

STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

November 9, 2023 - 1:02 p.m.

21 South Fruit Street
Suite 10
Concord, NH

RE: **DG 23-087**

NORTHERN UTILITIES, INC.:

Petition for Expedited Approval
of Empress Capacity Agreements.
(Prehearing conference)

PRESENT: Chairman Daniel C. Goldner, *Presiding*
Alexander Speidel, Esq./*PUC Legal Advisor*
Doreen Borden, Clerk

APPEARANCES: **Reptg. Northern Utilities, Inc.**
Patrick H. Taylor, Esq.

Reptg. Residential Ratepayers:

Michael J. Crouse, Esq.
Marc H. Vatter, Dir./Economics & Finance
Office of Consumer Advocate

Reptg. New Hampshire Dept. of Energy:

Mary E. Schwarzer, Esq.
Paul B. Dexter, Esq./Legal Director
Faisal Deen Arif, Dir./Gas Division
Ashraful Alam, Gas Division
(Regulatory Support Division)

Court Reporter: Steven E. Patnaude, LCR No. 52

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P R O C E E D I N G

CHAIRMAN GOLDNER: Okay. Good

afternoon. This is the prehearing conference for the Docket DG 23-087, the Commission review proceeding for the Northern Utilities' Petition for Approval of the Empress Capacity Agreements between the Company and the Portland and TransCanada Pipeline Systems, named after the Town of Empress, Alberta, Canada, in the western Canadian gas fields where the capacity path originates. Northern's Petition was filed on October 6, 2023.

I'm serving today as Presiding Officer, as you can see, by myself.

This prehearing conference is being held pursuant to the Order of Notice issued by the Commission on October 12th, 2023, and the hearing guidelines. The Office of the Consumer Advocate filed its Letter of Participation on October 9th. Northern filed its affidavit and publication on October 23rd. The New Hampshire Department of Energy filed a Technical Statement by Dr. Arif and Mr. Alam regarding the DOE's preliminary technical positions for this matter

1 on November 3rd.

2 Before taking appearances, I'd like to
3 offer the following framework for today's
4 proceeding. I would invite the Company, the OCA,
5 and the DOE to make opening statements. As a
6 part of these opening statements, I would ask
7 that the OCA and the DOE indicate their positions
8 regarding the Company's Motion for Confidential
9 Treatment, and invite the Company to advocate for
10 approval of the same.

11 Also, it's the Commission's intent to
12 have the parties' proposal for a procedural
13 schedule no later than November 15th, in light of
14 the Company's request for disposition of this
15 Petition no later than January 26th, 2024.

16 Following the statements of position, I
17 have some preliminary questions for the Company
18 and other parties, or I may have.

19 And I'll just pause there and see if
20 there are any objections to this approach?

21 *[No verbal response.]*

22 CHAIRMAN GOLDNER: All good?

23 MR. TAYLOR: No objection.

24 CHAIRMAN GOLDNER: Thank you. Okay.

1 In that case, let's proceed, starting with the
2 Company for appearances.

3 MR. TAYLOR: Good afternoon,
4 Commissioner. Patrick Taylor, on behalf of
5 Northern Utilities, Inc.

6 CHAIRMAN GOLDNER: Thank you. And the
7 Office of the Consumer Advocate?

8 MR. CROUSE: Good afternoon, Chairman
9 Goldner. My name is Michael Crouse, Staff
10 Attorney, on behalf of the Office of the Consumer
11 Advocate. Joining me today is our Director of
12 Economics, Marc Vatter.

13 CHAIRMAN GOLDNER: Very good. And the
14 New Hampshire Department of Energy?

15 MS. SCHWARZER: Good morning [sic], Mr.
16 Chairman. Mary Schwarzer, Staff Attorney for the
17 Department of Energy. With me as co-counsel is
18 Legal Director, Paul Dexter, also Gas Director,
19 Faisal Deen Arif, and Utility Analyst Ashraful
20 Alam.

21 CHAIRMAN GOLDNER: Excellent. Very
22 good. So, now, we can move to statements of
23 initial position, and remembering to talk about
24 the Motion for Confidential Treatment, beginning

1 with the Company.

