

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DG 23-087**

**NORTHERN UTILITIES, INC.**

**Petition for Expedited Approval of Empress Capacity Agreements**

**Order Approving Settlement Agreement and Motions for Confidential Treatment**

**ORDER NO. 26,939**

**January 26, 2024**

In this Order, the Commission approves a settlement agreement, entered into by Northern Utilities, Inc. and the New Hampshire Department of Energy, relating to natural gas capacity agreements with Portland Natural Gas Transmission System and TransCanada Pipelines Limited, and approves three related motions filed by Northern for confidential treatment of certain information submitted as part of this proceeding, pursuant to the terms of RSA Chapter 91-A. The Empress Agreements will provide Northern with the ability to transport up to 12,500 Dekatherms per day of incremental capacity to Northern's supply portfolio, inclusive of both New Hampshire and Maine, with service beginning on April 1, 2024 for a thirty-year term.

**I. BACKGROUND AND PROCEDURAL HISTORY**

On October 6, 2023, Northern Utilities, Inc. (Northern or the Company), a gas utility serving customers in southeastern New Hampshire, filed a petition requesting that the Commission approve, on an expedited basis, its natural gas capacity agreements (termed the "Empress Agreements," after the origination point of the capacity path, the town of Empress, Alberta, Canada) with Portland Natural Gas Transmission System (PNGTS) and TransCanada Pipelines Limited (TCPL). See Hearing Exhibit 2. In support of its petition, Northern submitted the pre-filed direct testimony of Francis X. Wells (Wells Testimony), Manager of Energy Planning at Unitil

Service Corp., Northern's service-company affiliate, and related attachments. The Company also filed, on October 6, 2023, a motion for confidential treatment related to certain information filed as part of its petition and the Wells Testimony, described in detail in Part III. of this Order below. (Hearing Exhibit 1 presents the confidential version of the Company's petition and the Wells Testimony material).

On October 9, 2023, the Office of the Consumer Advocate (OCA) filed its letter of participation in this proceeding. In response to the Northern petition, the Commission issued a Commencement of Adjudicative Proceeding and Notice of Prehearing Conference Order on October 12, 2023. On November 1, 2023, Northern filed an attachment to the Wells Testimony, an "Empress Capacity Resource Assessment" prepared by the Company, under the general direction of Mr. Wells. Hearing Exhibit 3. On November 3, 2023, employees of the New Hampshire Department of Energy, Dr. Faisal Deen Arif (Division of Regulatory Support, Gas Director) and Mr. Ashraf Alam (Division of Utility Support, Utility Analyst), as requested by the Commission, filed a Technical Statement outlining the initial position of the DOE regarding the Company's petition. Hearing Exhibit 6. A prehearing conference was held on November 9, 2023, as scheduled, at which representatives of Northern, the DOE, and the OCA appeared, and provided elaborations of their initial positions regarding the Company's petition. There were no intervenors.

On November 13, 2023, the DOE proposed, with the assent of the Company and the OCA, a procedural schedule to the Commission, which the Commission approved by a procedural order on November 16, 2023. Pursuant to this procedural schedule, following discovery and technical sessions among the parties, the OCA filed the written testimony of Dr. Marc H. Vatter (Director, Economics and Finance), with supporting attachments, on December 13, 2023. Hearing Exhibit 4. On December 14,

2023, Dr. Arif and Mr. Alam of the DOE filed a "Supplemental Position Statement" presenting the DOE's updated analysis regarding the Company's Empress proposal. Hearing Exhibit 8.

On January 16, 2024, Northern filed, in conjunction with a procedural motion requesting that the Commission accept a late-filed settlement, a Settlement Agreement pertaining to the Empress petition entered into with the DOE (Settlement Agreement). (The OCA was not a party to the Settlement Agreement, but it did not object to the Commission's consideration of the Settlement Agreement at hearing). The Company also included a second motion for confidential treatment pertaining to material presented in conjunction with the Settlement Agreement or its supporting attachments. The Commission granted leave for its consideration of the late-filed settlement agreement by a procedural order issued on January 17, 2024.

