

**STATE OF NEW HAMPSHIRE
BEFORE THE
NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION**

**Docket No. DG 23-087
Northern Utilities Inc.
Petition for Expedited Approval of Empress Capacity Agreements**

Supplemental Position Statement of Ashraful Alam, Utility Analyst, &
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Department of Energy, Division of Regulatory Support
December 14, 2023

The New Hampshire Department of Energy (“DOE” or the “Department”) submits this supplemental position statement in compliance with the approved procedural schedule. *See* New Hampshire Public Utilities Commission’s (“NHPUC” or the “Commission”) *Procedural Order Re: Proposed Procedural Schedule* (November 16, 2023).

Please note that this statement should be read in conjunction with DOE’s earlier (preliminary) technical statement dated November 3, 2023. While DOE’s preliminary technical statement identified facts of the original petition and attempted to summarize the overall contexts, this current position statement furthers that by providing additional facts and observations along with the Department’s recommendations for the petition. As such, in advance of the hearing scheduled for January 18, 2024, this position statement is based upon review of all information submitted into the docket to-date (including discovery incorporated in attachments to this statement). This statement aims to provide the Commission with:

- DOE’s summary of facts and observations based on Northern Utilities, Inc. (“Northern” or “the Company”)’s filing to-date; and
- DOE’s recommendations.

Upon review of all information submitted into the docket to-date, DOE makes additional observations and provides its recommendations.

In summary, the Department supports Northern’s request for Approval of “Empress Capacity Agreements”¹, which includes a pre-approval of pre-service and (potential) cancellations costs, subject to certain conditions described below. *See* Petition for Expedited Approval of Empress Capacity Agreements (“Empress Agreements” or the “Agreements”).

¹ As defined in Northern’s petition, the “Empress Capacity Agreements” include certain agreements with Portland Natural Gas Transmission System (“PNGTS”) and TransCanada Pipelines Limited (“TCPL”) (the agreements are collectively referred to herein as the “Empress Capacity Agreements”). *See* Petition dated October 6, 2023.

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1. Background

Northern's Petition (filed October 6, 2023) states that the Company has participated in pipeline Open Seasons bidding process conducted by TransCanada Pipelines Limited ("TCPL") and Portland Natural Gas Transmission System ("PNGTS"). See Petition (Oct 6, 2023), Confidential Unitil FXW-2 at 3 (Empress Capacity Resource Assessment, hereinafter "ECR Assessment").

The process led to multiple bilateral agreements between Northern and TCPL and PNGTS and Northern. See Petition Unitil FXW-2, Attachment 4 – the TCPL 2024 Precedent Agreement, Attachment 5 – the TCPL 2024 Firm Transportation Contract, Attachment 6 – the CONFIDENTIAL TCPL 2027 Precedent Agreement, and Attachment 2 – the PNGTS 2024 Firm Transportation Contract. These agreements are designed to provide the Company with access to firm natural gas pipeline transportation paths from Empress, Alberta to Granite State Gas Transmission, Inc. ("Granite") interconnects. See ECR Assessment, p. 3. This new capacity path is expected to add

12,500 Dekatherm (Dth) per day of incremental capacity to Northern’s New Hampshire and Maine gas supply portfolio.

Through its petition, Northern submits that the access to this incremental capacity will result in “relatively low-cost supply, while reducing Northern’s peaking supply requirements.” See ECR Assessment, p. 3. As such, Northern seeks an expedited Commission pre-approval of the pre-service and (potential) cancellation costs under these agreements on or before January 26, 2024.

The Company has also filed a concurrent petition with the Maine Public Utilities Commission (MPUC) seeking similar pre-approval for the same Empress Agreements² and has requested an expedited order from the MPUC by January 26, 2024.

2. Activities to-date

Given the expedited nature of the petition, Northern, DOE, and the Office of the Consumer Advocate (“OCA”), collectively the “Parties”, met multiple times. The Parties first met for an ad-hoc technical session on November 1, 2023, followed by two additional technical sessions dated November 9 and 28, 2023. DOE has filed two sets of data requests.

