

THE STATE OF NEW HAMPSHIRE
before the
PUBLIC UTILITIES COMMISSION

PETITION FOR EXPEDITED APPROVAL OF EMPRESS CAPACITY AGREEMENTS

Docket No. DG 23-087

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) relating to Northern Utilities, Inc.’s Petition for Expedited Approval of Empress Capacity Agreements (the “Petition”) is entered into by and among: Northern Utilities, Inc. (“Northern” or the “Company”) and the New Hampshire Department of Energy (the “Department” or DOE) (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 New Hampshire Public Utilities Commission (NHPUC or Commission)’s review of Northern’s Petition.

I. INTRODUCTION AND PROCEDURAL HISTORY

On October 6, 2023, Northern filed its Petition requesting Commission review and approval of certain agreements with Portland Natural Gas Transmission System (“PNGTS”) and TransCanada Pipelines Limited (“TCPL”) that will provide a firm natural gas pipeline transportation path from Empress, Alberta to Granite State Gas Transmission, Inc. (“Granite”) interconnects (the full capacity path is referred to herein as “Empress Capacity.” There are four agreements at issue: a Firm Transportation Agreement between PNGTS and Northern; a Precedent Agreement between TCPL and Northern for service from April 1, 2024 through October 31, 2027; a Firm Transportation Agreement between TCPL and Northern for service from April 1, 2024 through October 31, 2027; and a Precedent Agreement between TCPL and

Northern for service beginning November 1, 2027. *See* Petition at 3; Exhibit Unitil-FXW-1 at 4-7; Exhibit Unitil-FXW-2 at 5-11; Exhibit Unitil-FXW-2 Attachments 2, 4, 5, and 6. The agreements are collectively referred to herein as the “Empress Capacity Agreements” or the “Agreements”). The Company specifically requested a finding by the Commission that the Empress Capacity Agreements are prudent, reasonable, and consistent with the public interest on or before January 26, 2024. Northern submitted a parallel petition to the Maine Public Utilities Commission (MPUC) on October 5, 2023; that matter remains pending.¹ Northern has also asked that the MPUC issue a decision on or before January 26, 2024.²

The OCA submitted a Letter of Participation on October 9, 2023, and the Commission issued an Order of Notice on October 12, 2023. The Department filed an appearance on October 27, 2023. At that time, the Department also filed a partially-assented- to motion to enlarge time, which the Commission granted in an October 30, 2023 procedural order. The Department submitted a preliminary Position Statement on November 3, 2023. The Commission held a prehearing conference on November 9, 2023. The Department filed data requests on November 7 and November 13. The OCA filed data requests on November 30. The parties participated in technical and/or settlement conferences on November 9, 2023, November 28, 2023, December 21, 2023, and January 5, 2024. OCA witness Marc Vatter submitted testimony on December 13, 2023, and Department witnesses Ashraful Alam, Utility Analyst and Dr. Faisal Deen Arif, Gas Director, submitted a Supplemental Position Statement on December 14, 2023.

In support of its Petition, the Company provided the Prefiled Testimony of Francis X. Wells, as well as an Empress Capacity Resource Assessment, copies of the Empress Capacity Agreements, and other supporting appendices. *See* Exhibit Unitil-FXW-1; Exhibit Unitil-FXW-

¹ Maine Public Utilities Commission Docket 2023-00254.

² *See* footnote 1.

2 and Attachments. Mr. Wells' testimony described, *inter alia*, the Empress Capacity path, the terms and conditions of the Empress Capacity Agreements, the Company's planning load forecast, and the Company's analyses of its existing resource portfolio and the proposed Empress Capacity. Exhibit Unitil-FXW-1. Northern stated that the Empress Capacity Agreements will provide the Company with the ability to transport 12,500 Dth/day of incremental capacity to Northern's gas supply portfolio, inclusive of both New Hampshire and Maine, with service beginning on April 1, 2024 for a thirty (30) year term.

Northern is one of several shippers / subscribers for the contemplated project with a minimum subscription of at least 38,000 Dth / day. As noted above, the Empress Capacity Agreements will provide Northern with the ability to transport 12,500 Dth/day of incremental capacity to Northern's gas supply portfolio. Two other shippers, Emera Energy and New England Green Gas, have committed to 5,000 Dth / day and 41,500 Dth / day, respectively.

