

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DG 16-489

NORTHERN UTILITIES, INC.

**Petition for Licenses to Construct and Maintain Distribution Gas Mains Across the
Cocheco River in Dover**

Order *Nisi* Granting Temporary License Upon Satisfaction of Conditions

ORDER NO. 26,021

May 26, 2017

In this order *nisi*, the Commission grants a license to Northern Utilities, Inc., to construct and maintain a temporary distribution gas main over and across the Cocheco River in Dover, New Hampshire. The Commission also rules that no license is required for a permanent gas main, which will be attached to the Whittier Bridge during its reconstruction. This order is being issued on a *nisi* basis to ensure that all interested parties receive notice of the Commission's decision and have the opportunity to comment or request a hearing.

I. SUMMARY OF PETITION

Northern Utilities, Inc. (Northern), owns and operates a gas distribution main in Dover that is within the portion of Whittier Street that crosses the Cocheco River. The main is attached to the underside of the Whittier Street Bridge. The Whittier Street Bridge was scheduled to be replaced beginning in 2016. The replacement of the bridge will require Northern to construct a temporary main on a utility pipe bridge near the existing bridge location, and then to construct a permanent main on the new Whittier Street Bridge to allow Northern to provide uninterrupted service within its franchise territory.

Northern filed one petition pursuant to RSA 371:17 on April 25, 2016, to obtain licenses for both the temporary and permanent crossings. Along with its petition, Northern provided

design specifications for both the temporary and permanent mains. Northern represented that the temporary gas main and relocation of the main to the new permanent bridge structure would be consistent with those specifications. Northern stated that the temporary and permanent crossings are necessary for the continued provision of gas service to customers on both sides of the Cocheco River during the replacement of the Whittier Street Bridge. Because the Whittier Street Bridge has been in place for many years, the temporary and permanent mains will not present any impediment to traffic on the bridge or to marine traffic on the river. According to Northern, the new mains will not substantially affect the public rights to use the water and will allow Northern to continue the natural gas service that it already provides to customers on both sides of the Cocheco River.

The petition and subsequent docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are posted to the Commission's website at <http://puc.nh.gov/Regulatory/Docketbk/2016/16-489.html>.

II. SUMMARY OF STAFF REVIEW

The Company plans to construct a temporary utility bridge that will be located parallel to, and approximately ten feet southeast of, the existing Whittier Street Bridge. The temporary utility bridge will have a support system of four reinforced concrete piers and footings with structural steel girders. The piers and footings will be constructed within the limits of the existing right-of-way or within the project's construction easements. The main span across the river will be 177 feet from primary pier to primary pier, at an elevation of 51 feet. There will be additional spans of approximately 52 foot lengths on each side of the river, between the primary and secondary piers, at an elevation of 58 feet to the south and 59 feet to the north. Staff noted

that, after the permanent gas main is operational, the temporary utility bridge will be removed by Northern's contractor, although portions of the concrete piers and pier footings two feet or more below finished grade may be left in place.

Staff reported that the permanent main will be attached to the new Whittier Street Bridge upon completion of the bridge construction process. The main will be attached to utility support structures that are welded to bridge girders that will be below and that will support the reinforced concrete bridge deck. The pipe will pass under each bridge approach, through the support abutments on each side of the river, and through pipe roller supports attached to the utility support structures.

Staff opined that RSA 371:17 is not intended for temporary crossings and that it would be impractical for Staff to perform its usual safety review on temporary installations, which are designed to be adaptable and not as precise as permanent installations. Staff also opined that the permanent installation of a gas main within the highway right of way does not require a license for this crossing of the Cocheco River because utility installations within a highway right of way are also subject to the exclusive jurisdiction of the Department of Transportation (NHDOT), cities, and towns.

III. COMMISSION ANALYSIS

Pursuant to RSA 371:17, utilities must obtain a license from the Commission to "construct a pipeline, cable, or conduit, or a line of poles or towers and wires and fixtures thereon, over, under or across any of the public waters of this state, or over, under or across any of the land owned by this state," when such facilities are necessary to meet the reasonable requirements of service to the public. RSA 371:20 authorizes the Commission to grant a license

if it “may be exercised without substantially affecting the public rights in said waters or lands.” RSA 371:17 defines public waters to include all ponds of more than 10 acres, tidewater bodies, and such streams or portions thereof that the Commission may prescribe. The New Hampshire Department of Environmental Services (NHDES) prepares, maintains, and publishes an official list of all public waters in the state. The body of water listed in the instant petition is included in the official list, which is maintained at

http://des.nh.gov/organization/divisions/water/dam/public_waters/index.htm

Based on the information presented in Northern’s petition and Staff’s recommendation, we find that the proposed temporary crossing is necessary for Northern to meet the reasonable requirements of reliable service to the public, as required by RSA 371:17. We have a more difficult time finding that the crossing can be accomplished without substantially interfering with the public’s rights in the affected waters as required by RSA 371:20, because, believing that the standards in RSA 371:20 did not apply to this petition, Staff did not conduct its usual safety and design review.