The current supplemental position statement is informed by discussions held during these sessions along with the filings and responses to Data Request (DR)s exchanged among the Parties to-date. DOE has provided Northern’s responses to some of DOE’s Data Request (DR) Set 1 as Attachment A and some of Northern’s Responses to DOE Technical Session (TS) DR Set 1 as Attachment B. The DOE has also provided Northern’s Response to data request in the MPUC docket as a separate Attachment C and the email from PNGTS re FERC approving certification as Attachment D for ease of reference, although these responses were provided by Northern in response to DOE DR 1-2. Where supportive of the analysis, specific responses within each Attachment are cited. In addition, a number of responses have simply been provided to support the expedited nature of this docket.

3. Features of the Empress Capacity Filing by Northern

Based on the filing and DRs to-date, DOE notes the following:

3.1 Capacity Volume

The proposed Empress Agreements would add *net* 12,500 Dth/day volume of *incremental* capacity to Northern’s New Hampshire (NH) and Maine (ME) gas supply portfolio.

² MPUC Case No. 2023-00254 Northern Utilities, Inc. d/b/a Unitil Inc., Request for Approval of Precedent Agreement Pertaining to Northern Utilities Inc. d/b/a Unitil Inc. (case start date Sept. 29, 2023), available at the following link, Docket No. [2023-00254](#).

3.2 Capacity Distribution between NH and ME

Applying the Company's latest design year forecast for the 2023-24 gas year, approximately 5,007 Dth/day (i.e., 40.1%) of the proposed capacity will be supported by New Hampshire Division customers and 7,493 Dth/day (i.e., 59.9%) will be supported by Maine Division customers³. Northern would support the use of the Modified Proportional Responsibility Allocator to allocate contract costs at issue in this docket between New Hampshire and Maine. See DOE Attachment A, DOE 1-11.

3.3 Agreement Timeframe

The proposed Agreements have a 30-year term starting on April 1, 2024 to March 31, 2054, with an option for renewal rights that would allow Northern control over the "Empress Capacity" path⁴ following the initial term of the Agreements. See ECR Assessment, p. 51.

3.4 Transportation Path

Northern explains that the incremental capacity volume of 12,500 Dth/day would be transported via multiple pipelines. The gas would travel from Empress, Alberta via TransCanada pipeline to Pittsburg, New Hampshire, the location where PNGTS receives gas onto its system from TCPL. The commodity would then be transported via PNGTS pipelines to – either the interconnection between PNGTS and Maritimes in Westbrook, Maine; or delivery points on the PNGTS system from Westbrook, Maine to Dracut, Massachusetts. This includes the interconnections between PNGTS and the Granite State Gas Transmission, Inc. ("Granite") pipeline. See Petition Attachment Unitil-FXW-1, p. 4 and the ECR Assessment, p. 17 ("map").

Northern currently accesses PNGTS via the Granite pipeline to service its territories both in New Hampshire and Maine. See Petition Attachment 8 (Northern Capacity Paths). For the purposes of current filing, Northern referred to the full capacity path as "Empress Capacity" that includes the Granite State Gas Transmission, Inc. interconnects. See Petition Attachment Unitil-FXW-1, p. 2.

3.5 Company's Assessment of Supply Needs

- i) ***Design Day Planning Load & Deficiency:*** Northern provided an estimate of its design day planning load in Table IV-1 of the ECR Assessment. See ECR Assessment, p. 36. The design day load is estimated to be 146,989 Dth in the 2024-25 Winter Period, increasing to 152,149 Dth in 2027-28. Given that Northern reported ongoing deficiency in its resource balance,

³ The Modified Proportional Responsibility Allocator, which is used to allocate demand costs, is based on the Design Year utilization as estimated by Northern.

