

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DG 19-152

NORTHERN UTILITIES, INC.

**Petition for Approval of Fourth Amendment to Special Contract
with National Gypsum Company**

Order *Nisi* Approving Petition and Granting Motion for Confidential Treatment

ORDER NO. 26,308

November 13, 2019

This order approves a fourth amendment of Northern's special contract with National Gypsum for firm gas transportation service. The amendment extends the special contract for five years to November 30, 2024, with up to three additional one-year extensions.

I. BACKGROUND AND POSITIONS OF THE PARTIES

A. Petition

On September 13, 2019, Northern Utilities, Inc. (Northern, or the Company), filed a petition seeking approval of a fourth amendment to its October 1999 special contract to provide firm gas transportation service to New NGC, Inc. d/b/a National Gypsum Company (National Gypsum), a producer of gypsum wallboard with a manufacturing plant located in Portsmouth.

The initial 1999 contract was amended to limit the contract term to ten years, ending November 30, 2009, as a condition of approval in *Northern Utilities, Inc.*, Order No. 23,314 (October 5, 1999). The Commission approved a second amendment in *Northern Utilities, Inc.*, Order No. 25,047 (November 25, 2009), and a third amendment extending the contract for five years with up to three one-year automatic extensions in *Northern Utilities, Inc.*, Order No. 25,306 (December 22, 2011).

Northern now seeks a fourth amendment to extend the contract five years with up to three additional, self-executing one-year extensions to allow National Gypsum to meet its long-term energy needs in an economic and stable fashion. According to Northern, its ratepayers have benefitted from the revenue associated with the special contract through delivery rates that produce revenue in excess of the cost to serve National Gypsum. That additional revenue has reduced and will continue to reduce the amount of revenue requirement to be recovered from other Northern customers. The Company also noted that National Gypsum has an economically viable option to bypass Northern's delivery service and that continuation of the contract is essential for the retention of National Gypsum as a customer. The term extension under the proposed fourth amendment is scheduled to begin on December 1, 2019, and will remain in effect until at least November 30, 2024. The contract also includes a provision that allows either Northern or National Gypsum to opt-out of any of the additional one-year contract extensions. All other provisions of the original contract, as amended and previously approved, will remain the same.

The petition and subsequent docket filings, other than information for which confidential treatment is requested of or granted by the Commission, are posted on the Commission's website at <http://puc.nh.gov/Regulatory/Docketbk/2019/19-152.html>.

B. Staff Recommendation

On September 16, 2019, Staff recommended approval of the amendment to extend the contract, absent either Northern or National Gypsum exercising the annual opt-out provision. Staff found, based on an updated marginal cost study that Northern had demonstrated that the long-run marginal cost to serve National Gypsum for the next five years is less than the special

contract rates. Staff further determined that there will be no additional costs to Northern or its customers as a result of the proposed contract extension, based on an inflation escalator that assures that the contract rates will continue to exceed the marginal cost to serve National Gypsum over the course of the five-year extension.

Staff recommended that Northern be required to provide the Commission with written notice six months in advance of actual or impending termination of the special contract either under the annual self-executing extensions or resulting from the cessation of operations and permanent closing of the Portsmouth facility. In addition, Staff recommended that Northern be required to file updates of the special contract rates and marginal cost analyses with the Commission seven months prior to the commencement of the first of the three self-executing extensions.

C. Motion for Confidential Treatment

In its motion for confidential treatment, Northern said that the information it seeks to protect is competitively sensitive commercial information that is entitled to be protected from public disclosure under RSA 91-A:5, IV. *See also* N.H. Code Admin. Rules Puc 203.08.

Northern maintained that disclosure of this information would result in the Company being competitively disadvantaged in its bargaining position with other customers seeking special contracts when those customers have alternative service options, whether through bypass or from alternative energy sources, and, thus, Northern would be unable to obtain the highest possible contribution to its fixed costs in future contract negotiations. Finally, Northern argued that disclosure would allow competitors to undercut its customer-specific proposals.

Northern requested that the Commission issue an order protecting the identified information from public disclosure and prohibiting copying, duplication, dissemination, or disclosure in any form. Northern further requested that the protective order extend to any discovery, testimony, argument, or briefing relative to the confidential information.

II. COMMISSION ANALYSIS

RSA 378:18 authorizes the Commission to approve a special contract when “special circumstances exist which render such departure from the general schedules just and consistent with the public interest.” These standards are further detailed in *Generic Discount Rates*, 77 NH PUC 650, 654-655 (1992) and *Generic Discounted Rates Docket*, 78 NH PUC 316, 316-317 (1993). For the reasons set forth below, we find that special circumstances exist that justify the departure from standard tariff rates and render the special contract just and reasonable and consistent with the public interest.

As the Commission has noted in prior approvals of extensions of this contract, National Gypsum represents an important firm load for Northern and offers a meaningful contribution to Northern’s fixed costs that, in turn, lowers costs for other customers. Moreover, the discounted rate under the special contract will enable Northern to retain National Gypsum as a firm customer for at least the next five years and will permit National Gypsum to continue its New Hampshire operations in a competitive environment. The agreement Northern seeks to extend has been in place since 1999, and is fundamentally unchanged except for the duration and annual self-executing extension option. For those reasons, Northern seeks approval of a fourth amendment to extend the special contract an additional five years with up to three self-executing, one-year extensions.

