

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DG 18-103

NORTHERN UTILITIES, INC.

Petition for Authority to Operate in the Towns of Kingston and Atkinson

Order Granting Franchise Authority

ORDER NO. 26,178

October 3, 2018

In this order, the Commission grants Northern Utilities, Inc., authority to expand its franchise to provide natural gas service in the Towns of Kingston and Atkinson. The Commission also requires Northern to report on the costs and revenues associated with the service expansions and to file updated maps of its franchise area.

I. PROCEDURAL HISTORY

On July 3, 2018, Northern Utilities, Inc. (Northern or the Company), filed a petition under RSA 374:22 and RSA 374:26 for authority to provide natural gas service as a public utility in the Town of Kingston and for an expansion of its existing franchise authority in the Town of Atkinson. The filing included supporting testimony and maps, as well as a motion for confidential treatment with respect to certain information included in the filing. The Commission issued an order of notice on July 11, 2018.

On July 10, 2018, the Office of Consumer Advocate (OCA) filed its notice of participation. There were no other intervenors. The Atkinson and Kingston Boards of Selectmen each filed comments in support of the franchise expansion. A prehearing conference and technical session were held on July 24, 2018.

Following the adoption of a procedural schedule and discovery by Commission Staff, the Commission's Safety Division (Safety Division) filed a recommendation on August 24, 2018, in support of the requested franchise expansion with certain conditions related to financial reporting and mapping of the Company's system within the new franchise service territories; the Safety Division filed a revised recommendation on September 4, 2018. On August 28, 2018, the Commission's Gas and Water Division (Gas Division) filed a recommendation in support of the requested franchise expansion. On September 5, 2018, the OCA concurred with both Staff recommendations and supported approval of the petition with the "minor" reporting conditions proposed by the Safety Division. On September 6, 2018, the Company filed a letter in which it agreed with the Staff recommendations but suggested the reporting requirements recommended by the Safety Division be revised to require a report of annual costs and customers added, for the first five years for both Kingston and Atkinson. The petition and subsequent docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are posted at <http://puc.nh.gov/Regulatory/Docketbk/2018/18-103.html>.

II. POSITIONS

A. Northern

Northern is a public utility providing natural gas service to approximately 33,000 customers in 21 municipalities in southern New Hampshire and the seacoast region. Northern owns and operates natural gas distribution facilities pursuant to authority previously granted by the Commission, including in a limited portion of the Town of Atkinson,¹ as well as in towns adjacent to Atkinson (Plaistow and Salem) and Kingston (Plaistow, East Kingston, Exeter, and Brentwood).

¹ See *Northern Utilities, Inc.*, Order No. 19,852 (June 7, 1990) and *Northern Utilities, Inc.*, Order No. 19,147 (August 22, 1988).

Northern seeks authority to: (a) expand its natural gas distribution network into the Town of Kingston, and (b) expand its existing natural gas distribution network within the Town of Atkinson. In Kingston, Benevento Bituminous Products, LLC (Benevento), has requested that Northern provide gas service to Benevento's asphalt plant at 1 Roadstone Road. To do so, Northern proposes to extend an existing gas main located in Plaistow 1.4 miles to connect the asphalt plant.

In Atkinson, Lewis Builders Development, Inc. (Lewis Builders), has requested gas service from Northern at the main club house of the Atkinson Country Club, as well as to the first phase of a planned development consisting of 288 condominium units in 9 buildings. According to Lewis Builders, additional condominiums are scheduled to be built over a 5-year period, from 2018 to 2022, in multiple phases of an overall development plan that ultimately will include 800 condominium units, a hotel, and an entertainment complex. To provide the requested natural gas service to the country club and the prospective initial condominium buildings, Northern proposes to extend an existing gas main in Atkinson 3.8 miles to connect the Atkinson Country Club and the condominium development, and thereafter will install approximately 0.4 miles of mains and services on-site within the initial build-out area.