2 MR. TAYLOR: Good afternoon,
3 Commissioner.

4 So, as explained in the Company's
5 Petition, Unitil is seeking approval to enter
6 into the capacity agreements that will provide
7 Northern the ability to add 12,500 decatherms per
8 day of incremental capacity to the Company's gas
9 supply portfolio beginning April 1st, 2024. And,
10 of course, the Company has a system that spans
11 both New Hampshire and Maine. So, when I talk
12 about Northern's portfolio, I do talk about the
13 Company as a whole, some of which will be
14 apportioned to New Hampshire. And, based upon
15 the current -- the Company's current design year
16 forecast, approximately 5,007 decatherms per day
17 of the proposed capacity would be supported by
18 Northern's customers.

19 There are several contracts before the
20 Commission when we talk about the Empress
21 Capacity Agreements.

22 One is with PNGTS, that is a Firm
23 Transformation Agreement for service beginning
24 April 1st, 2024. And this agreement is subject

1 to what is sometimes referred to as a "regulatory
2 out" provision, and, under that provision, Unitil
3 can cancel, without penalty, if it does not
4 obtain regulatory approval that's acceptable to
5 the Company prior to February 1st, 2024.

6 There are also agreements with
7 TransCanada Pipeline before the Commission.
8 There is a 2024 Precedent Agreement and Firm
9 Transformation Agreement before the Commission
10 for service beginning April 1st, 2024, through
11 November -- I'm sorry -- October 31st, 2027.
12 And, then, another Precedent Agreement and Firm
13 Transformation Agreement beginning November 1st,
14 2027, that would go through March 1st, 2054. I
15 know that's a very long time to look out. And,
16 cumulatively, those agreements are for a 30-year
17 term.

18 The request before the Commission today
19 is similar to that brought forth by the Company
20 in DG 19-116. There's also precedent for the
21 Commission reviewing such agreements in DG
22 14-830, in which the Commission approved a
23 long-term capacity contract proposed by Liberty
24 Utilities.

1 And, so, even though the Company is
2 mindful that there's no specific requirement in
3 the rules or the governing legislation that the
4 Company submit these agreements for approval by
5 the Commission, there is precedent. And the
6 Commission has found that it has the authority to
7 review these agreements under RSA 374:1 and
8 374:2.

9 And, so, you know, in this case, there
10 are several factors that I think are similar, or
11 I think that, as a general matter, these
12 agreements are very similar to what we brought
13 before the Commission in 2019, in that there is
14 the PNGTS Agreement, a "regulatory out"
15 provision. And, under the TCPL Agreements, there
16 are certain pre-service costs. And we made a
17 request for Commission approval to include those
18 in the cost of gas, and that was also taken up by
19 the Commission in 2019.

20 And, so, we do think that it's prudent
21 to bring these agreements before the Commission,
22 and that it's appropriate for the Commission to
23 review them.

24 With respect to the Motion for

1 Confidential Treatment, I won't get into each
2 element that we have requested confidential
3 treatment for, other than to say that these are
4 commercial terms and financial terms that are
5 very commonly granted confidential treatment by
6 the Commission. We have been, I think, quite --
7 quite rigorous in our redaction of these terms.
8 And, if you look at the materials, you'll see
9 that we actually have redacted very little, and
10 have really just tried to keep it to the pricing
11 terms and analyses that would show our evaluation
12 of commercial terms. And, so, we really just
13 kept it to a minimum, and limited it to numbers
14 and analyses that we are very confident are
15 confidential and not in the public record, and
16 would do harm both to the Company and to its
17 counterparties if they were disclosed publicly.

18 CHAIRMAN GOLDNER: Anything else, Mr.
19 Taylor?

20 MR. TAYLOR: That's it. Thank you.

21 CHAIRMAN GOLDNER: Okay. Thank you.
22 Okay. Thank you. Let's move to the Office of
23 the Consumer Advocate.

24 MR. CROUSE: Thank you, Commissioner.

1 Generally speaking, the Office of the
2 Consumer Advocate is supportive of the Empress
3 Capacity Agreements. We believe that there's a
4 lot of potential that can be benefited both to
5 New Hampshire and the residential ratepayers
6 residing within.

