

**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.

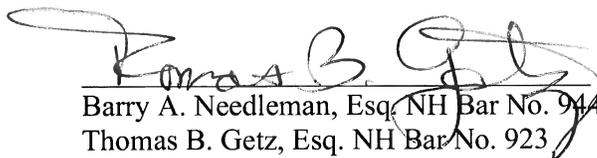
WHEREFORE, the Petitioners respectfully request that the Commission:

- 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



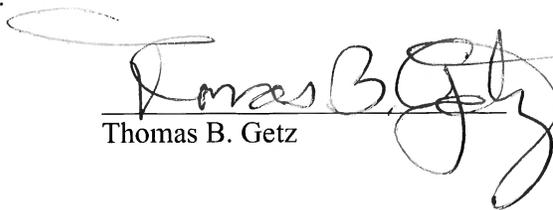
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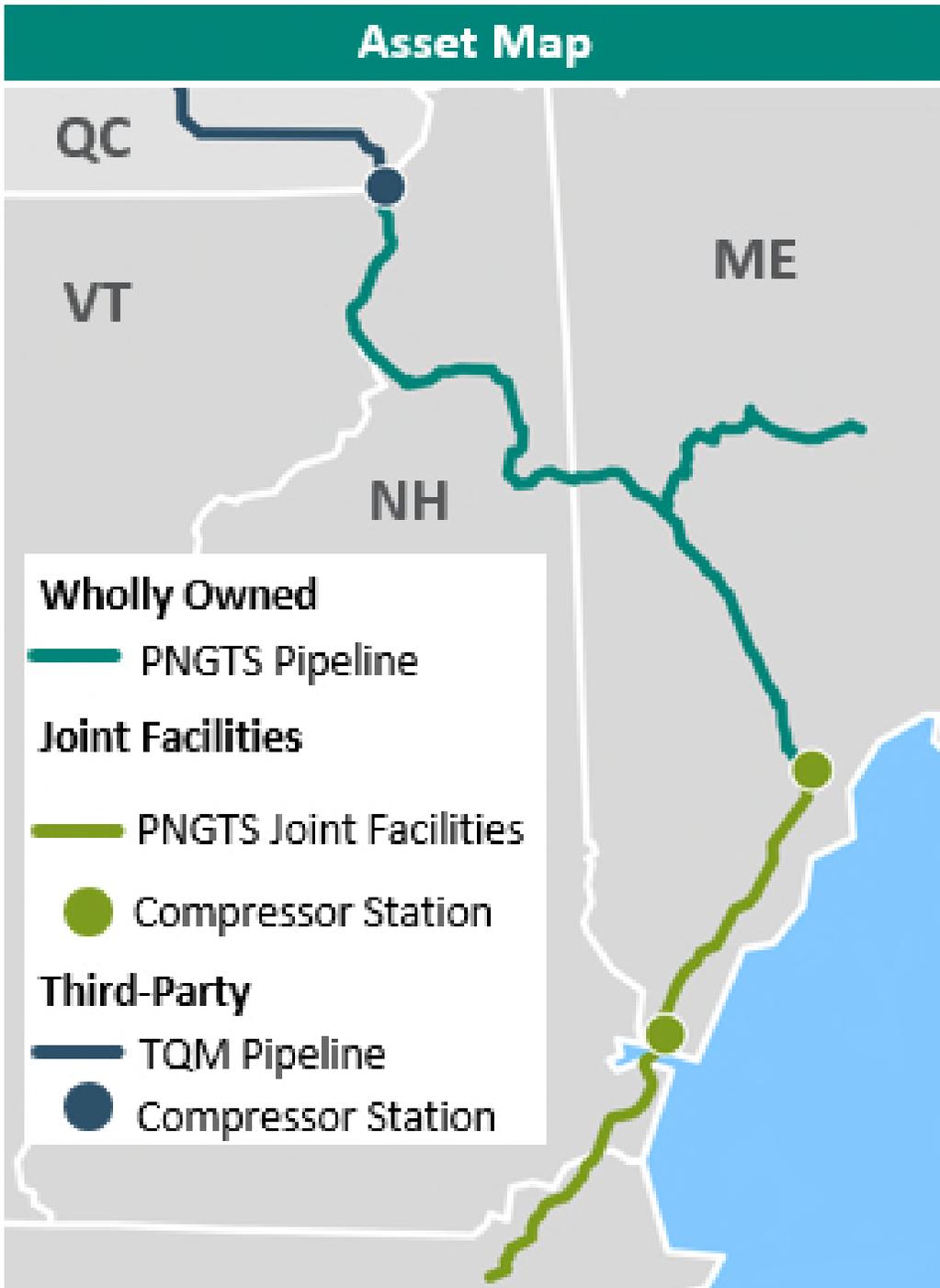
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Certificate of Service

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



STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE

(Docket No. SEC 96-01)
(Docket No. SEC 96-03)

ORDER

Amended Application of Portland Natural Gas Transmission System (PNGTS), for an Energy Facility Certificate to construct, operate and maintain a Natural Gas Pipeline, consisting of approximately 78.6 miles of 24 inch outside diameter pipeline extending from Pittsburg, New Hampshire across northern New Hampshire to Shelburne, New Hampshire, along with a lateral extending 0.7 mile to Groveton, New Hampshire (PNGTS project)

and Amended application of PNGTS and Maritimes & Northeast Pipeline, L.L.C. (M&N) to construct, operate and maintain 31.3 miles of 30 inch outside diameter pipeline between Newington, New Hampshire and Plaistow, New Hampshire, along with two laterals, one extending 1.1 mile to Newington, New Hampshire, and the second extending 0.6 mile to Haverhill, MA. (Joint Facilities)

CERTIFICATE OF SITE AND FACILITY

Upon Consideration of the foregoing report, which contains the findings of the Energy Facility Site Evaluation Committee, and attachments from the Department of Environmental Services, Water Division, the Public Utilities Commission, and Pease Development Authority, all of which are made part of this order, it is

ORDERED, that the proposed Energy Facility is of sufficient character and environmental impact to require a Certificate of Site and Facility; and it is

FURTHER ORDERED, that the requisite good cause exists to permit issuance of this Certificate of Energy Facility to permit construction of the proposed northern and southern natural gas transmission systems; and it is

FURTHER ORDERED, that a Certificate of Energy Facility be, and hereby is, granted pursuant to RSA Chapter 162-H to Portland Natural Gas Transmission System (PNGTS), to construct, operate and maintain a Natural Gas Pipeline approximately 78.6 miles of 24 inch outside diameter pipeline extending from the Pittsburg, New Hampshire across northern New Hampshire to Shelburne, New Hampshire, along with a lateral that extends 0.7 mile to Groveton, New Hampshire (PNGTS project)

and, pursuant to the amended application of PNGTS and Maritimes & Northeast Pipeline, L.L.C. (M&N) to construct and operate 31.3 miles of 30 inch outside diameter mainline between Newington, New Hampshire and Plaistow, New Hampshire, along with two laterals, one extending 0.4 mile to Newington, New Hampshire, and the second extending 0.6 mile to Haverhill, MA, and associated ancillary facilities (Joint Facilities). The certificate is for the transportation of natural gas only; and it is

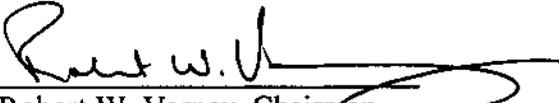
FURTHER ORDERED, that all licenses and/or permits referred to in the foregoing Report and attached findings of the Site Evaluation Committee, including the permits issued by the New Hampshire Department of Environmental Services, under RSA Chapter 482-A, and Chapter 485-A, the Commissioner of the Department of Transportation under RSA Chapter 231, the Office of State Planning, and the Public Utilities Commission under RSA Chapter 371, are granted, with the conditions attached hereto and pursuant to RSA-162-H:16, VII and VIII. All conditions imposed by the Committee in its Decision, the DES, the NHPUC and the Pease Development Authority and all state standards and requirements shall be met by the Portland Natural Gas Transmission System and the Maritimes & Northeast Pipeline, L.L.C., as a condition of granting this Certificate of Site and Facility; and it is

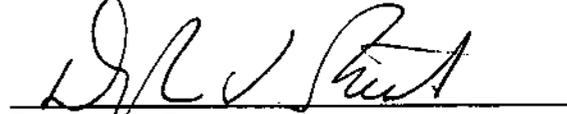
FURTHER ORDERED, that pursuant to RSA 162-H:3, III, the Committee delegates to the NHPUC authority to inspect and monitor the safety aspects of construction of the pipeline; and it is

FURTHER ORDERED, that pursuant to RSA 162-H:3, III, the Committee delegates to DES authority to inspect and monitor the environmental aspects of construction of the pipeline as authorized under this certificate. In addition, pursuant to RSA 162-H:3, III-a, as amended June 20, 1997, the Committee delegates to DES, including the NHDES EI specified in the final DES conditions, authority to specify the use of any technique, methodology, practice or procedure specified in the final DES conditions, and authority to specify minor changes in the route alignment in connection with the nonsurveyed and partially surveyed segments of the pipeline listed in condition #9 of the final DES conditions; and it is

FURTHER ORDERED, that pursuant to RSA 162-H:10, V, the Committee authorizes DES and the PUC to assess the applicants for the reasonable cost of their inspections, including the NHDES EI inspections.

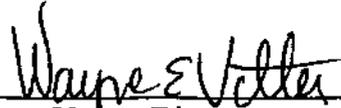
By Order of the Energy Facilities Site Evaluation Committee of New Hampshire this 16th day of July, 1997.


Robert W. Varney, Chairman
Commissioner, Dept. of
Environmental Services

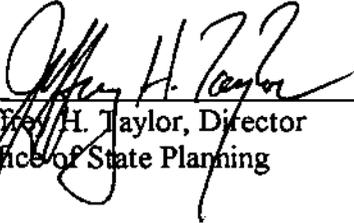

Douglas L. Patch, Chairman
Public Utilities Commission



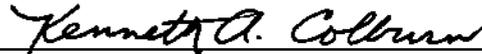
Dr. Edward Schmidt, Director
Water Division, Department of
Environmental Services



Wayne Vetter, Director
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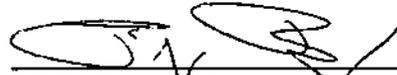
Jeffrey H. Taylor, Director
Office of State Planning



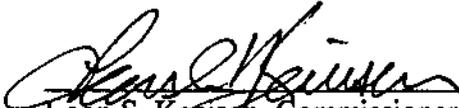
Kenneth A. Colburn, Director
Air Resources Division, Department
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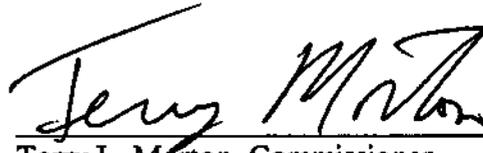
Deborah Schachter, Director
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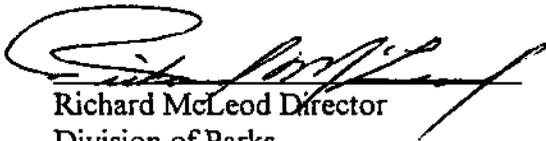
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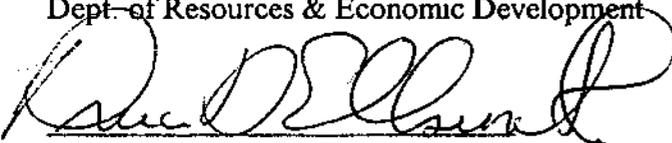
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Public Utilities Commission



Michael D. Cannata Jr., Chief Engineer
Public Utilities Commission

STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE

(Docket No. SEC 96-01)
(Docket No. SEC 96-03)

DECISION

Amended Application of Portland Natural Gas Transmission System (PNGTS), for an Energy Facility Certificate to construct, operate and maintain a Natural Gas Pipeline, consisting of approximately 78.6 miles of 24 inch outside diameter pipeline extending from Pittsburg, New Hampshire across northern New Hampshire to Shelburne, New Hampshire, along with a lateral extending 0.7 mile to Groveton, New Hampshire (PNGTS project)

and Amended application of PNGTS and Maritime Northeast Pipeline, L.L.C. (M&N) to construct, operate and maintain 31.3 miles of 30 inch outside diameter mainline between Newington, New Hampshire and Plaistow, New Hampshire, along with two laterals, one extending 1.1 mile to Newington, New Hampshire, and the second extending 0.6 mile to Haverhill, MA. (Joint Facilities)

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I. INTRODUCTION

This certification proceeding under RSA 162-H arises out of two originally separate applications to construct natural gas pipelines extending through two areas of New Hampshire.¹ On May 2, 1996, Portland Natural Gas Transmission System ("PNGTS") filed its initial application with the Site Evaluation Committee. (PNGTS Exhibit 1.)² PNGTS proposed to construct, operate and maintain a 20 inch outside diameter ("O.D.") pipeline extending from an interconnect with TransCanada Pipelines Limited at the Vermont-Quebec border, near Troy, Vermont, to an interconnect with the Tennessee Gas Pipeline System at Haverhill, Massachusetts. Approximately 103.05 miles of the pipeline was proposed to extend through New Hampshire, 72.65 miles in Coos County (northern portion) and 31.4 miles in Rockingham County (southern portion).

On September 25, 1996, the second applicant, Maritimes & Northeast Pipeline, L.L.C. ("M&N") filed its application with the Committee. M&N proposed to construct, operate and maintain a 24 inch O.D. diameter natural gas pipeline from an intersection of the Tennessee Gas Pipeline System ("Tennessee") at Dracut, Massachusetts to Wells, Maine. M&N's proposed route through New Hampshire extended for 31.4 miles in Rockingham County and was similar to the southern portion of the proposed PNGTS route.

On November 15, 1996, PNGTS filed an amended application substantially changing the northern portion of its route. (PNGTS Exhibit 1a.) The amended proposed northern portion would consist of a 24-inch O.D. pipeline extending for 78.6 miles in Coos County, beginning in Pittsburg and transversing south to the Vermont border, MP 0.0 to MP 0.35 (0.35 miles), then entering New Hampshire again at the Connecticut River and transversing south from Stewartstown to Shelburne, MP 0.88 to MP 73.53 (72.65 miles). (PNGTS Exhibit 10, Revised prefiled direct testimony of Michael Minkos; PNGTS Exhibit 19, alignment sheets.)

On February 3, 1997, PNGTS and M&N filed a joint application to join in the construction of a single 30-inch O.D. diameter pipeline between Dracut, Massachusetts and Wells, Maine. The joint application superseded M&N's original proposal and the southern portion of PNGTS' proposal, and would run for approximately 31.3 miles in Rockingham County, with a 1.1 mile 16-inch diameter natural gas pipeline lateral in Newington, and a 0.6 mile 16 inch diameter lateral to Haverhill, MA. Overall, PNGTS and M&N jointly propose to construct approximately 101.26 miles of 30-inch O.D. natural gas pipeline and appurtenant facilities extending from a proposed interconnection with existing pipeline facilities of Tennessee in Dracut, Massachusetts, through a portion of New Hampshire to a termination point in Westbrook near Portland, Maine.

¹ A complete procedural history relating to this matter may be found in Attachment A.

² An exhibit list is attached as Attachment B. The referenced exhibits are those filed by the parties at the adversarial hearings on June 23, 24, and 25, 1997.

The Rockingham County mainline portion of the joint pipeline runs for approximately 31.3 miles between Plaistow and Newington, N.H., at the Piscataqua River (MPs 16.9 to 48.2). Additionally, the Joint Pipeline Amendment includes an approximately 1.1 miles of 16-inch O.D. diameter natural gas pipeline lateral and appurtenant facilities (Newington lateral) near Portsmouth, New Hampshire, at approximately MP 47.5 to service the existing Public Service Company of New Hampshire, Newington Power Plant and to interconnect with the Granite State Gas Transmission System (PNGTS Exhibit 15 & 19.) Further the joint pipeline includes 0.6 O.D. 20-inch diameter pipeline mile of the Haverhill lateral ("Joint Facilities"). (PNGTS Exhibit 10, Revised prefiled direct testimony of Michael Minkos.)

In addition to several earlier public hearings on the initial proposals, the Committee held public informational hearings on the PNGTS northern route on February 5, 1997 in Groveton and on the joint southern route on March 5, 1997 in Exeter. On June 23, 24, and 25, in Concord, the Committee held adversarial hearings on the PNGTS northern route and the joint southern route.