Northern estimates that there are approximately 14 residential customer prospects and 32 commercial customer prospects currently located along the proposed main extension route in Kingston, and approximately 129 residential customer prospects and 8 potential commercial customer prospects along the proposed main extension route in Atkinson. The Company intends to pursue potential customers along the new mains, and will continue to seek additional expansion opportunities within each town.

The Company asserted that it has the requisite financial, technical, and managerial capability to own and operate the expanded natural gas mains and associated facilities and to provide natural gas service within Atkinson and Kingston. Northern has been a regulated public utility for many years and has a strong record of providing safe and reliable natural gas service at just and reasonable rates. In addition to its New Hampshire operations, Northern provides service in Maine and, through its affiliate, Fitchburg Gas and Electric Light Company, in Massachusetts.

Northern stated that it will construct, operate, and maintain the proposed gas mains and associated facilities in Kingston and Atkinson in accordance with all applicable federal, state, and municipal regulations. Upon approval of this petition, Northern will obtain all necessary regulatory permits and approvals prior to commencing construction, including those required by the New Hampshire Department of Transportation (NHDOT) and the New Hampshire Department of Environmental Services

Northern expressed its desire to commence construction on the Kingston and Atkinson extension projects as soon as possible, due to the Company's relatively short construction season, because it does not typically install underground mains and services during the winter. Lewis Builders has requested gas service by December 1, 2018, and Benevento has requested gas service by April 1, 2019. In addition, the Company has recently become aware that the NHDOT plans to work on a portion of the proposed route in Atkinson in the near future, and the Company wishes to complete its project prior to any paving work by the State.

Northern filed a motion for confidential treatment of payment terms contained in its contracts with Benevento and Lewis Builders and for the same information it used in Northern's Discounted Cash Flow (DCF) analysis of its two proposed franchise expansions.

B. Staff1. Gas Division

In its letter filed August 28, 2018, the Gas Division recommended that the Commission grant Northern's petition for a franchise in Atkinson and Kingston for the following reasons:

1. Northern has demonstrated through its New Hampshire natural gas operations that it has the requisite financial, engineering, and managerial capability to operate the proposed service territory;
2. Northern provides service to adjacent towns and already provides service to a limited portion of Atkinson;
3. Results of the Company's Discounted Cash Flow analysis, using conservative revenue estimates, indicate that the proposed expansion will benefit existing customers through lower rates;
4. Anchor customers with significant energy usage exist in both Atkinson and Kingston. Each of those anchor customers will be making a significant contribution towards the construction of the proposed main extensions in their respective towns and each has contracted for service to commence immediately upon completion of the project or shortly thereafter;
5. In addition to the anchor customers, other consumers along the new line and in the expanded franchise territory will have access to natural gas as an alternative to more expensive fuel;
6. The Kingston and Atkinson Boards of Selectmen each have filed letters of support for the proposed expansion; and
7. Expansion of the service territory will not adversely affect existing gas supply resources.

The Gas Division further recommended that the Commission issue an order approving Northern's petition without further hearing and as soon as possible to allow Northern to commence construction. The reasons for issuing an order as soon as possible and without a hearing include:

- a. The NHDOT plans to pave some of the roads on the proposed route of the main extension and once NHDOT paving is completed there will be a 5-year construction moratorium on that section of the route. Issuing an order

expeditiously will enable Northern to complete the project prior to NHDOT paving;

- b. Lewis Builders, the anchor customer for the proposed Atkinson expansion, has requested service by December 1, 2018; and
- c. An order of notice was issued, a prehearing conference was held, and comments supporting the proposed franchise expansions were filed. No comments have been filed opposing the proposed expansions.

