

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

DOCKET NO. DG 24-050

**Objection to the Department of Energy’s Motion to Make
Northern Utilities, Inc. a Mandatory Party**

On May 3, 2024, the Department of Energy (the “Department”) submitted a “Motion to Make Northern Utilities, Inc. a Mandatory Party” to the above-captioned proceeding, citing to RSA 541-A:32 and NH Administrative Rule Puc 203.17 as legal authority. Northern Utilities, Inc. (“Northern” or “the Company”) objects to the Department’s Motion for the reasons stated herein. The Department’s Motion has no support in the cited statute or rule, and fails to offer any compelling justification for the extraordinary relief requested by the Department.

In support of this Motion, Northern states as follows:

I. Background

1. On March 26, 2024, Portland Natural Gas Transmission System (“PNGTS”), TC Pipelines, LP, BlackRock Global Infrastructure Fund IV, SCSp, and North Haven Infrastructure Partners III (AIV-B) SCSp (collectively, the “Petitioners”) jointly petitioned the New Hampshire Public Utilities Commission (the “Commission”) for approval of an upstream change of ownership of PNGTS. The Petitioners stated that they submitted the joint petition pursuant to RSA 162-H:8, RSA 162-H:5, RSA 369:8,II(b)(1), and RSA 374:30.

2. The Department filed a Notice of Appearance in the above-captioned docket on March 29, 2024. The Commission thereafter issued a Notice of Hearing on April 17, 2024. In its Notice of Hearing, the Commission directed the Department to file its position regarding the joint petition, including whether the proposed standard meets the statutory “for the public good” standard. The Notice of Hearing also established a deadline of May 3, 2024 for petitions to

intervene in this docket.

3. On May 3, 2024, the Department submitted a Technical Statement indicating that it had reviewed, *inter alia*, the proposed transaction and “relevant contracts,” and that it had issued two rounds of discovery to the Petitioners. Several of the Petitioners’ responses to discovery requests are quoted at length in the Technical Statement, and all discovery requests are provided as attachments to the Technical Statement. After performing an analysis based on discovery and a review of materials submitted by the Petitioners, the Department concluded “the proposed transaction will not result in an adverse impact and is consistent with the public good.” DG 24-050, Technical Statement at 9.

4. At or about the time that it submitted its Technical Statement, the Department filed the Motion to which Northern now objects, positing that Northern’s “rights, duties, privileges and other substantial rights may be affected by this proceeding.” DG 24-050, Department Motion at 2. The Department further states, as support for the relief requested in its Motion: “In the opinion of the Department, Northern’s input . . . is an essential component of a complete record in this docket”; “making Northern a mandatory party has the additional benefit of . . . providing the Department with a well-established discovery process . . . to formally document Northern’s position;” and “In the opinion of the Department, the Commission and the Department would both benefit from an opportunity to ask Northern questions at hearing and thus create a public record regarding the position of a shipper directly engaged with PNGTS” Id. at 2-3.

II. There is No Basis for Making Northern a Mandatory Party

5. The Department requests that the Commission compel Northern to be a “mandatory party” to this proceeding, and thereafter made subject to discovery and questioning

under oath at hearing, pursuant to RSA 541-A:32 (“Intervention”) and Puc 203.17 (“Intervention”). Under RSA 542-A:32, the Commission “shall grant one or more petitions for intervention if . . . [t]he petition states facts that the *petitioner’s* right, duties, privileges, immunities or other substantial interests may be affected by the proceeding or that the *petitioner* qualifies as an intervenor under any provision of the law.” RSA 542-A:32, I(b) (emphasis added). The plain language of the statute only allows for consideration of a petition for intervention *submitted by the party whose interests may be affected*. It does not create a mechanism pursuant to which a party such as the Department can, by motion, seek to compel the mandatory participation in a docket of an entity based upon the assertion that such entity’s rights “may be affected.” Similarly, RSA 542-A:32 and Puc 203.17 do not vest in the Commission the authority to compel mandatory party status in a docket. The discretion to petition (or not petition) for intervention in a proceeding is plainly left only to the entity or person whose rights may be affected.

6. The Department cites to several recent dockets in which the Commission directed that certain entities be made “mandatory parties” in a docket. None of these orders rely on RSA 542-A:32 as authority for compelling mandatory party status. In each of these cases, the subject matter of the dockets pertained directly to the operations of the entities made “mandatory parties.” For example, in DW 22-012, the Commission made the Cities of Manchester and Londonderry mandatory parties because the underlying petition sought to transfer a sewer franchise and related assets *to those cities*. DW 22-012, Notice of Prehearing Conference at 1-3. Thus, in that case, the Commission needed to determine, *inter alia*, “whether Manchester and Londonderry have the requisite managerial, technical, and financial expertise to provide the sewer services now provided by [petitioner], so that transfer of the relevant portions of

[petitioner's] franchise to Manchester and Londonderry, respectively, would be for the public good." Id. at 3.

7. The circumstances in the cases cited by the Department are clearly distinguishable from those described in the Department's motion. The Department does not assert that Northern is assuming any new rights or operational obligations that require Commission review. Rather, it is the "opinion" of the Department that Northern's "position" on the transaction proposed by the Petitioners should be in the public record. In its Technical Statement, the Department identifies four current agreements between Northern and PNGTS. However, Northern's rights and obligations under those agreements are not impacted by an upstream transfer of ownership, and the Department has not asserted otherwise.

8. The Department has offered no compelling explanation as to *why* Northern should be compelled to offer a "position" into the public record. It has provided no legal standard stipulating that a Commission determination of the public good in this instance must include an analysis and position statement by a utility customer. The Department has already concluded that the proposed transaction is consistent with the public good; it is unclear why the public record must also include a "position statement" by Northern.

9. The relief requested by the Department is unusual and extraordinary. If granted, the Department would create precedent whereby a statute and rule intended to allow participation in dockets by petitioners whose rights may be affected by the outcome of a docket is transformed into a mechanism for compelling mandatory party status (including discovery and hearing obligations) simply because another party is of the "opinion" that the target entity's "position" may be of value. Northern believes that RSA 542-A:32 and Puc 203.17 do not contemplate or permit such a process. More broadly, to the extent that the Commission has they authority to

order mandatory party status, it should reserve the exercise of that authority for instances in which a party's participation is integral to the development and outcome of the docket.

10. In its Notice of Hearing, the Commission provided interested parties an opportunity to intervene in this docket. Northern made the decision not to intervene. To the extent that the Company wishes to offer comments prior to the hearing in this matter, it will provide public comments.

11. Northern notes that the Department did not request that Northern intervene in this docket, nor did the Department seek the Company's assent to its motion. As the Department acknowledges in its motion, it only reached out to Northern on an "informal" basis approximately a month ago, and Northern reasonably indicated that it did not have a position to share with the Department at that time. DG 24-050, Department Motion at 3. As noted above, to the extent that Northern wishes to express any further comment in this docket, it can do so through public comments.

12. For the reasons stated above, the Commission should deny the Department's Motion to Make Northern Utilities, Inc. a Mandatory Party.

Respectfully submitted,

NORTHERN UTILITIES, INC.

By Its Attorney,



Patrick H. Taylor (NH Bar # 17171)
Unitil Service Corp
6 Liberty Lane
Hampton, NH 03842-1720
Telephone: (603) 773-6544
Email: taylorp@unitil.com

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