

**THE STATE OF NEW HAMPSHIRE
BEFORE THE
NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION**

DOCKET NO. DE 24-XXX

PORTLAND NATURAL GAS TRANSMISSION SYSTEM

Petition to Transfer Partnership Interests

Portland Natural Gas Transmission System (“PNGTS”), a Maine general partnership, TC Pipelines, LP (“TCP”), a Delaware limited partnership, Northern New England Investment Company, Inc., a Vermont corporation, (“NNEIC,” and with TCP, the “Sellers”), and BlackRock Global Infrastructure Fund IV, SCSp, an affiliate of BlackRock Financial Management, Inc. (“BGIF IV”) and North Haven Infrastructure Partners III (AIV-B) SCSp, an affiliate of Morgan Stanley Infrastructure Inc. (“NHIP III,” and together with BGIF IV, the “Buyers,” collectively with the Sellers, the “Petitioners”) jointly request New Hampshire Public Utilities Commission (“PUC” or the “Commission”) approval for an upstream change of ownership of PNGTS. As described more fully within, the Sellers propose to transfer 100% of the general partnership interests in PNGTS to the Buyers (the “Transaction”). The Petitioners request approval pursuant to RSA 369:8, II(b)(1), because the Transaction will not have an adverse effect on the rates, terms, service, or operation of PNGTS in New Hampshire; or, alternatively, pursuant to RSA 374:30, I, because the Transaction will be for the public good.

Concurrent with this Petition to Transfer Ownership Interests (“Petition”), a petition is being filed with the New Hampshire Site Evaluation Committee (“SEC” or the “Committee”) regarding PNGTS’s Certificate of Site and Facility, seeking approval of the change in upstream ownership pursuant to RSA 162-H:8 and RSA 162-H:5. In that proceeding, the Buyers have

provided testimony demonstrating that they have the financial, managerial, and technical capability to operate the PNGTS facilities in compliance with the terms and conditions of the Certificate of Site and Facility.

Accordingly, Petitioners respectfully request that the Commission approve the Transaction for the reasons set forth herein.

I. BACKGROUND

A. PNGTS

PNGTS maintains a regional office in Lancaster, New Hampshire. It owns and operates a FERC-regulated pipeline for the transportation of natural gas in interstate commerce that extends 295-miles from the Canadian border to connections in New Hampshire, passes through Maine, re-enters New Hampshire, and terminates at Dracut, Massachusetts. *See* Map, Attachment A. PNGTS provides interstate transportation service to natural gas local distribution companies, industrial customers, and gas marketing customers with delivery points in Massachusetts, New Hampshire, Rhode Island, and Maine. PNGTS has no retail customers in New Hampshire.

In New Hampshire, the PNGTS facilities include 79.1 miles of 24-inch diameter pipeline extending from Pittsburg across the northern part of the state to Shelburne, along with a lateral extending 0.7 miles to Groveton, and 31.3 miles of 30-inch diameter pipeline between Newington and Plaistow in the southern part of the state, along with two laterals, one extending 1.1 miles to Newington, New Hampshire, and one extending 0.6 miles to Haverhill, Massachusetts; the southern segment is jointly owned with Maritimes & Northeast Pipeline, L.L.C. The SEC issued a Certificate of Site and Facility for the New Hampshire components of the system on July 16, 1997. *See* Attachment B.

B. FERC Regulation

PNGTS is a natural gas company, as defined by the Natural Gas Act (“NGA”), 15 U.S.C. § 717a (6), that is “primarily engaged in the transportation of natural gas in interstate commerce.” *Portland Natural Gas Transmission System*, 165 FERC ¶ 61,049 (2018). Under Section 1(b) of the NGA, FERC has exclusive jurisdictional authority over the transportation of natural gas in interstate commerce, sales in interstate commerce of natural gas for resale.¹

Pursuant to its authority under the NGA, in September 1997, FERC determined that the construction of PNGTS was in the public interest and authorized PNGTS to construct and operate a natural gas pipeline system.² Since that time, PNGTS has operated and maintained its pipeline subject to the comprehensive jurisdiction of FERC. Consequently, FERC governs PNGTS’s construction, operations, maintenance, rates, and terms of service.

C. The Transaction

On March 2, 2024, the Sellers executed a Purchase and Sale Agreement (“PSA”) with Beehive Loop AcquisitionCo LLC, a special purpose vehicle formed to facilitate the transfer of Sellers’ partnership interests in PNGTS (“Beehive Loop AcquisitionCo”). As explained below, Beehive Loop AcquisitionCo is indirectly owned by BGIF IV and NHIP III. *See* PSA, Attachment C.

Sellers own all the outstanding partnership interests in PNGTS (the “Purchased Interests”). BGIF IV and NHIP III each indirectly own a 50% interest in Beehive Loop JV LLC.

¹ *See* 15 U.S.C. § 717 *et seq.*; *see also* *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988) (“The NGA confers upon FERC exclusive jurisdiction over the transportation and sale of natural gas in interstate commerce for resale.”) ; *N. Natural Gas Co. v. State Corp. Comm’n of Kansas*, 372 U.S. 84 (1963) (“The NGA long has been recognized as a ‘comprehensive scheme of federal regulation of all wholesales of natural gas in interstate commerce.’ The NGA confers upon FERC exclusive jurisdiction over the transportation and sale of natural gas in interstate commerce for resale.” (internal citations omitted)).

