

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DG 24-050

PNGTS, TCP, NNEIC, BGIF IV and AIV-B

Petition to Transfer Partnership Interests

**Order Approving Transfer of Partnership Interests and Granting Motion for
Confidential Treatment**

O R D E R N O. 27,023

June 21, 2024

North Haven Infrastructure Partners III (AIV-B) SCSp, an affiliate of Morgan Stanley Infrastructure Inc. and BlackRock Global Infrastructure Fund IV, SCSp, an affiliate of BlackRock Financial Management, Inc. (together, 'Buyers'), TC Pipelines, LP, a Delaware limited partnership, and Northern New England Investment Company, Inc., a Vermont corporation (together, 'Sellers') (Buyers and Sellers collectively: 'Petitioners'), filed with the Public Utilities Commission (Commission) a petition (the Petition) to transfer partnership in the upstream ownership interests in the Portland Natural Gas Transmission System (PNGTS). In this order the Commission grants the Petition and finds that the transaction is in the public good and has no adverse effects on rates, terms, service or operation of PNGTS in New Hampshire. The Commission also grants the Petitioners' motions for confidential treatment.

The petition and subsequent docket filings, other than information for which confidential treatment is requested of or granted by the Commission, are posted to the Commission's website at <https://www.puc.nh.gov/Regulatory/Docketbk/2024/24-050.html>.

I. BACKGROUND AND PROCEDURAL HISTORY

PNGTS 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. 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. *See* March 26, 2024 Petition at 2.

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. *See Id.*

On March 26, 2024 the Petitioners filed the Petition with the Commission. On March 29, 2024 the Department of Energy (DOE) filed a notice of appearance in this matter. On April 5, 2024, the Office of the Consumer Advocate (OCA) filed a notice of appearance. On May 3, 2024 the DOE filed a technical statement conditionally recommending approval of the Petition. The parties appeared on June 13, 2024 for a final hearing on the Petition.

In addition to the Petition filed with the Commission, the Petitioners also filed with the Site Evaluation Committee (SEC) a separate petition requesting approval of the proposed upstream change of ownership interests in PNGTS pursuant to the

statutory requirements of RSA 162-H:8 and RSA 162-H:5, I. *See* SEC Docket 24-001. On May 31, 2024, a subcommittee for the SEC held a public hearing on the proposed change of ownership and transfer of certificate to the new owners. The subcommittee recommended approval of the transfer. *See* SEC Subcommittee's June 12, 2024 Order. On June 19, 2024, the full SEC voted to accept the recommendation of the Subcommittee and approve the transfer of ownership petition. *See Id.*

II. POSITIONS OF THE PARTIES

A. Petitioners

On March 2, 2024, the Buyers and the Sellers executed a purchase and sales agreement (PSA) to buy the Sellers partnership interests in PNGTS. *See* Petition at 3-4. In order to execute this transaction, the Buyers formed a special purpose vehicle, Beehive Loop Acquisition Co LLC (Beehive).¹ Beehive has been formed to effectuate an equal partnership between BGIF IV and NHIP III who will in turn each indirectly own a 50% interest in PNGTS. *See Id.*

The Petitioners assert that approval of the transaction is both in the public good, pursuant to RSA 374:30, I, and has no adverse impact on rates, terms, services or operations of PNGTS, pursuant to RSA 369:8, II (b)(1). In support of its position, the Petitioners presented the testimony of Daniel Sailors (for Morgan Stanley), Mark Saxe (for Blackrock) and William Yardley a consultant for Petitioners with experience in the natural gas industry. The witnesses explained at hearing, and in their sworn pre-filed testimony, that the financial resources of BlackRock and Morgan Stanley (two of the

¹ The Petitioners have provided a diagram of the post-closing ownership structure for PNGTS. *See* Hearing Exhibit 3 at 3. There are 4 separate Beehive LLC's being created. The Buyers testified that the complexity of the structure was based on the advice of their respective corporate tax and business advisors.

largest investment concerns in the world), each of which will own a 50 percent interest in PNGTS at the close of the proposed transaction, ensure that there will be no adverse effect on operations. See Confidential Hearing Exhibit 2 at 170-192. The Petitioners also pointed to the role of the Transition Services Agreement, Confidential Hearing Exhibit 4, and the Petitioners' management-related planning and experience to ensure that the operation of PNGTS going forward would be successful in maintaining operation for this facility. *Id.*

On questioning by the Commission, the witnesses confirmed that the buyers value this transaction as a reliable revenue stream for their clients. Both Mr. Sailor, for Morgan Stanley, and Mr. Saxe, for Blackrock, reviewed the due diligence practices that each company undertakes prior to entering a transaction of this magnitude. Specifically, the clients of both Blackrock and Morgan Stanley require both a moderate rate of return with moderate to low risk.