II. CRITERIA FOR PROJECT APPROVAL

Pursuant to the Declaration of Purpose set forth in RSA 162-H:1, the public interest requires the Site Evaluation Committee ("Committee") to maintain a balance between the environment and the need for new energy facilities; to avoid undue delay in construction of any needed facilities; to ensure that operation of energy facilities is consistent with the state's least cost energy policy; and to ensure that the construction and operation of energy facilities is treated as a significant aspect of land-use planning in which all environmental, economic and technical issues are resolved in an integrated fashion.

RSA 162-H:16, IV requires that the Committee, after considering available alternatives and fully reviewing the environmental impacts of the site or route, and other relevant factors bearing on whether the objectives of Chapter 162-H would be best served by the issuance of the certificate, must find that the site and facility:

- (a) Applicant has adequate financial, technical, and managerial capability to assure construction and operation of the facility in compliance with the terms and conditions of the Certificate.
- (b) Will not unduly interfere with the orderly development of the region with due consideration having been given to the views of municipal and regional planning commissions and municipal legislative bodies.
- (c) Will not have an unreasonable adverse effect on esthetics, historic sites, air and water quality, the natural environment and public health and safety.
- (d) Operation is consistent with the state energy policy established in RSA 378:37.

(RSA 162-H:16, IV (a) - (d).) In making a determination as to whether a petitioner's present or proposed use is reasonably necessary, the Committee examines: (1) the present or proposed use and any alternatives or alternative sites identified; (2) the applicant's financial, technical and managerial capabilities to assure construction and operation; (3) the environmental or any other impacts of the proposed use- and (4) that the operation is consistent with the present state energy policy.

The relevant inquiry under the statute, regarding environmental and other impacts, is whether the proposed facility will have an unreasonable environmental impact. Whether the impacts are unreasonable depends on the assessment of the environment in which the facility will be located, an assessment of statutory or regulatory constraints, or prohibitions against certain impacts on the environment and determination as to whether the proposed facility exceeds those constraints or violates those prohibitions. In Re: New England Electric Transmission Corp, 67 NHPUC 910, pg.923: Public Service Company of New Hampshire, SEC Report issued Dec. 15, 1992.

III.SUMMARY OF CERTIFICATING PROCESS

In passing RSA 162-H, the Legislature recognized that the selection of sites for energy facilities has a significant impact upon the welfare of the population, the economic growth of the state and the environment of the state. (RSA 162-H:1, I.) It found that it is essential to the public interest to maintain a balance between the environment and the possible need for new energy facilities in New Hampshire; that undue delay in construction of any needed facilities should be avoided; that the operation of the facility should be consistent with the state's least cost energy policy; and that the state should ensure that the construction and operation of energy facilities is treated as a significant aspect of land-use planning in which all environmental, economic and technical issues are resolved in an integrated fashion. (RSA 162-H:1, I.)

To establish a procedure for the review, approval, monitoring and enforcement of the planning, siting, construction and operation of energy facilities, the Legislature created the Site Evaluation Committee, whose members are Commissioners, Directors or key personnel in various state agencies. (RSA 162-H:3.) To expedite the process, the legislature created time frames which provide for informational hearings, public adversarial hearing and a decision no later than eight months after the acceptance of the application. (RSA 162-H:6.) The public is represented throughout the proceeding by Public Council appointed by the Attorney General. (RSA 162-H:9.) Members of the public may attend hearings, file written comments, or present oral testimony. Written comments are accepted before, during and after the public hearings until the evidentiary hearings are closed. (RSA 162-H:10.)

The Committee's certificating process subsumes separate permitting procedures under several other state statutes. Ordinarily, the Department of Transportation has the authority to

issue permits for Highway Crossings, the NHPUC for railroad crossings, the DES for excavating and dredging permits and for a Section 401 Water Quality Certificate, Office of State Planning for Certificate of Consistency with the Coastal Zone Management Act, and the Pease Development Authority for uses affecting their property. Because of the integrated process under RSA 162-H, such permits will be incorporated in the Energy Facility Certificate. (RSA 162-H:16, I.)

IV. SUMMARY OF TESTIMONY AND PUBLIC PARTICIPATION

On June 23, 24 & 25, 1997, public adversarial hearings were held by the Site Evaluation Committee as required by RSA 162-H: 10. In this proceeding, General Appearances were granted to the Applicants, Public Counsel, the Town of Shelburne and Donald and Mary Robie. A Limited Appearance was granted to Claire Lamm. Following the testimony of the witnesses, members of the committee questioned the witnesses and received statements by members of the public. The Public Counsel, appointed by the Attorney General, represented the public interests during the entire proceeding and at the public hearings. Upon conclusion of the presentation of testimony and introduction of evidence by all parties, the evidentiary portion of the hearing was closed.

A. Applicants' Testimony

On February 14, 1997, the applicants submitted pre-filed direct written testimony. On June 19, 1997, the applicants submitted an updated version of their prefiled testimony, along with a proposed exhibit list. (Exhibit 10, updated prefiled testimony.) At the adversarial hearings, most of the applicants' witnesses offered live testimony in addition to their prefiled testimony.

In the updated prefiled testimony, Michael A. Minkos, President of PNGTS Operating Co, testified to the composition and expertise of PNGTS and the procedural history of the PNGTS application. John M. Flumerfelt, Vice President of Granite State Gas Transmission, Inc., and Director of Government and Public Affairs for PNGTS, testified about the need for the proposed project and its consistency with the region's orderly development and energy policy.

Edward D. Gonzales, serving as Director of Engineering for M&N, testified relating to M&N's plans for operation of the Joint Facility, and detailed the specific measures that M&N will take to protect the public. At the adversarial hearing, Mr. Gonzales's testimony was adopted by Jeryl Mohn. William C. Penney, Jr, Project Manager for M&N, testified to M&N's financial, technical, and managerial capabilities to assure the operation of the Joint Facility in accordance with anticipated permit terms and conditions.

In panel testimony, Michael Morgan, PNGTS Field Project Manager; John Auriemma, PNGTS Project Environmental Coordinator; Roger Trettel, PNGTS Project Field Environmental Coordinator; and Chris Wilber, PNGTS Project ROW Coordinator testified regarding field activities including engineering, environmental issues and acquisition of right of way. The

applicants also presented the live testimony of a new witness, Brent Evans, with respect to river crossings.

B. Public Counsel's Testimony

In both live and prefiled testimony, Public Counsel presented a number of witnesses. Richard Marini, the Safety Administrator of the New Hampshire NHPUC, commented on the construction standards imposed by the U.S. Department of Transportation under 49 C.F.R. Part 192, Pipeline Safety. (PC Exhibit 1, tab 4.) Mr. Marini made several recommendations and requested that the Committee provide for safety inspectors for each spread of the pipeline. Robert Allen of ARK Engineering and Technical Services, Inc., evaluated the pipeline companies' application to determine whether the proposed right of way design is reasonable, particularly with regard to the proximity of the various utilities in the corridor. (PC Exhibit 1, tab 6.) Daniel Dobbels and Richard Stulgis of Haley and Aldrich, Inc., provided a geotechnical peer review of the proposed pipeline project. (PC Exhibit 1a.) The peer review covered major river crossings, proposed blasting procedures, and preferred and alternative alignment through the Gorham-Shelburne area.

Public Counsel also offered the testimony of several municipal and regional planning officials. Preston Gilbert, Cathy Conway and Dorothy Weinstein of the North Country Council ("NCC") assessed the impact of the proposal on the North Country's economy, environment, and orderly development. (PC Exhibit 1, tab 2.) The NCC, which has an important regional role in both planning and economic development, offered recommendations regarding the construction and design of the proposal and submitted a detailed analysis of the procedures used by PNGTS to select its route alignment through Gorham and Shelburne. Clay Mitchell of the Rockingham Planning Commission ("RPC") testified with respect to the regional impacts of the southern route, including a number of specific routing concerns. (PC Exhibit 1, tab 1.) RPC's testimony included statements by the Town of East Kingston Conservation Committee, Town of Newington, Town of Exeter, and the Town of Plaistow. (PC Exhibit 1 tab 1.) Stephen Cushing, the Chair of the Newton Conservation Commission, explained Newton's concerns regarding environmental impacts, particularly on Town-owned conservation land and trails. (PC Exhibit 1, tab 3.) Carl Demrow of the Appalachian Mountain Club ("AMC") and John Tyler Horn of the Appalachian Trail Conference ("ATC") testified regarding their organizations' concerns about the proposed route through Shelburne. (PC Exhibit 1, tab 5.)

C. Town of Shelburne's Testimony

The Town of Shelburne offered testimony (S Exhibits 1-7) wherein they presented their position that the routing of the pipeline on the northerly side of the Androscoggin River would unduly interfere with the orderly development of the region with no regard to the views of municipal and regional planning commissions and the municipal governing bodies. Shelburne Selectman Stanley Judge and Planning Board Chair John Carpenter explained that the pipeline as

proposed would adversely affect aesthetics and the environment and cause unnecessary fragmentation of property and habitat. The proposed pipeline route would negatively impact the Town's planning efforts, such as zoning and the master plan which the Town of Shelburne has worked on since the 1960's, which all call for orderly development, the maintenance of the rural character of the town and aesthetics as the highest priority.

D. Members of the Public

In addition to the parties, the Committee heard from a number of members of the public. Public Counsel's prefiled testimony contained written testimony from JoAnn Boydston, Gerald And Shelia Bergeron, Bruce Blodgett Darlene Cassady, Edward and Lena Connary, Jon H. and Lynette A. Emerson, Herve Giguere, Patrick Giroux, Frances A. Hawley, Claire and H. Nile Lamm, John and Carolyn Livingstone, and Nancy L. Marier. (PC Exhibit 1, tab 8.)

On the first day of the public hearings, Mark Bezanson, a resident of Newton, New Hampshire, expressed concern about impacts on his well water system as well as concern that private citizens may not be getting all the information they need about the project. (6/23 transcript, p. 11.) Frederick Martin, a longtime landowner in Stratford, testified to his concerns including possible water problems and access to his lumber lot and fields. He testified in response to questioning that nobody from PNGTS had ever suggested to him that the company could provide sleeves across the pipeline for heavy equipment and access. He also expressed his concern for the pipeline's impacts on the character of the Connecticut River Valley and his fear that the company would put oil through the pipeline in the future which would cause contamination in the event of a leak. He further recommended a thorough cultural survey of historic structures and landscapes which might be affected by the project. (6/23 transcript, p. 35.)

Jim Simpson, Senior Vice President and head of the Regulated Utility Business Segment for Bay State Gas Company and Northern Utilities, testified that the timely approval and installation of the project is essential to meeting the energy needs of Northern Utilities' customers, in light of expected supply shortfalls during the 1998-99 winter season. (6/23 transcript, p. 15.) The Committee also heard from Tom Craven, Director of Wausau Papers in Groveton, New Hampshire, who testified that the company's plan for compliance with the Clean Air Act of 1990 relies on natural gas to be received through the pipeline and an in-service date no later than November, 1998. (6/23 transcript, p. 27.)

Claire Lamm, a property owner from Stratford, spoke on both the first and second days of the hearings. She expressed her fear that the pipeline project would have a destructive impact on ground water, aquifers, oxbows, swamps and wetlands in the Connecticut River Valley. She also expressed specific concerns about impact to her terraced land and the company's entry without permission onto her property. (6/23 transcript, p. 42; 6/24 transcript, p. 10.)

On the second day of hearings, William Jackson, Town Manager for the town of Gorham, testified that the town's concerns mirror those of Shelburne. (6/24 transcript, p. 7.) Rep. Lawrence Guay testified in strong support of the proposed construction by PNGTS and against any delay in the project. (6/24 transcript, p. 126.)

On the third and final day of hearings, Sheila Bergeron of Newton testified to her concerns about the terms of easements entered into with residents which would permit alternate uses of the pipeline and right of way. She urged the Committee to protect the rights of landowners, including limiting the use of the pipeline to natural gas only, and testified to what she felt to be deceptive practices of a PNGTS land agent. (6/25 transcript, p. 4.)

In addition to the public hearing testimony, many citizens spoke and gave their comments at the informational hearings. (Transcripts of Informational Hearings.) The following Public Officials submitted written statement or oral testimony: Governor Jeanne Shaheen, Executive Councilors Raymond S. Burton and Ruth L. Griffith, State Senator Frederick King, State Representatives Lawrence J. Guay and Paula Bradley, United States Senators Robert Smith and Judd Gregg, and Congressman William Zeliff.

The following members of the public sent letters to the Committee setting forth their concerns: Reid Merrill, H. Nile Lamm, Eugene Salvage, Peter Beale, William Donovan, David Auger, Dr. Christopher Betjemin, Beatrice & Frank Stefan, Peter & Sharon DesRosiers, Leatrice & Douglas Bacon. The Committee appreciates the time and effort members of the public devoted to this proceeding.

V. ANALYSIS AND FINDINGS

Considering a project of this magnitude is a momentous undertaking, involving minute analysis of the site-specific impacts of the 100 plus miles of pipeline, as well as thorough consideration of the overarching questions of public safety, public participation, and orderly development. The members of the Committee as well as many state employees, local officials, and members of the public, have devoted many, many hours to the applicants' pipeline proposal. The Committee will discuss in detail only those issues which were controversial. For uncontested matters, the Committee will adopt by reference filings made by various parties with which it agrees. In addition, pursuant to RSA 162-H:VII & VIII, the certificate will incorporate without significant discussion the certificate conditions recommended by the individual agencies which would, in the absence of RSA 162-H, have had sole jurisdiction over the project.

Need for an Energy Certificate

Before discussing the major findings which the Site Evaluation Committee must make under the statute, there is a preliminary matter to consider, that is whether the proposed facility should require a certificate of Site and Facility.

An energy facility is defined as:

Any industrial structure, other than bulk power supply facilities as defined in paragraph II, that may be used substantially to . . . transport . . . sources of energy, including ancillary facilities as may be used or useful in transporting . . . storing or otherwise providing for the raw materials or products of any such industrial structure. This shall include but not be limited to industrial structures such as oil refineries, gas plants, equipment and
Energy facilities shall also include energy transmission pipelines, storage tanks or other facility which the applicant or 2 or more petition categories as defined in RSA 162-H:2 XI request and the Committee agrees or which the Committee determines in accordance with RSA 162-H:1 requires a certificate.

(RSA 162-H:2, VII.)

The proposed facility is a natural gas transmission pipeline and is located almost entirely in existing utility transmission rights of way. However there is a significant part of the pipeline that will impact the environment. The Committee finds that the proposed facility is a major project and one which should require a certificate. The reasons for this finding are that the existing right of way was developed so many years ago and present environmental standards and land use patterns should be reviewed and met for new construction and maintenance as well as an analysis that the existing rights of way can accommodate the proposed pipeline use. This proceeding provides a forum to make a proper examination.

A. Applicants' Capability

The first factor the Committee must consider is whether the applicant has adequate financial, technical, and managerial capability to assure construction and operation of the facility in compliance with the terms and conditions of the Certificate. (RSA 162-H:16, IV(a).)

PNGTS testified that it is a consortium of energy companies from the United States and Canada. It is a general partnership organized and existing under the laws of the State of Maine, with offices located at 43 Baxter Blvd., Portland, Maine and a principal place of business situated at 300 Friberg Parkway, Westborough, Massachusetts, 01581-5039. The six partners comprising PNGTS are MCNIC East Coast Pipeline Company; Gaz Metro Portland Corporation- JMC Portland (Investors), Inc.; Natural Gas Development, Inc. - TCPL Portland Inc.; and EPEC Portland Corporation (formerly known as Tenneco Portland Corporation). The partners are

subsidiaries (and/or affiliates) of MCN Corporation, Gaz Metropolitan, US Generating Co., Bay State Gas Company, TransCanada Pipelines Limited and El Paso Energy Corporation. (Testimony of Michael Minkos; PNGTS Exhibit 14.) The original PNGTS Application describes the financial, technical and managerial capabilities of PNGTS in detail. (PNGTS Exhibit 1, at p. 102.) PNGTS testified that Granite State Gas Transmission, a 17.8 percent equity partner in PNGTS, owns and operates an interstate natural gas pipeline connecting Haverhill, Massachusetts and Portland, Maine, and currently operates the Portland Natural Gas Pipeline, a converted crude oil pipeline that transports up to 31 million cubic feet of natural gas per day into Maine from Canada. (Revised prefiled testimony of John Flumerfelt, PNGTS Exhibit 10, at p. 2.)

