

DG 06-143

NORTHERN UTILITIES, INC. – PELHAM DIVISION

Sale of Pelham Plaza Assets and Termination of Service

Order Approving Sale and Termination of Service

ORDER NO. 24,689

October 27, 2006

APPEARANCES: Seth L. Shortlidge, Esq. of Pierce Atwood LLP, and Patricia M. French, Esq., on behalf of Northern Utilities, Inc.; and F. Anne Ross, Esq., for the Staff of the New Hampshire Public Utilities Commission.

I. PROCEDURAL HISTORY

On October 6, 2006, Northern Utilities, Inc. – Pelham Division (Northern or Company) filed with the New Hampshire Public Utilities Commission (Commission) a petition for authority for the sale of certain propane assets and to terminate propane service to the seventeen commercial customers served by an 18,000 gallon propane tank farm located at the Pelham Shopping Plaza (Pelham Plaza) in Pelham. Following the proposed sale, Pelham Plaza customers would receive unregulated propane service from EnergyUSA, a retail propane service dealer. The filing was accompanied by the direct testimony of Joseph A. Ferro, Manager of Regulatory Policy, the purchase and sale agreement entered into by Northern and EnergyUSA Propane, Inc. (EnergyUSA), and a motion for protective order and confidential treatment.

On October 9, 2006, the Commission issued an Order of Notice scheduling a pre-hearing conference for October 18, 2006. On October 18, 2006, Northern filed a motion for protective order and confidential treatment related to Northern's response to Staff data requests 1-1 and the attachment to response 1-2. There were no intervenors in this docket and, with the agreement of

the Company, a hearing on the merits was held immediately following the pre-hearing conference.

II. POSITIONS OF THE PARTIES AND STAFF

A. Northern

In 1989, Northern purchased the Pelham and Salem franchises from a previously regulated propane supplier, Petrolane Southern New Hampshire Gas Company (Petrolane). Although Northern expanded natural gas service to Salem subsequent to the purchase, Northern has now stated that it cannot economically provide that service to Pelham in the foreseeable future. In *Northern Utilities, Inc. – Pelham Division*, 87 NH PUC 269, Order No. 23,958 (2002), approving the Northern – Pelham Division 2002 Summer Cost of Gas, the Commission directed Northern to work toward developing a plan to deregulate propane service at Pelham Plaza that would minimize customer impacts.

As he has in prior COG dockets, Mr. Ferro reviewed the recent history of Northern's attempts to discontinue regulated service. *See also Northern Utilities, Inc. – Pelham Division*, 89 NH PUC 620, Order No. 24,391 (2004); *Northern Utilities, Inc – Pelham Division.*, Order No. 24,537 (October 31, 2005) and *Northern Utilities, Inc. – Pelham Division*, Order No. 24,616 (April 28, 2006). In the most recent of these decisions, the Commission directed Northern to continue its sales efforts. In 2005 Northern had issued a Request for Bids (RFB) to a numbers of potential retail suppliers that might take over the Pelham operation, but did not generate any bids. After reaching out again to a number of potential buyers Northern identified EnergyUSA as a potential buyer of the Pelham facilities and sent them the RFB from 2005. EnergyUSA responded positively and on September 20, 2006, Northern and EnergyUSA entered into a

purchase and sale agreement to transfer to EnergyUSA substantially all the propane assets of Northern located at the Pelham Plaza.

Northern testified that the cost to extend natural gas service to Pelham Plaza would be well in excess of \$1 million. According to Northern, with annual base revenues of less than \$17,000 from the Pelham Plaza customers and little opportunity to pick up additional customers along the proposed line extension, the annual customer contribution required to extend natural gas service to those customers would be cost-prohibitive.

Northern began notifying its Pelham Plaza customers in 2003 of its intention to discontinue regulated service to the Plaza and to sell the propane facility. Later, in a letter dated December 1, 2004, Northern invited each of the customers (of which there were then 18) to attend a meeting with the Staff and Northern regarding the matter. The meeting was held December 17, 2004, in Pelham, although none of the customers attended. Most recently Northern sent a copy of the Order of Notice in this docket via Federal Express to each of the Pelham customers.