⁴ Please see the Section 3.4 'Transportation Path' for Northern's definition of "Empress Capacity" path.

without the Empress Capacity, the Company estimates that the deficiency will increase overall, from 47,431 Dth in 2024-25 to 52,591 Dth in 2027-28. With the Empress Capacity, the Company estimates that the deficiency will *decrease* from 47,431 Dth to 34,975 Dth in 2024-25, and from 52,591 Dth to 40,135 Dth in 2027-28. A summary of these forecasts along with the growth rates in design day planning load are provided below:

Table 1: Design Day Planning Load, 2024-25 to 2027-28 Winter Period

	2024-2025	2025-2026	2026-2027	2027-2028
Design Day Utilization of Current Long-Term Capacity	99,558	99,558	99,558	99,558
Design Day Planning Load	146,989	148,784	150,466	152,149
Growth in Design Day Planning Load		1.2%	1.1%	1.1%
Design Day Resource Balance w/o Empress Capacity	(47,431)	(49,226)	(50,908)	(52,591)
Empress Capacity	12,500	12,500	12,500	12,500
Estimated Granite Fuel Use	44	44	44	44
Empress Capacity, net of Granite Fuel	12,456	12,456	12,456	12,456
Design Day Resource Balance w/ Empress Capacity	(34,975)	(36,770)	(38,452)	(40,135)

- ii) **Design Year Planning Load & Deficiency:** Northern also provided forecasts for the design year planning load in Table IV-2. See ECR Assessment, p. 38. Northern used PLEXOS energy optimization software to develop the estimates. As reported by the Company, the design year load is estimated to increase from 17,403,633 Dth in 2024-25 to 18,054,513 Dth in 2027-28. Without the Empress Capacity, Northern estimates deficiency will increase from 672,536 Dth in 2024-25 to 824,692 Dth in 2027-28. With the Empress Capacity, the deficiency is *reduced* from 672,536 Dth to 302,037 Dth in 2024-25, and from 824,692 Dth to 389,974 Dth in 2027-28. These projections along with the estimated growth rates in planning load are provided below:

Table 2: Design Year Planning Load, 2024-25 to 2027-28 Winter Period

	2024-2025	2025-2026	2026-2027	2027-2028
Delivered Supply Long-Term Capacity w/o Empress	16,731,097	16,886,128	17,028,952	17,229,821
Design Day Planning Load	17,403,633	17,628,179	17,840,851	18,054,513
Growth in Design Day Planning Load		1.3%	1.2%	1.2%
Design Year Resource Balance w/o Empress Capacity	(672,536)	(742,051)	(811,899)	(824,692)
Delivered Supply Long-Term Capacity w/ Empress	17,101,596	17,288,478	17,460,364	17,664,539

	2024-2025	2025-2026	2026-2027	2027-2028
Growth w/ Empress Capacity		1.1%	1.0%	1.2%
Impact of Empress Capacity	370,499	402,350	431,412	434,718
Growth due to Empress Capacity		8.6%	7.2%	0.8%
Design Year Resource Balance w/ Empress Capacity	(302,037)	(339,701)	(380,487)	(389,974)

- iii) **Overall Deficiency:** The DOE gives significant weight to Northern’s report of a current deficiency in resource balance both *with and without* Empress Capacity under both the design day and the design year projection scenarios. The access to Empress Capacity significantly *reduces* Northern’s reported current resource balance deficiency projections.
- iv) **Qualitative Assessment:** Northern uses several qualitative metrics to assess the non-price features of the proposed Empress Capacity Agreements. The Company asserts that the proposed agreements demonstrate flexibility and reliability improvements to Northern's capacity portfolio by addressing upstream and downstream issues, project development and deployment risks and providing control over contract renewal rights. The Company claims that the Empress Agreements will also help to mitigate demand charges and price volatility and improve rate and cost sharing processes. In Northern’s view the Empress Agreements will provide [BEGIN CONFIDENTIAL INFORMATION] [REDACTED] [END CONFIDENTIAL INFORMATION] diversity to Northern’s supply portfolio. See ECR Assessment, pp. 43-54.