M&N's testimony explained that it is a Delaware limited liability company, the members of which are affiliates of energy corporations with expertise in natural gas pipeline siting, permitting, construction, and operation. The M&N members are M&N Management Company, a wholly-owned subsidiary of Duke Energy (effective June 18, 1997, Pan Energy merged with Duke Power Company); Westcoast Energy (U.S.) Inc., a wholly-owned subsidiary of Westcoast Energy, Inc.; and Mobil Midstream Natural Gas Investments, Inc., a wholly-owned subsidiary of Mobil Oil Corporation. M&N Management Company is the managing member of M&N. According to M&N's testimony, Duke Energy owns and operates one of the largest natural gas transmission networks in the United States, including four interstate gas pipelines that transport approximately 12 percent of the nation's gas consumption using approximately 35,000 miles of installed pipeline. (Prefiled testimony of William C. Penney, PNGTS Exhibit 10.) Additional information, including PanEnergy Corp.'s 1995 Annual Report, detailing M&N's financial, technical and managerial capabilities is included in Appendix G of the Joint Pipeline Amendment to Energy Facility Certificate (Southern New Hampshire) dated February 1997.

According to the two applicants, the northern New Hampshire component extending from Pittsburg to Shelburne will be owned, constructed and operated by PNGTS. The southern New Hampshire component consisting of 31.3 miles of pipeline and appurtenant facilities located in Rockingham County, will be owned jointly by PNGTS and M&N, constructed by PNGTS, and operated by M&N. (Prefiled testimony of Edward Gonzales, adopted by Jeryl L. Mohn, Tr. 6/25/97 pg. 196.)

Based on the information submitted, the Committee concludes that the applicants have sufficient financial, technical, and managerial capability to assure construction and operation of the facility in compliance with the terms and conditions of the Certificate. The Committee also notes that the Federal Energy Regulatory Commission ("FERC") has issued preliminary determination with respect to both applicants that issuance of a certificate of public convenience and necessity for the proposed projects would be appropriate under Section 7(c) of the Natural Gas Act ("NGA"), 15 U.S.C. § 717 et seq. See July 31, 1996 Orders, Dockets CP96-249 (Ex. 6) and CP96-178. The Committee agrees with FERC's preliminary decision that the applicants have adequate financial, technical, and managerial capability to assure construction and operation of the facility in compliance with the terms and conditions of the NGA.

B. Orderly Development

RSA 162-H:16, IV (b) requires the Committee to consider whether the proposed project will "unduly interfere with the orderly development of the region with due consideration having been given to the views of municipal and regional planning commissions and municipal legislative bodies." The proposed route passes through the Coos County municipalities of Pittsburg, Stewartstown, Colebrook, Columbia, Stratford, Northumberland, Stark, Dummer, Milan, Berlin, Gorham and Shelburne, and the Rockingham County municipalities of Newington, Portsmouth, Greenland, Stratham, Exeter, East Kingston, Newton and Plaistow. (Testimony of Michael Minkos.)

The Committee received significant input from affected municipalities and regional planning commissions with respect to the proposed pipeline's impact on regional development. The Town of Shelburne intervened in the proceedings due to concerns about the route through the Town. Representatives of the Towns of Gorham and Newton, as well as the North Country Council and the Rockingham Planning Commission, testified at the adversarial hearings. Several other municipalities, including Plaistow and Exeter, either submitted letters to the Committee, or made statements at the informational hearings. The applicants testified that, consistent with statutory requirements, they notified affected municipalities of the proposal. (PNGTS Exhibits 1 & 1a; Testimony of John Flumerfelt.)

According to the applicants' testimony, the proposed route relies significantly on existing utility rights of way ("ROW"). Of the 73.7 miles of the northern line in New Hampshire, 59.6 miles parallel existing corridors. As to the Joint Facility Project, the distance within or parallel to the existing ROW is approximately 24 miles of the 31.26 miles of the proposed joint pipeline. The use of existing ROW reduces the disturbance of otherwise virgin land during construction, and increases the likelihood that the area through which the pipeline passes will be consistent with such a use from a zoning perspective. The applicants contend that the pipelines will replace and expand existing natural gas services within the region, reducing oil dependence and possibly attracting additional economic development. (Testimony of John Flumerfelt.)

For most of the proposed route, the Committee agrees with the applicants' contention that the proposed pipeline is consistent with the orderly development of the region. However, in certain areas of Shelburne and Newton, the Committee finds that the proposed route is not consistent with the orderly development of the region. As explained further below, based on the input of affected municipalities and regional planning bodies, the Committee conditions its certificate to require modifications to the route in these areas, as specified below.

1. Shelburne

A substantial portion of the adversarial hearings was devoted to testimony on the Shelburne issue. In addition to extensive testimony by John Trettel and Michael Morgan on behalf of the applicants, evidence was submitted by the Town of Shelburne, the North Country Council, the Appalachian Mountain Club, the Appalachian Trail Conference, and the Town of Gorham. The Committee also visited the site for a visual observation of the area.

The applicant's proposed route through Shelburne would stay on the north side of the Androscoggin River. This area is currently undeveloped and it is intended to remain so under the Town's master plan and zoning ordinance. Development in the Town is concentrated on the southern side of the Androscoggin, which contains Route 2, a major interstate highway, as well as an existing natural gas pipeline, a railroad bed and an electric transmission line. A portion of the proposed route follows Hogan Road, an unpaved logging road which is privately owned and maintained. The proposed route runs through the Leadmine State Forest and crosses the Appalachian Trail at a location which is currently not a utility crossing. The cleared permanent maintenance right of way will be visible from the observation area for scenic Reflection Pond.

The Town of Shelburne contends that deviating from the existing Portland Pipeline Corridor to the Hogan Road area would unreasonably undermine town planning efforts, adversely affect aesthetics and the environment and cause unnecessary fragmentation of property and habitat.³ The Town has worked since the 1960's to develop its zoning and master plan, which call for orderly development, the maintenance of the rural character of the town and aesthetics as the highest priorities. The applicant's proposed route would add 5.7 miles of new right of way in the narrow river valley to the existing 8.7 miles of existing pipeline right of way on the southern side of the river. It would detract from scenic vistas including Reflection Pond whereas using the existing right of way will have little or no impact.

The applicant submitted evidence contending that its proposed route is preferable to the alternatives it considered. These alternatives included the Shelburne Variation, which would leave the proposed route at MP 69.5, the Gorham North Variation, which would leave the proposed route at MP 67.5, and the Gorham South Variation, which would also leave the proposed route at MP 67.5, but which would take a slightly different path through Gorham. See PNGTS Exhibit 10, pgs. 5-9, for a detailed description of the three alternatives. The applicants' exhibits included a diversion assessment matrix comparing the proposed route with alternatives based on nine environmental constraints criteria, four land use constraints criteria and eight engineering constraints criteria. The applicant's analysis included quantitative assessment of the Gorham route variation and the Shelburne route variation, in an attempt to address Shelburne's concerns that the

³The Town of Shelburne also argued for a diversion at the easterly side of Shelburne, beginning at MP 92.9 and continuing to the Maine state line. The Committee finds that the Town did not present sufficient evidence to show why the proposed route is not consistent with the orderly development of the region in this location. Therefore, the Committee approves the applicant's proposal for this portion of the route.

proposed route would create a new corridor along the north side of the Androscoggin river through both towns. The applicant concluded that the disadvantages clearly outweigh the purported advantages of the alternatives.

With respect to the applicants' diversion assessment matrices, the Town complains that the Route analysis work submitted by PNGTS is flawed and inconsistent and the ratings do not adequately address the long term environmental and aesthetic impacts of the project. (S1 page 4.) According to the Town, the parameters used in scoring the various routes do not adequately address the long-term goals of the Town of Shelburne to the same degree as the short term issues of engineering and environment. The Town argues that the scoring is subjective, and giving equal weight to all the parameters distorts the conclusions. Finally, the Town emphasized that PNGTS performed a number of comparisons of the alternative routes, the last of which, published in the May 9 responses to data requests, showed a score of 45 for the Gorham South route versus a score of 41 for the Revision. By correcting the scoring to reflect the correct amount of flood plain traversed by the Revision, this score would rise to 45 for the Revision and the two routes would have the same score. Then by weighting long-term effects such as visual impacts, the Town argues that the score would show Gorham South as the preferred route.

In addition to the evidence submitted by the Town, Public Counsel's Engineering Consultant, Haley and Aldrich performed its own evaluation adjusting the rankings among the proposed route and the alternatives advocated by Shelburne and Gorham and concluded the results "do not demonstrate a clear winner." (PC Exhibit 1 pg. 3-3.)

Testifying both in its capacity as a regional planning commission and as a consultant hired by Public Counsel, the NCC filed a detailed report criticizing the Diversion Assessment performed by the applicant. (PC Exhibit 1, tab 2, pp.19-33.) The NCC identified, then explained in detail, four major conclusions:

- (1) PNGTS's Diversion Assessments do not properly consider or balance the objectives of minimizing the creation of new cleared rights-of-way and protection of the quality of the environment and orderly development in RSA 162-H: 16, IV (b) & (c) and the FERC's Guidelines in 18 C.F.R. §2.69.
- (2) The raw data used to assign a value to many criteria do not accurately measure the impact represented by the criteria.
- (3) The use of a relative value to measure the absolute constraint of route alternatives allows the applicant to manipulate the extent to which criteria will favor or disfavor a particular route.
- (4) The individual values assigned to each alternative do not reflect the actual impacts.

Specifically, the NCC argued that in making its various assessments at different stages of the application process, PNGTS changed the criteria it used to assess the various routing options, resulting in a much greater weight being given to waterbody crossings in the analysis which was submitted to support the final proposed route. (PC Exhibit 1, tab 2, pp.20-21.) According to the NCC, the applicant included certain criteria as both environmental and engineering categories, resulting in these criteria being counted twice. (PC Exhibit 1, tab 2, p. 21.) In addition, several criteria considered as negative factors by PNGTS, such as pipeline crossovers and road/rail crossings, actually disfavored the use of existing right of way. (PC Exhibit 1, tab 2, p. 22.) In some cases, the NCC argued, the raw data was not accurately reflected in the criteria values. For instance, the impacts of forest clearing were minimized by using linear feet instead of square feet as the measure. (PC Exhibit 1, tab 2, p. 24.)

Overall, the NCC concluded that the March 21, 1997, "Minor Diversion Assessment for the Revision" appeared to be biased in favor of the applicant's preferred outcome by under-rating the land use constraints and exaggerating the engineering and environmental advantages of the applicant's preferred route as discussed above." (PC Exhibit 1, tab 2 p. 30.) The NCC also presented its own alternatives analysis, with parameters weighted differently from the applicant's. Using the NCC's revised criteria, the proposed route scored 48, while the southern route scored 41. (PC Exhibit 1, tab 2 p. 29.) The NCC closed its analysis with the statement that "[g]iven our preference for using the existing right-of-way wherever possible, our significant concern for applicant's scoring methodology, the under-rated visual impacts, landowner concerns and inconsistency with Shelburne's master plan, we cannot support the applicant's preferred route through Shelburne." (PC Exhibit 1, tab 2 p. 30.) Instead, the NCC recommended approval of either of the two Gorham alternatives, the only alternatives which had been presented at the time of its analysis. (PC Exhibit 1, tab 2 p. 30.)

The AMC and the ATC also support the location of the pipeline on the south side of the river. Both filed written statements (PC 1 tab 5) opposing the creation of a new pipeline corridor through Gorham and Shelburne and recommending that the PNGTS pursue the proposed Gorham bypass alternative. According to the ATC, its policy on utilities and communications facilities clearly states that "utility lines ... generally are considered incompatible with the purposes and scenic values of the Appalachian trail." The policy states that with respect to new facilities:

It is the policy of ATC to oppose any construction of new utility lines, communications site facilities, and mountaintop facilities on Appalachian Trail Corridor land unless it can be demonstrated that (1) the proposed project is of overriding public benefit, (2) locating the proposed project on or across Appalachian Trail corridor lands is the only feasible and prudent alternative, and (3) Adverse impacts to the scenic, cultural and natural resources of the Appalachian Trail can and will be adequately mitigated. (PC 1, Tab 5.)

The AMC and ATC argued that visual impacts of the proposed PNGTS route will change the remote experience currently enjoyed by hikers in the area. The Gorham and Shelburne area is home to or within view of many popular hiking trails, including the 2,159 mile Appalachian Natural Scenic Trail. The Appalachian Trail and associated side trails are visited and enjoyed by thousands of hikers and walkers each year. The AMC and ATC presented testimony that the 50-foot-wide permanently open corridor required for the pipeline would present a visual scar on the landscape to hikers on the Appalachian Trail, both where it would be bisected by the proposed pipeline within Leadmine State Forest (north of Hogan Road) and from prominent viewpoints along the ridgeline of the southern Mahoosuc range and the northern Carter-Moriah range, where hikers would no longer look down on an uninterrupted forest landscape on the north side of the Androscoggin River. Both the AMC and the ATC urged the Committee to adopt the Gorham bypass alternative.

The Town, as well as the NCC, also stressed that the importance of the scenic viewshed should not be under-rated, and directly linked the viewshed to the economy of the area generated by tourism. They further stressed that the Lead Mine State Forest and the Appalachian Trail should not be disturbed. Construction, permanent occupancy and maintenance of the land by a gas pipeline is not within the management objectives of DRED for a State Forest and certainly not allowed under the Appalachian Trail Protection Zone as defined by RSA 216-D.

Based on the record before it, the Committee concludes that the proposed Hogan Road route through Shelburne, as updated by the applicant's mitigation plan, is not consistent with the orderly development of the region. In addition to its visual observation of the area, the Committee has reviewed all of the testimony, exhibits, statements and concerns of Municipal and Regional Planning Commissions regarding the location of the Proposed Pipeline on the north side of the Androscoggin River.

The Committee finds that the disadvantages of locating the pipeline on the north side of the river outweigh the advantages. Our analysis of the criteria in the various matrices produce similar results for the all of the various alternative routes. A careful consideration of the orderly development of the area and impacts on aesthetics, water quality and wetlands favors the use of the existing energy right of way on the south side of the river in this area. Adopting the NCC's analysis on the Shelburne issue, the Committee finds that the visual impact of the pipeline on the northerly side of the river would have a serious permanent effect on the aesthetics of one of the most pristine panoramic views (over Reflection Pond) located in the North Country, could have a large impact on the tourist business, and would result in unreasonable permanent impacts to the natural environment, orderly development and land use of the area.

The Committee rejects the mitigation plan submitted by the applicant to support locating the pipeline on the north side of the river, and finds that Hogan Road is not a corridor that would accommodate a project of this size. Hogan Road is not a Town Road and to disturb its present character would cause permanent impacts on the natural environment of the area. The proposed

route also negatively impact the State Leadmine State Forest. The Committee further finds that the location of the pipeline on the north side of the river conflicts with the master plan and the zoning ordinance of the Town of Shelburne which have attempted to preserve the rural nature and charm of the area, and unduly interfere with the orderly development of the region by creating another utility corridor in the valley which would be open for further development in the future if it were to be approved in this proceeding. In summary, the Committee finds that the use of the existing right of way is much more consistent with the orderly development of the region and has less impact on the environment.

With respect to a specific route, the Committee finds that the route which best balances environmental and engineering concerns with the orderly development of the region is the "Shelburne route," which crosses the Androscoggin River at approximately MP 69.5, then travels across the golf course to the existing right of way, recrossing the river at MP 73.5. (See PNGTS Exhibit 7-a, Figure B-1, sheets 25-27.) The Shelburne route is the shortest of the southern alternatives, and the cheapest to construct. It will not pass through the populated center of Gorham, but will be close enough to Gorham's industrial areas to facilitate possible future development. All of the southern alternatives, like the applicant's preferred route, cross the Appalachian Trail and Leadmine State Forest. However, for the southern routes, the crossings have much less impact because they coincide with existing development.

The Committee directs the applicant to amend its alignment of the pipeline route so that it will cross the Androscoggin River in the area of MP 69.50 to intersect with the existing energy pipeline on the South side of the river. The Amended alignment sheets shall be filed with the appropriate State Agencies for approval within the next 30 days.

The Committee is aware that its conclusion with regard to routing in Shelburne differs from the recommendation made by the FERC staff in its Draft Environmental Impact Statement for the PNGTS northern route. (Exhibit 7a - Draft EIS, June 1997.) The Committee notes that the updated information presented in this proceeding was not available to the FERC staff when they supported the revised route along Hogan Road. FERC's conclusion is not yet final, and the Committee urges FERC to consider the updated information in reaching its final decision.

2. Newton

The Town of Newton Conservation Commission presented written comments (PC 1 tab 3), and Stephen Cushing of the Conservation Commission testified at the adversarial hearing on June 24 (Tr.6/24/97 at 238). The Town's main concern with respect to orderly development was that "the joint proposal ... [has] a section that crosses a piece of town owned property that is under the management of the Conservation Commission which is... currently being considered as a site for a new public library. It's the only centrally located parcel of property in the Town the Newton that is owned by the town and also undeveloped." (Tr. 6/24/97 at 244.) In response to

Cushing's testimony, the applicants stated that a line change was being discussed, but had not yet been finalized.

