

DG 99-050

**NORTHERN UTILITIES, INC.**

**Wells, Maine LNG Facility**

**Order Approving Procedural Schedule,  
Motion for Protective Treatment and Interventions**

**O R D E R    N O.    23,222**

**June 7, 1999**

**APPEARANCES:** Paul B. Dexter, Esq. of LeBoeuf, Lamb, Greene & MacRae, LLP representing Northern Utilities, Inc.; Kenneth E. Traum, Finance Director, Office of Consumer Advocate on behalf of Residential Utility Customers; and Larry S. Eckhaus, Esq. for the Staff of the New Hampshire Public Utilities Commission.

**I.    PROCEDURAL HISTORY**

On August 26, 1996 the New Hampshire Public Utilities Commission (Commission) approved a Settlement Agreement regarding Northern Utilities, Inc.'s (Northern) request for approval of a Precedent Agreement with its affiliate, Granite State Gas Transmission, Inc. (Granite) for development of a 2 BCF LNG storage facility in Wells, Maine. Re Northern Utilities, Inc. 81 NH PUC 648 (1996).<sup>1</sup>

Almost two years later, on May 27, 1998, the Federal Energy Regulatory Commission (FERC) approved Granite's application for a certificate of public convenience and necessity (Certificate) to construct and operate the above facility.

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<sup>1</sup>Both Northern and Granite are wholly owned subsidiaries of Bay State Gas (Bay State), which was recently acquired by (NIPSCO). Re Northern Utilities, Inc. Order No. 22,983(July 20, 1998).

Granite State Gas Transmission, Inc., 83 FERC ¶ 61,194, reh'g denied, 84 FERC ¶ 61,285 (1998)<sup>2</sup>

On February 16, 1999, Northern requested that Granite release it from its obligation under the Precedent Agreement to execute the LNG Storage Contract due to changed circumstances, and more advantageous contracts for peaking supply. Northern indicated that it recognized that the LNG Storage Contract required an exit fee for early termination and requested confirmation from Granite as to the costs to be included.

On February 19, 1999, Granite agreed to release Northern from its obligation if it receives an order from the FERC acceptable to Granite regarding an exit fee which would be amortized over a 10-year period with carrying costs. Granite estimated the present value of the exit fee costs to total approximately \$11.6 million through May 31, 1999.

On March 5, 1999, Granite filed a Petition for Declaratory Order (Petition) with the FERC requesting that the FERC issue an order that Granite may recover a contract authorized exit fee from Northern and requested a decision by June 1, 1999. Granite State Gas Transmission, Inc. Docket No. CP 99-238-000.

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<sup>2</sup>That Order is now on appeal before the U.S. Circuit Court for the D.C. Circuit. No Tanks, Inc. v. FERC, Case No. 98-1463 (D.C. Cir. filed Oct. 2, 1998).

On March 31, 1999, Northern filed a Motion for Protective Order, requesting confidential treatment of information regarding: the price, the terms and the flexibility of Northern's contracts with Distrigas of Massachusetts (DOMAC); the terms and conditions of a third option which has not yet been finalized; and the computer model runs demonstrating the comparative costs of the gas supply alternatives. In its Motion, Northern states that the documents contain confidential commercial information and trade secrets which fall within the exemption from public disclosure of RSA 91-A:5, IV and N.H. Admin. Rules, Puc 204.06. Northern also states that it does not disclose the identified information and terms to anyone outside its corporate affiliates and representatives.

On April 1, 1999, the Commission intervened in the FERC proceeding in accordance with FERC Rules 207, 211 and 214; protested the Petition; requested that FERC stay the authority it granted Granite in the Certificate; and requested that FERC set the matter for a hearing, with a schedule to be determined after the Commission concludes its own investigation and issues an order regarding its jurisdictional issues concerning Northern in this proceeding.

In accordance with the Order of Notice issued April 2, 1999 in this proceeding, a Prehearing Conference was held on April 22, 1999.

On May 7, 1999, the Maine Public Utilities Commission (MPUC) petitioned for status as a Late-Filed Limited Intervenor, to offer comment on the issues in the proceeding only if it becomes appropriate given Maine's responsibility for this matter in an adjoining jurisdiction and the potential for mutual impact by some of the issues.

## **II. POSITIONS OF THE PARTIES AND STAFF**

### **A. Northern Utilities**

Northern submits that this case raises two distinct issues. The first issue concerns the reference to stranded costs in the order in Docket DE 95-346 which approved the settlement. Northern argues that by making no determination on stranded costs in DE 95-346, it was the settling parties' intent and that of the Commission in its approval of the settlement, that stranded costs referred to therein related to costs that became stranded as a result of retail choice or unbundling.