4. The Empress Agreements

Based on the filing to-date, DOE notes the following features of the Empress Agreements:

4.1 The PNGTS Agreement

As explained by the Company, in its Open Season, PNGTS offered approximately 59,000 Dth/Day of additional capacity to be available as soon as November 1, 2023. The minimum bidding requirements included a rate of \$0.82/Dth, and a 15-year term for a firm transportation service agreement. Northern successfully bid for 12,500 Dth/Day with the minimum rate (\$0.82/Dth), but for a term of 30 years (ending on March 31, 2054).

Northern has the option to terminate the PNGTS Firm Transportation (“FT”) Agreement without penalty by February 1, 2024, should the Company not obtain regulatory approvals from the NHPUC and the MPUC in a form and substance acceptable to the Company. See DOE Attachment A, DOE 1-19 Supp. The PNGTS transportation service rate is a negotiated, fixed rate for the term of the Agreement⁵. The Agreement also allows Northern to have the right of first refusal. The FT Agreement does not mention anything regarding the cancellation costs.

⁵ Although the transportation rate is negotiated, it is largely governed by the applicable FERC tariff rate(s) and is also subject to the rate discount provisions of the bilateral Agreement between Northern and PNGTS. Therefore,

DOE observes that PNGTS capacity requires approval only from the Federal Energy Regulatory Commission (FERC) to increase their certificated capacity by 59,100 Dth. The physical facilities PNGTS needs to provide the level of service, which PNGTS awarded through its Open Season bidding process, appears to be already in place. See DOE Attachment A, DOE 1-08. The Department notes that, based on the information received from Northern, it appears that PNGTS received the requisite FERC approval. See DOE Attachment D and [FERC Docket No. CP23-548-000](#).

4.2 The TCPL Agreements

The Company explained that, in its Open Season, TCPL offered up to 59,807 Dth/Day of delivery capacity to be available as early as April 1, 2024. However, the offering was subject to TCPL's ability to secure "necessary commercial and operational arrangements" until new facilities are constructed. TCPL expects to construct new facilities to support this capacity offering prior to November 1, 2027. See Petition Attachment Unitil-FXW-1, p. 5.

Northern explained that TCPL tolls are regulated by the Canada Energy Regulator ("CER") along with various provincial regulatory agencies (collectively the "Canadian Energy Regulators"). The tolls are rolled into the system rate implying that the expansion capacity customers would pay the average system rate, rather than an incremental project rate. See ECR Assessment, p. 52.

Northern states that TCPL asked the bidders to bid with a minimum service term of 15 years from November 1, 2027. Northern successfully bid for 12,890 Dth/Day for a term of 30 years (commencing April 1, 2024 and ending on March 31, 2054).

Overall, the TCPL Agreements are inclusive of two separate sets of agreements, each having a Precedent Agreement and a Firm Transportation Service Contract:

- a. The 2024 Precedent Agreement ("PA"), and 2024 Firm Transportation ("FT") Service Contract for service from April 1, 2024 through October 31, 2027 (or later, if facilities required by TransCanada are not yet in service, and TransCanada maintains the commercial and operational arrangements to continue interim service beyond October 31, 2027). See Petition Attachment Unitil-FXW-1, p. 6. This set of agreements stipulate Northern and TCPL's contractual obligations for transportation services until 2027; and
- b. The 2027 Precedent Agreement to service the 30-year contract from November 2027 through March 2054. See Petition, Attachment 6 CONFIDENTIAL. The 2027 TCPL Precedent Agreement also requires Northern to enter into a Firm Transportation Service Contract for service from November 2027 through March 2054 upon TCPL – either satisfying or waiving its conditions precedent. See Unitil-FXW-1, p. 6.