The Town was also very concerned that the Peanut Trail be retained as a handicapped-accessible trail. In addition, the Town noted that two of the roads crossed by the proposed route Heat Street and Thornell Road have been designated as Scenic Roads per RSA 231:157-158.

Newton also raised issues with respect to environmental issues and endangered species. The Town comments that there is an absence of generally available data about the Town, which they feel has been interpreted to mean an absence of impact. They submit there is a need of field studies regarding the Atlantic White Cedar, Small Whorled Pogonia, Deer Wintering Areas and Amphibian Breeding Habitat. (PC 1 tab 3 pg 4.) Various comments showed a concern over wetland impacts. They feel that the proposed route represents little concern for wetland impacts and was chosen as the most expedient way from one side of town to the other. They were also concerned over the wetland crossing methods, the impact on wells and the amount of work space in wetlands.

The Committee finds that bisecting Newton's "library parcel" would not be consistent with overly development in Newton. Accordingly, the Committee will require that the final route stay with the existing right of way at this location. (Alignment sheet PTE T- 14 5001-02 1, near Wetland B-63.) From the testimony at the adversarial hearing, it appeared that the alignment sheets currently do not reflect the route Newton prefers. (Tr. 6/23, pp.212-216 - Wilbur testimony.) The applicants should submit revised alignment sheets showing a route that addresses Newton's concerns within 30 days.

C. No Unreasonable Adverse Effect

RSA 162-H:16, IV(c) requires the Committee to find that the site and facility will not have an unreasonable adverse effect on aesthetics, historic sites, air and water quality, the natural environment and public health and safety. Within these environmental impacts analyses there are five specific category of impacts which the Committee must address. These five categories are (1) impacts on aesthetics, (2) impacts on historic sites, (3) impacts on air and water quality, (4) impacts on the natural environment, and (5) impacts on public health and safety. Each of the five categories are discussed as follows:⁴

1. Impacts on Aesthetics

The construction of the proposed pipeline on the north side of the Androscoggin River, and scarring of the high ground above the River, would be observed by residents, tourists and

⁴To the extent these criteria were analyzed in the "orderly development" section above, that analysis is incorporated by reference in the applicable discussion in this section.

hikers traveling on Route 2 and the hiking trails in the Shelburne area, and would have an adverse effect on the aesthetics of the region especially on the panoramic view across Reflection Pond. The remainder of the proposed natural gas transmission line will be primarily an underground facility with the majority of the line being located in the same rights-of-way that other utilities operate and maintain. With the modifications to the route in the Shelburne area as discussed above, the Committee finds that there will be no unreasonable aesthetic impact along the major portions of the pipeline.

2. Impacts On Historic Sites

PNGTS submitted two Archeological Resources Reports for the Northern route, prepared by Victoria Bunker, Inc. The first (IA) Report recommended a further Phase IB study and Phase II field studies in 55 locations along the northern route. The Second Report, which covered a 3.9 mile area, found one prehistoric site. The Southern report was made by Jay Miller Associates, Inc. and covered 74.4 miles. The report indicated there are two pre-historic and four historic sites covered in the Phase II Report. Phase IB and Phase II Field surveys are currently being compiled. A revised Unanticipated Discoveries Plan has been submitted to the State Historic Preservation Office for review and will be implemented during the construction of the pipeline (PNGTS Exhibit 36).

There are no known historic or archaeological sites within the area of the proposed facilities. Stratford landowner Frederick Martin recommended a cultural survey of historic structures and landscapes which might be affected by the project. (6/23 transcript, p. 35.) The proposed route is considered to have a low probability of impacting items of archaeological significance, but the State Historic Preservation Office has the authority to halt the construction when an archeological artifact, questionable artifact or unidentified burial is uncovered or discovered during construction. With these safeguards, the Committee finds no unreasonable adverse effect on historic sites.

3. Impacts On Air And Water Quality

With respect to air quality impacts, the applicants presented testimony that the use of natural gas reduces emissions of air pollutants and provides the opportunity to lower energy costs and economically meet strict, new environmental requirements. Flumerfelt testimony. PNGTS has prepared illustrations of how natural gas can provide direct air quality benefits to the northeast, which are set forth in its Response to FERC Staff Data Requests dated August 7, 1996. Question 75. See PNGTS Exhibit 58.

The applicants' panel also testified that the proposed route through New Hampshire follows existing utility corridors to the greatest extent practicable, thereby minimizing impacts to sensitive environmental resources. Despite the use of existing corridors, construction of the

pipeline will involve environmental impacts because the width of the corridor will be increased due to safety and maintenance concerns.

With the exception of wetlands and river crossings which will be discussed under environmental impacts, there are no unreasonable adverse impacts on air and water quality by the construction, operation or maintenance of the proposed, facilities. The DES has issued conditions to ensure that stream crossings and construction in wetlands comply with the agency's rules and regulations. The conditions are appended to this decision and incorporated into the final order issued by the Committee.

4. Impacts On The Natural Environment

The applicants testified that they have taken extensive measures to reduce impacts on sensitive environments. Mitigation measures important in protecting natural resources, including plant and animal habitat, are incorporated in the revised Environmental Construction Plan (PNGTS Exhibit 29) and are subject to construction monitoring and oversight under the third Party Inspector Program (PNGTS Exhibit 32). The mitigation measures address Spill Prevention and Control; Erosion and Sedimentation Control; Compaction Tests; Blast Rock; Revegetation; Equipment Crossings; Spoil Storage; and Routing/Construction. (PGNTS Exhibit 33.) DES differs to some extent with Applicants with respect to certain environmental issues. Those issues are further addressed in that department's conditions attached to this decision and order.

Some of the waterbodies crossed by the pipeline are cold water fisheries and warm water fisheries. In the Southern route there are sites of saltwater fisheries. The Fish and Game Department has classified certain sites of special concern. Through the cooperation of Fish and Game, eight crossings have been identified requiring site specific plans. Appropriate mitigation measures will be required through the DES conditions to minimize any effect on the State's fisheries.

Fish and Game, The New Hampshire Heritage Program and the U.S. Wildlife Service have been made aware of the project and information regarding unique ecosystems has been requested. As in any project of this size, considerable analysis, examination and studies of the effects on the natural resources of the state has been preformed. The various agencies have examined and studied the Applicant's Environmental Construction Plan and have advised, informed and directed the applicant to take certain measures to eliminate or mitigate, environmental impacts. The areas reviewed included wildlife habitats, state fisheries, river and stream crossings, threatened, endangered, and rare plant and animal species, sensitive and wetland habitats. The New Hampshire Natural Heritage Program, the Fish and Game Department and the DES have developed suitable mitigation measures for these areas.

The Committee finds the impact on the natural environment will be temporary and with mitigation measures imposed by the DES and other State Agencies as conditions to the Certificate

there will be no unreasonable adverse effect on the natural environment. The Committee notes that in April, 1997, the staff of the FERC issued a Draft Environmental Impact Statement (DEIS) regarding the Joint Facility, as required under the National Environmental Policy Act. (PNGTS Exhibit 7.) In June, 1997, the FERC issued a DEIS for the PNGTS project (PNGTS Exhibit 7a). For both areas, the FERC staff stated that the projects would be environmentally acceptable, with appropriate mitigation. Neither EIS has yet been issued in its final form, and the Committee anticipates that it will submit this decision to FERC to consider in finalizing their analysis.

5. Impacts On Public Health And Safety

In seeking to determine the health and safety impacts of construction, operation and maintenance of the natural gas transmission pipeline and the potential of harm to the public, the Committee heard testimony and reviewed reports from the applicants, NHPUC Safety Division Administrator Richard Marini (PC 1) and ARK Engineering and exhibits (PC 1).

Mr. Marini testified that the United States Department of Transportation ("USDOT") administers the Gas Pipeline Safety Standards, 49 C.F.R. Part 192. The common practice is for the USDOT to appoint an agent to inspect construction in the State of New Hampshire. The Administrator of the Safety Division of the NHPUC has requested to be appointed as the agent. The federal regulations governing the safety of natural gas pipelines are often written in "performance language," meaning that it is up to the applicant to formulate specific specifications or standards to be utilized in the construction of the facility. The applicants have not yet completed the Construction, Operations and Maintenance, or Emergency Plans required under Part 192, and Mr. Marini recommended that these plans be submitted to the SEC, or the NHPUC on behalf of the SEC, when they are completed.

After the testimony of Mr. Marini was filed, the applicant supplied additional materials for the NHPUC's Safety Division to review regarding the construction and installation of the pipeline. Many of the concerns were discussed at a staff meeting and permit conditions mentioned hereafter will address the remaining issues.

The applicants testified that their operating policies and procedures will be consistent with USDOT requirements and will include provisions addressing preventative maintenance and patrols of facilities, and actions to be followed in the event of accident or natural catastrophe (Prefiled revised testimony of Edward Gonzales, as adopted by Jeryl Mohn).

M&N testified that it will operate a gas dispatch center to monitor system pressures, flows and customer deliveries. It will be staffed 24 hours a day, 365 days a year. M&N will have ready access to heavy and specialized equipment and will employ qualified contractors and field personnel who can be immediately dispatched to the scene if an emergency should arise. M&N will also coordinate with each of the eight towns located along the Joint Pipeline Project, including

periodic firefighting demonstrations; special informational meetings and training- periodic literature distribution identifying emergency telephone numbers, contact persons and other pertinent data; and maps to police and fire departments and public officials that show the location and operating pressures of the pipeline within the boundaries of each town (Gonzales testimony, adopted by Jeryl Mohn).

The applicants have informed the Committee that 100% of the welds will be x-rayed. The Committee adopts this statement as a condition to do so. The Committee also requires that facilities constructed adjacent to electric power transmission lines be designed to protect employees and the public against shock. The Committee directs the applicant to obtain clearance from the electric power system dispatcher when working in proximity to electric power line. Finally, the Committee presumes that PNGTS also adopt the safety procedures outlined in the M&N testimony above.

Having reviewed the testimony, the Committee finds the project may be built in a safe manner if proper monitoring and inspections are performed. The Committee will impose conditions recommended by the NHPUC, and attached to the Certificate of Site and Facility. It is the Committee's understanding that the applicant proposed or agreed to these conditions during staff conferences or during the adversarial hearing. With compliance with the conditions attached, the Committee finds that there will be no unreasonable adverse public health and safety effects produced by the construction, operation or maintenance of the pipeline.

The Committee will recommend to the USDOT that the Administrator of the Safety Division at the NHPUC be appointed as its agent on this project. Because of the limited resources of the NHPUC, if the NHPUC is appointed as the USDOT's agent, the applicant will need to provide sufficient funding for at least one construction safety inspector for each spread.

D. Consistency With Energy Policy

In order to issue a certificate, the Committee must find that the proposed project is consistent with the state energy policy established in RSA 378:37. RSA 162-H: 16, IV(d). The state energy policy is as follows:

The general court declares that it shall be the energy policy of this state to meet the energy needs of the citizens and businesses of the state at the lowest reasonable cost while providing for the reliability and diversity of energy sources; the protection of the safety and health of the citizens, the physical environment of the state, and the future supplies of nonrenewable resources; and consideration of the financial stability of the state's utilities.

(See RSA 378:37.)

The Committee finds that the proposed PNGTS project and Joint Facilities are consistent with the state energy policy established in RSA 378:37. The pipeline is being built to meet the energy needs of the citizens and businesses of the state, at the lowest reasonable cost while providing for the reliability and diversity of energy sources. Natural gas is a clean, economic energy source. The project will introduce new natural gas capacity to New Hampshire thereby diversifying existing energy sources and making new sources available to New Hampshire, its citizens and industry. Consonant with the environmental and safety measures which have been made conditions of the project, the pipeline will meet the state's energy needs in a manner which protects public safety and health as well as the natural environment. With respect to the financial stability of the state's utilities, the project will have a beneficial impact on Northern Utilities, which testified that construction of the pipeline will help address a potential shortfall. The Committee received no testimony indicating that construction of the pipeline would adversely affect other utilities in the state.

E. Public Participation/Protection of the Public's Interests

Under RSA 162-H:9, III, the Committee is obligated to "consider and weigh written information and reports submitted to it by members of the public before, during, and subsequent to public hearings." The Committee acknowledges the extent and quality of the public participation in this proceedings. Many of the statements made by members of the public related to the process used by the applicant in dealing with property owners and the way in which negotiations were handled for the procurement of easements. There was also testimony at the hearing with respect to the issue of wells, water and sewer systems and the method to test them for damages caused by the installation of the pipeline or the blasting requirements. See, e.g., testimony of Mark Bezanson (Tr.6/23/97, pg. 11).

The Committee is very concerned that land owners be treated fairly and consistently, and that the applicants be responsive to local concerns during construction of the pipeline. To ensure fair treatment of the public and relying on the applicants's representation during the proceedings, the Committee directs the applicants to take the following actions:

1. Within sixty days of the date of this decision, recontact all landowners, including those who have already executed easements, and offer them new easements in the new form submitted as part of PNGTS Exhibit 26 during the adversarial hearing. The new easement form limits the company's rights to operation of a natural gas pipeline and contains no language with respect to transportation of oil or other substances, or the installation of communication lines not related to the transport of natural gas.
2. Notify the public by public notice published in the local news media in advance of its construction schedule and blasting schedule.

3. Both PNGTS and M&N must arrange for a telephone number to be listed and maintained in the White pages and the Yellow pages in each phone book published for Rockingham and Coos Counties throughout the projects' life.

4. Construction is limited to the hours of 7 AM to 7 PM Monday through Saturday. Work may take place outside these hours only as necessary to comply with permit conditions and good construction practices.

5. Reimburse landowners for the value of forest products harvested on their property. Yield Taxes will be the responsibility of the applicants. Ensure that any existing logging roads are made passable for logging, without cost to the landowner. Generally, ensure that landowners be able to access and harvest forest products in the future without incurring additional costs which arise only because of construction of the pipeline.

6. Notify the public by public notice that wells within 300' of the project activities will be eligible for well tests, at no cost to the owner, before and after blasting and construction.

7. Prepare a landowners fact sheet and distribute a copy to each land owner whose property will be affected by the construction. The fact sheet should explain in clear, nontechnical language what the pipeline companies are willing to do with respect to landowners' concerns. During face-to-face interactions, the applicants should affirmatively explain the landowners' rights and answer any questions the landowners may have about the information in the fact sheet. The "Landowner Fact Sheet" submitted by PNGTS after the adversarial hearings, and attached as Attachment F. Bullet 9 of the PNGTS Fact Sheet shall be amended to make it consistent with condition 6 above.

8. All public and logging roads shall be clearly marked with pipeline locations - said markings shall be posted throughout project life.

9. PNGTS & M&N shall establish a procedure / forum for addressing complaints during construction. A monthly report shall be filed with the SEC listing unresolved complaints and the nature thereof.

10. Certificate approval does not grant authority to remove buildings in the Additional Temporary Work Space areas.

VI. CONCLUSION

The Site Evaluation Committee, pursuant to RSA 162-H:2 (c) finds that the proposed Natural Gas Pipeline transmission system requires a certificate to construct and operate the natural gas pipeline transmission system facilities.

After having considered available alternatives and fully reviewed the environmental impacts of the proposed pipeline and other factors bearing on whether the objectives of Chapter 162-H would be best served by the issuance of a certificate, the Committee finds the applicants, PNGTS and M&N have adequate financial, technical, and managerial capability to assure construction and operation of the facility in compliance with the terms and conditions of the Certificate.

After due consideration having been given to the views of municipal and regional planning commissions and municipal legislative bodies, the Committee finds that, with the route changes described above with respect to Newton and Shelburne, the project will not unduly interfere with the orderly development of the region.

The PNGTS Project and Joint Facilities will not have an unreasonable adverse effect on aesthetics, historic sites, air and water quality, the natural environment and public health and safety if all conditions attached to the Certificate and incorporated in this decision are complied with.

The proposed natural gas pipeline transmission system is consistent with the state energy policy established in RSA 378:37.

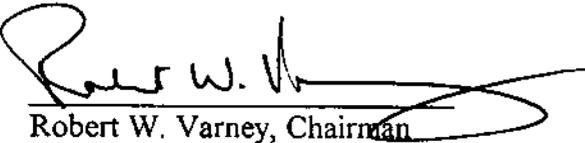
The undersigned members of the Supply Site Evaluation Committee, hereby adopt these findings pursuant to RSA-H 162:16.