The second issue presented by Northern is in regard to their own actions since approval of the Precedent Agreement in 1996. Northern asserts that it has taken steps to ensure service in a least cost and reliable fashion and that it entered into the Wells LNG Precedent Agreement for that purpose. After the Commission issued its order approving the Precedent Agreement, Northern maintains that it continued to go to the market with RFPs, to see if there were alternative resources to the LNG

facility. Northern asserts that as a result of the FERC's decision issuing the certificate to construct the facility, it received bids for suppliers that would result in lower overall costs to its customers and would provide adequate reliability. As part of pursuing those resources, Northern states that it asked to be let out of its contract with its affiliate, Granite State, and agreed to pay the exit fee that was set forth in the Storage Contract appended to the Precedent Agreement. Over a ten year planning horizon, Northern maintains that the net benefit in real terms from using the alternate supply resources is between \$15 and \$20 million.

**B. Office of Consumer Advocate**

The OCA's preliminary position is that ratepayers should not be required to pay for all or most of the costs of the LNG tank, in part because stockholders would also have benefited from the completed tank. In support of its position, the OCA cited the anti-CWIP statute, RSA 378:30-A, the settlement in Docket DR 95-345/346 which left open the issues of stranded costs, the affiliation between Northern and Granite, and how that affiliation fits into Northern's request in this docket.

**C. Staff**

The Commission Staff did not present a position, but noted that the Commission has intervened in the proceeding at FERC, where it raised the same issues contained in the Order of

Notice and requested the FERC to stay its proceedings pending a final Commission Order. The Staff intends to investigate those issues as well as Northern's management of its upstream capacity vis-a-vis the Wells LNG facility in conjunction with Staff's investigation in Docket DR 98-135 regarding Northern's Integrated Resource Plan.

### III. COMMISSION ANALYSIS

#### A. Scope

As stated in the Order of Notice, this proceeding raises, *inter alia*, issues related to: Northern's management of its upstream capacity; Northern's obligations under the Precedent Agreement as approved by the Commission; whether stranded capacity or costs exist pursuant to the Precedent Agreement, and, if so, the level of such costs and whether they may be passed on to Northern's customers; the prudence of Northern's actions; whether the size of the proposed Wells LNG facility is appropriate; whether the alternative supplies Northern has contracted for with Distrigas of Massachusetts meet the requirement of Puc 506.03; and whether they provide the same degree of flexibility and reliability of gas supply that can be provided by the Wells LNG facility.

The Commission's investigation into Northern's Integrated Resource Plan (IRP) in Docket DE 98-135 may be a more appropriate forum for addressing some of the above issues. The

partial procedural schedule set forth below, which was agreed to by the Parties and Staff, allows for the conducting of joint discovery and technical sessions with both the IRP and this docket.

**B. Motion for Protective Order**

With regard to Northern's Motion for Protective Order, the Commission recognizes that the information identified therein is critical to the review by the Commission, the Commission Staff (Staff) and the Office of Consumer Advocate (OCA). This is the type of information which was anticipated would be protected when N.H. Admin. Rules, Puc 204.06 was adopted. The Commission also recognizes that the information contained in the filing is sensitive commercial information in a competitive market. Thus, based on Northern's representations, under the balancing test we have applied in prior cases, e.g., EnergyNorth Natural Gas, Inc. Order 23,160 (March 9, 1999), Re NET (Auditel), 80 NHPUC 437 (1995), Re Eastern Utilities Associates, 76 NHPUC 236 (1991), we find that the benefits to Northern of non-disclosure in this case outweigh the benefits to the public of disclosure. The information, therefore, is exempt from public disclosure pursuant to RSA 91-A:5,IV and N.H. Admin. Rules, Puc 204.06.

We also approve the limited intervention of the MPUC. The issues in this proceeding may affect Northern's customers in Maine who are subject to MPUC jurisdiction. We request that the

Staff monitor any proceedings before the MPUC regarding these matters and advise the Commission if it determines that intervention in that forum would be prudent.

A copy of this Order shall be forwarded to the FERC so as to keep it informed of our progress in this matter.

**Based upon the foregoing, it is hereby**

**ORDERED,** that the following Procedural Schedule be adopted:

Data Requests to Northern	Rolling Basis to May 14, 1999
Northern's Responses	2 Week Rolling Basis to May 28, 1999
Update Northern IRP (In Docket DE 98-135)	May 19, 1999
Data Requests on IRP	June 2, 1999
Northern Responses	June 16, 1999
Technical Settlement Conference	June 22, 1999

In the event a Settlement is not reached, the Parties and Staff shall notify the Commission and the remainder of the procedural schedule, including hearings on the merits, shall be established; and it is

**FURTHER ORDERED,** that Northern's Motion for Protective Treatment is GRANTED to allow Staff and the OCA to review fully Northern's filing and to protect from public disclosure the information delineated above which is relevant to the pending Northern proceeding; and it is



**FURTHER ORDERED,** that the late-filed Petition for limited intervention by the Maine Public Utilities Commission is granted.

By order of the Public Utilities Commission of New Hampshire this seventh day of June, 1999.

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Douglas L. Patch  
Chairman

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Susan S. Geiger  
Commissioner

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Nancy Brockway  
Commissioner

Attested by:

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Thomas B. Getz  
Executive Director and Secretary