[BEGIN CONFIDENTIAL] [REDACTED]

[END CONFIDENTIAL] Both Emera Energy and New England Green Gas have already commenced service with PNGTS and TCPL for this capacity.

Applying Northern's Modified Proportional Responsibility Allocator (MPRA) and the Company's latest design year forecast for the 2023-2024 gas year, approximately 5,007 Dth/day, or approximately forty percent of the proposed capacity will be supported by New Hampshire Division customers and 7,493 Dth/Day, or approximately sixty percent of the proposed capacity will be supported by Maine Division customers. This allocation further presumes that the Commission and the MPUC have both provided Northern with regulatory approval in a form and substance acceptable to the Company by February 1, 2024. In no circumstance shall New

Hampshire customers absorb more pre-service or cancellation costs than correspond to New Hampshire's MPRA share. This Settlement is contingent upon both the Commission and the MPUC explicitly approving Northern's Petitions for approval of the Empress Capacity Agreements.

Northern has entered into a Firm Transportation Agreement with PNGTS for a term equal to 30 years beginning April 1, 2024 for 12,500 Dth of capacity from Pittsburg, New Hampshire to Dracut, Massachusetts. The firm transportation with PNGTS allows Northern to terminate the agreement without liability if the Company has not obtained regulatory approval from the New Hampshire Public Utilities Commission and the Maine Public Utilities Commission in form and substance acceptable to the Company by February 1, 2024.

Northern has entered into three agreements with TCPL for 13,600 GJ (12,890 Dth) of capacity from Empress to East Hereford with a 30-year term commencing April 1, 2024: a precedent agreement and firm transportation agreement for service from April 1, 2024 through October 31, 2027 (the 2024 TCPL Agreements) and a precedent agreement for service from November 2027 through March 2054 (the 2027 TCPL PA). The 2024 TCPL Agreements are subject to certain conditions precedent, including that TCPL has determined that it has sufficient facilities and/or operational or other arrangements to provide service under the 2024 TCPL firm transportation contract, and that the 2027 TCPL PA has not been cancelled. The 2027 TCPL PA is also subject to conditions precedent, including TCPL receiving authorization to increase its capacity in order to provide the service awarded to Northern. TCPL must use all reasonable efforts to obtain the required authorizations and increase its capacity. The 2027 TCPL PA 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.

If TCPL is unable to obtain required authorizations to increase its capacity from the Canada Energy Regulator and other various provincial agencies prior to May 1, 2027, then the 2027 TCPL PA will be cancelled. If Northern is unable to obtain approval of the 2027 TCPL PA from the New Hampshire and/or Maine Public Utilities Commissions, and opts not to execute the Firm Transportation Service Contract, or withdraws its service request, then the 2027 TCPL PA will be cancelled. Effective currently, if the 2027 TCPL PA is cancelled for any reason, TCPL will have the right to recover pre-service and cancellation costs from Northern, including the portion of the project development costs attributable to Northern's service request at the time of cancellation. Such costs are defined in Exhibit Unitil-FXW-2, Attachment 6 at 10, 13-14. The current and future estimated pre-service and cancellation costs, which are confidential, are described on a quarterly basis in the Empress Capacity Resource Assessment and Attachment 7 thereto, as well as the Company's response and attachment to DOE 1-13, a copy of which is included as part of Confidential Attachment A to this response.

As noted above, Department witnesses submitted a Position Statement and Supplemental Position Statement on November 3 and December 14, 2023 respectively. In their statement, Dr. Arif and Mr. Alam summarized the Department's position that it is reasonable and in the public interest for Northern to enter into the Empress Capacity Agreements at this time, subject to certain conditions. OCA witness Mr. Vatter's testimony similarly supported approval of the Empress Capacity Agreements, with the recommendation that the Commission "require Northern to evaluate available hedging strategies, including, but not necessarily limited to, purchasing Japan Korea Marker LNG on the futures market and signing long term contracts for purchase of

pipeline gas in Alberta, or additional LNG on the coast in New England.” *See* OCA Testimony of Marc Vatter (Dec 13, 2023).

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 currently available in the market, and the current regional supply constraints, the Settling Parties agree that the relatively modest commitment of 12,500 Dth/day as reflected in the Empress Capacity Agreements is reasonable with regard to supply for Northern’s NH and Maine supply requirements, the MPRA, and anticipated future needs.