Morgan Stanley has extensive domestic experience financing and managing investments in domestic natural gas pipeline and related infrastructure. See Hearing Exhibit 1 at 55. This includes having a majority interest in natural gas infrastructure in Southern Delaware, Ohio, and West Virginia. See *Id.* at 55-56. Blackrock also has extensive experience owning and managing investments in energy and utility infrastructure assets. See *Id.* at 66. This includes, but is not limited to, a substantial stake in Meade Pipeline Company in the mid-Atlantic regions as well as a substantial stake in Arrowhead Gulf Coast Holdings, LLC which operates 400 miles of pipelines carrying crude oil in Louisiana. See *Id.* at 67. BlackRock's holdings also include non-domestic holdings. Including natural gas pipeline ownership in the United Kingdom, Spain and Saudi Arabia. See *Id.* at 68.

Mr. Yardley testified that the agreements are in place to maintain, or increase staffing. The TSA will ensure that PNGTS's operations and service to PNGTS's customers will remain at the same level of quality that existed prior to closing the transaction and during this transition period while MSIP and BlackRock put their permanent management and operation steams in place. Accordingly, the transaction will not have an adverse effect on the service or operation of PNGTS. *See* Hearing Exhibit 1 at 48. PNGTS customers have negotiated or discounted natural gas transportation agreements with set terms and conditions and pricing that are fixed in the contract. *See* Hearing Exhibit 1 at 47. The current PNGTS contracts that effect NH ratepayers are in place until at least 2032 with some customer agreements expiring as late as 2054. *See Id.*

Finally, Mr. Yardley confirmed that the Buyers excel at leveraging their resources to assemble teams with the technical, financial and managerial expertise and proficiency needed to operate energy projects. This includes, when beneficial to customers and supported by demand, investing to expand infrastructure. *See Id.* Mr. Yardley confirmed that the NH local Gas distribution utilities (Liberty and Northern Utilities) had been consulted prior to the filing of the Petition and had not voiced an objection to the Petition.²

B. DOE

DOE reviewed the Petition and found that the proposed upstream change in ownership would not result in an adverse impact and was consistent with public good.

² The utilities support of the Petition was demonstrated by their objection to the DOE's motion to have them made mandatory parties to this proceeding. Northern and Liberty asserted that their rights and obligations under the proposed agreements to transfer ownership were not impacted and therefore they objected to participating in the docket. *See* Northern's May 13, 2024 Objection at ¶ 7 and Liberty's May 13, 2023 Objection at ¶ 6

See Hearing Exhibit 6 at 9. Although the DOE initially qualified its assessment as follows:

As such, the Department recommends the approval of the proposed ownership transfer of PNGTS subject to:

- The views of the NH Gas LDCs (i.e., Liberty and Northern) based on their independent analyses on the current matter before the PUC; and
- A statement from the Buyers that they would continue to adhere to all existing contractual

See *Id.* The DOE withdrew its qualifying approval after witness testimony on June 13, 2024 and recommended that the Commission approve the Petition on the basis of both public good and no adverse effect.

C. OCA

The OCA supported the petition and its approval on the grounds of both public good and no adverse effect.

III. MOTION FOR CONFIDENTIAL TREATMENT

In its motion, the Petitioners requests confidential treatment of the following documents:

1. Purchase and Sales Agreement (PSA);
2. Pre-Filed Testimony of Daniel Sailors and Mark Saxe;
3. The Buyers' Statements of Assets and Liabilities.
4. The Transaction Service Agreement (TSA); and
5. Material produced in Discovery to the DOE and the DOE technical statement that includes a confidential attachment.

Concerning the PSA and TSA, the petitioners argue that these agreements were the product of lengthy, confidential negotiations between the parties and is comprised of sensitive information, including the financial details of the transaction. The terms of the PSA and TSA include confidentiality clauses and disclosure of such confidential

information may place the petitioners at a competitive disadvantage. The Petitioners assert that their right to confidential treatment far outweighs any public interest in the PSA. *See* March 26, 2024 Motion for Confidential Treatment at 3 and April 8, 2024 Supplemental Motion for Protective Order and Confidential Treatment at 3.