The Gas Division supported Northern's position that it had used an appropriate economic analysis to estimate the costs and benefits of serving each of the towns and to justify the proposed expansions. Northern asserted that the incremental system investment required to provide utility service to the new franchise areas will be borne by the new customers to be served and not subsidized by existing customers. Northern conducted a DCF analysis to evaluate the economic feasibility of each of the two proposed line extensions. Such an analysis is required under Northern's tariff provisions and is a methodology that the Commission has found to be the appropriate framework to evaluate the financial viability of large system expansions.²

The Gas Division explained Northern's DCF analysis and why the Gas Division believed that analysis is adequate to support the Company's requests. Northern's DCF analysis compared estimated distribution revenues to estimated costs related to the proposed expansion, including the incremental costs associated with the main and service extensions, operations and maintenance expenses, depreciation expense, and property and other taxes. Those amounts produced an estimated annual after-tax cash flow associated with the proposed line extension. The annual cash flows were discounted over 10 years to a present value at Northern's after-tax weighted cost of capital to determine the Net Present Value (NPV) of the project. In the event an NPV is negative, new customers would be required to pay the shortfall as a Contribution in Aid

² See *Northern Utilities, Inc.*, Order No. 22,297 (August 28, 1996) (approving Northern firm gas transportation agreement and expansion of services).

of Construction (CIAC). As discussed below, the DCF analysis of the proposed Kingston franchise expansion resulted in a zero NPV; the DCF analysis of the proposed Atkinson franchise extension resulted in a positive NPV. Northern did not include Allowance for Funds Used During Construction (AFUDC) as a cost in its economic analysis, although AFUDC is applied for accounting purposes. Staff found that excluding the AFUDC cost in this instance is appropriate because the AFUDC cost would be *de minimis* given the short construction period and low interest rate.

a. Kingston Franchise Request

The Gas Division believes the results of the financial analysis justify the proposed Kingston expansion. The Company's DCF analysis of the proposed line extension to serve Benevento produces a zero NPV over 10 years based on a conservative revenue estimate. Actual returns over that period should be positive and, if the analysis were extended over the life of the project (average service life of mains and services), the NPV would be significantly higher.

According to the Gas Division, the revenue analysis included distribution revenues from Benevento over only 10 years, based on its actual prior fuel usage, and the Company asserted that actual revenue from the line extension should be well in excess of the revenue used in the DCF analysis. That was based on Northern's review of the assessor's data on prospective customers along the Kingston main extension and its estimate that, over the next five years, 60 percent of the commercial buildings and 40 percent of the residential buildings will convert to natural gas.

Northern entered into a contract with Benevento on June 13, 2018, for the installation of gas service lines, with an addendum signed on July 18, 2018. Gas Division Recommendation at 3. Benevento has committed to making a significant CIAC and has entered into a

transportation service agreement with Northern, with a request for service by April 1, 2019. Gas Division Staff concluded that, based on those obligations, it is reasonable to assume that the Benevento asphalt plant will be in operation well beyond 10 years. With respect to premises where businesses and residents will convert to natural gas, the Gas Division concluded that such customers can be expected to continue to utilize natural gas service indefinitely.

Northern provided a map of the proposed line extension route in Kingston and described each of the construction phases in detail. The Gas Division concluded that the Company's proposed route, construction plans, and cost estimates appear to be reasonable. The route is designed to serve the anchor customer, and cost estimates are based on design specifications that use average stock room pricing for materials and contract unit prices for labor.

The contract sets the CIAC to be paid by Benevento and includes customer covenants with respect to the amount of gas to be used. The customer covenants include a warranty from Benevento that the asphalt plant will use natural gas for a defined period of time with minimum annual usage amounts that, if not met, would allow Northern to recalculate the CIAC requirement and bill Benevento for a CIAC deficiency in the event one exists. In addition to the CIAC payment in advance of construction, the warranty will ensure that existing customers will not subsidize new customers along the new main extension.

