commission's amendment to Chapter 410 set forth only limited and specific types of annual report information that may be eligible for proprietary designation.

In our view, the revisions to Chapter 410 do not create any additional legal rights to protective treatment than the LDC's have now. Currently, a public utility may request protective treatment for information that it files with the Commission pursuant to 35-A M.R.S.A. §§1311-A and 1311-B and M.R.Civ.P. Rule 26(c). Upon receipt of such a request, the Commission will determine whether that request is warranted under the standards established in existing law.

The items identified in §4(D)(2) simply inform LDC's of items that we will not consider to be confidential because the information is not sensitive. An LDC will still

⁵ We have omitted the requirement that natural gas utilities file system maps with their annual report, because a rulemaking we conducted in 2001 required each natural gas utility to file a copy of its system map with the Commission in specified geographic information system (GIS) format, giving us ready access to a map showing the utility's system and the areas served. See Chapter 140, Utility Service Area and Infrastructure Maps. Thus, this discussion of confidentiality pertains to financial, customer and operational, rather than facilities information.

have to request confidential treatment, and Section 4(D)(3) requires that gas utilities file redacted versions for public disclosure.

Northern's comments indicate that it has revised its views concerning confidentiality from those expressed in Docket No. 2000-331 in which it took the position that some gas utility annual report information should be protected. It now states that it does not believe that protection of such information is necessary and that its objective in allowing the information in its annual return to remain in the public domain is simply to ensure that its customers who are paying regulated rates have the opportunity to avail themselves of the operating information and financial data that support those rates.

We appreciate Northern's willingness to make its information fully available to its customers and also to all others who may request the information from the Commission. The rule allows each LDC to determine whether it requires confidential treatment of any of its annual report information. Thus, Northern may choose to have its full report available even if other gas utilities choose to seek protective treatment of certain portions of their annual reports.⁶

BGC stated that, with few exceptions, the full information requested on the annual report form provided with the NOR should be kept confidential. The only information that BGC believes should be released is information that is of a general nature, such as the names of officers. BGC also believes that the information should be kept confidential indefinitely because competitors could utilize information to create trend analyses and predict BGC's future plans regarding its operations.

There are, obviously, sharp differences of view among Maine's gas LDCs. It may be the case however, that the particular circumstances of a gas utility may well support different viewpoints or make the exposure of a particular type of information more sensitive to one than to another. For example, the nature of a gas utility's rate plan or its stage of development (e.g. whether a relatively new "start-up" entity or a mature one) might influence the determination of whether certain information requires confidential treatment. A gas utility such as BGC, that operates under a non-traditional rate plan, may be able to demonstrate a greater need for protection of particular information than that demonstrated by a traditionally regulated company, or vice versa. However, as with any request for protective treatment, the Commission starts from the premise that all public utilities are responsible not only to this Commission but also to the public it serves. We must balance the possible harms and benefits of allowing public access to financial or operational information reported in the annual report. Ultimately the Commission, or its designee, will determine whether confidential treatment is warranted for information specified by each utility on the basis of the facts and arguments put forth, as well as on any established precedent.

⁶ As noted above, when protective treatment is sought, the Commission will determine whether protection of information identified by a gas utility as sensitive is warranted. If no request is made or if the information does not require protection, as determined by the Commission, then it will not be kept confidential.

MNG's comments on the confidential treatment of annual report information stakes out the middle ground in this debate. MNG states that certain of the information would allow the reader to assess the financial health of the utility, and it would not object to the release of that information. MNG does have concerns about releasing any information that provides a detailed breakdown of its customer profiles, mix and geographic concentration, or the details of gas purchases and operating revenues. MNG states that, armed with this information, competitors could determine the types of customers that MNG is seeking to attract as well as the geographic area it is focusing on (or not focusing on as the case may be).

MNG also would prefer that any confidential information be protected indefinitely; however, it recognizes that this information could become stale over time and suggested that there be a reputable presumption that the confidential business information will be protected for a period of three years from filing. The utility would then need to make the requisite showing that further protection would be necessary.

MNG also noted that the rule contemplates that the annual report form will be sent to utilities by January 30 of each year. According to MNG, while the timeframe for completion should be sufficient, if the Commission makes substantive changes to the report in the future, the form be provided earlier or the utilities be given a longer period to respond.

We find MNG's comments helpful in our review of the issue of confidential treatment.

With respect to MNG's comments on the annual report filing date and any changes to the annual report, we understand MNG's concerns and are willing to accommodate them. The date for filing of balance sheet information is a statutory requirement and cannot be waived. However, we can endeavor to issue the report form earlier than January 30 and, if necessary, grant a 30-day extension of the reporting requirement as permitted by the statute. The Commission requires the gross revenue information by April 1 to meet its statutory requirements for assessments, and therefore, requires all utilities to provide at least this information by April 1 regardless of any extensions granted for remaining annual report information.

Because we believe that the proposed rule already appropriately accommodates the concerns expressed in the comments, we have made no modification from our proposed rule on the confidentiality provisions discussed above.

E. Section 5: Audits

Chapter 710 of the Commission's Rules establishes utility auditing requirement details. We proposed to eliminate duplicate provisions in this rule, inserting instead a simple reference to Chapter 710 for this aspect of utility accounting regulation. We received no comment on this change and make no modification.

F. Section 6: Waiver

We proposed to revise this section to conform the language to other Commission rules. We received no comment on this change and make no modification.

In accordance with 5 M.R.S.A. § 8057-A (1), we invited all interested persons to comment on the fiscal impact of this rule. We received no comments on this matter.

Accordingly, we

O R D E R

1. That the attached Chapter 410, Uniform System of Accounts for Gas Utilities, is hereby adopted;
2. That the Administrative Director shall file the adopted Rule and related material with the Secretary of State in accordance with 5 M.R.S.A. § 8053(5); and
3. That the Administrative Director shall notify the following that the Commission has adopted the attached rule:
 - A. All natural gas utilities operating in the State;
 - B. All persons on the Commission's subscriber list who have requested notice of rulemakings;
 - C. The Bureau of Operations, Elections and Commissions of the Office of the Secretary of State;
 - D. The Secretary of State for publication in accordance with 5 M.R.S.A. § 8053(5); and
4. That the Administrative Director shall send copies of this Order and the attached rule to the Executive Director of the Legislative Council, 115 State House Station, Augusta, Maine 04333-0015 (20 copies).

Dated at Augusta, Maine, this 23rd day of December, 2002.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Nugent
 Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21 days** of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.