Concerning the prefiled witness testimony, the Petitioners argue that the testimony contains non-public financial information relating to the buyers' investment strategies and structure that is considered exempt from disclosure under See RSA 91-A:5. *See* March 26, 2024 Motion for Confidential Treatment at 4. Concerning the Petitioners statement of assets and liabilities, the Petitioners argue that these reports contain sensitive and confidential financial information that is not publicly available. Disclosure of such information would harm the Buyers by providing their competitors, vendors, and suppliers with access to this information, thereby placing Buyers at a substantial disadvantage in the marketplace. *See* April 8, 2024 Supplemental Motion for Protective Order and Confidential Treatment at 2.

Concerning their second supplemental motion for protective order and confidential treatment, the Petitioners assert that during the course of discovery with the DOE they produced confidential information concerning terms of closing, financial arrangements. The information provided, if released, would cause harm to the Petitioners and should be protected from disclosure. Further, there is no discernable public interest in disclosure. *See* June 12, 2024 Motion at 4.

At the June 13, 2024 hearing neither the DOE nor the OCA objected to granting the Petitioners motions for confidentiality treatment and issuing a protective order as requested.

IV. COMMISSION ANALYSIS

Transfer of Ownership Interest

Two separate statutory provisions define the Commission's responsibility to review transactions that involve merger or acquisition of New Hampshire public utilities. First, pursuant to RSA 369:8, the Commission is charged with reviewing whether a transaction will "adversely affect rates, terms, service, or operation of the public utility within the state." This provision is designed to allow for streamlined review of transactions that clearly will have no such adverse impacts. In such cases, RSA 369:8 makes clear that the Commission's review ends at that point. However, as noted in *New England Electric System*, 84 NH PUC 502 (1999) and *Energy North Natural Gas, Inc.*, 85 NH PUC 361 (2000), a petitioner's mere representations that no adverse effect on the rates, terms, service or operation of the utility will occur is insufficient to warrant approval of the transaction under RSA 369:8.

In cases that require further inquiry, the petitioners must satisfy not just the "no adverse impacts" standard in RSA 369:8 but also the requirements of RSA 374. Pursuant to RSA 374:30, a public utility may transfer its franchise, works, or system only upon our finding that "it will be for the public good." In light of these statutory requirements, the Commission has evaluated the assertions of petitioners that there are no adverse effects, and no net harm, associated with the transaction. See, *Hampton Water Works, Inc.*, 87 NH PUC 104 (2002) (approving acquisition of Hampton Water Works by Aquarian- NH); *Consumers New Hampshire Water Co.*, 82 NH PUC 814 (1997); and *Eastern Utilities Associates*, 76 NH PUC 236 (1991).

The proposed upstream transfer of PNGTS has already been approved by the SEC for the purposes of updating the certificate of ownership under RSA 162-H:8. The Commission appreciates the SEC's thorough review in that proceeding. The Subcommittee's June 12, 2024 order found that Petitioners had adequate financial, technical, and managerial capability to assure construction and operation of the facility in continuing compliance with the terms and conditions of the certificate pursuant to RSA 162-H:8, VI. For the same reasons that the petition was approved by the SEC, the Commission also finds that under the RSA 369:8, II standard, no adverse effect, and the RSA 374:30 standard, public good, the Petition should also be granted.

Concerning adverse effect, the Petitioners have adequate financial resources, being supported by the funding of two of the largest investment concerns in the world, to support the transaction. The Petitioners have adequate managerial resources, having managerial experience elsewhere in multiple other regulated pipeline operations, to provide managerial development plan for back office operations and frontline safety and security operations for PNGTS. Furthermore, the two NH Gas Utilities have acknowledged that they were informed of the upstream transfer and have provided no objection to said transfer. See May 23, 2024 Procedural Order denying the DOE's motion to compel.

In determining whether a transfer is for the public good, the Commission also 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). The Petitioners testimony that the transaction will not affect rates, terms, services or operations in

New Hampshire is found persuasive. Furthermore, for the reasons explained above, it is found that the Buyers possess the financial managerial and technical capacity needed for ownership.

Motion for Confidential Treatment

The New Hampshire Supreme Court has interpreted the exemption for confidential, commercial, or financial information to require an "analysis of both whether the information sought is confidential, commercial, or financial information, and whether disclosure would constitute an invasion of privacy." *Union Leader Corp. v. NH Housing Fin. Auth.*, 142 N.H. 540, 552 (1997) (quotations omitted). "Furthermore, the asserted private confidential, commercial, or financial interest must be balanced against the public's interest in disclosure, since these categorical exemptions mean not that the information is per se exempt, but rather that it is sufficiently private that it must be balanced against the public's interest in disclosure." *Id.* at 553 (citation omitted). The burden of proving that the information is confidential and private rests with the party seeking non-disclosure. *See Goode v. NH Legislative Budget Assistant*, 148 N.H. 551, 555 (2002).

