

DG 99-050

NORTHERN UTILITIES, INC.

Wells, Maine LNG Facility

Order Approving Joint Stipulation and Agreement

O R D E R N O. 23,362

December 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 (Precedent Agreement) with its affiliate, Granite State Gas Transmission, Inc. (Granite) for development of a 2 billion cubic foot (BCF) liquified natural gas (LNG) storage facility in Wells, Maine (Wells LNG Facility). Re Northern Utilities, Inc. 81 NH PUC 648 (1996).¹

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.

¹Both Northern and Granite are wholly-owned subsidiaries of Bay State Gas Company(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)²

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

On February 19, 1999, Granite agreed to release Northern from its obligation if it were to receive 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.

²That Order is currently 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 had not yet been finalized; and the computer model runs demonstrating the comparative costs of the gas supply alternatives.

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 issued an order regarding its jurisdictional issues concerning Northern in this proceeding. Other interveners in the FERC proceeding included Northern, the Maine Public Utilities Commission (MPUC), the Public Advocate, State of Maine (Public Advocate), the Office of Consumer Advocate (OCA) and No Tanks, Inc. (No Tanks).

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

On April 30, 1999, the MPUC opened its own Docket No. 99-259 and issued a Notice of Investigation to investigate Northern's decision to terminate its agreement with Granite to purchase LNG from the proposed Wells LNG Facility.

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

On June 7, 1999, the Commission issued Order No. 23,222 which raised the following issues to be considered in this proceeding: 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 DOMAC meet the requirement of Puc 506.03; and whether the alternative supplies provide the same degree of flexibility and reliability of gas supply that can be provided by the Wells LNG facility.

The Commission also stated that the 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. A partial procedural schedule was adopted which allowed for joint discovery and technical sessions within both the IRP proceeding and this docket. The Commission also approved

Northern's Motion for Protective treatment, and granted limited intervention to the MPUC.

The Parties to this proceeding and the FERC proceeding and Staff continued to meet regularly throughout the summer in an attempt to settle all matters related to Granite's FERC petition. On August 30, 1999, the parties and Staff filed a Joint Stipulation and Agreement (Stipulation) of Granite, Northern, OCA, Staff, the Maine Public Advocate and No Tanks with the Commission seeking its concurrence for filing at the FERC. A similar filing was made with the MPUC. On September 23, 1999, the MPUC deliberated and approved the Stipulation. A hearing on the Stipulation was held before this Commission on September 27, 1999.

II. JOINT STIPULATION AND AGREEMENT

The proposed Stipulation is intended to resolve all issues relating to Granite's Petition in FERC Docket CP99-238-000 and other issues and proceedings related to the Wells LNG Facility. The Agreement: resolves all issues that have been raised before the FERC, the MPUC and the Commission with respect to the Wells LNG Project; resolves all issues raised in a petition for review filed by No Tanks, Inc. in federal court³; provides for the recovery of \$8,342,241 of recoverable project costs, including carrying costs, over a seven (7) year recovery

³No Tanks, Inc. v. FERC, Case No. 98-1463 (D.C. Cir, filed October 2, 1998)

period commencing November 1, 1999; and provides for Granite's retention of the land purchased in connection with the proposed facility and any benefits that may be derived from the sale thereof. A mechanism for recovery was established which provides for recovery of \$3,807,987 from Northern's New Hampshire customers through Northern's Cost of Gas Adjustment (CGA), and \$4,534,254 from Northern's Maine customers. Granite also agreed to forgo pursuit of the Wells LNG Facility project, to formally surrender its certificate, and not to construct any other LNG projects on the site.

In support of the Stipulation, Northern indicated that a typical residential heating customer would experience an annual increase of about \$10 or 1.1% as a result of the addition of the exit fee. However, Northern maintained that the impetus for exiting the Wells LNG Precedent Agreement was its ability to finally obtain alternative supplies, and that customers would experience approximately \$45 million in benefits over ten (10) years, or \$21 million on a net present value basis, even after recognizing the proposed exit fee. This will result in the average cost of gas being 13.9% lower than it would otherwise be, or a net savings of about 5.5% to customers.

III. COMMISSION ANALYSIS

Having considered the testimony that was presented in support of the Stipulation, the Commission believes that it is a

reasonable resolution to the outstanding issues pertaining to Northern's attempt to recover expenses related to the proposed Wells LNG Facility. The Joint Stipulation and Agreement provides for recovery of some portion of those expenses from New Hampshire ratepayers and it is a much more limited recovery than what was originally sought by Northern, \$6.95 million versus \$11.6 million, or 59.9%, of project costs considered recoverable by Northern. The Stipulation, if approved in all jurisdictions, will satisfy not only the proceeding here, but also in the State of Maine, at the FERC, and at the federal court as well.

We also note that the Stipulation provides for the utilization, in New Hampshire, of \$1 million of a CGA over-collection to offset the recovery, reduce carrying costs and smoothing the cost of gas. By Order No. 23,330 (October 29, 1999) in Docket DG 99-130, Northern Utilities, Inc., \$1 million of Northern's 1998/1999 CGA over-collection was applied to the Wells LNG Facility exit fee, and was made applicable to certain transportation volumes as well as all firm volumes. In addition, year-to-year over or under collections due to fluctuations in actual sales from forecasted sales will be recovered in the next annual surcharge calculation with no additional carrying cost.

We agree with Staff that the issues raised in this matter were unique to Northern and Granite and are unlikely to arise in another context. Northern's ability to contract for less costly alternative supplies is largely the result of changes in

the industry. Given the uncertainty surrounding many of the issues raised in the protests filed at FERC, and the unique circumstances surrounding this matter, we commend all the parties and Staff for their diligent efforts in forging a reasonable settlement and avoiding costly litigation in multiple jurisdictions. For all of the above reasons, we approve the Joint Stipulation and Agreement.

Based upon the foregoing, it is hereby

ORDERED that the Joint Stipulation and Agreement is APPROVED; and it is

FURTHER ORDERED, that the Executive Director is hereby authorized and directed to sign the Joint Stipulation and Agreement on behalf of the Commission and to append a copy of this Order as Appendix E thereto.

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

Douglas L. Patch
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Thomas B. Getz
Executive Director and Secretary