b. Atkinson Franchise Expansion

The Gas Division also found that the results of the Company's financial analysis justify the proposed franchise expansion in Atkinson. The Company's DCF analysis of the proposed line extension to serve the Atkinson Country Club and associated condominium developments produces a positive NPV over 10 years, based on a conservative revenue estimate. Actual returns are likely to be higher and, if the analysis were extended over the life of the project, the

NPV would be significantly higher. The Gas Division noted that the Company's revenue analysis includes distribution revenue only from the Atkinson Country Club and phase one of the condominium development over 10 years, based on the actual prior Atkinson Country Club fuel usage and projected fuel use for phase one of the condominium development. Actual revenue from the line extension should be well in excess of that used in the analysis. Phase one of Lewis Builders' development plans includes the construction of 288 units; later phases include construction of over 600 more condominium units, a hotel, and an entertainment complex.

Lewis Builders is committing significant resources that otherwise would have added approximately \$1.7 million to the project cost if Northern were to perform the work. Specifically, Lewis Builders will perform the excavation and backfilling required to install the proposed mains and services to provide gas to the planned development. In addition to the future load/revenue growth expected from further development by Lewis Builders, the Gas Division concluded that it is reasonable to expect that Northern will realize additional load/revenue by adding a number of the 137 potential customers currently located along the proposed main extension.

As it did for its proposed extension in Kingston, Northern provided a basic map of the proposed line extension route in Atkinson and described each of the construction phases in some detail. The route is designed to serve the anchor customer and cost estimates are based on project design specifications using average stock room pricing for materials and contract unit prices for labor. The Gas Division found that the route, construction plans, and cost estimates appear to be reasonable. *See* Gas Division Recommendation at 5.

c. Adequacy of Supply

The Gas Division concluded that the proposed expansions into Atkinson and Kingston would have no adverse effect on Northern's supply resources. Other than the two anchor customers that have requested and committed to taking service, Northern does not have definite plans to provide service to any specific new customers on the proposed line extensions at this time. The expected combined capacity requirements of the forecasted load along the two proposed line extensions is approximately 0.2 percent of Northern's overall capacity requirement.

Benevento is expected to be a firm, summer-only, transportation customer of Northern; as such, it will have very little impact on Northern's gas supply resources. Additional sales or transportation customers that are added along the extensions in Kingston should not have an adverse effect on supply resources, because Northern's current supply capacity is sufficient to meet the potential growth.

2. Safety Division

The Safety Division's initial recommendation, dated August 24, 2018, questioned whether Northern had been operating outside its approved franchise area in Atkinson. Subsequently, based on additional information derived from a discussion with Northern, Staff identified a Company filing made two years after the initial Atkinson franchise request.³ In 1990, the Commission authorized an expansion of the original Atkinson franchise territory to areas "contiguous" to the existing franchise territory in Atkinson and Plaistow. *Northern Utilities, Inc.*, Order No. 19,852 (June 7, 1990). The second franchise request and order were not included as part of Northern's filings in this proceeding.

³ See *Northern Utilities, Inc.*, Order No. 19,147 (August 22, 1988) (granting Northern its initial, limited franchise territory in Atkinson).

The Safety Division reviewed the documents filed in Docket No. DE 90-074, matched them to geographic features and parcel information available from the Town of Atkinson, and created a revised franchise map based on mapping overlays of the existing gas system provided by the Company. The revised map showed the three franchise sub-areas that currently make up Northern's authorized service territory in Atkinson. Based on that work, the Safety Division concluded that Northern has not been operating outside of its franchise territory in Atkinson.

The Safety Division recommended that any authority granted for the expansion of Northern's Atkinson franchise include a condition that Northern provide annually to the Commission, in an electronic format, a compatible layer⁴ of its gas facility locations in Atkinson, Kingston, and all other franchises so that Safety Division Staff can verify franchise territory boundaries. In addition, the Safety Division recommended that Northern amend its tariff to eliminate references to "contiguous territory served by the Company."