RSA 371:17 does not distinguish among crossings based upon their duration, and as such, we rule that RSA 371:17 applies to the temporary crossing. We appreciate the difficulty in applying Staff’s usual and thorough review of compliance with applicable state and federal safety standards to temporary crossings due to the adaptable nature of utility design work for temporary structures, but we cannot conclude that such difficulty alleviates the statutory requirement. Staff’s standard review is comprehensive and designed to assure that permanent crossings are constructed for safety over long periods of time. While that level of review may not be necessary for shorter-term crossings, we cannot license even a temporary crossing without

finding the public's rights will not be substantially affected, which includes some showing that the crossing will meet minimum safety requirements. Staff indicated that work on the temporary main will be in conformance with NHDOT standard specifications for road and bridge construction, and that the steel girders of the temporary utility bridge will meet certain engineering criteria. Because there is no record evidence that the work will comply with federal or state gas safety rules or any other relevant requirements, we are unable to find that the temporary crossing can be exercised without substantially affecting the public rights in the affected public waters, as required for approval under RSA 371:20.

We understand the temporary crossing is necessary to maintain utility service to the public while the Whittier Street Bridge is replaced, and expect the Company will construct it in accordance with all applicable safety requirements. Accordingly, and due to the temporary nature of the crossing, we will grant a license subject to the condition that Northern identify and certify that the temporary crossing, as designed and constructed, will meet all applicable local, state, and federal safety requirements. This certification must be sworn to by an officer of Northern who is authorized to bind the company, and filed in this docket within 30 days of this order.

No license is required for the permanent crossing. Because the crossing will be attached to a highway bridge and will not hang lower than the bridge clearance, no license is required under RSA 371:17. *See Public Utilities: Licensing of Crossings Over public Waters and State-owned Land*, 35 NHPUC 94, 94-95 (1953) (Licenses need not be obtained for "crossings having supports attached to public highway bridges, except where such crossings are below the bridge

clearance,” but such crossings are not excepted “from compliance with established minimum safety standards.”).

We note that Northern is responsible for obtaining any and all other permits for the construction and installation of the proposed crossings from any federal, state, and local authorities having jurisdiction. Our approval of the temporary crossing is only for a pipeline with the specifications proposed by Northern in this docket and certified as safe by the company. Should the company wish to make any changes, it must make an appropriate filing. Finally, because NHDES is responsible for maintaining the official list of public waters, we require that notice of the proposed crossings be sent to NHDES. We also require notice to be provided to the Office of the Attorney General and the owners of land bordering the Cocheco River at the location of the crossing, as required by RSA 371:19, and the City of Dover.

Last, the license granted herein is temporary, for the construction and maintenance of a temporary pipeline, and shall lapse two years from the date of its effective date, unless extended by order of the Commission.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that subject to the effective date below, Northern is authorized, pursuant to RSA 371:17, *et seq.*, to construct, install, operate and maintain a temporary natural gas pipeline over and across the Cocheco River in Dover, New Hampshire, as described in its petition and depicted in its filings; and it is

FURTHER ORDERED, that this approval is limited to the temporary natural gas pipeline under consideration in this docket, and is conditioned on the requirement that Northern certify, by affidavit filed with the Commission, that the pipeline will be designed, constructed,

operated, maintained, and if applicable altered, in compliance with the provisions of N.H. Code Admin. Rules Puc 500 and 49 CFR Part 192, as may be applicable, and as amended from time to time, and all other applicable federal, state, and local safety standards in existence at that time; and it is

FURTHER ORDERED, that Northern shall submit any future proposed alteration(s) to the crossing license granted herein at least 60 days prior to any such alteration(s); and it is

FURTHER ORDERED, that Northern shall provide a copy of this Order *Nisi* to the (i) City Clerk of Dover, New Hampshire; (ii) the New Hampshire Attorney General and the owners of the land bordering on said public waters at the location of the crossing, pursuant to RSA 371:19; (iii) the New Hampshire Department of Environmental Services, by first class mail, no later than June 6, 2017, and to be documented by affidavit filed with this office on or before June 22, 2017; and it is

FURTHER ORDERED, that Northern shall cause a summary of this Order *Nisi*, issued concurrently with this Order, to be published once in a statewide newspaper of general circulation or of circulation in those portions of the state where operations are conducted, such publication to be no later than June 6, 2017, and to be documented by affidavit filed with this office on or before June 22, 2017; and it is

FURTHER ORDERED, that all persons interested in responding to this Order *Nisi* be notified that they may submit their comments or file a written request for a hearing which states the reason and basis for a hearing no later than June 13, 2017, for the Commission's consideration; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than June 20, 2017; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective June 26, 2017, unless Northern fails to satisfy the publication obligation set forth above or the Commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this twenty-sixth day of May, 2017.



Martin P. Honigberg
Chairman

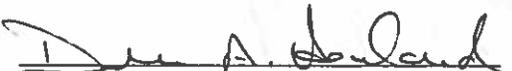


Robert R. Scott
Commissioner



Kathryn M. Bailey
Commissioner

Attested by:



Debra A. Howland
Executive Director