It is Northern's understanding that EnergyUSA has had discussions with the Pelham Plaza owner regarding the sale, but that Energy USA will not contact other customers absent Commission approval of the transaction. Upon such approval, EnergyUSA would contact customers regarding service and would offer a rate of \$1.70 per gallon, four cents lower than Northern's current Pelham Plaza rate. Pelham Plaza customers that wish to elect another competitive propane supplier would need to locate additional propane storage and gas lines on the Pelham Plaza property.

Northern currently anticipates an under-recovery associated with gas costs at the time it ceases service to the Pelham Plaza. The estimated under-recovery is approximately \$8,000 and

Northern proposes to recover the sum through Northern's New Hampshire Division Cost of Gas (COG) recovery mechanism, noting that the under-recovery would have a negligible impact on the New Hampshire Division COG rates. Northern stated that the New Hampshire Division customers would benefit from cost savings due to the termination of service to the Pelham Plaza. Those savings would relate to the elimination of operations and maintenance, property taxes and regulatory requirements. Also, as a result of the sale of the Pelham Plaza assets, the remaining Northern customers would benefit in a general rate case through the associated reduction in rate base, according to Northern. The Company noted that it would receive fair market value for the assets under the purchase and sale agreement.

In connection with the purchase and sale agreement, Northern moved, on October 6, 2006, for confidential treatment pursuant to RSA 91-A and N.H. Code Admin. Rules Puc 203.8. According to Northern, the purchase and sale agreement contains price and other terms that were negotiated at arms length and that constitute a trade and business secret to EnergyUSA, which operates in competitive markets and is entitled to confidential treatment because both Northern and EnergyUSA keep this data private as a matter of course. Further, Northern and EnergyUSA contend that the Commission has granted confidential treatment in the past to similar business and financially-sensitive information that is held as a trade secret and is generated by competitive bargaining in other proceedings, finding that the benefits of non-disclosure outweigh the benefits to the public of disclosure.

In connection with Northern's response to Staff data request 1-1 and the attachment to response 1-2 provided in this proceeding, on October 18, 2006, Northern requested confidential treatment pursuant to RSA 91-A and N.H. Code Admin. Rules Puc 203.8. According to Northern, the response and attachment contains the cost to extend natural gas service and a

calculation of required contribution in aid of construction (CIAC) information. Northern claimed that such information would constitute a trade secret and business secret of Northern. Northern asserts that public availability of such information would place Northern at a competitive disadvantage when procuring pipe and pipe installation services. Northern does not disclose this information outside a close circle of employees and representatives. Further, Northern contends that the Commission has granted confidential treatment to similar business and financially-sensitive information that is held as a trade secret and is generated from competitive bargaining in other proceedings, finding that the benefits of non-disclosure outweigh the benefits of disclosure to the public.

B. Staff

Staff noted that the Commission has encouraged the sale of the Pelham System for some time and recommended approval of the sale. The Pelham Plaza customers are expected to see a slight rate decrease without any noticeable impact on the rates of remaining Northern New Hampshire customers at this time. Over time, the remaining Northern customers should benefit from the resulting cost savings and reduction in rate base.

III. COMMISSION ANALYSIS

The Commission may authorize a public utility to discontinue service permanently “whenever it shall appear that the public good does not require the further continuance of such service.” RSA 374:28. The Commission may authorize a public utility to “transfer or lease its franchise, works or system, or any part of such franchise, works or system, exercised or located in this state, or contract for the operation of its works and system located in this state, when the Commission shall find that it will be for the public good...” RSA 374:30. “The statutory term ‘public good’ has been . . . held not only to include the needs of particular persons directly

affected by curtailment of the service but also to the needs of the public at large and the general welfare of the utility involved.” *Boston & Maine R. R. v. State*, 102 NH 9, 10 (1959). In this case we must consider the impacts of this proposed sale and service discontinuance on the Pelham Plaza customers, the remaining Northern customers in New Hampshire and the Company itself.