On January 18, 2024, the Commission held a hearing regarding the Settlement Agreement, and Northern's Empress petition, at which representatives of the Company, the OCA, and the DOE appeared, and Messrs. Wells and Alam, and Drs. Arif and Vatter, provided oral testimony in support of their positions. Following this hearing, on January 19, 2024, Northern filed a third motion for confidential treatment relating to data-response material provided during the course of this proceeding, and a corrected version of the Settlement Agreement that properly accounted for a redaction of confidential information. Hearing Exhibit 13.

The petition and subsequent docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are posted on the Commission's website at

<https://www.puc.nh.gov/Regulatory/Docketbk/2023/23-087.html>.

## **II. DESCRIPTION OF EMPRESS AGREEMENT TERMS AND SETTLEMENT AGREEMENT TERMS**

As described in greater detail in the Company's petition, the Wells Testimony, "Empress Capacity Resource Assessment," supporting schedules, and ancillary materials, together with the Settlement Agreement itself, the proposed Empress Agreements are comprised of four separate agreements: (1) a Firm Transportation Agreement between PNGTS and Northern; (2) a Precedent Agreement between TCPL and Northern for service from April 1, 2024 through October 31, 2027; (3) a Firm Transportation Agreement between TCPL and Northern for service from April 1, 2024 through October 31, 2027; and (4) a Precedent Agreement between TCPL and Northern for service beginning November 1, 2027. The Company specifically requested a finding by the Commission that the Empress Agreements are prudent, reasonable, and consistent with the public interest on or before January 26, 2024. Northern submitted a parallel petition to the Maine Public Utilities Commission (MPUC) on October 5, 2023, which remains pending, with a decision requested by the Company of the MPUC also by January 26, 2024. (Northern operates a Maine Division, which is interconnected to the New Hampshire utility, under common ownership, though the Maine Division is separately regulated by the MPUC from the Company, which is regulated by this Commission). Northern stated that the Empress Agreements will provide the Company with the ability to transport up to 12,500 Dekatherms (Dth) per day of incremental capacity to Northern's supply portfolio, inclusive of both New Hampshire and Maine, with service beginning on April 1, 2024 for a thirty-year term.

Gas capacity requirements for the Maine and New Hampshire Divisions of the Northern system are allocated by application of the Northern Modified Proportional Responsibility Allocator (MPRA). Applying the MPRA, and the Company's latest design year forecast for the 2023-2024 gas year, approximately 5,007 Dth per day, or

approximately 40 percent of the proposed Empress Agreements' capacity allocation, will be supported by New Hampshire Division customers, and 7,493 Dth per day, or approximately sixty percent of the proposed capacity, will be supported by Maine Division customers.

The Empress Agreements include elements that pertain to the TCPL portion of the capacity path, which extend from the Alberta gas fields to the Quebec-New Hampshire border, and the PNGTS portion, which extends from Pittsburg, New Hampshire, to Dracut, Massachusetts, a key interconnection point in New England to the transcontinental gas pipeline network. (PNGTS is a subsidiary of TCPL). If the Empress Agreements are not approved by either this Commission, the MPUC, or both, or if Northern elects to not proceed with the Empress Agreements for any reason, TCPL and PNGTS have the right to invoke contract-termination charges and penalties against Northern for non-performance. TCPL also has reciprocal obligations to make all reasonable efforts to effectuate the required increases in capacity along the Canadian portions of the capacity path to accommodate Northern's incremental needs; if such efforts fail, TCPL can cancel the Empress Agreements, and those relating to the Canadian Precedent Agreement between TCPL and Northern will trigger cancellation costs being assessed against Northern.

