

DE 98-195

ENERGYNORTH NATURAL GAS, INC.

Petition for Authority to Operate in the City of Berlin and  
Approval of Special Contract with the  
New Hampshire Department of Corrections

Order Granting Franchise and  
Approving Special Contract No. 99-01

O R D E R    N O.    23,302

September 20, 1999

**APPEARANCES:** McLane, Graf, Raulerson & Middleton by Steven V. Camerino, Esq. on behalf of EnergyNorth Natural Gas, Inc.; the Office of the Consumer Advocate by F. Anne Ross, Esq. on behalf of residential utility consumers; and Larry S. Eckhaus, Esq. for the Staff of the New Hampshire Public Utilities Commission.

**I.    PROCEDURAL HISTORY**

On November 3, 1998, EnergyNorth Natural Gas, Inc. (ENGI) filed with the New Hampshire Public Utilities Commission (Commission), pursuant to RSA 374:22 and RSA 374:26, a Petition for Authority to Operate in the City of Berlin (Petition). The prefiled testimony of Rate Analyst Mark G. Savoie accompanied the Petition. ENGI reported that the State of New Hampshire, Department of Corrections (Department) is currently constructing in the City of Berlin a new prison complex, the North Country Medium Security Prison (Prison), which the Department intends to equip with facilities that utilize natural gas. The Prison will be located approximately one-half mile from the Portland Natural Gas Transmission System (PNGTS). The Department has asked ENGI to provide natural gas service to the Prison.

ENGI also stated that it anticipates additional development around the Prison complex as well as interest from governmental and private organizations in Berlin which over time may result in extension of the gas distribution system. Consequently, ENGI has requested for authority to operate as a public utility in the City of Berlin.

On November 6, 1998, Staff propounded a series of thirty-two (32) interrogatories intended to elicit additional information regarding the Petition. By an Order of Notice issued November 13, 1998, the Commission scheduled a Prehearing Conference for December 11, 1998. On December 7, 1998, the City of Berlin filed a Motion to Intervene. The City of Berlin states in its motion that it is partially in favor of the petition subject to certain conditions and concerns. There were no objections to Berlin's Motion to Intervene. The Office of the Consumer Advocate (OCA) intervened on behalf of residential consumers pursuant to RSA 363:28.

At the Prehearing Conference, Staff raised issues as to whether the contract with the Department will be a special contract pursuant to RSA 378:18 and Puc 1606.01. Because the special contract between ENGI and the Department and the capacity contract between ENGI and PNGTS had not been completed, the Parties and Staff agreed to defer establishing a procedural schedule until the contracts were executed and filed with the Commission. The Parties and Staff further agreed that once the

contracts were filed, a procedural schedule would be developed to recognize ENGI's and the Department's construction and service requirements.

On January 6, 1999, the Commission held a public hearing on the Petition in Berlin. On February 9, 1999, the Commission issued Order No. 23,142 approving the Department's Motion for Intervention and deferring the procedural schedule as agreed to by the Parties and Staff.

On June 4, 1999, ENGI filed with the Commission, in accordance with Puc 1606 and RSA 378:18, a Special Contract between ENGI and the Department regarding service to the Prison. Supplemental testimony was not filed with the Special Contract. The Special Contract is for a twenty-year term and contains provisions for minimum takes and for liquidated damages due to early termination.

On June 22, 1999, the Governor and Executive Council approved the Special Contract between ENGI and the Department. On July 28, 1999, the capacity contract between ENGI and PNGTS was filed with the Commission.

On July 30, 1999, the Commission issued an Order of Notice detailing the expanded scope of the proceeding to include: the terms of the Special Contract between ENGI and the Department; the rate impact, if any, on the cost of gas; and the applicability of the terms of the capacity contract between ENGI and PNGTS to the Special Contract between ENGI and the

Department. No further Motions to Intervene were filed. On August 9, 1999, ENGI filed the Supplemental Pre-filed Testimony of Mr. Savoie. A hearing on the merits of the original Petition and the Special Contract was held on August 24, 1999. On August 27, 1999, ENGI filed responses to the Commission's Bench Requests.

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

### **1. EnergyNorth Natural Gas, Inc.**

At the hearing, ENGI's witnesses, Mr. Savoie and Donald E. Carroll, Vice President of Gas Supply, stated that the Department is completing construction of a new prison complex in Berlin which the Department intends to equip with facilities that utilize natural gas for space and water heating, clothes drying, and food preparation. The Prison will be located approximately one-half mile from the PNGTS pipeline. The Department actively sought a service provider to construct the necessary distribution facilities from the PNGTS main to the Prison complex. Consequently, ENGI petitioned the Commission for authority to operate a franchise territory in the City of Berlin and for approval of a Special Contract with the Department to provide natural gas service to the Prison.

ENGI updated the status of additional development around the Prison complex by stating that it is aware of three potential customers in the area but it has not received firm

commitments for service from any of them. However, ENGI asks that it be granted the service territory for the entire city of Berlin.