² *Portland Nat. Gas Transmission Sys.*, 76 FERC ¶ 61,123 (1996); 80 FERC ¶ 61,134 (1997); 80 FERC ¶ 61,136 (1997); 80 FERC ¶ 61,346 (1997); 80 FERC ¶ 61,345 (1997).

At the closing of the proposed Transaction, Beehive Loop AcquisitionCo, a wholly-owned subsidiary of Beehive Loop JV LLC, will receive from Sellers 99.99% of Purchased Interests and Beehive Loop StubCo LLC, also a wholly-owned subsidiary of Beehive Loop JV LLC, will receive 0.01% of the Purchased Interests. At the closing of the Transaction, BGIF IV and NHIP III will each indirectly own a 50% interest in PNGTS. *See* Attachment D, which includes an organizational chart showing the post-closing ownership structure of PNGTS.

II. STANDARD AND PROCESS FOR REVIEW

PNGTS falls under the definition of public utility pursuant to New Hampshire law because it is a partnership owning and operating a pipeline for the transportation of natural gas. *See* RSA 362:2. As explained above, however, FERC exercises exclusive jurisdiction over PNGTS's rates, terms, and conditions of service.

RSA 369:8, II(b)(1) provides:

To the extent that the approval of the commission is required by any other statute for any corporate merger or acquisition involving parent companies of a public utility whose rates, terms, and conditions of service are regulated by the commission, the approval of the commission shall not be required if the public utility files with the commission a detailed written representation no less than 60 days prior to the anticipated completion of the transaction that the transaction will not have an adverse effect on rates, terms, service, or operation of the public utility within the state.

The "other statute" contemplated by RSA 369:8, II(b)(1), with respect to the Transaction, is RSA 374:30, which provides that "[a]ny public utility may transfer or lease its franchise, works, or system . . . when the commission shall find that it will be for the public good. . . ."

If the Commission does not act on a filing under RSA 369:8, II(b)(2) within 60 days, the Transaction is considered approved as filed. Consequently, the streamlined review contemplated under the statute requires that whatever mechanisms the Commission employs (e.g., order of notice, prehearing conference, order *nisi*) be implemented in short order.

III. DISCUSSION

A. Approval pursuant to RSA 369:8, II(b)(1)

As the Commission concluded in *Aquarion Water Company of New Hampshire*, 91 NHPUC 509, 513 (2006), RSA 369:8, II was “designed to allow for streamlined review of transactions that clearly will have no . . . adverse impacts.” Here, as explained in the detailed written representation, provided as Attachment E, it is clear that the Transaction will not have an adverse effect on PNGTS’s rates, terms, service, or operation in New Hampshire. *See* Attachment E.

In the *Aquarion Water* proceeding, Macquarie Utilities, Inc. (“Macquarie”), a subsidiary of Macquarie Bank Limited, an Australian bank that manages a diversified portfolio of international utility investments, purchased stock held by Kelda Group, Inc., the ultimate parent company of Aquarion Water Company of New Hampshire, Inc (“Aquarion-NH”). But for the streamlined review provided under RSA 369:8, II, the Commission would have reviewed the stock purchase pursuant to RSA 374:33 (i.e., the “other statute” applicable under RSA 369:8, II for that transaction). The Petitioners urge the Commission to employ in this case the streamlined review recognized in *Aquarion Water* because here as well the Buyers are major financial institutions with large, diversified portfolios and successful track records of investment in utility infrastructure projects, and they have shown that the proposed transaction will have no adverse effects, thus meriting streamlined review.

As to the applicability of RSA 369:8, II, inasmuch as PNGTS is a partnership and not a corporation, it has general partners, namely TCP and NNEIC, which are, respectively, a limited partnership and a corporation. The relationship of the general partners to the partnership entity for purposes of RSA 369:8, II is substantially the same as the relationship of a parent company to

a subsidiary in that the general partners exercise control over the partnership in much the same way that a parent company exercises control over a subsidiary.

An acquisition at the partnership or parent company level occurs a step or more removed from the public utility itself and does not disturb the underlying public utility's form of business or affect its rights and responsibilities. The proposed transfer of the Sellers' partnership interests to the Buyers thus amounts to an acquisition of PNGTS comparable to Macquarie's acquisition of Aquarion-NH through a stock purchase.

The distinction between the Aquarion-NH and PNGTS cases is that the PUC regulates Aquarion-NH, while FERC regulates PNGTS, which bolsters the case for a streamlined review because the Transaction will clearly have no adverse impacts. Accordingly, the Petitioners ask the Commission to conduct a streamlined review of the Transaction pursuant to RSA 369:8, II(b)(2).

B. Approval pursuant to RSA 374:30, I

"Any public utility may transfer or lease its franchise, works, or system . . . when the commission shall find that it will be for the public good" RSA 374:30, I. In determining whether a transfer is for the public good, the Commission assesses the financial, managerial, and technical capability of the transferee (i.e., the buyer) as well as the potential impact of the transfer on rates and services. *See Lakes Region Water Company, Inc.*, Order No. 26,144 at 5 (June 15, 2018).