The Company, and the DOE (Settling Parties), within the Settlement Agreement executed on January 16, 2024, agreed to the following terms, which are herein reproduced verbatim, in *italics* for clarity where warranted:

*The Settling Parties agree that the Settlement Agreement as described below should be approved by the Commission[...]*

1. In light of the Company's assessment of its supply needs, options currently available in the market, and the current regional supply constraints, the

- Settling Parties agree that the relatively modest commitment of 12,500 [Dekatherms] Dth/day as reflected in the Empress Capacity Agreements is reasonable with regard to supply for Northern's NH and Maine Supply requirements, the [Northern Modified Proportional Responsibility Allocator] (MPRA), and anticipated future needs.
2. The Settling Parties similarly agree that the thirty-year term of the Empress Capacity Agreements is reasonable in light of the Company's current planning load analysis, bidding strategy, and anticipated future needs.
  3. The Settling Parties agree that pre-service and cancellation costs associated with the Empress Capacity Agreements that have accrued as of the date of the Commission Order approving this Settlement Agreement and the Empress Capacity Agreements in this Docket [DG 23-087] and for which the Company is liable-- and apportioned consistent with the MPRA-- are reasonable and appropriately recoverable through the Company's rates. *If the Commission Order does not explicitly approve this Settlement Agreement and Empress Capacity Agreements, whether pre-service and cancellation costs associated with the Empress Capacity Agreements that have accrued as of the date of the Commission Order are prudent and recoverable will be addressed in the Company's next Cost of Gas [COG] docket.*
  4. The Settling Parties agree that recovery of costs associated with the Empress Capacity Agreements will be addressed through the Company's annual Cost of Gas filings and recovered through Cost of Gas rates. The Settling Parties agree that potential cancellation costs shall be recovered from all capacity-eligible customers.

5. The Settling Parties agree that Northern will monitor and evaluate the prudence of continuing with or terminating any or all of the Empress Capacity Agreements at certain decision points outlined in Confidential Attachment A (*of the Settlement Agreement, see Hearing Exhibit 12*), and quarterly, including once during Northern's COG filing, or in light of any new material information or change in circumstances which becomes known. The prudence of the Company's decisions to continue or terminate any of the Empress Capacity Agreements will be evaluated in light of existing circumstances known to the Company at each decision point and in light of any new material information or change in circumstance that becomes known to Northern. *See Confidential Attachment A, Hearing Exhibit 12*. If at any time, in the Company's opinion, it is probable that Northern will terminate any of the Empress Capacity Agreements, the Company will, within two business days, notify the other Settling Parties. To the extent necessary, such communication shall be made on a confidential basis. To the extent that the Company is found by the Commission to have acted reasonably and prudently in incurring costs associated with the Empress Capacity Agreements, such costs will be recoverable as described in Paragraph 4 above.
6. Provided that Northern is successful in obtaining approval of its petitions by both the NHPUC and the MPUC [*Maine Public Utilities Commission*], and if an "Event of Cancellation" (see Exhibit Unitil-FXW-2, Attachment 6 at 3, 11-13) (defining Event of Cancellation) occurs, the Company shall use the Modified Proportional Responsibility Allocator (MPRA) to allocate the appropriate share of the cancellation costs to New Hampshire and shall be allowed to

- recover the corresponding percentage of cancellation costs through its rates so long as the Company is found to have acted reasonably and prudently in incurring those costs associated with the Empress Capacity Agreements.
7. Decisions points include, but are not limited to, unfavorable regulatory decisions, a material increase in actual or projected project costs, and material changes in cost allocation due to decisions or actions of the transporter. See Confidential Attachment A. The Company agrees to provide quarterly updated to the Department [DOE] and OCA until such time that all conditions precedent in the 2027 TCPL PA [*TransCanada Pipelines Limited Precedent Agreement*] are satisfied or waived, and until the Company enters into a Firm Transportation Service Contract for service from November 2027 through March 2054 with TCPL [*TransCanada Pipelines Limited*]. The Company will also provide an update to the Commission on its evaluation of decision points in the Company's annual Cost of Gas filing. The Company shall inform the Commission of regulatory approvals related to the projects and/or material changes in actual and projected costs Northern would be responsible for under the terms of the Empress Capacity Agreements. To the extent that there is a notice of cancellation from any shipper or transporter or an Event of Cancellation, the Company will notify the Commission, the Department [DOE], and the OCA within two business days.
  8. Northern will evaluate available hedging strategies and include a report on its evaluation in the Company's Cost of Gas filings through the execution of the TCPL Firm Transportation Agreement.