7 The only concern that the Office of the
8 Consumer Advocate preliminarily takes is in
9 regards to the TCPL PA, or TransCanada Pipeline
10 Precedent Agreement. It just stated that, if
11 it's canceled for any reason, TransCanada
12 Pipeline has the right to recover pre-service and
13 cancellation costs.

14 In our view, we kind of view that as
15 anti-CWIP. And we would have some concerns that
16 we'd want to talk with both the Department and
17 the Commission -- the Company about.

18 But, other than that, we're just
19 excited to review this and get an exact number of
20 the benefits we're passing on to residential
21 ratepayers.

22 Thank you.

23 CHAIRMAN GOLDNER: Okay. Thank you,
24 Attorney Crouse. And did you have any comments

1 on confidential treatment, Attorney Crouse?

2 MR. CROUSE: Yes. In regards to the
3 confidential treatment, the OCA does not have any
4 objections.

5 And, regarding the procedural schedule,
6 I believe the Department will be addressing that
7 shortly.

8 CHAIRMAN GOLDNER: Okay.

9 MR. CROUSE: Thank you.

10 CHAIRMAN GOLDNER: And we'll turn now
11 to the New Hampshire Department of Energy, and
12 Attorney Schwarzer.

13 MS. SCHWARZER: Thank you, Mr.
14 Chairman.

15 As an initial matter, the Department
16 has no objection to Northern's request for
17 confidential treatment, to get that out of the
18 way.

19 We have spent some time with the
20 parties to put together a proposed procedural
21 schedule. And I do have hard copies to provide
22 to the Commission at this time, with your
23 permission? Other parties have them already.

24 CHAIRMAN GOLDNER: Okay. Thank you.

1 You can approach.

2 *[Atty. Schwarzer distributing document*
3 *to Chairman Goldner.]*

4 MS. SCHWARZER: Overall, this schedule
5 would propose a hearing on January 18th,
6 understanding that Northern has asked for an
7 order no later than January 26th. We have worked
8 hard to get dates that will work for discovery.
9 You'll see several rounds of discovery. And we
10 are dealing with a initial period in January
11 where our witness would not be available, which
12 is why we've moved this forward.

13 We think this gives everybody an
14 opportunity to conduct discovery, and to provide
15 the Commission with the information it will need
16 to make a decision.

17 CHAIRMAN GOLDNER: Okay. Thank you.

18 MS. SCHWARZER: With regards to the
19 Department's position, we have no position on the
20 preliminary agreement, per se, at this time.
21 Although, we look forward to working with the
22 parties to explore this complex matter at issue
23 in this expedited docket.

24 We have identified several key issues

1 in this docket. Primarily, the termination
2 costs, aka "cancellation fees", which are
3 certainly sizable, and confidential. But were
4 also addressed in Docket Number DG 19-116, or
5 similar costs.

6 This Agreement has a 30-year term,
7 which is longer. And it has sort of a two-tiered
8 nature, in that there's a PNGTS date of April '24
9 through March 2027, and a TCPL date from March
10 2027 to 2054.

11 We also have concerns and questions
12 about the allocation for both gas and the risk of
13 termination costs between New Hampshire and
14 Maine. So, we look forward to exploring those.
15 And we are interested in potential quantification
16 of the qualitative benefits that Northern has
17 identified in its Petition.

18 We certainly believe it's appropriate
19 for the Commission to conduct this hearing, and
20 to consider the efforts that Northern is making
21 towards reliability and flexibility. There's
22 precedents, as Northern has identified. And
23 Northern has also shared with us that it has a
24 current need for the gas that would be acquired.

1 CHAIRMAN GOLDNER: And I just want to
2 make sure I understand, Attorney Schwarzer. I
3 think you're saying you have no position now,
4 here, early on in the process. But you expect to
5 take a position before the end of the process?

6 MS. SCHWARZER: Yes. We will take a
7 position. We simply have no position at this
8 time.

9 CHAIRMAN GOLDNER: It is early. Okay.
10 Very good. And I thank -- the Commission would
11 just like to thank Dr. Arif and Mr. Alam for
12 their very helpful technical statement filed last
13 Friday. So, we found those to be very helpful.

