

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DG 24-050

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

Petition to Transfer Partnership Interests

COMMENCEMENT OF ADJUDICATIVE PROCEEDING AND NOTICE OF HEARING

On March 26, 2024, the petitioners—Portland Natural Gas Transmission System (PNGTS), TC Pipelines, Inc. (TCP), Northern New England Investment Company, Inc. (NNEIC), BlackRock Global Infrastructure Fund, IV, SCSp (BGIF IV), and North Haven Infrastructure Partners III (AIV-B), SCSp (NHIP III)—jointly requested that the Commission review and approve the transfer of ownership of PNGTS from its current owners, TVP and NNEIC (together, the Sellers), to BGIF IV and NHIP III (together, the Buyers). The New Hampshire Department of Energy (DOE) and the Office of the Consumer Advocate (OCA) have both filed appearances in this docket. All docket filings, other than any information subject to confidential treatment, are available on the Commission’s website at

<https://www.puc.nh.gov/Regulatory/Docketbk/2024/24-050.html>.

I. BACKGROUND AND PROCEDURAL HISTORY

According to the Petition, PNGTS is a general partnership organized under the general laws of Maine that maintains a regional office in Lancaster, New Hampshire. Petition at 2. PNGTS owns and operates a 295-mile, FERC-regulated pipeline for the transportation of natural gas in interstate commerce. *Id.* The pipeline originates in Canada and runs through New Hampshire, Maine, and Massachusetts. *See* Petition, Attachment A. The New Hampshire portion consists of 79.1 miles of 24-inch diameter pipeline divided into two sections. *Id.* The first northern section runs from Pittsburg on

the Canadian border to Shelburne on the Maine border. *Id.* The second southern section runs from Newington to Plaistow. *Id.* The southern section is jointly owned by the Maritimes & Northeast Pipelines, LLC. *Id.* The New Hampshire Site Evaluation Committee issued a Certificate of Site and Facility for PNGTS's New Hampshire pipeline assets in 1997. *See* Petition, Attachment B.

The petitioners represent that 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. *Id.* The petitioners further represent that PNGTS has no retail customers in New Hampshire. *Id.*

This docket relates to the sale of PNGTS from the Sellers to the Buyers. Currently PNGTS is wholly owned by the Sellers. On March 2, 2024, the Sellers executed a Purchase and Sale Agreement. *Id.* This contract had the effect of indirectly transferring the Sellers' interests in PNGTS to a separate legal entity wholly owned by the Buyers. *See* Petition at 3–4 (describing the transaction in greater detail); *see also* Petition, Attachment D (containing an organizational chart showing the post-closing ownership structure of PNGTS).

The petitioners maintain that because PNGTS is a public utility under New Hampshire law, *see* Petition at 4 (citing RSA 362:2), there are two aspects of the Petition that require Commission consideration: (1) the transfer of public utility assets from the Sellers to the Buyers; and (2) a new entity operating a public utility within the state. As explained more fully below, the petitioners argue that, under New Hampshire law, the Commission does not need to take action with respect to either of these two aspects and should allow the transfer to become effective as a matter of law. Alternatively, the petitioners request that, if the Commission determines that

Commission action is appropriate, that the Commission make all necessary findings and approve the Petition. The Commission discusses the petitioners' argument as to each aspect of the Petition in turn.

A. Transfer of Ownership

In general, the Commission is required to review all transfers of utility assets within New Hampshire and only permit transfers that "will be for the public good." RSA 374:3. Here, however, the petitioners argue that the Commission does not need to make this finding because RSA 369:8, II(b), which applies to out-of-state businesses, states that:

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 petitioners maintain that the Commission should allow the transfer to become effective within sixty days of the date it filed the petition (i.e., May 27, 2024) under RSA 369:8, II(b) on the grounds that all of the Petitioners are out-of-state entities and the transfer of assets will have no adverse effect on rates, terms, service, or operation of a public utility in New Hampshire.