Initially, the Prison will be on the Commercial Heating Firm Sales Rate, a tariffed rate. The Prison's usage, before a planned 500 bed expansion, is anticipated at 365,000 therms per year. After the expansion, the usage is expected to increase to 495,000 therms per year. The Prison will be subject to the cost of gas rate and all applicable surcharges including surcharges related to environmental remediation. Although the rates charged to the Department for natural gas usage at the Prison are tariffed rates, ENGI and the Department negotiated other terms which deviate from ENGI's tariff and necessitate the Special Contract. These terms include: a twenty-year commitment to match the term of the capacity contract ENGI signed with PNGTS; mandatory capacity assignment should the Prison switch from firm sales service to firm transportation service; a minimum take provision of 100,000 therms per year with a deficiency multiplier of \$0.315 per therm; and an early termination clause with a schedule of liquidated damages. The liquidated damages were calculated on a net present value basis which incorporated the demand charges from the PNGTS contract and ENGI's construction costs. ENGI testified that the Special Contract is in the public good because it protects ENGI and its existing ratepayers from full cost responsibility for the entire PNGTS capacity contract,

entered into solely at this time to enable ENGI to provide service to the Prison, should the Special Contract be breached.

## **2. City of Berlin**

On November 12, 1998, the City Manager of Berlin wrote the Commission supporting and endorsing the Petition on behalf of the Mayor and City Council of Berlin. Subsequently, on December 7, 1998, Berlin filed a Motion to Intervene partially in favor of the Petition, but subject to certain conditions and concerns which were summarized in Order No. 23,142.

On February 8, 1999, Berlin filed a letter with the Commission stating that its concerns relating to the exclusivity of the franchise and the ability of Berlin to serve or act cooperatively with ENGI to extend or otherwise construct gas lines for service in Berlin have largely been satisfied. Additionally, Berlin stated that it continues to be unwavering in its support of the Petition. Berlin did not attend the August 24, 1999 hearing but communicated through Staff that any concerns it may have had have been resolved.

## **3. Office of Consumer Advocate**

The OCA did not file testimony in this proceeding; however, the OCA stated it supports ENGI's Petition. OCA also stated that the Petition appears fair to existing ratepayers.

## **4. Staff**

Staff also did not file testimony in this proceeding. Staff stated at the hearing it supports and recommends approval of ENGI's Petition and the Special Contract entered into between ENGI and the Department.

#### **5. Other Comments**

Letters in support of ENGI's petition were received from: District One Executive Councilor Raymond S. Burton; District One Senator Frederick W. King; Hank Risley, Commissioner of the Department of Corrections; George M. Bald, Commissioner of the Department of Resources and Economic Development; the Northern White Mountain Chamber of Commerce; and Donald A. Veno, Director, Division of Administration, Department of Corrections.

#### **IV. COMMISSION ANALYSIS**

After careful review of the Petition and Special Contract and testimony and exhibits offered at the August 24, 1999 hearing, we find that granting ENGI's petition for authority to operate in the City of Berlin is in the public interest. We therefore grant them permission to operate in the City of Berlin. We note that ENGI's authority to operate in the City of Berlin will not be exclusive as a matter of law. Appeal of Pub. Service Co., 141 N.H. 13 (1996). We also find that ENGI's Special Contract 99-01 with the New Hampshire Department of Corrections is reasonable and in the public good.

ENGI demonstrated that it has the managerial, technical, and financial capability to operate as a gas utility safely, reliably, and economically in the proposed service territory. Further, ENGI satisfied the Commission's concern about ENGI's ability to service the City of Berlin notwithstanding the fact that ENGI's headquarters and operations are quite a distance away.

We find the terms and conditions of the Special Contract to be just and consistent with the public interest, pursuant to RSA 378:18. The system expansion would not be economically feasible but for the must-take provision in the Special Contract which necessitates a deviation from ENGI's current effective tariff. Additionally, mandatory assignment and the liquidated damages clauses within the Special Contract protect existing ratepayers should the Department breach the contract by not taking the minimum volumes or breach for other reasons.

We are approving the Special Contract with the terms negotiated between ENGI and the Department, however, the Commission defers its policy on capacity assignment in a restructured natural gas environment to another docket. Specifically, the Commission anticipates that capacity assignment will be addressed in Docket DE 98-124, the Gas Unbundling proceeding. The issue of capacity assignment was not a litigated issue in this proceeding and the Commission's decision to approve



mandatory assignment in this limited instance should not be construed by any party as setting any precedent.

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

**ORDERED**, that pursuant to RSA 374:26 ENGI's Petition for Authority to Operate in the City of Berlin is Granted; and it is

**FURTHER ORDERED**, that the Special Contract between ENGI and the Department of Corrections is hereby APPROVED; and it is

**FURTHER ORDERED**, that ENGI shall file a compliance tariff with the Commission within ten days of the date of this order, in accordance with N.H. Admin. Rules, Puc 1603.02(b).

By order of the Public Utilities Commission of New  
Hampshire this twentieth day of September, 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