

THE STATE OF NEW HAMPSHIRE  
before the  
PUBLIC UTILITIES COMMISSION

PETITION FOR APPROVAL OF WXP PHASE III PRECEDENT AGREEMENTS

Docket No. DG 19-116

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) relating to Northern Utilities, Inc.’s Petition for Approval of Precedent Agreements for the Westbrook Express Phase III Projects (the “Petition”) is entered into by and among: Northern Utilities, Inc. (“Northern” or the “Company”); the Staff of the New Hampshire Public Utilities Commission (“Staff”); and the Office of Consumer Advocate (“OCA”); (all collectively referred to as the “Settling Parties”), with the intent of resolving the issues discussed herein. This Settlement Agreement constitutes the recommendation of the Settling Parties with respect to the Commission’s approval of Northern’s Petition.

I. INTRODUCTION AND PROCEDURAL HISTORY

On June 28, 2019, Northern submitted its Petition requesting Commission review and approval of certain Precedent Agreements with Portland Natural Gas Transmission System (“PNGTS”), TransCanada Pipelines Limited (“TransCanada”), and Enbridge Gas, Inc. (“Enbridge”) for a firm natural gas pipeline transportation path from Dawn, Ontario to Granite State Gas Transmission, Inc.’s (“Granite”) interconnects as part of PNGTS’s Westbrook Xpress (“WXP”) Phase III Project.<sup>1</sup> The Company specifically requested a finding by the Commission that the WXP PAs are prudent, reasonable, and consistent with the public interest. Northern

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<sup>1</sup> The Precedent Agreements are collectively referred to in this Settlement Agreement as the “WXP PAs.”

submitted a parallel petition to the Maine Public Utilities Commission on May 13, 2019; that matter remains pending.<sup>2</sup>

The Commission issued an Order of Notice on July 18, 2019, and the OCA submitted a Letter of Participation on July 24, 2019. The Commission held a prehearing conference on August 6, 2019, and the parties participated in technical conference on August 6, August 21, and August 27, 2019. Staff witness Al-Azad Iqbal submitted testimony on September 10, 2019.

In support of its Petition, the Company provided the Prefiled Testimony of Robert S. Furino, as well as copies of the WXP PAs and other supporting appendices. Mr. Furino's testimony described, *inter alia*, the proposed route of the WXP Project, the terms and conditions of the WXP PAs, the Company's planning load forecast, and the Company's analyses of its existing resource portfolio and the proposed WXP capacity. Northern stated that the WXP PAs will provide the Company with the ability to transport 10,000 Dth/day of natural gas from Dawn to Granite for a 15-year initial term, with an option to extend. Applying the Company's latest design year forecast for the 2022-2023 gas year, approximately 4,200 Dth/day of the proposed capacity will be supported by Northern's New Hampshire Division customers. The projected in-service date for Westbrook XPress Phase III is November 1, 2022.

Under the TransCanada PA, Northern may be subject to "cancellation costs" if, for example, Northern does not execute the Firm Transportation Service Contract, TransCanada is unable to obtain necessary project authorizations, or TransCanada otherwise decides to cancel the project. TransCanada does have an obligation to minimize Cancellation Costs, including minimizing costs before all necessary authorizations are received and accepted. A copy of

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<sup>2</sup> Docket 2019-00101.

Northern's estimated cancellation costs were included with Appendix 1-B to the Company's Petition, and were updated during the pendency of this proceeding.

The Enbridge PA includes a Financial Backstopping Agreement that would require payment of "pre-service costs" by Northern (and other shippers) in the event of a termination of the Precedent Agreement due to a failure of shippers or Enbridge to meet conditions precedent that results in Enbridge canceling the project. As with TransCanada, Enbridge has an obligation to minimize Pre-Service Costs. An estimate of Northern's share of pre-service costs was included with Appendix 1-C to the Company's Petition, and were updated during the pendency of this proceeding.

Under the PNGTS and TransCanada PAs, Northern may withdraw from the Agreements without penalty if the Company does not obtain required regulatory approvals by November 30, 2019.<sup>3</sup>

As noted above, Commission Staff submitted pre-filed testimony on September 10, 2019. In his testimony, Mr. Iqbal explained the Staff's belief that it is reasonable and in the public interest for Northern to enter into the WXP PAs at this time, but that it would be "premature for the Commission to rule on the prudence of cost recovery, pending a request by the Company and consideration of future decision related to the proposed cost recovery." Mr. Iqbal recommended that recovery of any future costs associated with the terms of the WXP PAs be determined in future rate proceedings and be largely dependent on future Company decisions in response to changing circumstances.

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<sup>3</sup> In its Petition, the Company indicates that the date upon which Northern may withdraw from the Agreements due to lack of regulatory approvals is October 31, 2019. However, the Company recently obtained extensions of time to November 30, 2019.

## II. SETTLEMENT TERMS

The Settling Parties agree that the Settlement Agreement as described below should be approved by the Commission. These terms are intended to be included in a comprehensive settlement and, as such, all terms are interdependent, and each Settling Party's agreement to each individual term is dependent upon agreement with all of the terms.

1. In light of the Company's assessment of its supply needs, options available in the market, and regional supply constraints, the Settling Parties agree that the relatively modest commitment of 10,000 dth / day as reflected in the Precedent Agreements and associated firm transportation agreements is reasonable.<sup>4</sup>

2. The Settling Parties similarly agree that the fifteen year term of the firm transportation agreements is reasonable in light of the Company's planning load analysis.

3. The Settling Parties agree that pre-service and cancellation costs associated with the Precedent Agreements that have accrued as of the date of the Commission's Order in this Docket and for which the Company is liable, are reasonable and appropriately recoverable through the Company's rates.