Alternatively, the petitioners argue that the Commission should approve the Petition subject to RSA 374:30 on the grounds that the transfer is for the public good. The petitioners request that if the Commission determines that review pursuant to RSA 374:30 is appropriate, that the Commission issue its disposition of the Petition within ninety days of the date it was filed.

After reviewing the filing, the Commission makes an initial determination that ruling on the Petition will require greater investigation to determine

whether the transfer will have “no adverse impact” as required by RSA 369:8, II(b). Therefore, in the Commission’s view, the transfer should not take effect within sixty days as a matter of law pursuant to RSA 369:8, II(b) based solely on the Petition. Accordingly, the Commission will determine whether the transfer of assets meets either the “no adverse impact” or “for the public good” standards. The Commission will make every effort to resolve the Petition within ninety days as requested by the petitioners.

B. Operation of a Public Utility Pursuant to RSA 374:22

The Petition raises three issues related to RSA 374:22. The first two are related: namely whether RSA 374:22 applies to the Buyers’ future ownership of PNGTS and, if so, whether the Commission should grant permission for the Buyers to operate a public utility in New Hampshire pursuant to RSA 374:26.

RSA 374:22 states that: “No person or business entity . . . shall commence business as public utility within this state, or shall engage in such business . . . , or shall exercise any right or privilege under any franchise not theretofore actually exercised in such town, without first having obtained the permission and approval of the commission.” RSA 374:22, I. RSA 374:26 states that the Commission shall provide permission upon a finding, after a hearing, that it would be “for the public good.” Permission may also be granted without a public hearing “when all interested parties are in agreement.” RSA 374:26.

Here, the petitioners argue that RSA 374:22 does not apply to this transaction because 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.” Petition at 7. Nonetheless, the petitioners maintain if the Commission determines that RSA 374:22 does apply,

that the Commission determine it is “for the public good” and therefore grant permission under RSA 374:26.

The third issue raised relates to RSA 374:24. The petitioners acknowledge that this statute states: “No permission under RSA 374:22 shall be granted to any business entity not organized under the laws of this state” However, they maintain that RSA 374:25’s exception for businesses “doing or desiring to do an interstate business” applies in this case. Petitioner at 7. Accordingly, the petitioners argue that even if the Commission determines that RSA 374:22 is applicable to this transaction, RSA 374:24 does not prohibit the Sellers from operating PNGTS.

II. ISSUES PRESENTED

The filing presents, *inter alia*, the following issues: whether the transfer of PNGTS from the Sellers to the Buyers will have an adverse impact on rates, service, operation, or terms and conditions of a New Hampshire utility under the standard in RSA 369:8, II(b); whether the transfer of PNGTS from the Sellers to the Buyers will be for the public good pursuant to RSA 374:30; whether the petitioners require permission under RSA 374:22 to effectuate the transfer of assets; if so, whether the Sellers’ operation of PNGTS in New Hampshire is for the public good under RSA 374:26; and, if RSA 374:22 applies, whether one of the exceptions in RSA 374:25 to the prohibition on out-of-state operation of public utilities also applies. Accordingly, an adjudicative proceeding will be convened to address these issues.

The Commission will be conducting any hearings scheduled in this matter in person. The Commission will consider requests to conduct hearings using a hybrid format to permit remote participation by a specific individual only if the Commission has determined that a sufficient reason has been provided for why that individual

would be unable to attend in person. Any party requesting that a specific individual be permitted to participate remotely should file a written request with the Commission's Clerk's Office no later than fifteen (15) days prior to the hearing date. If the Commission determines that one or more individuals will be permitted to appear remotely, then individuals in the Commission's hearing room, including the Commissioners, will be broadcast on a web-enabled platform.