(Additional terms of the Settlement Agreement related to the presentation of record evidence at hearing, and 'savings clauses' relating to the non-precedential nature of



any Commission acceptance of the Settlement Agreement in connection with the positions of the Company and the DOE).

### **III. NORTHERN'S MOTIONS FOR CONFIDENTIAL TREATMENT**

During the pendency of this proceeding, Northern filed three motions for confidential treatment (on October 6, 2023, January 16, 2024, and January 19, 2024, respectively). Northern's motions pertain to: certain pricing information related to the Empress Agreements; certain commercially-sensitive terms of these agreements, including estimated termination-related penalty calculations; proprietary business analysis prepared by Northern, for its internal use in the development of the Company's assessment of the Empress Agreements; and related data request responses provided by the Company. These motions covered the presentation of this material within the Company's petition, the Wells Testimony, supporting attachments, the Settlement Agreement, the Technical Statements of the DOE, and data responses. The specific positions of Northern and the other parties to this proceeding regarding these motions is summarized below.

### **IV. POSITIONS OF THE PARTIES**

#### **A. Northern**

Through its petition, the Wells Testimony, other supporting filings (including the "Empress Capacity Resource Assessment"), and testimony of Mr. Wells at hearing, Northern advocated for the Commission's approval of the Empress Agreements, and the Settlement Agreement, as comporting with the Commission's standards of prudence, and just and reasonable rates. The Company stated that the Empress Agreements were important to secure needed incremental gas capacity, and potential commodity transportation, from a reliable source (Western Canada and the TCPL/PNGTS system). Despite the imposition of the cancellation terms by TCPL--

which, the Company stated, were a common feature of Canadian gas pipeline business practice-- Northern expressed its view that the terms of the Empress Agreements were favorable to Northern and its customers, and would serve the Company well for the 30-year contractual period, especially in light of uncertainties in the New England gas markets. This agreement is also contingent on the MPUC's approval for the Maine Division component.

In its motions for confidential treatment, Northern asserted that the disclosure of the information for which it sought protection would cause the Company competitive harm; disclose internal proprietary, trade-secret information related to its own internal modelling and projection practices; and undermine its ability to potentially negotiate with future counterparties (including potentially TCPL/PNGTS themselves) for favorable terms, if the commercially-sensitive terms of the Empress Agreements were to be disclosed in the context of this proceeding.

#### **B. DOE**

The DOE stated at hearing that it supported the Commission's approval of the Settlement Agreement and Empress Agreements, insofar as this would enable the Company to acquire the additional capacity needed to serve its New Hampshire customers' load in the future, on just and reasonable terms. The DOE also stated that it had no objection to the Company's motions for confidential treatment.

#### **C. OCA**

The OCA stated at hearing that it would not object to Commission approval of the Settlement Agreement. The OCA also stated that it had no objection to Northern's motions for confidential treatment.

**V. COMMISSION ANALYSIS: SETTLEMENT AGREEMENT AND APPROVAL OF CAPACITY AGREEMENTS**

In this proceeding, we must consider whether the Empress Agreements are prudent and reasonable. RSA 374:1 and 374:2 (public utilities shall provide reasonably safe and adequate service at 'just and reasonable' rates), and RSA 378:7 (rates collected by a public utility for services rendered or to be rendered must be just and reasonable). RSA 374:1 and :2; RSA 378:7; *see also Northern Utilities, Inc.*, Order No. 26,309 (Nov. 19, 2019) at 8-9; *Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities*, Order No. 25,822 at 24 (October 2, 2015).