4. The Settling Parties agree that recovery of costs associated with the Precedent Agreements, other than pre-service and cancellation costs covered in 3 above, will be addressed through the Company's annual Cost of Gas filings.

5. The Settling Parties agree that Northern will monitor and evaluate the prudence of continuing with or terminating any or all of the Precedent Agreements at certain decision points outlined in the Company's response to Staff Data Requests 4-2 and 4-3, or in light of any new

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<sup>4</sup> The various transportation agreements are labeled as follows in the precedent agreements: Gas Transportation Contract for PNGTS, Firm Transportation Service Contract for TransCanada, and M12 Transportation Contract for Enbridge.

information or change in circumstances which becomes known.<sup>5</sup> The prudence of the Company's decisions to continue with or terminate any of the Precedent Agreements will be evaluated in light of existing circumstances known to the Company at each decision point. To the extent that the Company is found to have acted reasonably and prudently in incurring costs associated with the Precedent Agreements, such costs will be recoverable through the Company's rates.

6. Decision points include, but are not limited to, unfavorable regulatory decisions, a material increase in actual or projected project costs, and material changes in cost allocation due to decisions or actions of the transporter and/or other shippers. The Company shall inform the Commission of regulatory approvals related to the projects and/or material changes in actual and projected costs Northern would be responsible for under the terms of the Precedent Agreements.

7. The Settling Parties agree that Northern will not waive the conditions precedent under the PNGTS and Enbridge Precedent Agreements that allow Northern to terminate said Precedent Agreements prior to November 30, 2019 without liability to the Company (PNGTS PA Section 5(a)(iii) and First and Second Amendments; Enbridge PA Section 3.2(a) and First and Second Amendments) unless the Company receives approval of the Precedent Agreements in a form acceptable to the Company of its respective petitions from both the Commission and the Maine Public Utilities Commission.

#### **A. General Provisions**

The Settling Parties agree that all testimony and supporting documentation may be admitted as full exhibits for purposes of consideration of this Agreement. Agreement to admit

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<sup>5</sup> Copies of the Company's response to Staff Data Requests 4-2 and 4-3 are appended as Exhibit A to this Settlement Agreement.

all direct testimony without challenge does not constitute agreement by the Settling Parties that the content of the written testimony filed on behalf of the other Parties is accurate nor is it indicative of what weight, if any, should be given to the views of any witness. Furthermore, in light of the fact that they have entered into this Agreement, the Settling Parties agree to forego cross-examining witnesses regarding their pre-filed testimony and, therefore, the admission into evidence of any witness's testimony or supporting documentation shall not be deemed in any respect to constitute an admission by any party to this Agreement that any allegation or contention in this proceeding is true or false, except that the sworn testimony of any witness shall constitute an admission by such witness.


This Agreement is expressly conditioned upon the Commission's acceptance of all of its provisions without change or condition. All terms are interdependent, and each Settling Party's agreement to each individual term is dependent upon all Settling Parties' agreement with all of the terms. If such complete acceptance is not granted by the Commission, or if acceptance is conditioned in any way, the Settling Parties shall have the opportunity to amend or terminate this Settlement Agreement or to seek reconsideration of the Commission's decision or condition. If this Settlement Agreement is terminated, it shall be deemed to be withdrawn and shall be null and void and without effect, and shall not constitute any part of the record in this proceeding nor be used for any other purpose. The Settling Parties agree to support approval of this Agreement before the Commission. The Settling Parties agree that they shall not oppose this Settlement Agreement before any regulatory agencies or courts before which this matter is brought, but shall take all such action as is necessary to secure approval and implementation of the provisions of this Settlement Agreement.

The Commission's acceptance of this Agreement does not constitute continuing approval of or precedent regarding any particular issue in this proceeding, but such acceptance does constitute a determination that, as the Settling Parties believe, the provisions set forth herein are just and reasonable. The discussions which have produced this Agreement have been conducted on the understanding that all offers of settlement and discussion relating thereto are and shall be privileged, and shall be without prejudice to the position of any party or participant representing any such offer or participating in any such discussion, and are not to be used in any manner in connection with this proceeding, any further proceeding or otherwise.

IN WITNESS WHEREOF, the Settling Parties have caused this Agreement to be duly executed in their respective names by their agents, each being fully authorized to do so on behalf of their principal.

[SIGNATURES FOLLOW ON NEXT PAGE(S)]

NORTHERN UTILITIES, INC.

By:   
\_\_\_\_\_  
Patrick H. Taylor, Esq.  
Senior Counsel

Date: October 7, 2019

NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION STAFF

By: \_\_\_\_\_  
Lynn Fabrizio, Esq.  
Staff Attorney

Date: \_\_\_\_\_

OFFICE OF CONSUMER ADVOCATE

By: \_\_\_\_\_  
D. Maurice Kreis, Esq.  
Consumer Advocate

Date: \_\_\_\_\_



NORTHERN UTILITIES, INC.

By: \_\_\_\_\_  
Patrick H. Taylor, Esq.  
Senior Counsel


Date: \_\_\_\_\_

NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION STAFF

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NORTHERN UTILITIES, INC.

By: \_\_\_\_\_  
Patrick H. Taylor, Esq.  
Senior Counsel

Date: \_\_\_\_\_

NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION STAFF

By: /s/ Lynn Fabrizio, Esq. \_\_\_\_\_  
Lynn Fabrizio, Esq.  
Staff Attorney

Date: October 7, 2019

OFFICE OF CONSUMER ADVOCATE

By: \_\_\_\_\_  
D. Maurice Kreis, Esq.  
Consumer Advocate

Date: \_\_\_\_\_