RSA 91-A:5(IV) expressly exempts from public disclosure requirements any "records pertaining to ... confidential, commercial or financial information ... " In furtherance of the Right-to-Know law, the Commission's rule on requests for confidential treatment, Puc 203.08, is designed to facilitate the balancing test required by the relevant case law. The rule requires petitioners to: (1) provide the material for which confidential treatment is sought or a detailed description of the types of information for which confidentiality is sought; (2) reference specific statutory or common law authority favoring confidentiality; and (3) provide a detailed statement of

the harm that would result from disclosure to be weighed against the benefits of disclosure to the public. See Puc 203.08(b).

The Supreme Court has stated that the determination of whether information is confidential or private must be made "objectively, and not based on the subjective expectations of the party generating it." See *Union Leader Corp. v. NH. Housing Fin. Auth.*, 142 N.H. at 553. Moreover, the Court has found instructive the federal test for confidential information under which "the party resisting disclosure must prove that disclosure is likely to: (1) impair the State's ability to obtain necessary information in the future; or (2) cause substantial harm to the competitive position of the person from whom the information was obtained." *Id.* at 554 (quotation and brackets omitted).

In this case the Petitioners seeks protection for financial information under RSA 91-A:5, IV. We agree with Petitioners that the information contained within the applicable filings in this docket constitutes confidential and sensitive commercial or financial information under RSA 91-A:5, IV, and that the Petitioners have a privacy interest in protecting the information pertaining to this transaction. We therefore conclude that the Petitioners interest in nondisclosure of the information identified in its motions outweighs the public's interest in disclosure of that information. Although the public may have an interest in that information to aid in understanding the Commission's analysis of the issues presented in this proceeding, we find that the public's interest in disclosure is outweighed by the Petitioners privacy interests in information that, if disclosed, could pose legitimate financial harm to or privacy risk to the Petitioners.

Accordingly, pursuant to Puc 203.08(a), we grant the Petitioners three separate motions for protective order and confidential treatment (dated March 26, 2024, April

8, 2024 and June 12, 2024). Consistent with past practice and Puc 203.08(k), 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 under RSA 91-A, should circumstances so warrant.

Based upon the foregoing, it is hereby

ORDERED, that the Petition to approve an upstream change of ownership interest in PNGTS from NNEIC and TCP to NHIP III and BGIF IV is hereby **GRANTED**; and it is


FURTHER ORDERED, that Petitioners shall submit written confirmation of the completed transaction within 10 days of execution of the closing date of the transaction; and it is

FURTHER ORDERED, that Petitioners shall file a copy of the final PSA and TSA that is signed at closing within 10 days of the closing date.

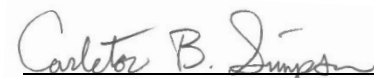
FURTHER ORDERED, PNGTS shall cause a copy of this order to be published on its website by no later than the close of business on June 25, 2024; and to be documented by affidavit filed with this office on or before June 28, 2024; and it is

FURTHER ORDERED, that the Petitioners March 26, 2024, April 8, 2024 and June 12, 2024 Motions for Protective Order and Confidential Treatment is **GRANTED**.

By order of the Public Utilities Commission of New Hampshire this twenty-first day of June 2024.


Daniel C. Goldner
Chairman


Pradip K. Chattopadhyay
Commissioner


Carleton B. Simpson
Commissioner

Service List - Docket Related

Docket#: 24-050

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Email Addresses

ClerksOffice@puc.nh.gov
Ashraful.Alam@energy.nh.gov
andrew.hyde@energir.com
Faisal.DeenArif@energy.nh.gov
Bruce.L.Blair@energy.nh.gov
Energy-Litigation@energy.nh.gov
paul.b.dexter@energy.nh.gov
viggo.fish@mclane.com
thomas.c.frantz@energy.nh.gov
thomas.getz@mclane.com
sunil.hosmane@morganstanley.com
rhughes@velaw.com
donald.m.kreis@oca.nh.gov
mark.lewis@bracewell.com
dlittell@bernsteinshur.com
rosalia.martinezrial@blackrock.com
barry.needleman@mclane.com
ocalitigation@oca.nh.gov
mary.e.schwarzer@energy.nh.gov
erica_youngstrom@tcenergy.com