

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION



DG 14-154

NORTHERN UTILITIES, INC.

**Petition to Extend Franchise to Brentwood and to Cross State Property
Order *Nisi* Granting Petition and Motion for Confidential Treatment**

ORDER NO. 25,700

August 1, 2014

In this order the Commission grants Northern's petition to extend its franchise into the Town of Brentwood and to cross state property so that Northern can build a four mile extension of a distribution main. This order is issued on a *nisi* basis to allow interested parties the opportunity to review and raise objections to the franchise extension. The Commission also grants Northern's motion for confidential treatment.

I. PROCEDURAL HISTORY

Northern Utilities, Inc. (Northern), is a public utility that provides natural gas service to approximately 28,000 customers in southeastern New Hampshire. Northern filed a petition seeking Commission approval to extend its service area into the Town of Brentwood and to build a pipeline across state waters and lands. Northern plans to extend an existing distribution main into Brentwood to serve two industrial customers who have each agreed to make a substantial contribution in aid of construction (CAIC). Petition at 1. Northern's filing includes the pre-filed direct testimony of Cindy L. Carroll, Northern's Director of Customer Energy Solutions, and attachments. Northern supplemented its filing with the CAIC agreements referenced above and an Excel document containing Northern's CAIC calculations, all of which were subject to a motion for confidential treatment.

No party sought intervention. The boards of selectmen from the Towns of Brentwood and Exeter wrote letters expressing their support of Northern's petition. Attachment to Petition at Exhibits B and C. The Exeter Town Manager, Russell Dean, also filed a comment in support of the project.

The petition and subsequent docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are posted to the Commission's website at <http://www.puc.nh.gov/Regulatory/Docketbk/2014/14-154.html>.

II. POSITIONS OF THE PARTIES AND STAFF

A. Northern

Northern's petition argues that its proposed franchise expansion into Brentwood meets the public good standard of RSA 374:26. The primary reason for Northern's expansion is to extend service to two industrial customers located in Brentwood - Owens Corning and Pike Industries. Carroll Testimony at 3. These customers signed separate agreements with Northern by which they will make CAIC payments of approximately one-half of Northern's estimated \$1.9 million in total project costs. *Id.* at Attachment CLC-1. Redacted copies of the CAIC agreements are attached to Northern's *Motion for Confidential Treatment*. Northern states that its CAIC calculations support investing its share of the construction costs. Carroll Testimony at 3-4.

The secondary reasons Northern cites in support of its petition are that the new pipeline will travel by a number of potential customers in Exeter and Brentwood, and will put its mains within reach of Exeter High School (3,000 feet), and the Rockingham County complex (2.3 miles). *Id.* at 5; *see* Staff Recommendation at 2 (the proposed main will pass 24 residences, 34 small businesses, and 9 medium-sized businesses). Northern says it will "aggressively pursue

potential customers” along the route to the benefit of all Northern customers. Carroll Testimony at 5.

Northern states that adding Owens Corning and Pike Industries will not adversely affect Northern’s ability to supply natural gas to all its customers, and that Northern has the financial, technical, and managerial experience to provide natural gas service in Brentwood. *Id.* at 6.

The route of the proposed pipeline crosses state land twice and state waters once. Petition at 3. The state land crossings both involve New Hampshire Route 101. Northern plans to bury the pipeline by horizontal directional drilling under Route 101 for one crossing and will trench next to Pine Road, which passes beneath Route 101, at the other crossing. Petition at 4. The state water crossing involves Bloody Brook in Exeter. *Id.* at 3; *see* Attachment to the Petition at Exhibit A (a map of the proposed pipeline).

Northern argues that it meets the standard for the state land crossings. Northern claims that the crossings are “necessary ... to meet the reasonable requirements of [natural gas] service to the public” because the main cannot be built without crossing Route 101. RSA 371:17; *see* Petition at 4.

According to Northern, a license for the Bloody Brook crossing is unnecessary because it is not classified as “public waters” by the Department of Environmental Services (DES). *See* des.nh.gov/organization/commissioner/pip/publications/wd/documents/olpw.pdf (the “Official List of Public Waters” which does not include Bloody Brook).

Finally, Northern separately filed a motion for confidential treatment of certain information in the contracts with Owens Corning and Pike Industries. Northern seeks to protect from public disclosure the precise CIAC amounts, the quantity of natural gas the two customers intend to use, and related financial information. Motion at 1-2. Northern also seeks to protect an

Excel document provided to Staff that contains Northern's CIAC analysis. *Id.* at 3. Northern argues that this information constitutes "confidential, commercial or financial information" as described in RSA 91-A:5, IV and is thus exempt from public disclosure. *Id.*

B. Commission Staff

Staff filed a recommendation that the Commission approve the petition, citing five reasons. First, the Town of Brentwood is adjacent to Northern's existing service territory in Exeter. Second, the boards of selectmen from Exeter and Brentwood support the proposed expansion. Attachment to Petition at Exhibits B and C. Third, the proposed expansion will not adversely affect Northern's supply resources. Fourth, the expected revenues from the project meet the return requirements in Northern's tariff. Fifth, new customers along the new pipeline will have access to natural gas, a relatively inexpensive source of energy. June 27, 2014, Staff Recommendation.