the rate will remain somewhat variable and responsive to market forces. See Petition Attachment 2 (PNGTS FT Contract), p. 1

4.3 TCPL Conditions Precedent

Both the 2024 and 2027 TCPL Precedent Agreements contain conditions precedent:

- a. For the 2024 Precedent Agreement, the conditions precedent include a determination that TCPL has sufficient facilities and/or operational, or other arrangements to provide service under the 2024 TCPL FT Contract, and that the 2027 TCPL PA has not been cancelled. See Unitil-FXW-1, p. 6.
- b. For the 2027 Precedent Agreement, the conditions precedent include TCPL receiving authorization to increase its capacity in order to provide the service awarded to Northern. It further requires Northern to enter into a FT Contract for service from November 2027 through March 2054 upon TCPL – either satisfying or waiving its conditions precedent. See Unitil-FXW-1, p. 7. The 2027 PA also contains a *Sunset Date* of May 1, 2027. See Petition Attachment 6 (TCPL 2027 PA), Section 13 (h), p. 12 of 29 and DOE Attachment B, Northern Response to DOE TS 1-02.

4.4 Violation of the Conditions Precedent

Northern states that Paragraph 13 of the 2027 TCPL PA provides a complete list of events that would construe an event of cancellation. See Petition Unitil-FXW-2 CONFIDENTIAL Attachment 6 (TCPL 2027 PA). Essentially, these include the following:

- a. TCPL is unable to obtain required authorizations to increase its capacity from the Canadian Energy Regulators prior to May 1, 2027;
- b. PNGTS is unable to obtain FERC certification (this condition appears to have been met. See Attachment D, DOE TS 1-03);
- c. Northern:
 - i) is unable to obtain approval of the 2027 TCPL PA from NHPUC or MPUC in a form and substance acceptable to the Company;
 - ii) fails to execute the Firm Transportation (FT) Service Contract; or
 - iii) withdraws its service request prior to May 1, 2027;

then the 2027 TCPL PA will be deemed cancelled.

As identified above and in conjunction with 4.3(b), it appears that, with FT Service Contract put in place, beyond the *Sunset Date* of May 1, 2027, all 2027 TCPL PA conditions precedent would be construed satisfied, and consequently, the cancellation costs provisions of the 2027 TCPL PA would be deemed moot.

bidders incorporated: 1) the term of each bid; and 2) the current toll for the requested path⁶. Bids were then ranked based on the product of 1) and 2). The implication of this process is that TCPL's open season process favored bids with longer terms. *See* DOE Attachment C, Response to MPUC, 2023-00254 EXM Set 1 Responses EXM-01-008. As such, according to the Company, bidding a shorter term with renewal rights would have increased the likelihood that Northern would not be awarded any capacity through the Open Season process. *See* DOE Attachment C, Response to MPUC, 2023-00254 EXM Set 1 Responses EXM-001-017. [BEGIN CONFIDENTIAL INFORMATION] [REDACTED]

[REDACTED] [END CONFIDENTIAL INFORMATION]

5.4 Demand Cost Mechanism

DOE observes that, as reported by Northern, the Empress Capacity Agreements would provide reasonable demand cost mechanisms allowing for rolled-in rate treatment of new facilities, rather than rates based on higher incremental costs. *See* ECR Assessment, pp. 53-54.

5.5 Cancellation Costs vis-à-vis the Agreements

DOE observes that PNGTS Agreements have a “regulatory out” date – i.e., the date prior to which the Company can withdraw from the agreements without a penalty for the PNGTS agreement – of February 1, 2024. Hence, the petition requests a pre-approval of the proposed PNGTS and TCPL Agreements by January 26, 2024. The provision of “regulatory out” date implies that Northern can cancel the PNGTS Agreement without incurring any cancellation costs emanating from that specific agreement. *See* DOE Attachment A, DOE 1-06. Such a cancellation, however, will trigger an event of cancellation within the context of the TCPL Precedent Agreements⁷.

