

DG 00-145

ENERGYNORTH NATURAL GAS, INC.

**Petition for Approval of Gas Transportation Agreement and
Natural Gas Firm Peaking Agreement with AES Londonderry, LLC
and Approval of Plans for Construction of
Natural Gas Pipeline to Serve AES Londonderry, LLC**

Order Approving Intervention and Procedural Schedule

O R D E R N O. 23,556

September 18, 2000

APPEARANCES: McLane, Graf, Raulerson & Middleton, P.A. by Steven V. Camerino, Esq. for EnergyNorth Natural Gas Inc.; Donahue, Tucker & Ciandella by Susan W. Chamberlain, Esq. for the Town of Londonderry; Office of Consumer Advocate by Michael W. Holmes, Esq. for residential utility consumers; and Larry S. Eckhaus, Esq. for the Staff of the New Hampshire Public Utilities Commission.

I. PROCEDURAL HISTORY

On July 3, 2000, EnergyNorth Natural Gas, Inc. (ENGI or the Company) filed with the New Hampshire Public Utilities Commission (Commission), pursuant to RSA 378:18, a Petition for Approval of Agreements with AES Londonderry, LLC (AES)(Petition), along with the joint Pre-filed Direct Testimony of Messrs. Mark G. Savoie, ENGI Manager of Regulatory Affairs, and William R. Luthern, Vice President of Gas Resources for Boston Gas Company, Essex Gas Company and Colonial Gas Company, the three gas subsidiaries of Eastern Enterprises.¹ In the Petition, ENGI seeks approval of a Gas

¹On May 8, 2000, by Order No. 23,470, the Commission approved the acquisition of EnergyNorth Natural Gas, Inc. by Eastern Enterprises and

Transportation Agreement (Transportation Agreement) and Natural Gas Firm Peaking Agreement (Peaking Agreement) with AES in order to proceed with construction of an approximately 2.8 mile natural gas pipeline from a take station on the Tennessee Gas Pipeline Company (Tennessee) Concord lateral in Londonderry to AES' planned 720 megawatt gas-fired electric generating station (the Facility) on North Wentworth Road in Londonderry. ENGI is also seeking authority to utilize a 20 year depreciation schedule with regard to its capital investment related in the project in order to match the 20 year term of the Transportation Agreement.

ENGI also filed a set of plans and specifications for a natural gas pipeline to be constructed by ENGI in order to provide service to the Facility. Under an order of the New Hampshire Site Evaluation Committee (NHSEC) dated May 25, 1999, in NHSEC Docket No. 98-02, the NHSEC, pursuant to RSA 162-H:4 III and III-a, delegated to the Commission authority "to monitor the construction safety aspects of the natural gas pipeline". In addition, the NHSEC Order provided that "The Application and Petitions are referred to ... the Public Utilities Commission for the issuance of such permits and

licenses as required by law to be included in the Certificate of Site and Facility" (at p. 29).

ENGI also filed a Motion for Protective Order and Confidential Treatment for certain materials relating to the cost of construction of the pipeline necessary to serve AES, information concerning the terms on which AES has agreed to provide peaking services to ENGI, and information concerning the financial and related business terms on which ENGI will provide transportation service to AES or other customer specific information concerning AES.

On July 17, 2000 and August 9, 2000, the Commission Staff issued its first and second sets of data requests, respectively, in advance of an Order of Notice in order to expedite the proceeding.

On July 31, 2000, the Office of Consumer Advocate (OCA) notified the Commission that, pursuant to the Inter-Agency Memorandum of Understanding dated April 28, 2000, it will be participating in this docket on behalf of residential ratepayers consistent with RSA 363:28.

On July 28, 2000, the Commission issued an Order of Notice scheduling a Prehearing Conference for August 21, 2000. The Order of Notice indicated that the filing raised, inter alia, issues related to whether special circumstances exist

which render departure from ENGI's schedules of general application just and consistent with the public interest in accordance with RSA 378:18; whether the terms and conditions of the Transportation Agreement and the Peaking Agreement are just and reasonable and in the public interest; how the Transportation Agreement and Peaking Agreement relate to the Company's ongoing Revenue Neutral Rate Redesign Proceeding, Docket DG 00-063; how the Transportation Agreement and Peaking Agreement relate to the Model Delivery Tariff now under consideration by the Commission in Docket DE 98-124, *Gas Restructuring, Unbundling and Competition in the Natural Gas Industry*; whether a 20 year depreciation schedule with regard to ENGI's capital investment related in the project is appropriate; whether the Commission should exempt the requested information from public disclosure; whether the Peaking Agreement triggers the need for ENGI to file a new integrated resource plan; whether and how the proposed contract between AES and Tennessee, and the proposed abandonment of the existing Tennessee 8" pipeline and replacement with a 20" pipeline, will affect the cost of gas or transportation costs for ENGI and/or its customers; whether and how Federal Energy Regulatory Commission action in Docket No. CP 00-48-000, *Tennessee Gas Pipeline Company* will affect

the Petition in this proceeding; whether the plans and specifications as submitted meet the appropriate construction safety standards; whether the proposed crossing of Little Cohas Brook requires ENGI to petition the Commission for a license, pursuant to RSA 371:17, to construct a pipeline under or across any of the public waters of the State defined to be all ponds of more than 10 acres, or such streams as are commonly used for navigation, See *Public Utilities and Others*, 35 NH PUC 94 (1953), and if so, whether such crossing will, pursuant to RSA 371:20, substantially affect the public safety or public functional use of said waters, See *Re Portland Natural Gas Transmission System*, 82 NH PUC 533, (1997); whether the proposed crossing of an existing or former railroad right of way requires ENGI to petition the Commission for a license to construct a pipeline under or across any land owned by the State pursuant to RSA 371:17, or property of a railroad pursuant to RSA 371:24; and, if such petitions pursuant to RSA 371:17 are required, whether owners of lands bordering on Little Cohas Brook shall be notified pursuant to RSA 371:19, and whether any payments or compensation is due to such owners and/or the State pursuant to RSA 371:21 and/or RSA 371:24.