Staff did not object to the motion for confidential treatment because, according to Staff, "the information Northern redacted from the two contracts meets the standards for confidential treatment." July 9, 2014, Letter of Michael J. Sheehan, Esq.

III. COMMISSION ANALYSIS

Before Northern can provide natural gas service "in any town in which it shall not already be engaged in such business," Northern must first obtain "the permission and approval of the commission." RSA 374:22, I. The Commission exercises its authority under RSA 374:22 by assessing the managerial, technical, financial, and legal expertise of the petitioner. *Hampstead Area Water Company*, Order No. 25,672 at 4-5 (May 30, 2014). The Commission also scrutinizes franchise petitions to ensure they are consistent with the orderly development of the region. *Id.* at 4.

Based on the record in this case, the Commission finds that Northern has the required capabilities to provide natural gas service in the Town of Brentwood and that the proposed expansion is for the public good. Northern is a well-established utility that has maintained its natural gas distribution system in this state for many years. Expanding natural gas service to a new community not currently served advances the public good given the favorable market for natural gas for the foreseeable future.

The Commission may grant permission to expand a franchise without a hearing pursuant to RSA 374:26: "Such permission may be granted without hearing when all interested parties are in agreement." Here, Staff supports the franchise request and, although not parties, the towns of Brentwood and Exeter both registered their support. In order to determine that no interested parties object to the franchise expansion we will issue this order on a nisi basis.

The proposed pipeline will cross Route 101 in two locations and will cross Bloody Brook once. State law requires a utility to obtain a license from the Commission to construct and maintain a pipeline beneath any "public waters" of the state or "under or across any of the land owned by this state," and requires the utility to demonstrate that the crossing is "necessary ... to meet the reasonable requirements of service to the public." RSA 371:17.

The crossing of Bloody Brook does not require a license because it is not among the "public waters" in the state. DES maintains the official list of public waters, referenced above, which list does not include Bloody Brook. Nonetheless, Northern will still have to satisfy environmental and other regulatory requirements for this water crossing. Petition at 3.

If Northern can demonstrate that the Route 101 crossings are "necessary" under RSA 371:17, then RSA 371:20 authorizes the Commission to grant a license if it "may be exercised without substantially affecting the public rights in said ... lands."

Based on the information presented in Northern's filing and Staff's memorandum, the Commission finds that the proposed crossings of Route 101 are necessary for Northern to meet the reasonable requirements of reliable service to the public as required by RSA 371:17. Northern has agreements with two industrial customers and will likely obtain other customers along the proposed route. The Commission also finds that the license may be exercised without substantially affecting the public rights in the public lands in question. The pipeline will be buried at both crossings of Route 101. The Commission thus finds that the crossings are in the public good and therefore grants the licenses.

Turning to Northern's motion for confidential treatment of information contained in the contracts with Owens Corning and Pike Industries, New Hampshire law exempts from disclosure records of "confidential, commercial or financial information." RSA 91-A:5, IV. The New Hampshire Supreme Court applies a three-step balancing test to determine whether documents meet this definition. *Lambert v. Belknap County Convention*, 157 N.H. 375, 382-83 (2008); *see Sprint Communications Company*, Order No. 25,607 at 2 (Dec. 19, 2013). Under that test the Commission first inquires whether the information involves a privacy interest and then asks if there is a public interest in disclosure. Finally, *Lambert* directs the Commission to balance those competing interests and decide whether disclosure is appropriate. 157 N.H. at 383.

Applying *Lambert*, the Commission grants Northern's motion. The Commission regularly protects the financial and commercially sensitive information of third parties. *See, e.g., Liberty Utilities (EnergyNorth Natural Gas) Corp.*, Order No. 25,690 at 3-4 (July 9, 2014). The CIAC amounts Owens Corning and Pike Industries agreed to pay, and their predicted gas consumption upon which the CAICs were based, fall into this protected category. Public

knowledge of the precise CIAC payments is not necessary to understand the nature of Northern's request.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that subject to the effective date below, Northern's petition to expand its franchise to include the Town of Brentwood is GRANTED; and it is

FURTHER ORDERED, that that Northern's petition for a license to cross state land is GRANTED; and it is

FURTHER ORDERED, that Northern's Motion for Confidential Treatment and Protective Order is GRANTED; and it is

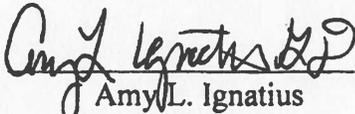
FURTHER ORDERED, that Northern shall cause a summary of this Order *Nisi* to be published once in a statewide newspaper of general circulation or of circulation in those portions of the state where operations are conducted, such publication to be no later than August 11, 2014 and to be documented by affidavit filed with this office on or before September 1, 2014; and it is

FURTHER ORDERED, that all persons interested in responding to this Order *Nisi* be notified that they may submit their comments or file a written request for a hearing which states the reason and basis for a hearing no later than August 18, 2014 for the Commission's consideration; and it is

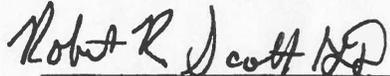
FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than August 25, 2014; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective September 1, 2014, unless the Northern fails to satisfy the publication obligation set forth above, or the Commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this first day of August,
2014.



Amy L. Ignatius
Chairman



Robert R. Scott
Commissioner



Martin P. Honigberg
Commissioner

Attested by:



Lori A. Davis
Assistant Secretary