

THE STATE OF NEW HAMPSHIRE

BEFORE THE

PUBLIC UTILITIES COMMISSION

NORTHERN UTILITIES, INC.

Petition for Approval of

Third Amendment to Special Contract

With National Gypsum Company

Docket No. DG 11-_____

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PETITION FOR APPROVAL OF THIRD AMENDMENT

TO SPECIAL CONTRACT WITH NATIONAL GYPSUM COMPANY

NOW COMES Northern Utilities, Inc. (“Northern” or “the Company”) and, pursuant to N.H. RSA 378:18 and N.H. Admin. Rule Puc 1606.03, respectfully petitions the New Hampshire Public Utilities Commission (“the Commission”) for approval of a Third Amendment of Agreement which amends the term of Special Contract No. 99-02 (“the Special Contract”) between Northern and National Gypsum Company (“National Gypsum” or “the Customer”) to: 1) extend the term of the Special Contract for five (5) additional years beyond the expiration date of November 30, 2011; 2) provide for up to three (3) one-year automatic contract extension periods; and 3) relieve National Gypsum of certain minimum annual payment obligations if its facility in Portsmouth, New Hampshire is permanently closed and ceases to operate.

In support of this Petition, Northern states as follows:

1. Northern is a public utility primarily engaged in the delivery of natural gas services in certain cities and towns in southeastern New Hampshire and Maine.

2. Northern and its customer, National Gypsum, are parties to a “Special Firm Transportation Agreement” (i.e. Special Contract 99-02) dated August 2, 1999. *See*

Schedule NU-1-2. The Special Contract was conditionally approved by the Commission in Order No. 23, 314 issued October 5, 1999. *See Re Northern Utilities, Inc.*, DG 99-123, 84 NH PUC 530 (October 5, 1999). The condition imposed by the Commission when it approved the Special Contract directed the Company to revise the Special Contract provision delineating the term to require Commission approval for any extension period beyond ten (10) years. *See Re Northern Utilities, Inc.*, 84 N.H. PUC at 532. On November 1, 1999, Northern filed an Amendment of Agreement in Docket No. DG 99-123 to comply with the condition imposed by Order No. 23,314. *See* Schedule NU 1-3.

3. The special circumstances that led to the negotiation, execution and approval of the Special Contract were that National Gypsum had a viable option to bypass Northern's distribution system by connecting directly with an interstate pipeline. *See Re Northern Utilities, Inc.*, 84 N.H. PUC at 531. The Special Contract was designed to retain National Gypsum's load at a competitive price which would make the bypass option unattractive while at the same time enabling Northern to obtain contribution toward fixed costs to mitigate the effects on other customers of lost revenues and sales. *Id.*

4. On October 19, 2009, Northern filed a petition with the Commission seeking approval of a Second Amendment of Agreement to extend the terms and conditions of the Special Contract with National Gypsum for two (2) additional years. The Commission granted the petition, and in so doing, found that the extension period was reasonable and would allow time for Northern and National Gypsum "to consider other options to meet

National's long term energy needs." *See Northern Utilities, Inc.*, DG 09-201, Order No. 25, 047 (November 25, 2009) at 6.

5. The circumstances that led to the filing of the original Special Contract and the Second Amendment of Agreement continue to exist today. As indicated in Mr. Smith's prefiled testimony and the Schedules submitted herewith, National Gypsum continues to have a viable option to completely bypass Northern by directly interconnecting with an interstate pipeline. The bypass option presents a risk to Northern and its other customers in the form of substantial lost transportation revenues that would be recoverable from remaining customers. Thus, special circumstances continue to exist which render departure from Northern's tariffed rates just and consistent with the public interest. Accordingly, Northern and National Gypsum have entered into an agreement (i.e. the "Third Amendment of Agreement") to extend the terms and conditions of the Special Contract for five (5) additional years beyond the current term of the Special Contract which expires on November 30, 2011. *See* Schedule NU 1-5.

6. The extension of the Special Contract for five (5) additional years will provide benefits to Northern and its firm customers because the annual revenues under the Special Contract will exceed the long-run marginal costs of serving this load, and because retention of the load will keep the average system costs of transporting gas applicable to all of Northern's firm customers lower than it would be if Northern were to lose the Customer to bypass.