Northern’s Pelham propane facility was originally purchased from Petrolane in 1989. The Petrolane acquisition enabled Northern to expand its natural gas distribution service in Salem to all of Petrolane’s former propane customers, but the economics have not, nor are they expected to, justify an extension of the natural gas distribution system to Pelham Plaza in the foreseeable future.

The purchase and sale agreement allows for a seamless transition from propane service provided by Northern to that of EnergyUSA, provides fair market value to Northern for its Pelham Plaza facilities and will enable the Pelham Plaza customers to purchase propane service from a competitive retail propane supplier at rates comparable to those offered by Northern without increasing natural gas rates for Northern’s remaining New Hampshire customers. The sale of the Pelham Plaza facilities and termination of service will result in cost savings to Northern through the elimination of certain expenses related to serving the Pelham Plaza customers and, ultimately, will benefit Northern’s New Hampshire ratepayers through reduced costs and rate base.

Therefore, we find that the termination of regulated propane service to the Pelham Plaza and the sale of the assets to EnergyUSA meets the public good requirement. Accordingly, we approve the Purchase and Sale Agreement and the termination of regulated propane service by Northern to the Pelham Plaza customers.

IV. MOTION FOR CONFIDENTIAL TREATMENT

In connection with its petition, the Company moved for protective treatment of the Northern and EngeryUSA purchase and sale agreement attached to Mr. Ferro's testimony, which the Company claims contains confidential information, namely the price and terms of the sale to EnergyUSA. On October 18, 2006, Northern further moved for protective treatment of Northern's response to Staff data request 1-1 and its attachment to response 1-2. These two responses contain the cost to extend natural gas service and the calculation of required CIAC information.

The Right-to-Know Law provides each citizen with the right to inspect all public records in the possession of the Commission. *See* RSA 91-A:4, I. The statute contains an exemption, invoked here, for "confidential, commercial or financial information." RSA 91-A:5, IV. Our applicable rule, Puc 203.08, is designed to facilitate the implementation of the statute as it has been interpreted by the courts. In most cases, a balancing test is used to determine whether confidential treatment should be granted. *See e.g., Union Leader Corporation v. New Hampshire Housing Finance Authority*, 142 N.H. 540, 553-554 (1997).

We note that no parties have objected to the motions for protective order and confidential treatment and that the information for which protective treatment is sought is similar to information for which the Commission has granted protective treatment in the past. In balancing the interests for and against public disclosure of the information for which confidential treatment is sought, we are persuaded on the basis of the record in this docket that the interests of Northern and EnergyUSA and ultimately their customers in non-disclosure outweigh the public's interest in obtaining access to the information. We will therefore grant the motions for protective order and confidential treatment. Consistent with our practice, the protective treatment provisions of

this Order will be subject to the on-going rights of the Commission, on its own motion or on the motion of Staff, any party or any other member of the public, to reconsider in light of RSA 91-A, should circumstances so warrant.

Based upon the foregoing, it is hereby

ORDERED, that the Purchase and Sale Agreement between Northern and EnergyUSA is APPROVED; and it is

FURTHER ORDERED, that termination of regulated propane service to Pelham Plaza by Northern is APPROVED, termination to take place as soon as practicable; and it is

FURTHER ORDERED, that upon termination of service Northern shall notify Staff as to the date of termination, the amount and price of propane inventory purchased by EnergyUSA under the terms of the Purchase and Sale Agreement and the amount of the remaining Pelham Plaza COG under recovery; and it is

FURTHER ORDERED, that the motions of Northern for confidential treatment of certain information contained in the filing and submitted to Staff in discovery is GRANTED; and it is

FURTHER ORDERED, that the determination as to protective treatment contained herein shall be subject to the ongoing authority of the Commission, on its own motion or on the motion of Staff, any party or any other person, 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 twenty-seventh day
of October, 2006.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Clifton C. Below
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary