

**STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE**

**ORDER RENDERING SUBCOMMITTEE'S RECOMMENDATION TO SITE
EVALUATION COMMITTEE FOR APPROVAL; MEMORIALIZING
SUBCOMMITTEE'S ORDER GRANTING JOINT PETITIONERS' MOTION FOR
CONFIDENTIAL TREATMENT; and PRESENTING LIST OF HEARING EXHIBITS TO
SITE EVALUATION COMMITTEE**

JUNE 12, 2024

I. BACKGROUND

On March 26, 2024, North Haven Infrastructure Partners III (AIV-B) SCSp, an affiliate of Morgan Stanley Infrastructure Inc. and BlackRock Global Infrastructure Fund IV, SCSp, an affiliate of BlackRock Financial Management, Inc. (together, 'Buyers'), TC Pipelines, LP, a Delaware limited partnership, and Northern New England Investment Company, Inc., a Vermont corporation (together, 'Sellers') (Buyers and Sellers collectively: 'Petitioners'), filed with the New Hampshire Site Evaluation Committee ('Committee,' or 'SEC') requesting approval of the proposed upstream change of ownership interests in the Portland Natural Gas Transmission System (PNGTS). This filing (Petition) was made to the Committee pursuant to the statutory requirements of RSA 162-H:8 and RSA 162-H:5, I.

Appended to the Petition was the Petitioners' Motion for Confidential Treatment, made pursuant to RSA Chapter 91-A, regarding the Buyer's respective Statements of Assets and Liabilities, the Petitioners' Transition Services Agreement, and the unredacted pre-filed testimony of Messrs. Daniel Sailors and Mark Saxe, employees of Buyers, which, it is asserted by Petitioners, contains confidential non-public financial and commercial information exempt from disclosure.

On April 9, 2024, the Chairman of the SEC, Mr. Daniel C. Goldner (Chairman, New Hampshire Public Utilities Commission) issued an acknowledgement of the Petition. Also, on April 9, 2024, Chairman Goldner issued an Order appointing this Subcommittee to consider the Petition and render recommendations regarding same to the full SEC, pursuant to the terms of RSA 162-H:4-a, III.

On April 24, 2024, an Order of Notice scheduling a meeting of the Subcommittee on May 31, 2024, was issued by the Presiding Officer and Chairman of the Subcommittee, Alexander F. Speidel, Esq. (Senior Advisor, New Hampshire Public Utilities Commission). This Order of Notice, which provided additional detail regarding

Petitioners' proposal and the course of this proceeding, was published by the Petitioners in newspapers circulated Statewide in New Hampshire, and in Coös and Rockingham Counties, on May 2, 2024, and the Petitioners filed an Affidavit attesting to this publication into this instant SEC Docket No. 2024-01 on May 24, 2024.

On May 10, 2024, the Petitioners filed, through counsel, a Motion for Clarification regarding the Subcommittee's procedural approach to the impending May 31, 2024 hearing, raising concerns about the formalities of the process centering on the issue of potential interventions, in light of the statutory changes presented in HB 281 (*see* RSA 162-H:8, as amended by 2023 Laws of New Hampshire Chapter 233).

On May 16, 2024, the Petitioners filed a Revised Organizational Structure for the proposed ownership of PNGTS by Buyers after consummation. *See* Hearing Exhibit 6, per list discussed below.

On May 31, 2024, the Subcommittee held the noticed hearing regarding the Petition and ancillary matters at the premises of the New Hampshire Public Utilities Commission in Concord, New Hampshire, where representatives of the Buyers, Sellers, and the Counsel for the Public attended and provided statements of position, and the Subcommittee rendered its rulings as delineated below. *See also* Transcript of May 31, 2024 SEC Subcommittee Public Hearing (Tr.), *passim*. No motions for intervention were made in advance of, or at, the May 31 Subcommittee hearing, nor were any members of the general public present at the hearing. One written public comment was tendered for the SEC's consideration by Mr. Thomas Costello on April 29, 2024, referring to a typo on the SEC's Docket segment of its website, and unspecified "issues" with this instant Docket No. 2024-01.

II. SUMMARY OF POSITIONS OF PARTIES AND RULINGS OF SUBCOMMITTEE

As a threshold matter, at the May 31, 2024 hearing, the Subcommittee addressed the Petitioners' May 10 Motion for Clarification in light of the fact that no intervention was being sought by any person in this proceeding. The Presiding Officer and Chairman of the Subcommittee suggested that these circumstances rendered the Petitioners' Motion for Clarification MOOT, and that while the Subcommittee would not render a legal opinion to the full SEC regarding the legal questions presented therein as being outside of the scope of the Subcommittee's ambit, the Subcommittee would render its recommendation to the full SEC regarding the Petition. Tr. at 14-15.