On August 1, 2000, ENGI filed a Motion for Protective Order and Confidential Treatment concerning information provided in response to Staff Data Requests 1-24, 1-25 and 1-26, which include information regarding existing gas supply arrangements.

On August 14, 2000, the Town of Londonderry filed a Petition for Intervention.

On August 18, 2000, ENGI filed a Motion for Protective Order and Confidential Treatment concerning Staff Data Request 1-20 and a license agreement between AES and Public Service Company of New Hampshire.

On August 21, 2000, ENGI filed a Form E-22 pursuant to N.H. Admin. Rule Puc 308.07 for the proposed 2.8 mile pipeline in Londonderry, New Hampshire.

The Prehearing Conference was held on August 21, 2000 in accordance with the Order of Notice. Other than the Town of Londonderry and the OCA, there were no other petitions for intervention. There being no objection, the Commission granted the Petitions for Intervention pursuant to N.H. Admin Rule Puc 203.02 and RSA 541-A:32,I(b). At the Prehearing Conference, the Parties and Staff presented their initial positions and perspectives regarding substantive and procedural issues which are summarized below. After the

Prehearing Conference, the Parties and Staff held a Technical Session. Staff reported to the Commission that the Parties and Staff agreed to an interim procedural schedule as follows:

Technical Session	August 29, 2000
Data Requests to Company by Intervenors and Staff	August 31, 2000
Company Responses	September 14, 2000
Technical Session/ Settlement Conference	September 26, 2000

In addition, the Parties and Staff agreed to notify the Commission with regard to the three (3) Motions for Protective Order and Confidential Treatment after they had an opportunity to discuss the information. A separate order will be issued with regard to those Motions. In the interim, the information referenced in the Motions shall remain confidential pursuant to N.H. Admin. Rule Puc 204.05(b).

II. POSITIONS OF THE PARTIES AND STAFF

A. EnergyNorth Natural Gas, Inc.

ENGI summarized its filing indicating that it was seeking Commission approval of both the Transportation Agreement and the Peaking Agreement (together the Agreements) as they were closely linked and the Company would not be entering into one without the other. The Company maintained that the Agreements were the only part of this proceeding and that the construction, specification, design and route of the

pipeline do not need to be a formal part of the proceeding, but, rather, subject to review of the Commission's Engineering Department without hearings. ENGI did recognize, however, that construction cost issues relate to the Transportation Agreement. The Company maintained that the Peaking Agreement will provide substantial benefit to ENGI customers.

With regard to the issue of whether the proposed crossing of Little Cohas Brook requires ENGI to petition the Commission for a license pursuant to RSA 371:17, the Company maintained that the pipeline was part of the larger project including the AES generating station which was reviewed and approved by the NHSEC, that Little Cohas Brook is not a public water requiring PUC approval, that Little Cohas Brook is not a navigable waterway, that ENGI is not crossing the pond but actually routing the pipeline between two ponds, that the location of the crossing is not a pond, and that directional drilling under the brook is not under water within the meaning of the statute. On the other hand, ENGI recognized the need for it to supply factual information to the Parties and Staff so that the issue could be discussed further.

B. Town of Londonderry

The Town of Londonderry stated that its interest was to monitor the proceeding and the construction of the pipeline

as the host community. With reference to its Petition to Intervene, the Town indicated that it does not intend to litigate environmental issues already addressed by the NHSEC.

C. Office of Consumer Advocate

The OCA indicated its concerns related to the timing of the related Tennessee expansion and the availability and cost of gas to firm core customers considering the large volume of gas to be purchased by AES *vis-a-vis* the rest of ENGI. The OCA expressed its concern about the impact of the project on other firm customers under various scenarios and how this proceeding may impact the pending rate redesign proceeding, Docket DG 00-063, and restructuring proceeding, Docket DE 98-124. While the OCA indicated it was not interested in the engineering issues *per se*, it wanted to be kept informed of developments. The OCA also questioned whether ENGI as a public utility was using its authority to achieve results which AES as a private entity could not.

D. Staff

Staff supported the need to address all the issues contained in the Order of Notice. Staff indicated that it was cooperating with ENGI regarding the Company's development of revised plans and designs for the pipeline to replace those filed on July 3, 2000. Staff left to the Commission the

determination as to whether review of those plans should be part of this proceeding.

With regard to the proposed crossing of Little Cohas Brook, Staff maintained that, on the basis of present information, ENGI is required to petition the Commission for a license pursuant to RSA 371:17. Staff pointed to the Official List of Public Waters in New Hampshire, published by the Department of Environmental Services in January 1994 as indicative, if not dispositive, of the issue. On the other hand, the information required with such a petition would be no more than what would be required for the Commission to approve the plans and designs themselves - namely, assurance of the public safety and public functional use of the line. Staff also disputed the Company's interpretation of the statute. Staff acknowledged that it was awaiting information from the Company with regard to the Company's position and recommended the Commission defer action until the parties had an opportunity to discuss this matter further.

Based upon the foregoing, it is hereby

ORDERED, that the interim procedural schedule as proposed by the Parties and Staff is hereby adopted. The Parties and Staff shall notify the Commission of any additional scheduling requirements; and it is

FURTHER ORDERED, that the Petition to Intervene of the Town of Londonderry is hereby approved.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of September, 2000.

Douglas L. Patch
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Thomas B. Getz
Executive Director and Secretary