The Safety Division suggested that the Gas Division's August 28, 2018, recommendations be augmented with a separate reporting requirement of actual expenditures and revenue margins for Kingston and Atkinson during the first five years of operation. The recommended reporting would include expenditures incurred on an annual basis, with separate categories for gas mains, gas services, and metering, including a cumulative total as well as the actual revenue margins received on an annual and cumulative basis. According to the Safety Division, this information would form a basis for confirming that the franchise expansion is not being subsidized by rates collected from customers outside the expanded franchise areas, and that charging consolidated rates to new customers in Atkinson and Kingston are just and reasonable, consistent with RSA 374:2.

⁴ Such as a shape file or other mutually agreed upon format that is compatible with ESRI geographic information system (GIS) software. Currently, Northern's and the Commission's GIS analysts exchange data electronically as the need arises.

C. The Office of the Consumer Advocate

The OCA agreed with the Staff recommendations and supported approval of the petition with the “minor” reporting conditions proposed by the Safety Division. The OCA stated that it agreed with the Gas Division that, under the circumstances, the Commission may enter its order in this proceeding without a hearing pursuant to RSA 374:26.

III. COMMISSION ANALYSIS

Before Northern can provide natural gas service “in any town in which it shall not already be engaged in such business,” Northern must first obtain “the permission and approval of the commission.” RSA 374:22, I. The Commission exercises its authority under RSA 374:22 by assessing the managerial, technical, and financial, expertise of the petitioner to determine whether the request is for the public good. *Northern Utilities, Inc.*, Order No. 25,700 at 4-5 (August 1, 2014).

Based on the record in this case, the Commission finds that Northern has the required capabilities to provide natural gas service in Atkinson and Kingston and that the proposed expansion of its service territories is for the public good. Northern is an established public utility that has maintained its natural gas distribution system in this state for many years consistent with its obligation to provide safe and adequate service.

The Safety Division recommended that the Company provide annual mapping updates, in an electronic format, of gas facility locations in all its franchises areas. We direct the Company to provide the Safety Division updated maps in the requested format no later than December 31, 2018. We further require annual filing of updated maps to the extent that the Company’s systems are expanded in a particular year. We find that the Safety Division’s accurate knowledge of gas facility locations is critical to its role in monitoring and regulating the

safety of gas utility pipelines and operations. The Safety Division currently relies on mapping overlays of the Company's system provided by the Company itself. The Company and Staff may work together to determine the most efficient means to update maps of specific franchise areas following line extensions within those boundaries and/or establish a trigger point, based on miles of main extensions installed. We encourage the Safety Division and the Company to collaborate on developing appropriate guidelines.

The Safety Division also recommended that we impose a reporting requirement for the first five years of the Company's operations in the new franchise areas, for actual expenditures and actual revenue margins in both Kingston and Atkinson, to ensure conformity with RSA 374:2 that Northern offer its proposed service at just and reasonable charges to customers in Kingston and Atkinson. The Company agreed to report the costs as recommended by the Safety Division, but objected to reporting actual revenue margins each year. The Company contends that annual revenue margin reporting would be burdensome and is unnecessary given the fact that Staff found the revenue estimates used in the Company's DCF analysis to be conservative.

We find Staff's recommendation that Northern provide detailed cost and revenue reporting on the proposed pipeline extensions for the first year of operation to be reasonable and not unduly burdensome. We therefore require Northern to file actual costs and revenues for the first year of operation and an updated DCF analysis, with actual costs and revenue margins for the first year and estimated costs and margins for the following four years, one year after the extensions are completed. Because both projects will serve anchor customers with existing load requirements, further annual reporting of revenues may not be necessary. Following an

assessment of the first year of operations, based on the Company's initial reports, we will consider requests from either Staff or the OCA with respect to the need for further reporting.