Counsel for the Petitioners did not object to this approach, nor did Counsel for the Public. Tr. at 15.

Regarding the Petitioners' Motion for Confidential Treatment, counsel for the Petitioners summarized their arguments in favor of this Motion at the Subcommittee hearing as follows. The first set of information for which the Petitioners sought protection from disclosure was the "Statements of Assets and Liabilities" material submitted with the Petition, which, the Petitioners argued, contained confidential financial information that has customarily been protected in SEC proceedings from disclosure under RSA Chapter 91-A. Tr. at 8-9. The Petitioners also reiterated their seeking confidential treatment for the Transition Services Agreement, and portions of the prefiled testimony of Messrs. Sailors and Saxe filed with the Petition, as also having confidential financial and business information qualifying for protection from disclosure under RSA Chapter 91-A. Tr. at 9. No objections were raised to the Motion for Confidential Treatment at the hearing. Tr. at 10. The Subcommittee rendered a unanimous decision granting the Petitioners' Motion for Confidential Treatment, with the balance having tipped in favor of protection from disclosure under the standards of RSA Chapter 91-A. *Id.*

Having approved the Motion for Confidential Treatment, the Presiding Officer of the Subcommittee suggested to the parties a standardized nomenclature for the Hearing Exhibits / Petition materials, which the Subcommittee offers for the full SEC's use as listed below:

EXHIBIT 1: Public Components of Petition to Change Ownership (3/26/24), including Redacted, Public Versions of Attachments

CONFIDENTIAL EXHIBIT 2: Unredacted, Confidential Version of Pre-Filed Testimony of Daniel Sailors (3/26/24) "Attachment 2a"

CONFIDENTIAL EXHIBIT 3: Unredacted, Confidential Version of Pre-Filed Testimony of Mark Saxe (3/26/24) "Attachment 3a"

CONFIDENTIAL EXHIBIT 4: NHIP Statement of Assets and Liabilities (3/26/24), "Attachment 4"

CONFIDENTIAL EXHIBIT 5: BGIF Statement of Assets and Liabilities (3/26/24), "Attachment 5"

EXHIBIT 6: Revised Organizational Structure Filed by Petitioner (5/16/2024)

CONFIDENTIAL EXHIBIT 7: Transition Services Agreement (3/26/24),
"Attachment 7"

EXHIBIT 8: New Hampshire Department of Energy Technical Statement (Blair and Arif), (prepared 5/3/24, filed by Petitioner on 5/30/24)

Counsel for the Petitioners and Counsel for the Public did not object to this nomenclature, nor did any other person present at the hearing; therefore, the Subcommittee adopted this and reproduces it in this Order. Tr. 11-14.

With these ministerial matters having been addressed, the Subcommittee heard arguments from the Petitioners regarding their proposed transfer of ownership of PNGTS. Counsel for the Petitioners referenced RSA 162-H:8, which states, "[t]he [SEC] shall administratively approve changes of ownership and transfers of certificates within 90 days of a petition if it determines the new certificate holder has adequate financial, technical, and managerial capability to assure construction and operation of the facility in continuing compliance with the terms of the [SEC] certificate." Tr. at 18. Counsel for the Petitioners expanded on the testimonies of Messrs. Sailors, Saxe, and Bill Yeardley, a consultant for Petitioners with experience in the natural gas industry, the financial resources of BlackRock and Morgan Stanley (two of the largest investment concerns in the world-- BlackRock having \$10 trillion in assets, including \$47 billion in infrastructure assets, and the Morgan Stanley investment fund involved in this transaction having \$5.5 billion in funding), each of which will own a 50 percent interest in PNGTS at the close of the proposed transaction. Tr. at 17-21. Counsel for the Petitioners also pointed to the role of the Transition Services Agreement, Confidential Exhibit 7, and the Petitioners' management-related planning in ensuring that the operation of PNGTS going forward would be successful and in conformity with the terms of the SEC certificate for this facility. *Id.* Petitioners also noted the parallel New Hampshire Public Utilities Commission oversight role, pursuant to RSA 369:8, and allied statutes, pending regarding the PNGTS transfer proposal, and the favorable opinion rendered by the New Hampshire Department of Energy, Hearing Exhibit 8 (Technical Statement of Blair and Arif), therein. Tr. at 20-21.