2. The Settling Parties similarly agree that the thirty-year term of the Empress Capacity Agreements is reasonable in light of the Company’s current planning load analysis, bidding strategy, and anticipated future needs.

3. The Settling Parties agree that pre-service and cancellation costs associated with the Empress Capacity Agreements that have accrued as of the date of the Commission Order approving this Settlement Agreement and the Empress Capacity Agreements in this Docket and for which the Company is liable-- and apportioned consistent with the MPRA -- are reasonable and appropriately recoverable through the Company’s rates. If the Commission Order does not explicitly approve this Settlement Agreement and the Empress Capacity Agreements, whether pre-service and cancellation costs associated with the Empress Capacity Agreements that have

accrued as of the date of the Commission Order are prudent and recoverable will be addressed in the Company's next cost of gas docket.

4. The Settling Parties agree that recovery of costs associated with the Empress Capacity Agreements will be addressed through the Company's annual Cost of Gas filings and recovered through Cost of Gas rates. The Settling Parties agree that potential cancellation costs shall be recovered from all capacity-eligible customers.

5. The Settling Parties agree that Northern will monitor and evaluate the prudence of continuing with or terminating any or all of the Empress Capacity Agreements at certain decision points outlined Confidential Attachment A, and quarterly, including once during Northern's COG filing, or in light of any new material information or change in circumstances which becomes known. The prudence of the Company's decisions to continue with or terminate any of the Empress Capacity Agreements will be evaluated in light of existing circumstances known to the Company at each decision point and in light of any new material information or change in circumstance which becomes known to Northern. See Confidential Attachment A. If at any time, in the Company's opinion, it is probable that Northern will terminate any of the Empress Capacity Agreements, the Company will, within two business days, notify the other Settling Parties. To the extent necessary, such communication shall be made on a confidential basis. To the extent that the Company is found by the Commission to have acted reasonably and prudently in incurring costs associated with the Empress Capacity Agreements, such costs will be recoverable as described in Paragraph 4 above.

6. Provided that Northern is successful in obtaining approval of its petitions by both the NHPUC and the MPUC, and if an "Event of Cancellation" (see Exhibit Unitil-FXW-2, Attachment 6 at 3, 11-13 (defining Event of Cancellation)) occurs, the Company shall use the

Modified Proportional Responsibility Allocator (MPRA) to allocate the appropriate share of the cancellation costs to New Hampshire and shall be allowed to recover the corresponding percentage of cancellation costs through its rates so long as the Company is found to have acted reasonably and prudently in incurring those costs associated with the Empress Capacity Agreements.

7. 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. See Confidential Attachment A. The Company agrees to provide quarterly updates to the Department and OCA until such time that all conditions precedent in the 2027 TCPL PA are satisfied or waived, and until the Company enters into a Firm Transportation Service Contract for service from November 2027 through March 2054 with TCPL. The Company will also provide an update to the Commission on its evaluation of decision points in the Company's annual Cost of Gas filing. 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 Empress Capacity Agreements. To the extent that there is a notice of cancellation from any shipper or transporter or an Event of Cancellation, the Company will notify the Commission, the Department, and the OCA within two business days.

8. Northern will evaluate available hedging strategies and include a report on its evaluation in the Company's Cost of Gas filings through the execution of the TCPL Firm Transportation Agreement.

A. General Provisions

The Settling Parties agree that all testimony and position statements, and supporting documentation may be admitted as full exhibits for purposes of consideration of this Agreement. Agreement to admit all direct testimony and position statements 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 within ten business days of the Commission's Order 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

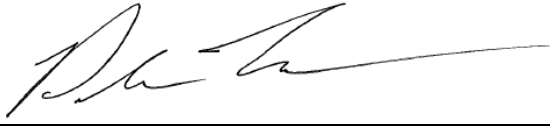
agencies or courts before which this matter is brought, but shall take all such action as is necessary to secure approval and implementation of the provisions of this Settlement Agreement.

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.
Chief Regulatory Counsel

Date: January 16, 2024

NEW HAMPSHIRE DEPARTMENT OF ENERGY

By: Mary E. Schwarzer_____

Mary Schwarzer, Esq.
Staff Attorney

Date: January 16, 2024