In addition, to the extent Northern is relying on Lewis Builders for the installation of the pipeline extensions in Atkinson, we find it prudent to require Northern to file with the Commission a detailed report on the Company's qualification of Lewis Builders pursuant to Puc 506.01 to perform the designated work. We therefore require such reporting as a condition of our approval of the franchise expansion in Atkinson. We note, as well, that Northern is required to conduct and document inspections and audits of any new construction by outside contractors pursuant to Puc 506.02(v) and the Company's quality assurance plan.

The Commission may grant permission to expand a franchise without a hearing pursuant to RSA 374:26: "Such permission may be granted without hearing when all interested parties are in agreement." Here, Staff and the OCA support the franchise request, and the Towns of Atkinson and Kingston both registered their support. Following publication of an order of notice, no objections to the franchise expansion were filed. Thus, we conclude that all interested parties are in agreement with the franchise requests.

Motion for Confidential Treatment

The New Hampshire Supreme Court and the Commission apply a three-step balancing test to determine whether information is exempt from disclosure under RSA 91-A:5, IV. *Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities*, Order No. 26,166 at 5 (August 1, 2018) (citing *Lambert v. Belknap County Convention*, 157 N.H. 375, 382-83 (2008)). Under this test, the Commission first inquires whether the information involves a privacy interest and then asks if there is a public interest in disclosure. Finally, the Commission must balance those competing interests and decide whether disclosure is appropriate. *Id.*

Applying the *Lambert* test, the Commission grants Northern's motion. The Commission routinely protects information related to commercial customers' fuel pricing and usage profile information, as well as the financial and commercially sensitive information of third parties. *See, e.g., Northern Utilities, Inc., Order No. 25,700 (August 1, 2014)*. The current and estimated fuel usage of prospective customers, such as Benevento and Lewis Builders, fall into this protected category. While the public may have some interest in the information, such as aiding its understanding of the Commission's analysis, we find that the public's interest is outweighed by the commercial harm that disclosure could cause. To the extent the DCF analysis contains details of the Contribution in Aid of Construction information, those details are likewise protected from disclosure. *Id.* at 6-7.

Based upon the foregoing, it is hereby

ORDERED, that the request filed by Northern for approval of franchise authority in the Town of Kingston and for approval of expanded franchise authority throughout the Town of Atkinson is GRANTED; and it is

FURTHER ORDERED, that the motion for confidential treatment filed by Northern is GRANTED; and it is

FURTHER ORDERED, that prior to construction, to the extent Northern has contracted Lewis Builders, Inc., to work on the installation of the gas pipelines in Atkinson, Northern shall file with the Commission a report on the qualification of Lewis Builders, Inc., pursuant to Puc 506.01; and it is


FURTHER ORDERED, that Northern shall file with the Commission a compliance tariff with updated franchise maps noting the approved changes, in accordance with N.H. Code Admin. Rules Puc 1603.02(b), and including the electronic overlays of Northern's existing gas

system facilities in the Kingston and Atkinson franchise areas on or before December 31, 2018; and it is

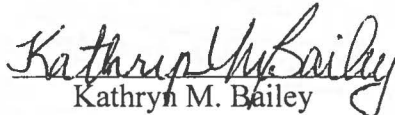
FURTHER ORDERED, that Northern shall file actual costs and revenues for the first year of operation and an updated DCF analysis within 30 days following the first year of operations, with actual costs and revenue margins for the first year and estimated costs and margins for the following four years; and it is

FURTHER ORDERED, that Northern file updated franchise maps by March 31 of each year with electronic overlays of Northern's gas system facilities operating as of December 31 in each franchise territory.

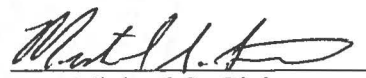
By order of the Public Utilities Commission of New Hampshire this third day of October, 2018.



Martin P. Honigberg
Chairman




Kathryn M. Bailey
Commissioner



Michael S. Giaino
Commissioner

Attested by:



Debra A. Howland
Executive Director