

THE STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

NORTHERN UTILITIES, INC.

Petition for Approval of
Fifth Amendment to Special Contract
With Foss Manufacturing Company, LLC

Docket No. DG 12-_____

THE STATE OF NEW HAMPSHIRE

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PETITION FOR APPROVAL OF FIFTH AMENDMENT

TO SPECIAL CONTRACT WITH FOSS MANUFACTURING COMPANY, LLC

NOW COMES Northern Utilities, Inc. (“Northern” or “the Company”) and, pursuant to N.H. RSA 378:18, respectfully petitions the New Hampshire Public Utilities Commission (“the Commission”) for approval of a Fifth Amendment of Agreement which extends the term of the Special Contract between Northern and Foss Manufacturing Company, LLC (“Foss” or “the Customer”) for five (5) additional years. 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. Foss is a manufacturing company with operations in Hampton, New Hampshire where it employs close to 400 people. Foss is Northern’s second largest firm transportation customer; Foss purchases natural gas from a third party supplier.
3. Northern and Foss are parties to a “Special Firm Transportation Agreement” dated October 28, 1999 (Schedule NU-1-1) which was conditionally approved by the Commission in Order No. 23,381. *See Re Northern Utilities, Inc.*, DG 99-171, 85 NH PUC 6 (January 6, 2000). The condition imposed by the Commission in Order

No. 23,381 required the Company to revise the Special Contract term provision to require Commission approval for any extension period beyond five (5) years. *See Re Northern Utilities, Inc.*, 85 NH PUC at 9. Northern complied with this condition by entering into an Amendment of Agreement (or the First Amendment of Agreement) with Foss dated January 11, 2000. *See* Schedule NU-1-2.

4. The special circumstances that led to the negotiation, execution and approval of the original Special Contract were that Foss had the capability to utilize alternate fuels. *See Re Northern Utilities, Inc.*, 85 NH PUC at 8. The Special Contract was designed to retain Foss's load at a competitive price which would make the fuel switching 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.

5. The original Special Contract expired on February 28, 2005. Because Foss wanted continued certainty regarding its gas transportation costs and because Northern wished to maintain a certain revenue stream from this Customer, Northern and Foss negotiated an agreement to extend the terms and conditions of the original Special Contract for five (5) additional years. In order to insure continuation of service during the parties' negotiations and the Commission's review process, Northern and Foss entered into a Letter Agreement dated March 8, 2005 which provided that Northern would continue to deliver natural gas according to the terms of the 2000 Special Contract but that the Customer would be obligated to pay the applicable tariff rate back to March 1, 2005 in the event that the Commission did not approve an extension of the Special Contract. *See* Letter Agreement (March 8, 2005) (Schedule NU-1-3).

6. Northern and Foss entered into a Second Amendment of Agreement with an effective date of March 1, 2005, the purpose of which was to extend the existing Special Contract for five (5) more years, i.e. until "February 29, 2010". See Second Amendment of Agreement (Schedule NU-1-4).

7. On April 1, 2005, Northern filed a Petition and supporting documents with the Commission seeking approval of the Second Amendment of Agreement. In investigating this filing, Commission Staff concluded that the rates contained in the original Special Contract should be increased. See *Re Northern Utilities, Inc.*, 90 NH PUC 263, 264 (July 1, 2005). In response to Staff's concerns, Northern and Foss negotiated a Third Amendment of Agreement (Schedule NU-1-5) for the purpose of increasing the transportation rates to be charged by Northern to Foss under the extended Special Contract. *Id.* On July 1, 2005, the Commission approved both the Second and Third Amendments of Agreement in Order No. 24,478. See *Re Northern Utilities, Inc.*, 90 NH PUC at 266.

8. On February 16, 2010 Northern filed a petition with the Commission seeking approval of the Fourth Amendment to the Special Contract extending the Agreement for an additional two (2) years (Schedule NU-1-6). In order to insure continuation of service during the parties' negotiations, Northern and Foss entered into a Letter Agreement similar to the one dated March 8, 2005 which provided that Northern would continue to deliver natural gas according to the terms of the 2000 Special Contract but that the Customer would be obligated to pay the applicable tariff rate back to March 1, 2010 in the event that the Commission did not approve an extension of the Special Contract.