Unless precluded by law, disposition may be made of any contested case at any time prior to the entry of a final decision or order. RSA 541-A:31, V(a). Pursuant to N.H. Code Admin. Rules, Puc 203.20(b), the Commission shall approve the disposition of any contested case by stipulation or settlement if it determines that the result is just and reasonable and serves the public interest. The Commission encourages parties to settle disagreements through negotiation and compromise because it is an opportunity for creative problem solving, allows parties to reach a result in line with their expectations, and is often a better alternative to regulation. *Northern Utilities, Inc.*, Order No. 26,650 at 12 (July 20, 2022). Nonetheless, the Commission cannot approve a settlement, even when all parties agree, without independently determining that the result comports with applicable standards. *Id.*

In this instance, we find that Northern's decision to enter into the Empress Agreements, for the specified volumes and contractual terms, is prudent, reasonable, and consistent with the public interest. We likewise find that the Settlement Agreement is just and reasonable, and consistent with the public interest of Northern's existing and future customers, especially in light of the folding-in of the periodic reporting requirements related to the Empress Agreements, and specification

of the Cost of Gas mechanism for cost recovery. The Settlement Agreement ensures that Northern will monitor and evaluate the prudence of continuing with or terminating any or all of the Empress Agreements at designated decision points, and in light of any new information or change in circumstances. Accordingly, the prudence of the Company's decisions to continue with or terminate any of the Empress Agreements will be evaluated in light of existing circumstances known to Northern at key decision points for the duration of each respective contract period, consistent with the Settlement Agreement. Typically, we determine prudence and reasonableness within the context of a full rate proceeding, after a utility has incurred costs to serve its customers. Therefore, as also consistent with the terms of the Settlement Agreement, recovery of ongoing costs associated with the Empress Capacity Agreements will be addressed through the Company's Cost of Gas rate filings and recovered through its Cost of Gas rates. We do, however, as specified in the Settlement Agreement, find that pre-service and cancellation costs associated with the Empress Agreements that have accrued as of the date of this Order are reasonable and appropriately recovered by the Company through its rates.

As the Settlement Agreement highlights, the Empress Agreements are a reasonable supply option that will enable Northern to meet a portion of its identified incremental resource need while enhancing reliability and price stability for its customers. Our finding that the contracted capacity is prudent assumes, however, that Northern will manage its business and operate in a manner consistent with good utility practice and its plan outlined in its petition, testimony, and supporting documentation. We therefore will approve the Settlement Agreement and the related Empress Agreements presented by the Company in its petition.

## **VI. COMMISSION ANALYSIS: NORTHERN'S MOTIONS FOR CONFIDENTIAL TREATMENT**

RSA Chapter 91-A ensures public access to information relative to the conduct and activities of governmental agencies or “public bodies” such as the Commission. Disclosure of records may be required unless the information is exempt from disclosure under RSA 91-A:5. RSA 91-A:5, IV exempts several categories of information, including records pertaining to confidential, commercial, or financial information, and personnel files of which disclosure would constitute an invasion of privacy. A party seeking protection of information under RSA 91-A:5, IV must show that a privacy interest exists, and that its interest in confidentiality outweighs the public’s interest in disclosure. *Union Leader Corp. v. Town of Salem*, 173 N.H. 345, 355 (2020) (citing *Prof’l Firefighters of N.H. v. Local Gov’t Ctr.*, 159 N.H. 699, 707 (2010)).