Petitioners made Mr. Yeardley available for unsworn questioning by the Subcommittee. Tr. at 21-22. On questioning by the Subcommittee, Mr. Yeardley offered the following information of interest on the record. Mr. Yeardley stated that the Petitioners (BlackRock and Morgan Stanley) saw a business opportunity in the

ongoing operation of PNGTS in the Northern New England region, given the importance of PNGTS in offering gas capacity in the capacity-constrained regional market. Tr. at 24-25. In terms of operational personnel for PNGTS, Mr. Yeardley clarified that the BlackRock-Morgan Stanley joint venture would be responsible for operational management of the Coös County northern component of PNGTS in New Hampshire (that is, the Pittsburg to Shelburne segment), while Enbridge, the joint owner of the "Maritimes" Rockingham County (Newington to Plaistow) component will continue its current operational management of that segment of PNGTS. Tr. at 27-29. Mr. Yeardley noted that the Petitioners had some experience in managing gas pipelines elsewhere in the United States; using this experience, they would develop back-office personnel to oversee PNGTS operations to replace the role of Sellers, while maintaining continuity in the front-line operations personnel staffing, with the filling of an operational technician vacancy for New Hampshire that is currently open. Tr. at 27-31.

For safety and security issues, Mr. Yeardley confirmed on Subcommittee questioning that PNGTS has a good safety record since its inception in 1997, and that the operational safety and security arrangements for PNGTS would remain the same after the transfer of ownership is consummated. Tr. at 31-32. The Petitioners also confirmed on questioning that the current State of New Hampshire inspectional authority for PNGTS, in parallel with the Federal authorities, would be the New Hampshire Department of Energy (DOE), rather than the New Hampshire Public Utilities Commission (PUC), as referenced in the 1997 original SEC certificate for PNGTS that predated the 2021 DOE/PUC reorganization. Tr. at 32-33. The Subcommittee indicated that it would request that the full SEC update the language of the certificate for this change, to which counsel for the petitioners had no objection. *Id.*

Following Subcommittee questioning of Mr. Yeardley, Counsel for the Public offered a statement in support of the Petition, wherein Counsel for the Public outlined its review of the Petition materials, including the Confidential Exhibits and the DOE Technical Statement (Hearing Exhibit 8), and in-person discussions with representatives of both Buyers and Sellers. Tr. at 35-36. Counsel of the Public concluded that, after review of those materials and discussions with Petitioners, that

she found no reason to object to a change in ownership of PNGTS on behalf of the public. Tr. at 36.

Following the Counsel for the Public's statement on the record, the Subcommittee deliberated the merits of the Petitioners' request pursuant to the operative standards of RSA Chapter 162-H. Tr. at 37-40. Following a peroration by the Presiding Officer of the Subcommittee, in which he recommended that the Subcommittee issue a recommendation for the full SEC to approve the Petition for the reasons listed below, the Subcommittee unanimously voted to issue such a recommendation. *Id.* The Subcommittee finds that the Petitioners have adequate financial resources, being supported by the funding of two of the largest investment concerns in the world; the Petitioners have adequate managerial resources, having managerial experience elsewhere with regulated pipeline operations, some experience with New England energy investments on a large scale, a managerial development plan for back office operations and frontline safety and security operations for PNGTS, and ongoing support from their joint-venture partner, Enbridge, for the Rockingham County segment; and ongoing inspection capability and responsibility by the federal authorities and by the New Hampshire DOE Enforcement Division and pipeline safety personnel, with the proviso that the original 1997 SEC certificate for PNGTS be updated to reflect the transfer of responsibility from the PUC to the DOE. *Id.*

III. CONCLUSION

On this basis, the Subcommittee RECOMMENDS that:

- (1) The full SEC APPROVE the Petition for transfer of ownership from Sellers to Buyers, in advance of the 90th-day statutory deadline (June 26, 2024); and
- (2) The full SEC UPDATE the SEC Certificate for PNGTS to reflect the inspectional responsibility of the New Hampshire Department of Energy, the successor agency in the pipeline field from the New Hampshire Public Utilities Commission as of 2021.

By Order of the Subcommittee of the Site Evaluation Committee, this **twelfth day of June, 2024.**

/s/ Alexander Speidel

Alexander Speidel, Esq.

Designee of Chairman Goldner

/s/ Joseph Doiron

Joseph Doiron

Designee of Cm'r. Caswell

/s/ James Jalbert

James Jalbert

Public Member