Based upon the foregoing, it is hereby

ORDERED, that an adjudicative proceeding be commenced for the purpose of reviewing and resolving the foregoing issues pursuant to RSA chapter 541-A, RSA 369:8, II(b), RSA 374:22, RSA 374:24, RSA 374:26, and RSA 374:30 and the Commission's procedural rules; and it is

FURTHER ORDERED, that the Commission will hold a hearing in this matter at its offices located at 21 S. Fruit St., Suite 10, Concord, New Hampshire, on June 13, 2024, at 9:00 a.m. Three hours shall be allotted for this hearing; and it is

FURTHER ORDERED, that the New Hampshire Department of Energy shall file its position regarding the Petition, including the reasons for this position, on or before May 3, 2024. Specifically, the DOE's statement should include its position on: (1) whether the transfer of PNGTS from the Sellers to the Buyers meets the "no adverse impact" standard under RSA 369:8, II(b) or the "for the public good" standard under RSA 374:30; and (2) whether permission under RSA 374:22 for the operation of a public utility in New Hampshire is necessary and, if so, whether the Petition meets the "for the public good" standard under RSA 374:26; and it is

FURTHER ORDERED, that any entity or individual may petition to intervene and seek to be admitted as a party in this proceeding. Each party has the right to have an attorney represent the party at the party's own expense; and it is

FURTHER ORDERED, that, consistent with N.H. Admin. R., Puc 203.17 and Puc 203.02, any entity or individual seeking to intervene in the proceeding shall file with the Commission a petition to intervene with copies sent to the petitioners and any other parties on the service list, on or before May 3, 2024. The petition shall state the facts demonstrating how the petitioner's rights, duties, privileges, immunities, or other substantial interests may be affected by the proceeding, consistent with N.H. Admin. R., Puc 203.17; and it is

FURTHER ORDERED, that any party objecting to a petition to intervene make said objection on or before May 10, 2024; and it is

FURTHER ORDERED, that parties shall file any proposed exhibits, written testimony, motions, or other documents intended to become part of the record in this proceeding with the Commission. Pursuant to the secretarial letter issued on March 17, 2020, which is posted on the Commission's website at <https://www.puc.nh.gov/Regulatory/Secretarial%20Letters/20200317-SecLtr-Temp-Changes-in-Filing-Requirements.pdf>, all Commission rules requiring the filing of paper copies are suspended until further notice. Parties may elect to submit any filing in electronic form unless otherwise ordered by the Commission. Filings will be considered filed as of the time the electronic copy is received by the Commission; and it is

FURTHER ORDERED, that routine procedural inquiries may be made by contacting the Commission's Clerk's Office at (603) 271-2431 or ClerksOffice@puc.nh.gov. All requests to the Commission should be made in a written pleading filed with the Commission. Unless otherwise authorized by law, *ex parte* communications are prohibited; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. R., Puc 203.12, the petitioners shall notify all entities and individuals desiring to be heard at this hearing

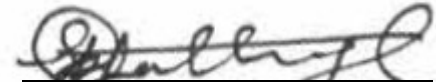
by publishing a copy of this order of notice on its website no later than two business days after the date of issue, such publication to be documented by affidavit filed with the Commission on or before May 1, 2024. In addition, the Clerk shall publish this order of notice on the Commission's website no later than two business days after the date of issue; and it is

FURTHER ORDERED, that any hearings in this matter shall be conducted in accordance with the attached hearing guidelines.


So ordered, this seventeenth day of April, 2024.



Daniel C. Goldner
Chairman



Pradip K. Chattopadhyay
Commissioner



Carleton B. Simpson
Commissioner

Individuals needing assistance or auxiliary communication aids due to sensory impairment or other disability should contact the NHPUC, 21 S. Fruit St., Suite 10, Concord, New Hampshire 03301-2429; 603-271-2431; TDD Access: Relay N.H. 1-800-735-2964. Notification of the need for assistance should be made one week prior to the scheduled event.

Service List - Docket Related

Docket#: 24-050

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