Conversely, the TCPL Agreements⁸ do not have a “regulatory out” date per se. *See* DOE Attachment A, DOE 1-05. As such, Northern has the right to terminate the Precedent Agreement provided that the Company pays the cancellation costs or the estimated liability limit. *See* DOE Attachment A, DOE 1-10; DOE 1-10 Attachment 1. [BEGIN CONFIDENTIAL INFORMATION] [REDACTED]

⁶ The price that Northern pays will ultimately be determined by the CER-approved tolls that will be in effect at the time of service. They will not be based on the tolls in effect at the time of the bids that were used solely for the purpose of evaluating bids. *See* Attachment C, Response to MPUC, 2023-00254 EXM Set 1 Responses, EXM-01-008

⁷ Please refer to Section 4.3 and 4.4 above.

⁸ TCPL Agreements include three separate agreements – the 2024 TCPL Precedent Agreement (PA), the Firm Transportation (FT) Service Contract over 2024-2027 period, and the 2027 TCPL PA. The FT Service Contract covering the period 2027-2054 is not yet in place.

[REDACTED] [END
CONFIDENTIAL INFORMATION].

The Department further observes that the 2027 TCPL PA has a *Sunset Date* of May 1, 2027. See CONFIDENTIAL Attachment 6 of Unifil-FXW-2. In light of this and based on the information provided by Northern to-date, it appears that beyond May 1, 2027, and/or once the TCPL facilities intended to serve Northern (and other shippers) over 2027-2054 timeframe are put in place the cancellation costs provisions of the 2027 TCPL PA would be deemed moot. Consequently, if no event of cancellation occurs by May 1, 2027, Northern will not have to pay any termination fees beyond that date to cease purchase and transportation of any gas through TCPL pipelines.

5.6 Proposed Distribution of Cancellation Costs

Northern states that the reported TCPL cancellation costs are an estimated total amount for the whole Company (i.e., inclusive of customer groups both in its New Hampshire and Maine Divisions). As such, in the event of project cancellation, Northern proposes the costs be allocated between New Hampshire and Maine Divisions using the Modified Proportional Responsibility Allocator (“MPRA”) in effect at the time of the cancellation event, as is done with the Company’s other fixed costs. See Attachment A, Northern Response to DOE 1-09, DOE 1-11, and Attachment B, Northern Response to DOE TS 1-07.

In the event of a cancellation, the Department supports Northern’s proposal to use the MPRA to allocate appropriate share of cancellation costs assuming that the Company is successful in obtaining approval of its concurrent petitions by both the NHPUC and the MPUC.

5.7 Likelihood of Cancellation

DOE notes, Northern highlights the fact that TCPL has extensive experience with pipeline project approval processes. Northern submits that, of all proposed projects between 2012 and 2022⁹, TCPL and its affiliate pipelines have cancelled only 2 out of 189 projects. This renders a failure rate of 1.06% or an overall probability of success for the TCPL portion of the contract as 98.94%. Northern further submits that no projects have been cancelled by TCPL or its affiliates since 2014. See DOE Attachment A, DOE 1-08 CONFIDENTIAL and DOE 1-22.

The Department also observes Northern’s historical engagement with different precedent agreements. In February 2015, Northern entered into a precedent agreement with TransCanada for service on the Vaughan project and no cancellation costs were incurred in this agreement. In January 2019, Northern entered into precedent agreements with both

⁹ In its response to DR, Northern notes that seven of the TCPL projects were not placed into service because the customer requesting service withdrew their request for service or there was a delay on the customer’s end. TransCanada and/or its affiliates were able to gain their approvals in these cases. There were three projects that have been proposed in 2023 by the NGTL system, but those approvals processes have not been completed. For that reason, these projects were not included in the table. See Attachment A, DOE 1-08.

TransCanada and Enbridge to fill Northern's PNGTS WXP capacity. The Company was exposed to cancellation costs under each of these agreements. These precedent agreements were filed with the Commission under [Docket No. DG 19-116](#). As with the 2027 TCPL PA, the TransCanada precedent agreement in the WXP capacity expansion allowed Northern the option to terminate the precedent agreement, subject to cancellation costs. However, for the Enbridge precedent agreement, Northern was exposed to possible cancellation costs, but only had the ability to terminate if it was unable to meet certain conditions precedent, such as state regulatory approvals. No cancellation costs were incurred under the January 2019 precedent agreements. See DOE Attachment A, DOE 1-14 and ECR Assessment, p. 10. These demonstrate a history of successful contractual engagements between Northern and TCPL (i.e., TransCanada) without having to resort to invocation of any cancellation costs.

As such, consistent with the analysis used by Northern for calculating the success rate, the Department observes that the likelihood of cancellation of current Empress Capacity Agreements would be low.

5.8 Cost Recovery Mechanism

Since Northern did not incur cancellation costs, the Department notes that the Company has not previously sought recovery of such costs. In [Docket No. DG 19-116](#) the parties to that proceeding filed a settlement, which stated that "pre-service and cancellation costs associated with the Precedent Agreements accrued as of the date of this Order and for which the Company is liable, are reasonable and appropriately recoverable through the Northern's rates" and pertaining to pre-service costs that may have accrued after the date of the Order that "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 Northern's rates." These settlement provisions were accepted by the Commission. See [Order No. 26,309](#). However, the mechanism that such costs would be recovered was not identified in that docket. See DOE Attachment A, DOE 1-14.

5.9 Other Risks

The Department observes that, under the 2027 TCPL PA, Northern has the right to trigger an event of cancellation earlier than May 1, 2027. DOE further notes that the Company has not developed a formalized decision-making process for assessing termination of its participation in the projects [BEGIN CONFIDENTIAL INFORMATION] [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] [END CONFIDENTIAL INFORMATION] See DOE

Attachment A, DOE 1-13 Attachment 1 CONFIDENTIAL.

6. Recommendations

In light of the current review of Northern's filing, the observations made by the Department, and the foregoing discussion, DOE believe the proposed pre-approval of the Empress Capacity Agreements is reasonable and in the public interest. As such the Department recommends approving the petition subject to the following conditions, which may continue to be modified or expanded in what DOE anticipates will be settlement discussions with the Company, and are similar to conditions agreed upon in Docket No. DG 19-116:

- In the event of cancellation, the recovery of costs associated with the Precedent Agreements, other than pre-service and cancellation costs, should be addressed through the Company's annual Cost of Gas filings.
- Northern should 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 DOE 1-13 CONFIDENTIAL, or in light of any new information or change in circumstances which becomes known. The prudence of the Company's decisions to continue with or terminate any of the Precedent Agreements should be evaluated in light of existing circumstances known to the Company at each decision point. See DOE Attachment A, DOE 1-13 Attachment 1 CONFIDENTIAL. To the extent that the Company is found to have acted reasonably and prudently in incurring costs associated with the Precedent Agreements, such costs should be recoverable through the Company's rates.
- Provided that Northern is successful in obtaining approval of its petitions by both the NHPUC and the MPUC, and if an event of cancellation occurs, the Company should use the Modified Proportional Responsibility Allocator (MRPA) to allocate the appropriate share of the cancellation costs and be allowed to recover the costs through its rates so long as the Company is found to have acted reasonably and prudently in incurring such costs associated with the Precedent Agreements.
- Decision points should 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 must 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.
- Northern should not waive the conditions precedent under the Empress Capacity Agreements that allow Northern to terminate said TCPL Precedent Agreements prior to May 1, 2027 without liability to the Company unless the Company receives approval of the Precedent Agreements in a form acceptable to the Company of its respective petitions from the Commission (and also from the Maine Public Utilities Commission, if applicable).