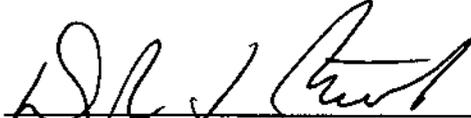
The application and petitions are referred to the DES, the Department of Transportation, and the NHPUC for the issuance of such permits and licenses as required by law to be included in the Certificate of Site and Facility.

Pursuant to RSA 162-H:3, III, the Committee delegates to the NHPUC authority to inspect and monitor the safety aspects of construction of the pipeline as authorized under this certificate.

Pursuant to RSA 162-H:3, III, the Committee delegates to DES authority to inspect and monitor the environmental aspects of construction of the pipeline as authorized under this certificate. In addition, pursuant to RSA 162-H:3, III-a, as amended June 20, 1997, the Committee delegates to DES, including the NHDES EI specified in the final DES conditions, authority to specify the use of any technique, methodology, practice or procedure specified in the final DES conditions, and authority to specify minor changes in the route alignment in connection with the nonsurveyed and partially surveyed segments of the pipeline listed in condition #9 of the final DES conditions.

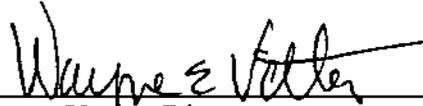
Pursuant to RSA 162-H:10, V, the Committee authorizes DES and the NHPUC to assess the applicants for the reasonable cost of their inspections.


Robert W. Varney, Chairman
Commissioner, Dept. of
Environmental Services

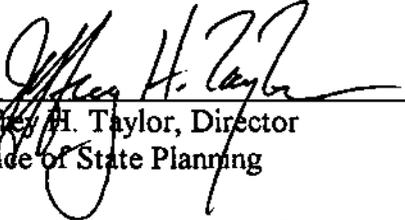

Douglas L. Patch, Chairman
Public Utilities Commission



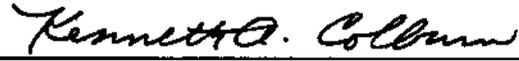
Dr. Edward Schmidt, Director
Water Division, Department of
Environmental Services



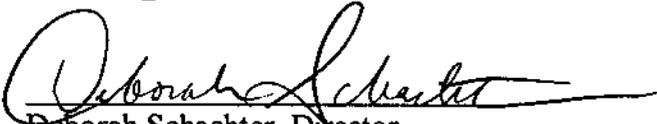
Wayne Vetter, Director
Fish and Game Department



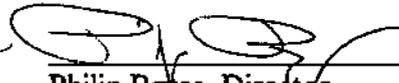
Jeffrey H. Taylor, Director
Office of State Planning



Kenneth A. Colburn, Director
Air Resources Division, Department
of Environmental Services



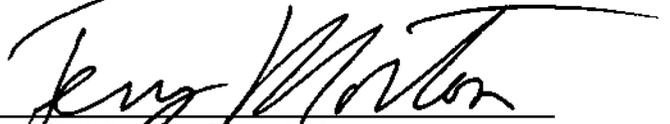
Deborah Schachter, Director
Governor's Office of Energy and
Community Services



Philip Bryce, Director
Division of Forest & Lands



Leon S. Kenison, Commissioner
Department of Transportation



Terry L. Morton, Commissioner
Dept. of Public Health & Human Services



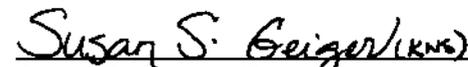
Richard McLeod Director
Division of Parks,
Dept. of Resources & Economic Development



Robb Thomson, Commissioner
Dept. of Resources & Economic Development



Bruce B. Ellsworth, Commissioner
Public Utilities Commission



Susan S. Geiger, Commissioner
Public Utilities Commission



Michael D. Cannata Jr., Chief Engineer
Public Utilities Commission

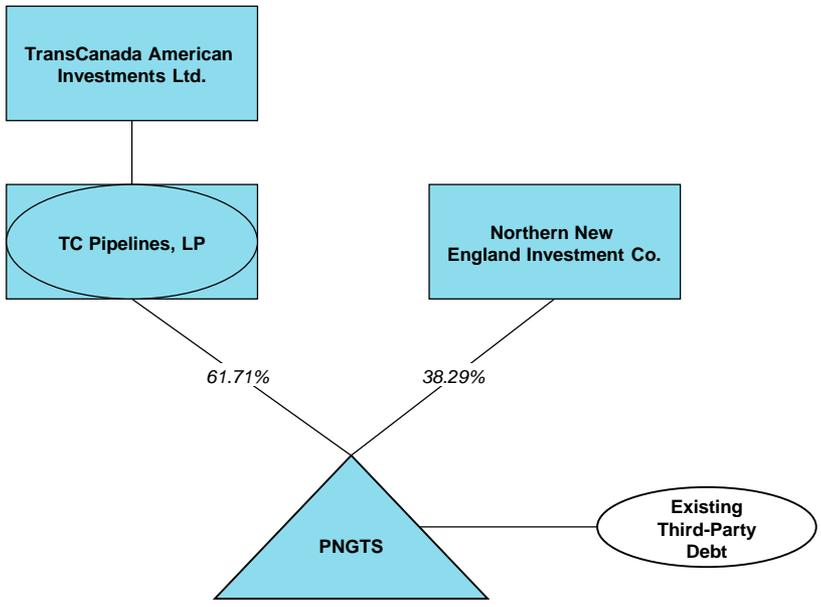
ATTACHMENT C

Purchase and Sale Agreement

CONFIDENTIAL

FILED UNDER SEAL PURSUANT TO MOTION FOR
PROTECTIVE ORDER AND CONFIDENTIAL
TREATMENT

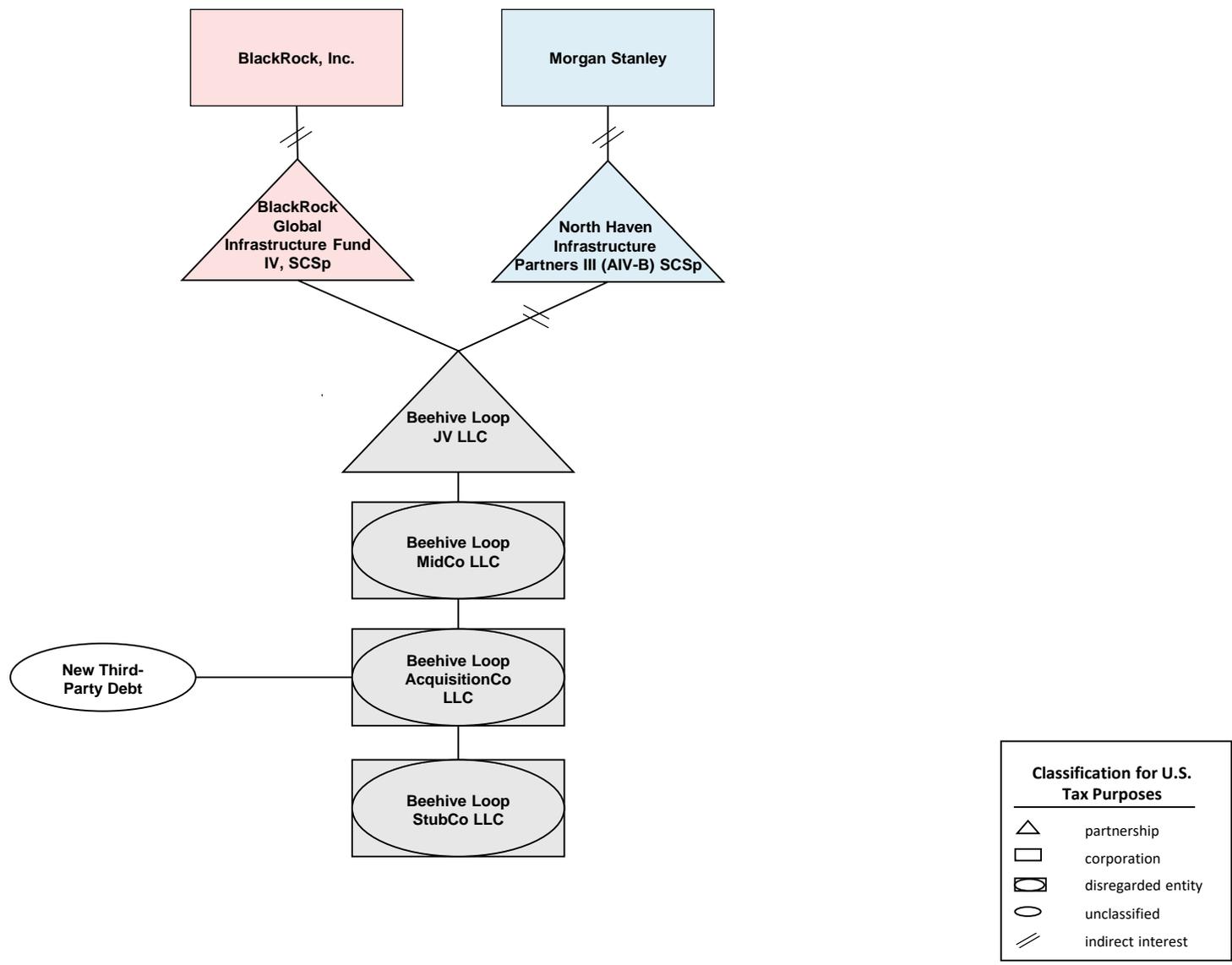
Pre-Closing Structure: Target



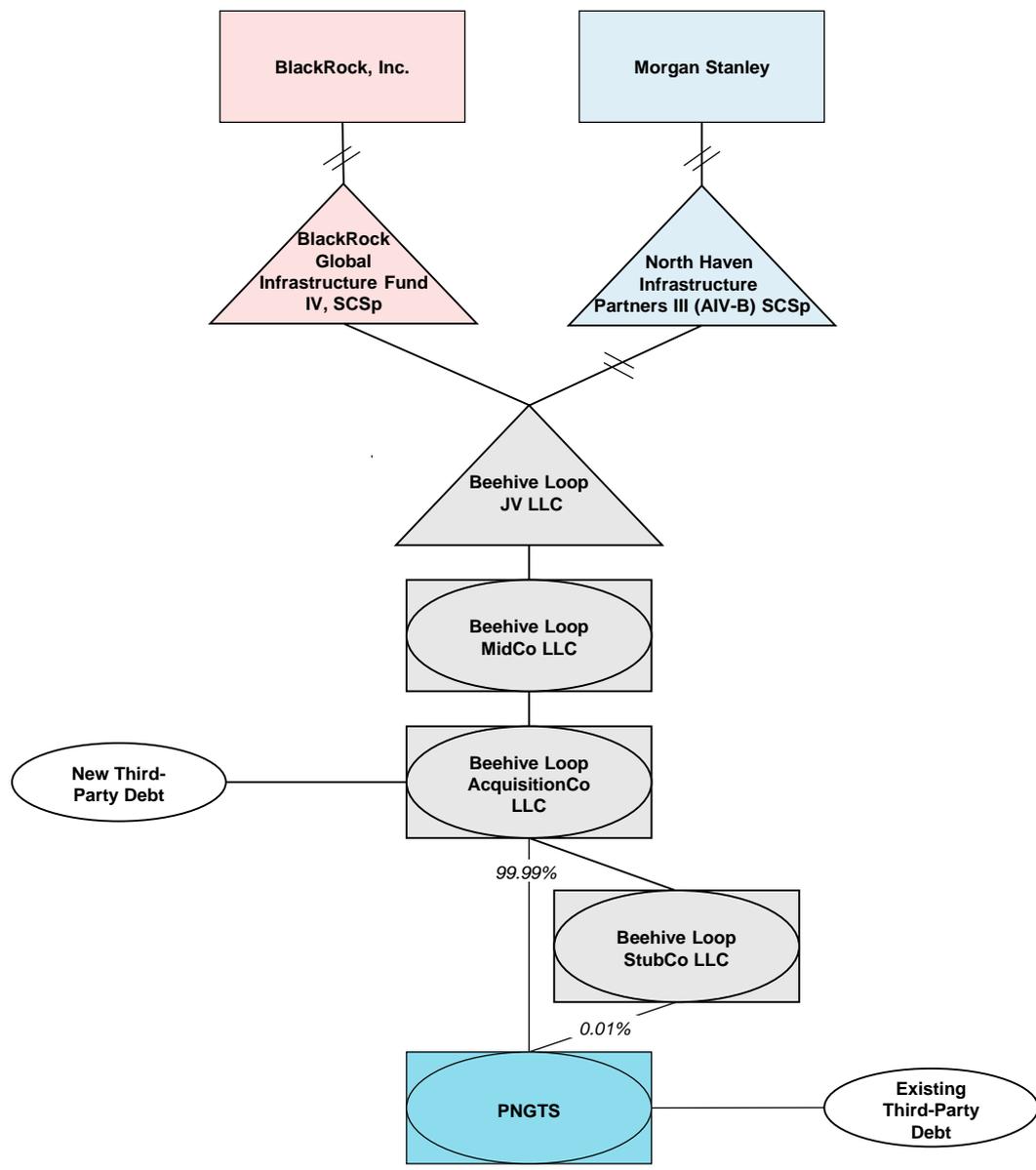
Notes: This organizational chart was prepared on information provided by the Company. We have not confirmed or verified the legal status of the entities shown.

Classification for U.S. Tax Purposes	
△	partnership
□	corporation
▭	disregarded entity
○	unclassified
∕	indirect interest

Pre-Closing Structure: Acquisition Structure



Resulting Structure



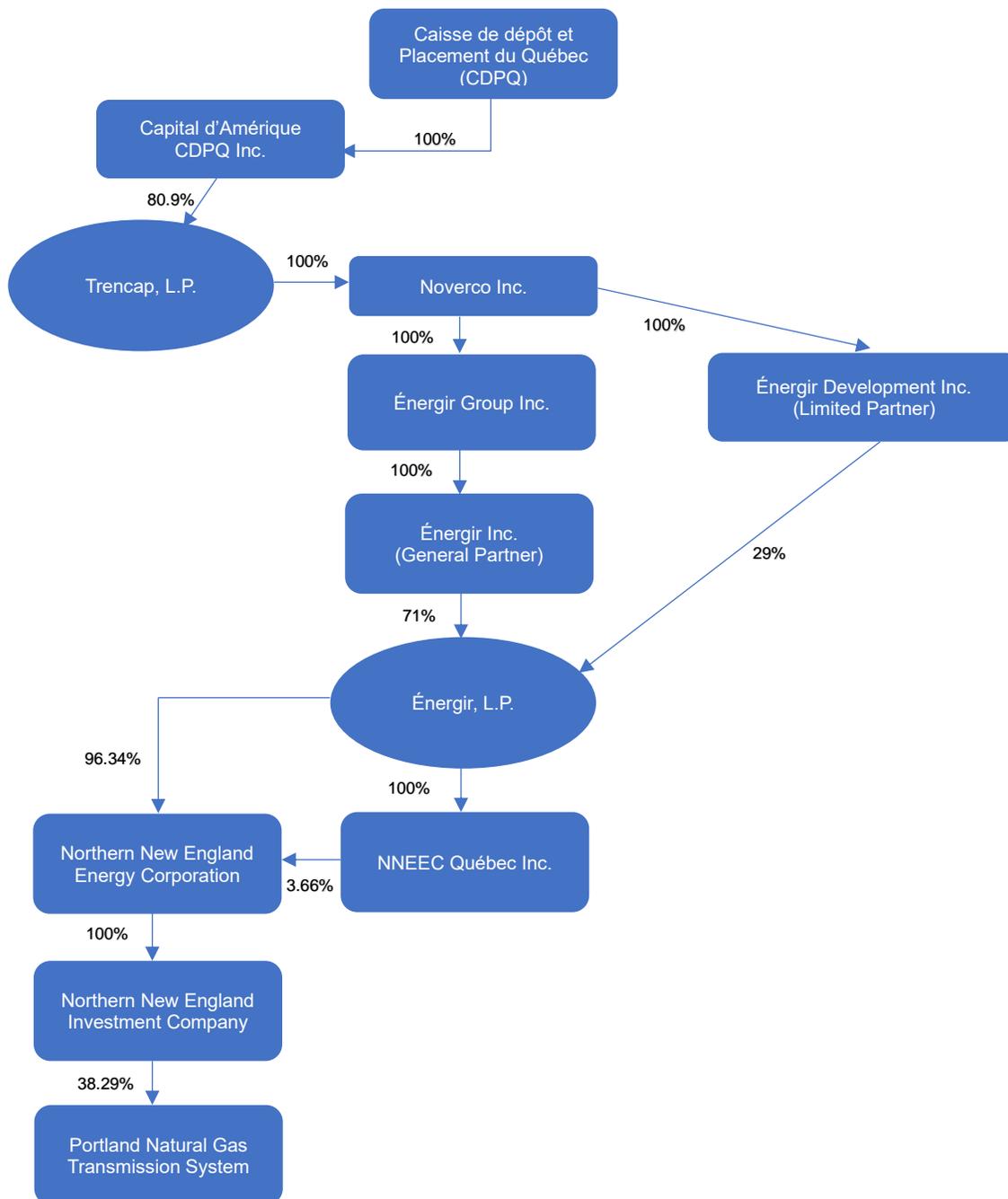
Classification for U.S. Tax Purposes	
△	partnership
□	corporation
▭	disregarded entity
○	unclassified
//	indirect interest



**ÉNERGIR INC.
 and
 ÉNERGIR, L.P.**

OFFICER'S CERTIFICATE

I, the undersigned, Nathalie Blais, Assistant Corporate Secretary of Énergir Inc., acting in its capacity as General Partner of Énergir, L.P, hereby certify that the following diagram indicates the accurate shareholdings of the Corporation as of the date hereof:



DATED this 29th day of February 2024.

NATHALIE BLAIS
 Assistant Corporate Secretary

Detailed Written Representation

New Hampshire Public Utilities Commission (“PUC” or “Commission”) approval of a transaction pursuant to RSA 369:8, II (b) (1) requires a detailed written representation that the “transaction will not have an adverse effect on rates, terms, service, or operation of the public utility within the state.”

As described in the foregoing Petition to Transfer Partnership Interests (“Petition”), pursuant to a Purchase and Sale Agreement executed March 2, 2024, BlackRock Global Infrastructure Fund IV, SCSp (“BGIF IV”), an affiliate of BlackRock Financial Management, Inc., a wholly owned subsidiary of BlackRock Inc. (“BlackRock”), and North Haven Infrastructure Partners III (AIV-B) SCSp (“NHIP III”), an affiliate of Morgan Stanley Infrastructure Inc., advisor to the Morgan Stanley Infrastructure Partners investment platform and its current or future investment vehicles (“MSIP”) (NHIP III together with BGIF IV, “Buyers”) will acquire 100% of the partnership interests in the Portland Natural Gas Transmission System (“PNGTS”).

PNGTS is a natural gas transmission pipeline that provides gas transportation service to two natural gas distribution companies in New Hampshire (Northern Utilities, Inc. d/b/a/ Unitil, and Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty). PNGTS’s services and rates are regulated exclusively by the Federal Energy Regulatory Commission (“FERC”) and PNGTS provides services to its customers via long-term, negotiated or discounted transportation service agreements subject to the approval and regulation of FERC. PNGTS has no retail customers in New Hampshire.

The transaction will not have an adverse effect on PNGTS’s rates or terms of service. As described above, all of PNGTS’s customers have negotiated or discounted natural gas

transportation agreements with contractual and pricing terms that are fixed for the term of the contract. Further, none of the existing customers contracts with PNGTS expire earlier than 2032, and some customer agreements expire as late as 2054. None of these agreements will be modified in connection with, or as a result of, the closing of the transaction.

Additionally, because FERC generally prohibits the recovery of an acquisition premium, the Buyers will not recover any acquisition premium (i.e., amount of the purchase price above book value), or any transaction costs associated with the purchase of PNGTS from any of PNGTS's existing customers. Accordingly, the transaction will not have an adverse effect on PNGTS's rates or terms of service.

MSIP and BlackRock excel at leveraging their comprehensive network of relationships to assemble teams with the technical, financial and managerial expertise and proficiency needed to maintain and operate energy projects. MSIP and BlackRock actively support their investments with capital as well as financial and technical oversight. MSIP and BlackRock focus on operations and maintenance excellence to ensure their businesses provide safe and reliable services to their customers. When beneficial to customers and supported by demand, MSIP and BlackRock seek to invest incremental capital to expand the infrastructure asset base of their portfolio companies.

Under the terms of the TSA between TransCanada Northern Border Inc. (the "TransCanada Service Provider") and PNGTS, for up to a year following the close of the proposed transactions, unless earlier terminated in accordance with the terms of the TSA, the TransCanada Service Provider will continue to operate the PNGTS system while MSIP and BlackRock assemble an experienced team to operate PNGTS going forward. Following the expiration or termination of the TSA, MSIP and BlackRock have committed to making

employment offers to the identified “Available Employees”, who are certain employees and technicians of an affiliate of the TransCanada Service Provider who currently operate the pipeline.

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 during this transition period while MSIP and BlackRock put their permanent management and operations teams in place. Accordingly, the transaction will not have an adverse effect on the service or operation of PNGTS.

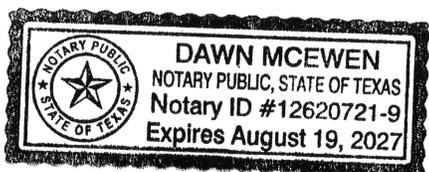
To the best of my knowledge and belief the information contained in this Detailed Written Representation is true and accurate.

By: [Signature]
Name: William Yardley

STATE OF Texas
COUNTY OF HARRIS

On March 25, 2024, 2024, personally appeared before me the above-named William Yardley, and swore that the foregoing statements are true to the best of his knowledge and belief.

(Seal)



[Signature]
Notary Public/Justice of the Peace
My Commission Expires:

THE STATE OF NEW HAMPSHIRE
BEFORE THE
NEW HAMPSHIRE SITE EVALUATION COMMITTEE

DOCKET NO. SEC 2024-__
PORTLAND NATURAL GAS TRANSMISSION SYSTEM

PRE-FILED DIRECT TESTIMONY OF DANIEL SAILORS

In Support of Joint Petition to Change Ownership

1 **Qualifications and Purpose of Testimony**

2 **Q. Please state your name and business address.**

3 A. My name is Daniel Sailors and my business address is 1585 Broadway, 33rd Floor, New
4 York, NY 10036.

5 **Q. By whom are you employed and in what capacity?**

6 A. I am a Managing Director of Morgan Stanley Infrastructure Partners (“MSIP”), an
7 infrastructure investment business within the Investment Management Division of Morgan
8 Stanley. I also serve as Vice President of Morgan Stanley Infrastructure Inc. (“MSI”), an advisor
9 to MSIP and its current or future investment vehicles, including NHIP III (as defined below).
10 MSI is a wholly-owned subsidiary of Morgan Stanley.

11 **Q. Please describe your background and work experience.**

12 A. I have 17 years of experience managing financial investments in energy infrastructure,
13 with a particular emphasis on natural gas infrastructure investments. In my role, I help lead our
14 investment efforts in several sectors, including natural gas pipelines, liquefied natural gas
15 (“LNG”), and natural gas utilities. Prior to joining MSIP, I served from 2018 to 2021 as
16 Managing Partner and Chief Financial Officer at Discovery Midstream, an energy infrastructure
17 company that owns natural gas pipeline infrastructure. From 2015 to 2018 I served as Vice
18 President at TPG Inc., an investment management firm, where I focused on the energy sector,
19 including the midstream natural gas sector. From 2008 to 2015, after my promotion from
20 Associate, I served as Vice President of Riverstone Holdings, where I focused on the energy
21 sector. From 2006 to 2008 I worked as an Analyst in the Global Energy Group at Credit Suisse. I
22 hold a B.S. from the University of Kansas in Finance and Business Administration. Please also

1 see my professional biography attached as Exhibit 1.

2 **Q. What is the purpose of your testimony?**

3 A. It is my understanding that Portland Natural Gas Transmission System (“PNGTS”) is
4 seeking the approval of the New Hampshire Site Evaluation Committee (“SEC”) pursuant to
5 RSA 162-H:8 for the transfer of upstream partnership interests, as contemplated by the Joint
6 Petition to Change Ownership (“Petition”), and, as part of such approval request, a showing of
7 adequate financial capability of the buyers must be made. My testimony will demonstrate that
8 North Haven Infrastructure Partners III (AIV-B) SCSp (“NHIP III”) one of the two Buyers (as
9 defined below) identified in the Petition, has the requisite financial capability to operate the
10 PNGTS facilities (described below) in compliance with the terms and conditions of the
11 Certificate of Site and Facility for the Joint Facilities issued by the SEC to PNGTS on July 16,
12 1997 (the “Certificate”). This testimony supplements the Petition and the testimony of Mark
13 Saxe, Managing Director at BlackRock Financial Management, Inc., a wholly owned subsidiary
14 of BlackRock Inc. (“BlackRock”), concerning the financial capability of BlackRock Global
15 Infrastructure Fund IV, SCSp, an affiliate of BlackRock (“BGIF IV”).

16 Attachment 1 to the Petition shows the direct and indirect ownership of MSIP, as required
17 by Site 301.04(a)(2). MSIP is also providing a chart demonstrating its post-closing corporate
18 structure as it relates to PNGTS. Attachment 4 to the Petition is a current Statement of Assets
19 and Liabilities for MSIP, as required by Site 301.04(a)(5). As demonstrated by the Petition, the
20 attachments, and this testimony, MSIP has more than sufficient financial capability to ensure the
21 continued operation of the PNGTS facilities in compliance with the Certificate.

22

1

Description of Transaction2 **Q. Please briefly describe the proposed transaction.**

3 A. The proposed Transaction (the “Transaction”) involves the transfer of 100% of the
4 partnership interests in PNGTS to an entity that is a subsidiary of BGIF IV and NHIP III
5 (together, the “Buyers”) from TC Pipelines, LP (“TCP”) and Northern New England Investment
6 Company (“NNEIC,” and together with TCP, the “Sellers”). Buyers and Sellers are collectively
7 referred to as the “Petitioners.” The PNGTS facilities include approximately 110 miles of natural
8 gas pipeline in New Hampshire along with appurtenant facilities. The northern component in
9 New Hampshire is approximately 79.1 miles long and extends from Pittsburg, New Hampshire
10 to Shelburne, New Hampshire, with a lateral extension of 0.7 miles to Groveton, New
11 Hampshire. The southern component in New Hampshire is approximately 31.3 miles long and
12 extends from Newington, New Hampshire to Plaistow, New Hampshire, with a 1.1-mile lateral
13 extension to Newington, New Hampshire, as well as a 0.6-mile extension to Haverhill,
14 Massachusetts.

15 On March 2, 2024, the Petitioners entered into a Purchase and Sale Agreement (“PSA”)
16 to facilitate the transfer of the partnership interests in PNGTS to BGIF IV and NHIP III. NHIP
17 III and BGIF IV each indirectly own a 50% interest in Beehive Loop JV LLC. Beehive Loop
18 AcquisitionCo LLC (“Beehive Loop AcquisitionCo”), a wholly-owned subsidiary of Beehive
19 Loop JV LLC, will, at the closing of the proposed Transaction receive from Sellers 99.99% of
20 Purchased Interests (as defined in the PSA) and Beehive Loop StubCo LLC, also a wholly-
21 owned subsidiary of Beehive Loop JV LLC, will receive 0.01% of the Purchased Interests. At
22 the closing of the Transaction, BGIF IV and NHIP III will each indirectly own a 50% interest in

1 PNGTS. Direct and Indirect Organizational Charts included with the Petition as Attachment 1
2 identify the respective Buyer subsidiaries involved in this Transaction.

3 **Q. How will Beehive Loop AcquisitionCo fund the acquisition of PNGTS?**

4 A. The proposed ownership of PNGTS by Beehive Loop AcquisitionCo will be funded by
5 both equity investments made by NHIP III and BGIF IV¹, as well as new debt raised from third
6 parties that will be entered into at the Beehive Loop AcquisitionCo entity level.² NHIP III and
7 BGIF IV have initially committed to fund up to [REDACTED] of equity to fund Beehive Loop
8 AcquisitionCo's purchase of PNGTS for \$1.135 billion. The purchase price includes the
9 assumption of \$250 million in outstanding Senior Notes.

10 I understand that PNGTS is currently a party to the following financing arrangements:

- 11 • [REDACTED] Revolving Credit Agreement, dated April 5, 2018 (as amended by the First
12 Amendment to Revolving Credit Agreement dated January 31, 2023), by and among
13 PNGTS (as Borrower), Truist Bank (as Agent) and the Lenders party thereto (the
14 "Revolving Credit Agreement"). Note BlackRock and MSIP do not expect there to be
15 any balance outstanding under the Revolving Credit Agreement at closing of the
16 Transaction.

¹ Please also refer to the Pre-Filed Testimony of Mark Saxe concerning the financial capability of BlackRock to operate the facilities in compliance with the terms and conditions of the Certificate.

² In connection with closing of the Transaction, Beehive Loop AcquisitionCo plans to enter into a senior secured term loan facility or 4(a)2 private placement to fund the purchase of PNGTS. Beehive Loop AcquisitionCo has already received committed financing from two banks to fund a [REDACTED] senior term loan facility to fund the purchase of PNGTS.

1 II and co-investors acquired a majority stake in Eureka Midstream, a natural gas gathering
2 system in Ohio and West Virginia. The transaction involved carving out Eureka Midstream from
3 Eureka's parent and establishing new operational functions. During its ownership, MSIP
4 increased the number of pipeline miles from 121 to over 200, increased interconnects from 3 to
5 19, and more than doubled the number of connected customers. Throughput and total pipeline
6 capacity increased more than 6x, with throughput rising from 0.23 bcf/d to 1.5 bcf/d while
7 capacity increased from 0.42 bcf/d to 3.5 bcf/d. In 2010, North Haven Infrastructure Partners I, a
8 predecessor fund to NHIP II ("NHIP I") acquired Southern Star Central Gas Pipeline ("Southern
9 Star"), a Federal Energy Regulatory Commission ("FERC")-regulated interstate natural gas
10 pipeline and primary gas transmission and storage facility provider. Southern Star had facilities
11 and employees in eight states, with a system that served utility, municipal, commercial,
12 industrial, and power generation customers in the U.S. Midwest. Southern Star was also ranked
13 #2 out of 23 peers⁴ in a Mastio Customer Satisfaction Index,⁵ due to its leading service and
14 safety track record. At the time of sale in 2015, Southern Star had 5,800+ pipeline miles, 30+
15 pipeline connections, 360 bcf of annual throughput, and 47 bcf of storage working gas capacity.

16 MSIP's domestic experience also includes natural gas power generation, further
17 demonstrating the depth of MSIP's knowledge, experience, and financial capabilities in natural
18 gas infrastructure. In 2018, NHIP II acquired a majority stake in Bayonne Energy Center,⁶ a 644
19 MW modern, fast-response natural gas power generating facility in Bayonne, New Jersey. In

⁴ Peer group consists of pipelines with at least 3,500 miles of transportation pipe serving at least 3 states.

⁵ Mastio 15th Edition Natural Gas Transportation Customer Value Study – 2014.

⁶ A current MSIP portfolio company.

1 2017, NHIP II acquired a majority stake in Red Oak Power,⁷ an 805 MW baseload, efficient gas-
2 fired power plant located in Sayreville, New Jersey.

3 MSIP's natural gas infrastructure experience extends beyond American shores as well. In
4 2015, NHIP II acquired a majority stake in Ital Gas Storage, which holds a 40-year concession to
5 construct and to operate what is now the largest independently regulated gas storage facility in
6 Northern Italy. In 2021, the NHIP III Group acquired a significant stake in Høegh LNG,⁸ one of
7 the largest owner-operators of floating natural gas storage and regasification units, a critical
8 element of the liquified natural gas value chain. In 2010, NHIP I formed Madrileña Red Gas
9 ("MRG") through a complex carve out of certain gas distribution operations of Gas Natural. At
10 the time, MRG operated a 5,500 km network of medium-and low-pressure pipelines serving
11 approximately 59 municipalities of Spain's capital, Madrid, on the basis of perpetual licenses.
12 During MSIP's ownership, additional assets from Gas Natural were carved-out, increasing
13 MRG's connection points from 500,000 to 842,600. MRG further demonstrates MSIP's expertise
14 and ability to successfully operate carved-out assets.

15 **Q. Please address MSIP's financial capability to operate the facilities in compliance**
16 **with the terms and conditions of the Certificate.**

17 A. MSIP is managed by Morgan Stanley Infrastructure Inc., a wholly owned subsidiary of
18 Morgan Stanley (NYSE: MS). Morgan Stanley has long-term credit ratings of A1/A-/A+
19 (Moody's/S&P/Fitch). MSIP is a global leader in private infrastructure equity financing which
20 targets assets that provide essential public goods and services. MSIP has a diverse team across 7

⁷ A current MSIP portfolio company.

⁸ A current MSIP portfolio company.

1 offices in North America, Europe, and Asia-Pacific, with its headquarters located in New York,
2 New York. Since its inception in 2006, MSIP's four global flagship funds and co-investment
3 vehicles have raised approximately [REDACTED] of capital commitments and have invested [REDACTED]
4 [REDACTED] across more than 35 portfolio companies. Energy and power infrastructure sector is a key
5 focus and since 2006, MSIP has invested approximately [REDACTED] of equity capital in energy
6 and power infrastructure. MSIP will indirectly acquire its portion of the partnership interests in
7 PNGTS through NHIP III. The NHIP III Group is a \$5.5 billion fund. Following the acquisition,
8 the NHIP III Group is projected to have over [REDACTED] of committed, uncalled capital. Based
9 on MSIP's available capital, and its expected revenues from operating the PNGTS assets, MSIP
10 has more than sufficient financial resources to operate the PNGTS facilities in compliance with
11 the terms and conditions of the Certificate.

12 **Conclusion**

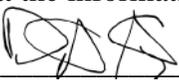
13 **Q. In your opinion, does MSIP have the requisite financial capability to assure the**
14 **operation of the PNGTS facilities in continuing compliance with the terms and conditions**
15 **of the Certificate?**

16 A. Yes. In my opinion, based on the testimony provided above and based on the information
17 provided in the Petition, MSIP satisfies the criteria set forth in Site 301.13(a) and the
18 requirements of RSA 162-H:16, IV(a), and therefore has the requisite financial capability to
19 assure operation of the PNGTS facilities in continuing compliance with the terms and conditions
20 of the Certificate.

21 **Q. Does this conclude your testimony?**

22 A. Yes.

I affirm that the information contained in this testimony is true and accurate.

By: 

Name: Daniel Sailors
Title: Vice President

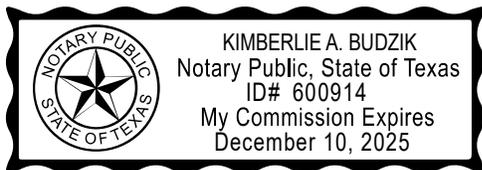
STATE OF TEXAS
COUNTY OF HARRIS

On March 26, 2024, personally appeared before me the above-named Daniel Sailors, and swore that this testimony is true and accurate to the best of his knowledge and belief. This notarial act was an online notarization.



Notary Public/Justice of the Peace
My Commission Expires: December 10, 2025

(Seal)





Daniel Sailors

Americas Investing, Infrastructure Partners
17 years industry experience

Biography

Daniel Sailors is a Managing Director focused on Americas investing. Daniel's most recent investment and operating experience prior to MSIP was Managing Partner and CFO at Discovery Midstream ("Discovery"). Prior to Discovery, Daniel spent a decade at private equity firms TPG Capital and Riverstone Holdings, after starting his career in the investment banking division of Credit Suisse. Daniel holds bachelor's degrees in Finance and Business Administration from the University of Kansas, where he graduated from the Honors Program.

THE STATE OF NEW HAMPSHIRE
BEFORE THE
NEW HAMPSHIRE SITE EVALUATION COMMITTEE

DOCKET NO. SEC 2024-__

PORTLAND NATURAL GAS TRANSMISSION SYSTEM

PRE-FILED DIRECT TESTIMONY OF MARK SAXE

In Support of Joint Petition to Change Ownership

1

Qualifications and Purpose of Testimony2 **Q. Please state your name and business address.**3 A. My name is Mark Saxe and my business address is One Lafayette Place, Greenwich, CT
4 06830.5 **Q. By whom are you employed and in what capacity?**6 A. I am a Managing Director at BlackRock Inc. (“BlackRock”), a leading publicly traded
7 investment management firm, where I am part of the BlackRock Diversified Infrastructure
8 Group (“BGIF Group”), which is BlackRock’s flagship diversified infrastructure business
9 managed by BlackRock Financial Management, Inc. (“BAM”), a wholly-owned subsidiary of
10 BlackRock.11 **Q. Please describe your background and work experience.**12 A. I have served as a Managing Director at BlackRock since 2017. In my role as Managing
13 Director, I am responsible for leading investments in the midstream, regulated utilities, and
14 digital infrastructure sectors, and in my capacity as a member to the Investment Committee of
15 the diversified infrastructure funds, I oversee investments in the environmental, low-carbon
16 power, regulated utilities, transportation and logistics, and digital infrastructure sectors. From
17 2011 to 2017, I worked for First Reserve Energy Funds, a private equity firm investing
18 exclusively in the energy sector since 1983, that was acquired by BlackRock in 2017. Prior to
19 joining First Reserve Energy Funds, from 2004-2011 I was the Director of the Corporate
20 Development Department at Loews Corporation and, while employed by Loews Corporation, I
21 served as a board observer for Boardwalk Pipelines which encompassed approximately 13,000
22 miles of FERC-regulated natural gas pipelines. From 2001-2004, I worked in the Investment

1 Banking Division of Lehman Brothers. I hold a Bachelor of Commerce degree from McGill
2 University with concentrations in Finance and Information Technology. Please also see my
3 professional biography attached as Exhibit 1.

4 **Q. What is the purpose of your testimony?**

5 A. It is my understanding that Portland Natural Gas Transmission System (“PNGTS”) is
6 seeking the approval of the New Hampshire Site Evaluation Committee (“SEC”) pursuant to
7 RSA 162-H:8 for the transfer of upstream partnership interests contemplated by the Joint Petition
8 to Change Ownership (“Petition”), and, as part of such approval request, a showing of adequate
9 financial capability of the buyers must be made. My testimony will demonstrate that BlackRock
10 Global Infrastructure Fund IV, SCSp, an affiliate of BlackRock (“BGIF IV”), one of the two
11 Buyers identified in the Petition, has the requisite financial capability to operate the PNGTS
12 facilities in compliance with the Certificate of Site and Facility issued by the SEC to PNGTS on
13 July 16, 1997 (the “Certificate”). This testimony supplements the Petition and the testimony of
14 Daniel Sailors, Vice President at Morgan Stanley Infrastructure Inc., as advisor to the Morgan
15 Stanley Infrastructure Partners investment platform and its current or future investment vehicles
16 (“MSIP”), concerning the financial capability of North Haven Infrastructure Partners III (AIV-B)
17 SCSp, an affiliate of Morgan Stanley Infrastructure Inc (“NHIP III”).

18 Attachment 1 to the Petition shows the direct and indirect ownership of BlackRock, as
19 required by Site 301.04(a)(2). BlackRock is also providing a chart demonstrating its post-
20 closing corporate structure as it relates to PNGTS. Attachment 5 to the Petition is a current
21 statement of assets and liabilities for BGIF IV, as required by Site 301.04(a)(5). As
22 demonstrated by the Petition, the attachments, and this testimony, BlackRock has more than

1 sufficient financial capability to ensure the continued operation of the PNGTS facilities in
2 compliance with the Certificate.

3 **Description of Transaction**

4 **Q. Please briefly describe the proposed transaction.**

5 A. This transaction (the “Transaction”) involves the transfer of 100% of the upstream
6 partnership interests in PNGTS to an entity that is a subsidiary of BGIF IV and a subsidiary of
7 NHIP III (together, the “Buyers”) from TC Pipelines, LP (“TCP”) and Northern New England
8 Investment Company (“NNEIC,” and together with TCP, the “Sellers”). Buyers and Sellers are
9 collectively referred to as the “Petitioners.” The PNGTS facilities include approximately 110
10 miles of natural gas pipeline in New Hampshire, along with appurtenant facilities. The northern
11 component in New Hampshire is approximately 79.1 miles long and extends from Pittsburg,
12 New Hampshire to Shelburne, New Hampshire, with a lateral extension of 0.7 miles to Groveton,
13 New Hampshire. The southern component in New Hampshire is approximately 31.3 miles long
14 and extends from Newington, New Hampshire to Plaistow, New Hampshire, with a 1.1-mile
15 lateral extension to Newington, New Hampshire, as well as a 0.6-mile extension to Haverhill,
16 Massachusetts.

17 On March 2, 2024, the Petitioners entered into a Purchase and Sale Agreement (“PSA”)
18 to facilitate the transfer of the partnership interests in PNGTS to BGIF IV and NHIP III. NHIP
19 III and BGIF IV each indirectly own a 50% interest in Beehive Loop JV LLC. Beehive Loop
20 AcquisitionCo LLC (“Beehive Loop AcquisitionCo”), a wholly-owned subsidiary of Beehive
21 Loop JV LLC, will, at the closing of the Transaction receive from Sellers 99.99% of Purchased
22 Interests (as defined in the PSA) and Beehive Loop StubCo LLC, also a wholly-owned

1 subsidiary of Beehive Loop JV LLC, will receive 0.01% of the Purchased Interests. At the
2 closing of the Transaction, BGIF IV and NHIP III will each indirectly own a 50% interest in
3 PNGTS. Pre- and post-closing Organizational Charts appended to the Petition, at Attachment 1,
4 identify the respective Buyer subsidiaries involved in this Transaction.

5 **Q. How will Beehive Loop AcquisitionCo fund the acquisition of PNGTS?**

6 A. The proposed ownership of PNGTS by Beehive Loop AcquisitionCo will be funded by
7 both equity investments made by NHIP III and BGIF IV and its affiliates as well as new debt
8 raised from third parties that will be entered into at the Beehive Loop AcquisitionCo entity
9 level.¹ MSIP and BGIF IV have initially committed to fund up to [REDACTED] of equity to fund
10 Beehive Loop AcquisitionCo's purchase of PNGTS for \$1.135 billion. BlackRock's financing
11 will be completed via BlackRock's Global Infrastructure Fund IV and other funds under the
12 management of BlackRock Alternatives Management, LLC. The purchase price includes the
13 assumption of \$250 million in outstanding Senior Notes.

14 I understand that PNGTS is currently a party to the following financing arrangements:

- 15 • [REDACTED] Revolving Credit Agreement, dated April 5, 2018 (as amended by the First
16 Amendment to Revolving Credit Agreement dated January 31, 2023), by and among
17 PNGTS (as Borrower), Truist Bank (as Agent) and the Lenders party thereto (the
18 "Revolving Credit Agreement"). Note BlackRock and MSIP do not expect there to be
19 any balance outstanding under the Revolving Credit Agreement at closing of the
20 Transaction.

¹ In connection with closing of the Transaction, Beehive Loop AcquisitionCo plans to enter into a senior secured term loan facility or 4(a)2 private placement to fund the purchase of PNGTS. Beehive Loop AcquisitionCo has already received committed financing from two banks to fund a \$464,006,261 senior term loan facility to fund the purchase of PNGTS.

- 1 • [REDACTED] of [REDACTED] Senior Notes (Series A) due October 8, 2030 (“Series A Notes”)
2 issued pursuant to a Note Purchase and Private Shelf Agreement, dated October 8, 2020
3 (“NPA”); and
4 • [REDACTED] of [REDACTED] Senior Notes (Series B) due October 29, 2031 (“Series B Notes”)
5 issued pursuant to the NPA.

6 Upon the closing of the Transaction, NHIP III and BGIF IV expect to terminate the Revolving
7 Credit Agreement if the consent that is required by the lenders thereto in connection with the
8 transaction is not obtained and the Series A and Series B Senior Notes are expected to remain
9 outstanding on PNGTS’s books.

10 **Financial Capability of BlackRock**

11 **Q. Please describe BlackRock’s experience in financing energy infrastructure assets.**

12 A. BlackRock has extensive experience owning and managing its investments in energy and
13 utility infrastructure assets, including natural gas pipeline assets.

14 Several of BlackRock’s pipeline assets transmit domestic natural gas across hundreds of
15 miles under the regulatory oversight of the Federal Energy Regulatory Commission (“FERC”).²
16 For instance, in 2019, the BGIF Group acquired a substantial stake in Meade Pipeline Company,³
17 a 185-mile natural gas pipeline system in the Marcellus and mid-Atlantic regions. In the same
18 year, the BGIF Group also acquired a preferred interest in Equitrans Midstream, a US-based
19 contracted natural gas midstream company operating storage and transmission systems which
20 include approximately 940 miles of FERC-regulated, interstate pipelines. In 2016, the BGIF

² As described in the Joint Petition, PNGTS is also subject to FERC’s regulatory oversight.

³ A current BGIF Group portfolio company.

1 Group acquired a substantial stake in Arrowhead Gulf Coast Holdings LLC, which operates
2 about 400 miles of pipelines carrying crude oil in southern Louisiana.

3 The BGIF Group has also managed financial investments in smaller-scale pipelines as
4 well. In 2021, the BGIF Group acquired a majority stake in Centric Infrastructure Group,⁴ a
5 Texas-based utility that owns and operates a local natural gas distribution network and high-
6 speed internet fiber optic cable. In 2017, the BGIF Group acquired a majority stake in
7 Hearthstone Utilities (now named Hope Utilities, formerly Gas Natural, Inc.), a natural gas
8 holding company serving approximately 82,000 people and businesses in Maine, Montana, North
9 Carolina, Ohio, and Indiana.

10 The BGIF Group also has extensive non-domestic experience. In 2020, the BGIF Group
11 acquired a substantial stake in Kellas Midstream,⁵ a critical natural gas pipeline system located in
12 the North Sea and serving the United Kingdom. In 2020, the BGIF Group partnered with
13 Naturgy to acquire a majority stake in Medgaz, S.A.,⁶ a natural gas pipeline serving Spain. In
14 2022, the BGIF Group acquired a minority stake in Aramco Gas Pipelines,⁷ a natural gas
15 pipeline located in Saudi Arabia.

16 BlackRock also manages financial investments in projects involving generation, storage,
17 and refining assets both domestically and internationally. In 2014, the BGIF Group acquired a
18 majority stake in Navigator Energy Services, a midstream company which operates about 650
19 miles of pipeline, which constructs crude oil gathering, transportation, and storage assets in West

⁴ A current BGIF Group portfolio company.

⁵ A current BGIF Group portfolio company.

⁶ A current BGIF Group portfolio company.

⁷ A current BGIF Group portfolio company.

1 Texas. In 2017, the BGIF Group acquired a majority stake in Glass Mountain Pipeline,⁸ a 280-
2 mile crude oil gathering and storage system traversing Oklahoma and Texas. In 2012, the BGIF
3 Group acquired a majority stake in First Caribbean Power and Midstream, a power and
4 midstream joint venture with Beowulf Energy consisting of a 225 MW power generation facility
5 and related pipeline infrastructure. In 2016, the BGIF Group acquired a majority stake in
6 Mexico Clean Fuels Infrastructure, an ultra-low sulfur gasoline processing plant in Mexico. In
7 the same year, the BGIF Group acquired a substantial stake in PetroFirst Infrastructure, which
8 operates offshore floating production and storage infrastructure across Southeast Asia. In 2022,
9 the BGIF Group acquired a minority stake in ADNOC Oil Pipeline, a crude oil gathering system
10 in the United Arab Emirates.

11 **Q. Please address BlackRock's financial capability to operate the facilities in**
12 **compliance with the terms and conditions of the Certificate.**

13 A. BlackRock, together with its subsidiaries (which includes BAM), is a leading publicly
14 traded investment management firm. As of December 2023, BlackRock has \$10 trillion of assets
15 under management and approximately 19,500 employees in more than 30 countries. BlackRock
16 provides a broad range of investment and technology services to institutional and retail clients
17 worldwide. As of September 30, 2023, BlackRock and its subsidiaries had \$9.1 trillion of assets
18 under management across equity, fixed income, multi-asset, cash, and alternative strategies
19 (including infrastructure).

20 BlackRock's infrastructure platform manages more than \$47 billion of capital across
21 diversified equity and debt investment solutions. BlackRock's infrastructure platform has over

⁸ A current BGIF Group portfolio company.

1 200 people based in over 18 offices globally. The BGIF Group is a dedicated 50-person
2 investment team based across Greenwich (Connecticut), London, Singapore, and Mexico City
3 and brings to bear significant expertise in owning and managing infrastructure investments. The
4 BGIF Group has a global footprint with a focus on investing across energy and environmental
5 assets, low-carbon power, regulated utilities, transportation and logistics, and digital
6 infrastructure sectors and industries.