With respect to the potential impact on rates and services, the detailed written representation provided as Attachment E, shows that the Transaction will not impact rates, terms, services, or operations in New Hampshire. With respect to the financial, managerial, and technical capability of the Buyers, the testimony provided in the concurrent SEC proceeding

demonstrates that the Buyers have the requisite capability for both SEC and PUC purposes. *See* Attachment F. Insofar as the Commission determines that approval is warranted pursuant to RSA 374:30, I, the Petitioners ask that, for purposes of administrative efficiency, the Commission coordinate its review and process to align as closely as possible with the SEC's 90-day review period, including, to the extent necessary and practical, consolidating any public meetings or hearings.

C. Approvals pursuant to RSA 374:22, 24, 25, and 26.

RSA 374:22 provides that “[n]o person or business entity shall commence business as a public utility within this state . . . without first having obtained the permission and approval of the commission.” RSA 374:24 provides that “[n]o permission under RSA 374:22 shall be granted to any business entity not organized under the laws of this state and no authority to transfer or lease the franchises, works, or system . . . of any public utility in this state to any such business entity shall be granted under RSA 374:30.” However, RSA 374:25, I sets forth an exception to RSA 374:24 for any business entity “doing or desiring to do an interstate business.” Finally, RSA 374:26 provides that the Commission “shall grant such permission whenever it shall, after due hearing, find such engaging in business . . . would be for the public good”

PNGTS is a foreign business entity for purposes of RSA 374:24 because it is not organized under the laws of New Hampshire. The exception under RSA 374:25, I applies to PNGTS because it is engaged in an interstate business subject to the exclusive jurisdictional authority of FERC.

In light of the partnership business structure employed for PNGTS, the Buyers are not themselves commencing business in New Hampshire as contemplated by RSA 374:22. Nevertheless, in the event the change in the composition of the PNGTS partnership is determined

to warrant Commission approval to commence business under RSA 374:22, as it does when assessing a transfer under RSA 374:30, the Commission would look to financial, managerial, and technical capability, as well as, potential impacts on rates and services. *Id.* at 5. As discussed above in Subsections A and B, the Buyers have the financial, managerial, and technical capability to own and operate PNGTS, and the proposed Transaction will not have an adverse effect on PNGTS's rates, terms, service, or operation in New Hampshire or elsewhere.

IV. CONCLUSION

Petitioners request approval of the Transaction because it will not adversely affect PNGTS's rates, terms, services, or operation in New Hampshire.³ Specifically, the Transaction will not adversely impact retail New Hampshire ratepayers and PNGTS will remain the same interstate natural gas pipeline and will continue to provide safe, reasonable, and adequate service to its customers at just and reasonable rates regulated by FERC. Furthermore, the Buyers have the financial, managerial, and technical capability to own and operate PNGTS. The Petitioners have, therefore, made the requisite showings for Commission approvals pursuant to (1) RSA 369:8, II(b)(1); (2) RSA 374:30, I; and (3) RSA 374:22 and 26. Accordingly, they respectfully request that the Commission approve the Transaction for an upstream change of ownership of PNGTS.

³ As noted herein, FERC exercises comprehensive jurisdiction over PNGTS and its rates, terms and services pursuant to the Natural Gas Act. In this proceeding, the Petitioners, however, seek PUC approval under New Hampshire law, as applicable, for the express purpose of transferring the Sellers' partnership interests in PNGTS to the Buyers. In the event the Commission takes any action in this proceeding that conflicts with FERC's jurisdiction, the Petitioners reserve the right to contest such action.

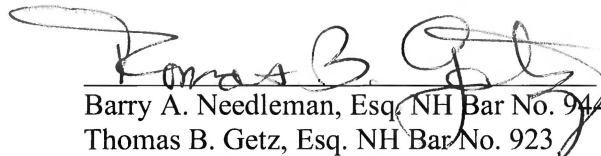
WHEREFORE, the Petitioners respectfully request that the Commission:

- A. Approve the Petition pursuant to RSA 369:8, II(b)(1); or, in the alternative,
- B. Approve the Petition pursuant to RSA 374:30, I;
- C. To the extent necessary, authorize PNGTS to conduct business in New Hampshire pursuant to RSA 374:22 and 26; and
- D. Grant such further relief as it deems appropriate.

Respectfully submitted,

By Their Attorneys

Date: March 26, 2024



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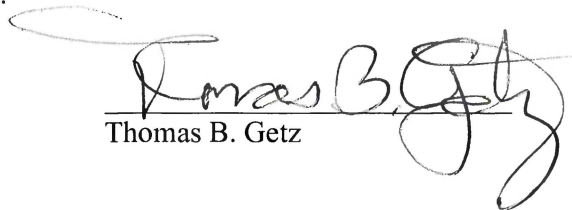
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Certificate of Service

I hereby certify that a copy of the foregoing Petition has on this 26th day of March, 2024, been sent by email to the service list.



Thomas B. Getz