14 Does the OCA have anything further,
15 based on DOE's comments?

16 MR. CROUSE: At this time, no further
17 comments.

18 CHAIRMAN GOLDNER: Okay. And maybe
19 we'll just keep the questions kind of limited
20 today.

21 But would any of the parties care to
22 elaborate on the current gas market conditions in
23 northern New England, and as it relates to the
24 Empress proposal? Would anyone like to comment

1 on that?

2 MR. TAYLOR: I can tell you that I
3 personally am not the person who is best equipped
4 to give you that answer. I do have Francis Wells
5 with me today. He is the witness who supported
6 the analysis. And he could provide an answer to
7 you.

8 I'm not sure if you're asking us, given
9 this is a prehearing conference, we typically
10 don't give witness testimony. So, we're happy to
11 answer the question just from the table here.
12 But I don't know you would need him to be sworn
13 in or not or if you're just seeking information?

14 CHAIRMAN GOLDNER: No, just seeking
15 information. That would be excellent. Thank
16 you.

17 MR. WELLS: Good afternoon, Mr.
18 Chairman.

19 Just in reference to your question
20 about, you know, a comment on the New England
21 gas -- the New England -- I like to think of it
22 as the "New England energy supply market",
23 because of that interconnection between the power
24 market and the gas market. And, of course,

1 Northern is a gas company. But the scarcity of
2 supply, which sort of drives the New England
3 region, is really driven by the combination of
4 the need for natural gas supply of both the power
5 and gas market combined.

6 One of the challenges of the gas
7 market, I'd say in New England, is that there's
8 insufficient pipeline capacity to meet all of the
9 supply requirements of the region on the coldest
10 days of the year. And it is reliant on really
11 very low load factor utilization of some really
12 expensive, you know, LNG import facilities. And,
13 so, that provides -- that creates sort of a
14 commercial challenge for those entities, as well
15 as a high-price environment, especially in the
16 wintertime, for the New England -- the entire New
17 England market, whether it's the power side of
18 the market or the gas side of the market.

19 And, so, these are the -- you know,
20 this is the sort of the environment that Northern
21 is trying to operate in. And, you know, our
22 purpose in acquiring the Empress capacity was
23 more to be proactive in trying to manage the
24 inherent risks due to the current environment.

1 CHAIRMAN GOLDNER: Thank you,
2 Mr. Wells. Very helpful.

3 Would the OCA or the DOE kind of care
4 to comment on the same question?

5 MR. CROUSE: The OCA doesn't have any
6 further comments to add. Thank you.

7 CHAIRMAN GOLDNER: Okay. Thank you,
8 Attorney Crouse.

9 MS. SCHWARZER: No thank you, Mr.
10 Chairman.

11 CHAIRMAN GOLDNER: Okay. Very good.

12 I'll just turn my attention to the
13 procedural schedule. And I'm looking at the
14 proposal. Just a moment please.

15 *[Short pause.]*

16 CHAIRMAN GOLDNER: Just a moment, let
17 me confer with Attorney Speidel.

18 *[Chairman Goldner and Atty. Speidel*
19 *conferring.]*

20 CHAIRMAN GOLDNER: Okay. So, just
21 checking quickly with the Office of the Consumer
22 Advocate and the Company. Is this -- is this
23 schedule acceptable to all the parties?

24 MR. TAYLOR: We're comfortable with it,

1 yes.

2 CHAIRMAN GOLDNER: Okay.

3 MR. CROUSE: The OCA was also able to
4 accommodate it, thanks to the Department and the
5 Company's willingness to accommodate the week of
6 January 15th, due to our limited availability.

7 CHAIRMAN GOLDNER: Okay. Excellent.

8 So, without my fellow Commissioners
9 here, it looks -- at the moment, the 18th looks
10 open, but I need to check on Commissioner
11 availability. So, I can't rule on that from the
12 Bench. But we'll put something out shortly.

13 It does leave a very limited time
14 between the hearing and the order. But I think
15 we'll work to accommodate this schedule, assuming
16 the Commissioners are available on the 18th.

17 MR. CROUSE: Excuse me, Chairman
18 Goldner?

19 CHAIRMAN GOLDNER: Yes.

20 MR. CROUSE: If it's helpful to the
21 Bench, Donald Kreis would be the only one from
22 the OCA available to meet that week. And the
23 19th is the only alternative we could offer.