7 BGIF IV, is the BlackRock-affiliated investment fund that is the 50% investor with NHIP
8 III holding the other 50% in Beehive Loop JV LLC, the upstream owner of the entity that is
9 ultimately purchasing PNGTS. BGIF IV is an infrastructure fund that invests in essential
10 infrastructure assets in the environmental, low-carbon power, regulated utilities, transportation
11 and logistics, and digital infrastructure sectors across the globe. BGIF IV is a targeted [REDACTED]
12 fund that has commitments to date over [REDACTED] that, as of the date hereof has invested or is
13 committed to invest [REDACTED] (including this Transaction). The BGIF Group manages [REDACTED]
14 [REDACTED] in capital commitments across four funds, with a substantial amount of those invested in,
15 or committed to be invested in, energy infrastructure assets.

16 Based on BlackRock's significant financial resources, and its expected revenue from
17 operating PNGTS assets, BlackRock has more than sufficient financial resources to operate the
18 PNGTS facilities in compliance with the terms and conditions of the Certificate.

19 **Conclusion**

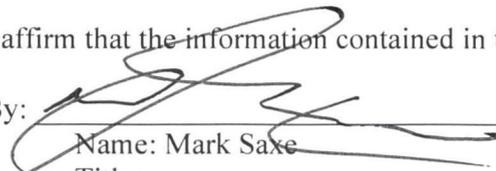
20 **Q. In your opinion, does BlackRock have the requisite financial capability to assure the**
21 **operation of the PNGTS facilities in continuing compliance with the terms and conditions**
22 **of the Certificate?**

1 A. Yes. In my opinion, based on my testimony and the information provided in the Petition,
2 BlackRock satisfies the criteria set forth in Site 301.13(a) and the requirements of RSA 162-
3 H:16, IV(a), and therefore has the requisite financial capability to assure operation of the PNGTS
4 facilities in continuing compliance with the terms and conditions of the Certificate.

5 **Q. Does this conclude your testimony?**

6 A. Yes.

I affirm that the information contained in this testimony is true and accurate.

By: 

Name: Mark Saxe

Title:

STATE OF Connecticut
COUNTY OF Fairfield

On March 26, 2024, personally appeared before me the above-named Mark Saxe, and swore that this testimony is true and accurate to the best of his knowledge and belief.

ASHLEY CARR
NOTARY PUBLIC
My Commission Expires July 31, 2028

(Seal)



Notary Public/Justice of the Peace
My Commission Expires:

BlackRock Global Infrastructure Funds

Selected Biographies



Mark Saxe
Managing Director

Mark Saxe, Managing Director, joined the BlackRock Global Infrastructure Funds team ("BGIF") in 2011. The BGIF team manages approximately \$14 billion in capital commitments across four vintages. BGIF invests globally in essential contracted infrastructure assets and businesses by capitalizing on the long-term trends of decarbonization, decentralization and digitalization. The BGIF team has created over 40 portfolio companies across the globe for the Funds and includes over 60 investment professionals who are located in Greenwich (Connecticut), London, Singapore, Houston and Mexico City. The BGIF team joined BlackRock in 2017 from First Reserve, a private equity firm that was founded in 1983 and created the BGIF infrastructure platform in 2008. The BGIF team raised the first two vintages while at First Reserve.

Mark's responsibilities include deal origination, structuring, execution, monitoring, and exit strategy. At BGIF, Mr. Saxe leads, or has led, investments in midstream, energy services, digital & technology, and renewables projects. He is a member of the Investment Committee.

Prior to joining BGIF, Mr. Saxe was a Director in the Corporate Development Department of Loews Corporation. Prior to Loews Corporation, he was in the Investment Banking Division at Lehman Brothers. Mr. Saxe holds a Bachelor of Commerce from McGill University.

THE STATE OF NEW HAMPSHIRE
BEFORE THE
NEW HAMPSHIRE SITE EVALUATION COMMITTEE

DOCKET NO. SEC 2024-__

PORTLAND NATURAL GAS TRANSMISSION SYSTEM

PRE-FILED DIRECT TESTIMONY OF WILLIAM YARDLEY

In Support of Joint Petition to Change Ownership

1

Qualifications and Purpose of Testimony2 **Q. Please state your name, title, and business address.**3 A. My name is William “Bill” Yardley and I am the former President of Gas Transmission
4 and Midstream and Executive Vice President of Enbridge, Inc. (“Enbridge”).5 **Q. Please describe your background and experience.**6 A. Enbridge moves 20% of all natural gas in the United States. As President of Gas
7 Transmission and Midstream at Enbridge, I was responsible for the financial, operational, and
8 regulatory performance of Enbridge’s \$3 billion earnings before interest, taxes, depreciation, and
9 amortization (“EBITDA”) business unit in the U.S. and Canada, operating 20,000 miles of
10 pipeline and 200 billion cubic feet of storage across 32 U.S. States. I maintained reliable service
11 to major gas and electric utility customers while overseeing the deployment of \$4 billion into a
12 substantial pipeline integrity and modernization program and growing the business at a 5–7%
13 year-over-year rate. I oversaw 10 rate proceedings in 4 years, and lead Enbridge to record-low
14 employee and contractor injury rates. Prior to Enbridge, I served from 2017 to 2022 as Chairman
15 and President of Spectra Energy Partners (NYSE: SEP), where I oversaw the buy-in of Spectra
16 Energy Partners into Enbridge. From 2007 to 2017, I worked for Spectra Energy (NYSE: SE),
17 where I served as the Group Vice President of Northeast Transmission and then President of U.S.
18 Transmission and Storage. Prior to Spectra Energy, I worked at Duke Energy, where I led the
19 integration of Westcoast’s Union Gas utility into Duke Energy. From 1997-2000, I served as the
20 Vice President of Marketing for Boston Gas Company, where I directed the sales and marketing
21 team to convert homeowners’ energy supply from fuel oil to natural gas, and helped lead the

1 company through three utility acquisitions and one merger. For further details on my
2 qualifications, please refer to my curriculum vitae attached as Exhibit 1.

3 **Q. What is the purpose of your testimony?**

4 A. It is my understanding that Portland Natural Gas Transmission System (“PNGTS”) is
5 seeking the approval of the New Hampshire Site Evaluation Committee (“SEC”) pursuant to
6 RSA 162-H:8 for the transfer of partnership interests contemplated by the Joint Petition to
7 Change Ownership (“Petition”), and, as part of such approval request, a showing of adequate
8 technical and managerial capability of the buyers must be made. My testimony will demonstrate
9 that BlackRock Global Infrastructure Fund IV, SCSp (“BGIF IV”), an affiliate of BlackRock
10 Financial Management, Inc., a wholly owned subsidiary of BlackRock Inc. (“BlackRock”), and
11 North Haven Infrastructure Partners III (AIV-B) SCSp (“NHIP III”), an affiliate of Morgan
12 Stanley Infrastructure Inc., advisor to the Morgan Stanley Infrastructure Partners investment
13 platform and its current or future investment vehicles (“MSIP”) (NHIP III together with BGIF
14 IV, “Buyers”), have the requisite technical and managerial capability to operate the PNGTS
15 facilities. The corporate structure of the companies is described in the testimony of Mark Saxe,
16 BlackRock’s financial witness, and Daniel Sailors, MSIP’s financial witness, as well as in the
17 organizational charts presented in Attachment 1 to the Petition, which depict the pre-closing and
18 post-closing structure of PNGTS and the associated BlackRock and MSIP entities. I will also
19 explain the role of the Transition Services Agreement (“TSA”) with respect to the ongoing
20 operation of the PNGTS facilities.

21

1 **Technical and Managerial Capability to Operate PNGTS Facilities**

2 **Q. Please describe the TSA and explain how it will work.**

3 A. For up to one year following closing of the proposed transaction, TransCanada Northern
4 Border Inc. (“TC Service Provider”), an affiliate of TC Energy Corporation and the current
5 operator of PNGTS, has agreed to provide certain services to Buyers that will allow Buyers to
6 continue to operate PNGTS in substantially the same manner as it is currently being operated.
7 Such services to be provided include environmental monitoring and reporting, daily operations
8 of the pipeline facilities and general corporate services and accounting. The scope of services to
9 be provided by TC Service Provider is the result of an intensive due diligence process
10 undertaken by Alvarez & Marsal, a market leading management consultant for transactions of
11 this nature, designed to ensure that Buyers will be able to operate PNGTS in substantially the
12 same manner as TC Service Provider currently operates PNGTS.

13 **Q. Please describe BlackRock’s and MSIP’s experience operating facilities similar to**
14 **the PNGTS facilities.**

15 A. BlackRock and MSIP, both individually and together, have extensive experience and
16 expertise putting in place management and operations teams to oversee daily operations of their
17 energy assets in general, and their natural gas pipeline assets in particular. For further details on
18 past project operational successes under MSIP’s leadership, please refer to the testimony of
19 Daniel Sailors. For further details on BlackRock’s successes, please refer to the testimony of
20 Mark Saxe.

1 **Q. Please describe the experience and expertise of any contractors or consultants**
2 **expected to be engaged to provide technical or managerial support in operating the PNGTS**
3 **facilities.**

4 A. Under the terms of the TSA between TC Service Provider and PNGTS, for up to a year
5 following closing of the proposed transaction, unless earlier terminated in accordance with the
6 terms of the TSA, the TC Service Provider will continue to operate the PNGTS system while
7 BlackRock and MSIP assemble an experienced team to operate PNGTS going forward. The TSA
8 is included with the Petition as Attachment 7. Following the expiration or termination of the
9 TSA, BlackRock and MSIP have committed to making employment offers to certain “Available
10 Employees”, who are employees and technicians of an affiliate of the TC Service Provider who
11 currently operate the pipeline. The TSA will ensure that PNGTS’s operations and service to
12 PNGTS’s customers (the majority of whom are located outside of New Hampshire and none of
13 whom are direct retail customers) will remain at the same level of quality that existed prior to
14 closing the transaction during this transition period while MSIP and BlackRock put their
15 permanent management and operations teams in place.

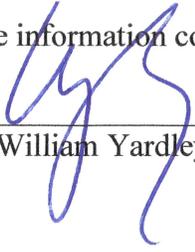
16 The transaction will not have any impact on PNGTS’s two existing New England
17 regional offices, one of which is located in and will continue to be located in Lancaster, New
18 Hampshire. BlackRock and MSIP are in the process of engaging me to serve in a senior
19 leadership role at PNGTS upon the closing of the transaction. BlackRock and MSIP are also
20 considering the use of management consultant firms such as Alvarez & Marsal, and Embark,
21 which are both leading management consulting firms specializing in transitioning energy-related
22 businesses to new ownership. Alvarez & Marsal’s consulting services have supported corporate

1 A. Yes. In my opinion, based on my testimony and the information provided in the Petition,
2 BlackRock and MSIP satisfy the criteria set forth in Site 301.13(b) and (c) and the requirements
3 of RSA 162-H:16, IV (a), and therefore have the requisite technical and managerial capability to
4 assure operation of the PNGTS facilities in continuing compliance with the terms and conditions
5 of the Certificate of Site and Facility issued by the SEC to PNGTS on July 16, 1997.

6 **Q. Does this conclude your testimony?**

7 A. Yes.

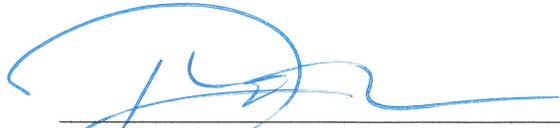
I affirm that the information contained in this testimony is true and accurate.

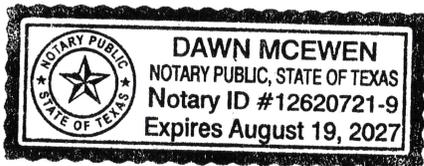
By: 
Name: William Yardley

STATE OF Texas
COUNTY OF Harris

On March 25, 2024, personally appeared before me the above-named William Yardley, and swore that this testimony is true and accurate to the best of his knowledge and belief.

(Seal)


Notary Public/Justice of the Peace
My Commission Expires:



William T. Yardley
2306 Kingston Street
Houston, TX 77019
billyyard@yahoo.com
(617) 571-2705

Experienced energy executive that has led organizations through significant changes including market upheavals, mergers, spin-offs, divestitures, regulatory and operational challenges. Established strategies specific to all stakeholder groups and geared the organization accordingly to focus on each. A proven leader, relationship builder and advocate for the evolution of traditional energy organizations through investments in new energies.

**Executive Vice President and President, Gas Transmission and Midstream
Enbridge, Inc.**

Enbridge, Inc. (NYSE: ENB) is a leading energy infrastructure company with 12,000 employees and a market capitalization of \$80 billion, moving 30% of North American crude oil and 20% of the natural gas in the United States. It also operates North America's third largest utility and has a growing renewable energy portfolio in North America and Europe.

As President of Gas Transmission and Midstream, was responsible for financial, operational and regulatory performance of the \$3 billion EBITDA business unit in the U.S. and Canada. The business operated in 32 states and 5 Canadian provinces, with 20,000 miles of pipeline, 200 billion cubic feet of storage, and five million horsepower at 126 compressor stations. Maintained reliable service to major gas and electric utility customers, overseeing a substantial pipeline integrity and modernization program while growing the business unit at 5-7% per year and improving employee and contractor safety annually.

Highlights:

- Deployed \$10 billion in capital, growing annual EBITDA of the business unit, directing traditional growth, exports to Mexico and to liquefied natural gas export facilities.
- Created and funded a Market Innovations group to pivot the business unit and align with the energy transition in the U.S. and Canada.
- Led transformational pipeline integrity program, investing over \$4 billion in pipeline investigations, horsepower modernization and reliability improvements, resulting in a four-fold improvement in risk-of-failure.
- Led regulatory strategy, overseeing 10 rate proceedings in 4 years, settling on appropriate returns on capital deployed. Routinely briefed federal and state government officials on natural gas activities.
- Focused on personal safety practices, leading the organization to record-low employee and contractor incident rates.
- Led through significant mergers and divestitures. With a team of 2,000 employees, improved diversity and Houston office culture, as well as engagement.
- Liaison to White House task force on cyber security, receiving annual classified briefings and worked with the company's information technology team and peer companies to address and minimize risks.
- A member of the Executive Leadership team, key advisor to the CEO, and critical to the successful integration of Spectra Energy into Enbridge beginning in 2017.
- President and Chairman of Spectra Energy Partners (NYSE: SEP), managing the independent board and representing the entity to the investor community, ultimately overseeing the buy in of the entity into Enbridge, Inc.

Group Vice President and President U.S. Transmission (2012-2017)

Group Vice President – Northeast Transmission (2008-2012)

Spectra Energy

Spectra Energy (NYSE: SE) was a Fortune 500 company and one of North America's premier natural gas pipeline and midstream companies. It merged with Enbridge in 2017.

Highlights:

- As president of the U.S. Transmission business, achieved significant growth rates by deploying over \$7 billion in major pipeline projects, directing each from origination through permitting and construction.
- Oversaw the re-engineering of the natural gas system to accommodate shale gas, and the reversal of systems to serve the growing liquefied natural gas export industry on the U.S. Gulf Coast.
- Represented Spectra Energy Partners in the investor community.
- Board member, Spectra Energy Partners, 2016-17.

Group Vice President, Gas Transmission (2006-2007)

Vice President Marketing & Business Development (2001-2006)

Duke Energy (NYSE: DUK)

Highlights:

- Aligned customer growth and retention strategies, improving customer service.
- In conjunction with Duke Energy's acquisition of Westcoast Energy, led the integration of Westcoast's Union Gas utility into Duke Energy.
- Received Duke Energy's Pinnacle Award for excellence on the mid-Atlantic growth project.

Vice President Marketing (1997 – 2000)

Boston Gas Company

Highlights:

- Directed sales and marketing team to convert homeowners to gas from fuel oil.
- Managed \$10 million annual budget.
- Integrated 3 utilities into Boston Gas through acquisition.
- Led Marketing and Gas Supply integration teams upon merger with KeySpan.

Board Experience:

- Spectra Energy Partners 2012-2022, President and Chairman of the Board 2017 - 2022
- DCP Midstream LLP 2017-2022
- Interstate Gas Pipelines of America Assoc, 2017-2022, Chairman 2017-2018
- United Way of Greater Houston 2016 – present
- Greater Houston Partnership 2019-2021
- Northeast Gas Association 2012- 2021
- Westcoast Energy Inc. 2017-2022

Education:

- Bachelor of Arts in Economics, Colby College, Waterville, Maine (1986)
- Master's in Business Administration, Northeastern University, Boston, MA (1991)
- Advanced Management Program, Harvard University, Cambridge, MA (2012)

ATTACHMENT F-1

SEC PRE-FILED TESTIMONY OF DANIEL SAILORS
AND MARK SAXE

CONFIDENTIAL

FILED UNDER SEAL PURSUANT TO MOTION FOR
PROTECTIVE ORDER AND CONFIDENTIAL
TREATMENT