Staff's recommendation confirms Northern's assertion that the contract price to serve National Gypsum will surpass Northern's long-run marginal costs and will continue to do so, given the inflation rate escalator clause included in the agreement. In addition to providing a contribution to Northern's fixed costs, which reduces the obligations of other customers, Northern will be better positioned to achieve its allowed rate of return.

In light of the benefits to Northern, National Gypsum, and other customers, we will extend the special contract. We find the five-year proposed extension, with up to three one-year additional extensions, to be reasonable, as the extensions will provide National Gypsum with stability in meeting long-term energy needs.

We agree with Staff, however, that, for purposes of regulatory supervision, Northern must provide the Commission with written notice of the actual or impending termination of this special contract resulting either from closure of National Gypsum's Portsmouth facility or from non-adoption of one of the annual self-executing extensions.

We further agree that Northern must file updates of the special contract rates and associated marginal cost analyses with the Commission seven months prior to the commencement of the first of the three self-executing extensions.

The marginal cost analysis filed in this proceeding reflects the results of Northern's cost of service (COS) study provided in its most recent rate case, updated for inflation, which is reasonable in light of the expense of undertaking a new COS study. However, when Northern undertakes a new COS study, we direct the Company to calculate the marginal cost to provide service to National Gypsum as part of that study and to use the results of that study, updated for inflation, in its analysis to be provided prior to commencement of the first one-year self-

executing extension of the contract. Staff did not recommend, nor do we require, Northern to file updates of the special contract rates and associated marginal cost analyses with the Commission prior to each of the three one-year extensions. Based on the record, it is unlikely that there would be a material change in the cost to serve National Gypsum over a three-year period. If a material change does occur, we would expect Northern to inform the Commission.

With regard to Northern's motion for confidential treatment, RSA 91-A:5, IV states, in relevant part, that records of "confidential, commercial, or financial information" are exempt from disclosure. *See Unutil Corp. and Northern Utilities, Inc.*, Order No. 25,014 at 3 (September 22, 2009). In determining whether commercial or financial information should be deemed confidential, we first consider whether there is a privacy interest that would be invaded by the disclosure. *Id.* Second, when a privacy interest is at stake, the public's interest in disclosure is assessed. *Id.* Disclosure should inform the public of the conduct and activities of its government; if the information does not serve that purpose, disclosure is not warranted. *Id.* When there is a public interest in disclosure, that interest is balanced against any privacy interests in non-disclosure. *Id.* This is similar to the Commission's rule on requests for confidential treatment. *See* Puc 203.08.

The Commission has previously found the categories of information for which Northern seeks protection to be exempt from disclosure. *See Northern Utilities, Inc.*, Order No. 25,047 (November 25, 2009); and *Northern Utilities, Inc.*, Order No. 25,306 (December 22, 2011). Disclosure would reveal internal business decisions and financial information, could harm Northern, and could result in a competitive disadvantage to Northern, ultimately to the detriment of ratepayers. Further, there is no indication that disclosure would inform the public about the

workings of the Commission. In balancing the interests of Northern in protecting information with the public's interest in disclosure, we find that the privacy interests in non-disclosure outweigh the public interest in disclosure and, therefore, we grant Northern's motion. Consistent with Puc 203.08(k), our grant of this motion is subject to our on-going authority, on our own motion, on the motion of Staff, or of any member of the public, to reconsider our determination.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that subject to the effective date below, the proposed five-year extension of Northern's special contract with National Gypsum, with up to three self-executing one-year additional extensions, is **APPROVED** subject to the terms and conditions set forth herein; and it is

FURTHER ORDERED, that Northern's motion for confidential treatment is **GRANTED**; and it is

FURTHER ORDERED, that Northern shall file updates of the special contract rate and marginal cost analyses with the Commission seven months prior to the commencement of the first of the three self-executing extensions; and it is

FURTHER ORDERED, that Northern shall provide the Commission with written notice of the actual or impending termination of this special contract, resulting either from closure of National Gypsum's Portsmouth facility or from non-adoption of one of the annual self-executing extensions; and it is

FURTHER ORDERED, that Northern shall cause a summary of this order 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 November 18,

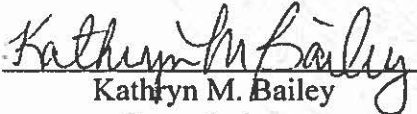
2019 and to be documented by affidavit filed with this office on or before November 22, 2019; and it is

FURTHER ORDERED, that all persons interested in responding to this order 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 November 22, 2019, 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 November 26, 2019; and it is


FURTHER ORDERED, that this order shall be effective November 27, 2019, unless 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 thirteenth day of November, 2019.


Kathryn M. Bailey
Commissioner


Michael S. Giaimo
Commissioner

Attested by:


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