24 CHAIRMAN GOLDNER: Okay.

1 MR. CROUSE: Thank you.

2 CHAIRMAN GOLDNER: That's helpful,
3 Attorney Crouse. Thank you.

4 All right. And the Department and the
5 Company would be available on the 19th, if that
6 came to pass?

7 MS. SCHWARZER: We'd be happy to check
8 our schedules right now, Your Honor.

9 CHAIRMAN GOLDNER: I was going to start
10 the hearing at 4:00 p.m., if that's okay? It's a
11 Friday, you know. So, probably not.

12 MS. SCHWARZER: Sounds great.

13 CHAIRMAN GOLDNER: Okay. It would
14 be -- do the parties anticipate a full day or a
15 half day for the proceeding?

16 MR. CROUSE: My impression was a half
17 day. But we're willing to be accommodating to
18 the other parties.

19 CHAIRMAN GOLDNER: Okay.

20 MS. SCHWARZER: We believe it would
21 likely be half a day. But, perhaps, out of an
22 abundance of caution, it could be the first half
23 of the day?

24 CHAIRMAN GOLDNER: Oh, of course, yes.

1 For sure.

2 Attorney Taylor, a full day or half
3 day?

4 MR. TAYLOR: I agree that, and my hope
5 certainly is, this could be done in a half a day.
6 And I'm certainly open to the idea of it being
7 the first part of the day.

8 And I just checked our calendars, and
9 we are available on the 19th, if necessary.

10 CHAIRMAN GOLDNER: The 19th. Okay.
11 So, the Commission will work towards either the
12 hearing at 9:00 a.m. on 18th or the 19th. And
13 we'll perhaps block out the full day, and then --
14 and perhaps anticipate a half day, but block out
15 the full day.

16 MS. SCHWARZER: And, Mr. Chairman, the
17 Department is available on the 18th or the 19th.

18 CHAIRMAN GOLDNER: Both, okay. Okay,
19 that's what I had understood. But thank you for
20 verifying.

21 All right. Very good. Okay. Was
22 there any concerns with filing the procedural
23 schedule by November 15th? I guess, this would
24 just be filed by then?

1 MS. SCHWARZER: Sure. We'll be happy
2 to file that for you.

3 Perhaps the Commission could let us
4 know or we can check with the Clerk's Office as
5 to which date, hearing date the Commission would
6 prefer, or we'll include both?

7 CHAIRMAN GOLDNER: Okay. So, we --
8 *[Chairman Goldner and Atty. Speidel*
9 *conferring.]*

10 CHAIRMAN GOLDNER: Okay. Due to
11 Commissioner schedules, we're having some
12 scheduling challenges of our own here. But I
13 think, for the filing on the 15th, I think this
14 filing would work well. So, I would encourage
15 the filing as is.

16 MS. SCHWARZER: Certainly. I can
17 identify the other alternative date as well, if
18 that's helpful.

19 CHAIRMAN GOLDNER: Oh, thank you. That
20 would be perfect.

21 And, then, because of some travel in
22 hard-to-reach places, it may be a few days after
23 that we can confirm everything. But we'll
24 certainly confirm as quickly as we can. But

1 either the 18th or 19th will work.

2 MS. SCHWARZER: Thank you, Mr.

3 Chairman.

4 CHAIRMAN GOLDNER: All right. Okay.

5 I'm just checking here. Is there anything else
6 that we need to cover today? I'll just offer
7 that we'll issue a prehearing order posthearing.
8 And I just want to make sure that we've covered
9 everything before the parties will probably
10 meet -- well, you may be meeting to discuss or
11 you may not be. But is there anything else that
12 we need to cover here?

13 *[Atty. Crouse indicating in the*
14 *negative.]*

15 CHAIRMAN GOLDNER: No?

16 MS. SCHWARZER: No thank you, Mr.

17 Chairman.

18 CHAIRMAN GOLDNER: Okay. Well, thank
19 you very much. If there's no further matters,
20 I'll conclude the prehearing conference. And we
21 are adjourned.

22 ***(Whereupon the prehearing conference***
23 ***was adjourned at 1:22 p.m.)***

24