The New Hampshire Supreme Court has instituted a three-step balancing test to determine whether a document, or the information contained within it, falls within the scope of RSA 91-A:5, IV and is exempt from disclosure. *Lambert v. Belknap County Convention*, 157 N.H. 375, 382-383 (2008). Under this test, the first step is to determine whether the information involves a privacy interest. *Id.* The second step is to determine whether there is a public interest in disclosure. *Id.* Finally, one must balance the competing interests and decide whether disclosure is appropriate. *Id.* When the information involves a privacy interest, disclosure should inform the public of the conduct and activities of its government; if the information does not serve that purpose, disclosure is not warranted. *Id.*

The Commission routinely protects sensitive financial and proprietary business information, including contract price-related information, of the type delineated by Northern in its motions for confidential treatment. *See, e.g.*, N.H. Code Admin. Rules Puc 201.06(a), *passim*; *see also Northern Utilities, Inc.*, Order No. 26,309 (Nov. 19,

2019), at 12-13. We find that the information provided by Northern for which it seeks confidential treatment constitutes confidential, commercial, and/or financial information pursuant to RSA 91-A:5, IV. Weighing potential harm to Northern or to third parties against the benefits of disclosure of the information to the public, we find that, on balance, protective treatment is warranted.

We therefore grant Northern's motions. Consistent with past practice, the protective treatment provisions of this order are subject to the ongoing authority of the Commission, on its own motion or on the motion of any party or member of the public, to reconsider this protective order pursuant to RSA Chapter 91-A, should circumstances so warrant.

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

**ORDERED**, that Northern Utilities, Inc.'s entry into the proposed Empress Agreements with TransCanada Pipelines Limited and Portland Natural Gas Transmission system, as delineated in the Company's petition considered in this proceeding, and subject to the terms of the Settlement Agreement entered into by the Company and the New Hampshire Department of Energy is APPROVED; and it is

**FURTHER ORDERED**, that the Settlement Agreement between the Company and the New Hampshire Department of Energy in this instant proceeding is APPROVED, with all reporting requirements included thereto taking effect, including, but not limited to, the reports in which Northern will evaluate hedging strategies and include its evaluation in the Company's Cost of Gas filings through the execution of the TCPL Firm Transportation Agreement; and it is


**FURTHER ORDERED**, that pre-service and cancellation costs associated with the Empress Agreements accrued as of the date of this Order and for which the

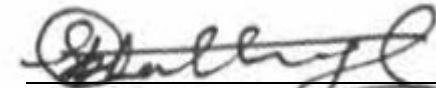
Company is liable, are reasonable and appropriately recoverable through Northern's rates; and it is

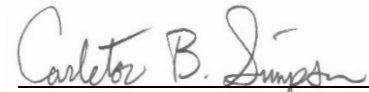
**FURTHER ORDERED**, that recovery of prudent costs associated with the Empress Agreements, other than the pre-service and cancellation costs discussed herein in this Order and in the Settlement Agreement, will be addressed through the Company's Cost of Gas rate petitions; and it is

**FURTHER ORDERED**, that the motions filed by Northern for a protective order and confidential treatment of certain information submitted in Docket No. DG 23-087 are GRANTED, as set forth herein above.

By order of the Public Utilities Commission of New Hampshire this twenty-sixth day of January, 2024.

  
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Daniel C. Goldner  
Chairman

  
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Pradip K. Chattopadhyay  
Commissioner

  
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Carleton B. Simpson  
Commissioner

# Service List - Docket Related

Docket#: 23-087

Printed: 1/26/2024

Email Addresses

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ClerksOffice@puc.nh.gov  
Ashraful.Alam@energy.nh.gov  
Faisal.DeenArif@energy.nh.gov  
Michael.J.Crouse@oca.nh.gov  
Energy-Litigation@energy.nh.gov  
paul.b.dexter@energy.nh.gov  
thomas.c.frantz@energy.nh.gov  
donald.m.kreis@oca.nh.gov  
amanda.o.noonan@energy.nh.gov  
ocalitigation@oca.nh.gov  
mary.e.schwarzer@energy.nh.gov  
taylorp@unitil.com  
Marc.H.Vatter@oca.nh.gov