After investigating that filing the Commission Staff recommended that the Commission approve the request for a two year extension of the special contract with Foss. The Commission approved the Fourth Amendment of Agreement in Order No. 25,085 issued on March 25, 2010.

9. Northern recently notified Foss that the existing Special Contract will expire at the end of February, 2012 and that Foss would be subject to Northern's tariff rates as of March 1, 2012. In response, Foss requested that Northern make a filing with the Commission to extend the terms and conditions of the existing contract. *See* Letter from Paul Koroski to Mike Smith dated January 17, 2012 (Schedule NU-1-7). In support of its request, Foss stated that if it were required to pay tariff rates for gas transportation service, the savings it has achieved from a variety of improvement efforts made to remain competitive with companies from Mexico and China, as well as southern states, which it detailed in the letter (investments in technological improvements, replacement of the unit fork truck force, negotiated reduced property tax assessment) would be lost and it would have to seriously consider other options. *Id.*

10. Northern and Foss have negotiated a Fifth Amendment of Agreement with an effective date of March 1, 2012 to extend their Special Contract until February 28, 2017. *See* Fifth Amendment of Agreement (Schedule NU-1-8).

11. The extension of the Foss Special Contract for five (5) additional years is in the public interest because it will provide benefits to Foss, Northern and Northern's customers. The annual revenues under the Special Contract extension will exceed the long-run marginal costs of serving this load as shown in the marginal cost of service analysis accompanying this filing (*See* NU-1-9, Marginal Cost Analysis), and 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 have been if the Customer reduced its operations (due to layoffs) or relocated. Because Foss is a transportation customer, this contract extension will not have an anti-competitive effect on the gas supply market.

12. Special circumstances exist which support the extension of the Special Contract for five (5) more years. As explained in Schedule NU-1-7, Foss has made significant financial investments to improve its facilities and upgrade its equipment and has negotiated a lower property tax assessment. The Customer faces competitive pressures from competitors located in Mexico and China, as well as southern states North Carolina, South Carolina and Georgia, where labor and utility costs are lower than Foss's and where there are state subsidies and a lower tax burden. Foss has also experienced an increase in raw materials costs. All employees have taken wage reductions and there was a work force reduction. During 2012 Foss faces renegotiation of their Union contract and renewal of health insurance programs. Thus Foss is under pressure to maintain its energy costs such that it remains competitive. Foss has indicated that if it were required to take transportation service under Northern's tariff rates, the savings it has achieved from a variety of improvement efforts made to remain competitive with companies from Mexico and China, as well as southern states would be lost and it would have to seriously consider other options.

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

14. The following documents are submitted with this Petition: Prefiled Direct Testimony of Michael Smith; Special Firm Transportation Agreement (Schedule NU-1-

1); Amendment of Agreement (Schedule NU-1-2); Letter Agreement (March 8, 2005) (Schedule NU-1-3); Second Amendment of Agreement (Schedule NU-1-4); Third Amendment of Agreement (Schedule NU-1-5); Fourth Amendment of Agreement (Schedule NU-1-6); Letter from Paul Koroski to Michael Smith (January 17, 2012) (Schedule NU-1-7); Fifth Amendment of Agreement (Schedule NU-1-8); and Marginal Cost Analysis (Schedule NU-1-9).

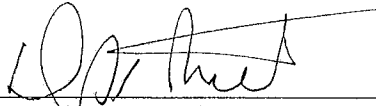
WHEREFORE, Northern respectfully requests that the Commission:

A. Find that the Fifth Amendment of Agreement is just and consistent with the public interest; and

B. Grant such further relief and make such findings or orders as may be necessary and consistent with the relief requested herein.

Respectfully submitted,

NORTHERN UTILITIES, INC.
By its Attorneys,
Orr & Reno, P.A.

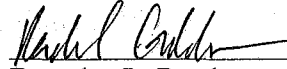



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Dated: January 26, 2012

Certificate of Service

I hereby certify that a copy of the foregoing Petition has on this 26th day of January, 2012 been sent electronically to the Office of Consumer Advocate.

Douglas L. Patch

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