7. Pursuant to Order No. 25, 047, Northern and National Gypsum have considered National Gypsum's "long term energy needs" and have agreed that those long term needs can best be served by extending the terms and conditions of the Special

Contract for at least another five (5) year period and by amending the Special Contract to permit the parties to automatically extend the Contract term for up to three (3) one year periods after the expiration of the above-reference five (5) year extension period.

8. Northern is mindful of the concerns expressed in Order No. 23, 314 that led to the Commission requiring Northern to amend the original Special Contract by eliminating the self-executing extension clause so that Commission approval would be required for any extension of the Contract's initial term. Those concerns were that because of the length of the Special Contract term, the circumstances that justified the Special Contract in 1999 might not exist in the future, and therefore an extension without Commission review would be inappropriate. However, the ensuing years have demonstrated that the circumstances that justified the Special Contract in 1999 have continued and will likely continue for the foreseeable future. Accordingly, in order to provide Northern and National Gypsum with long-term certainty regarding the terms and conditions upon which gas transportation service will be furnished, and for administrative efficiency for Northern, National Gypsum, the Commission and Commission Staff, the Third Amendment of Agreement contains a self-executing extension clause which will allow the Special Contract terms and conditions to continue for up to three (3) years (i.e. three (3) one year automatic extension periods) beyond the proposed expiration date of November 30, 2016, unless either party notifies the other to the contrary at least six (6) months prior to the upcoming/applicable expiration date.

9. In addition to extending the term of the Special Contract to November 30, 2016 and including a self-executing extension clause, the only other modification to the Special Contract contained in the Third Amendment of Agreement is the elimination of

National Gypsum's responsibility for certain minimum annual payment obligations in the event that its facility is permanently closed and ceases to operate. As indicated in Mr. Smith's prefiled testimony, Northern believes this provision is appropriate because the Company's investment to serve the Customer has been fully recovered. Therefore, the risks associated with plant closure that were addressed by the minimum annual payment obligation during the initial term of the Special Contract are no longer present.

10. The following information is submitted in support of this Petition: Prefiled Direct Testimony of Michael Smith; Customer letter to Northern regarding its special circumstances (Schedule NU 1-1); Special Contract (Schedule NU 1-2); Amendment to Agreement (Schedule NU 1-3); Second Amendment to Agreement (Schedule NU 1-4); Third Amendment to Agreement (Schedule NU 1-5); Northern's Cost Estimate of Bypass (Schedule NU 1-6); Results for Customer's Value of Service Alternative (Schedule NU 1-7); and Marginal Cost of Service Analysis for the Customer (Schedule NU 1-8).

11. The specific rates and charges for the firm transportation service are set forth on page 2 of Schedule NU 1-2. In addition, by the terms of the Special Contract, the Customer will be subject to all charges and fees set out in the Company's General Terms and Conditions and Transportation Terms and Conditions, as are in effect from time to time.

12. As explained above, Northern is making the instant filing because the circumstances that justified the Special Contract in 1999 continue to exist today. Moreover, additional circumstances further support the extension of the Special Contract for at least five (5) more years. As explained in Schedule NU 1-1, the Customer faces increasing competitive pressures. The high cost of energy has contributed to National

Gypsum's decision to suspend operations at its plant in northern New York. The Customer's direct competitor, Georgia Pacific (located in Newington, New Hampshire) has bypassed the Northern system and is therefore avoiding the charges that National Gypsum is paying under the Special Contract. Given that its competitors' energy costs are presumably lower than National Gypsum's, the Customer is under pressure to maintain its energy costs such that it remains competitive and does not suffer the same fate as its sister plant in New York.

13. In view of the foregoing, National Gypsum's circumstances are special and render departure from Northern's general tariffs just and consistent with the public interest.

WHEREFORE, Northern respectfully requests that the Commission:

- A. Find that the Third Amendment of Agreement is just and consistent with the public interest;
- B. Issue an order *nisi* with an effective date no later than November 30, 2011 approving the Third Amendment of Agreement; and
- C. Grant such further relief as it deems appropriate.

Dated: October 18, 2011

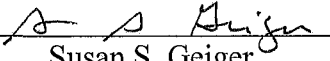
Respectfully submitted,
NORTHERN UTILITIES, INC.
By its Attorneys,
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Certificate of Service

I hereby certify that on this 18th day of October, 2011, a copy of the foregoing Petition was served electronically upon the Office of Consumer Advocate.



Susan S. Geiger

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