I. Introduction

Q. Please state your name, position and business address.

A. Michael Smith, Manager, Business Services, Northern Utilities, 376 Riverside Industrial Parkway, Portland, Maine 04103.

Q. Please describe your employment responsibilities.

A. My responsibilities include retaining, expanding and attracting business within Northern Utilities' service territories. I am the point of contact with Northern's designated key business and industrial customers, and I am responsible for insuring quality service and opening business communications to address competitive pressures. In addition, I manage other field sales representatives in our New Hampshire and Maine Division service territories.

Q. Please describe your education and employment background.

A. I received a Bachelor of Science Degree in Mechanical Engineering Technology in 1989 from Wentworth Institute of Technology in Boston, Massachusetts. From 1989 to 1996, I was employed at Northrop, Devine and Tarbell in Portland, Maine as a consulting engineer focusing on energy projects. In 1996, I began my career with Northern Utilities and have held several positions with responsibilities for managing Northern's industrial and key account customers in New Hampshire and Maine.

II. Purpose of Testimony and Description of Schedules

Q. What is the purpose of your testimony in this docket?

A. The purpose of my testimony is to present information and documentation to support Northern's proposal for extending the terms and conditions of an existing Special Firm Transportation Agreement ("Special Contract") for Delivery Service (a/k/a "transportation service") with Foss Manufacturing Company, LLC, formerly known as Foss Manufacturing Company, Inc., and now known as Foss Performance Materials, LLC ("Foss" or "the Customer"). The proposed contract extension is for a period of two (2) additional years beyond the Special Contract's stated expiration date of February 28, 2022, i.e., until February 29, 2024, with an option to extend the contract on a month-to-month basis for up to one (1) year, i.e., until February 28, 2025.

Q. Does your testimony include input from other individuals employed or engaged by Northern Utilities?

A. Yes. My testimony includes information and documentation supplied by Christopher Goulding, Director of Rates and Revenue Requirements, and Karen Asbury, Director of Regulatory Services, both of Unitil, who estimated the annualized long-run marginal cost to serve Foss.

Q. Please identify the documents that are submitted with this prefiled testimony.

A. The following Schedules are submitted with this prefiled testimony:

Schedule NU-1: Special Firm Transportation Agreement;

Schedule NU-2: Amendment of Agreement;

Schedule NU-3: Letter Agreement (March 8, 2005);

Schedule NU-4: Second Amendment of Agreement;

Schedule NU-5:	Third Amendment of Agreement;
Schedule NU-6:	Fourth Amendment of Agreement;
Schedule NU-7:	Fifth Amendment of Agreement;
Schedule NU-8:	Sixth Amendment of Agreement;
Schedule NU-9:	Letter from Dean Landry to Michael Smith (December 20, 2021);
Schedule NU-10:	Seventh Amendment of Agreement
Schedule NU-11:	Marginal Cost and Revenue Analysis

Q. Are you familiar with the provisions of the Special Contract and the seven amendments to the Special Contract that are submitted with this filing?

A. Yes. I worked directly with the Customer to negotiate the initial Special Contract in 1999, and all of the Amendments of Agreement.

III. Special Contract and (First) Amendment of Agreement

Q. Please describe the circumstances that led to the negotiation and execution of the Special Contract (Schedule NU-1).

A. Foss is Northern's second largest customer. It has a manufacturing facility located in Hampton, New Hampshire which currently employs approximately 300 people and produces specialty fibers and engineered fabrics. Foss has been a customer of Northern Utilities since 1988. In May of 1999, Foss switched from Sales to Delivery Service and began purchasing gas through a third party supplier. At that time, Foss had multiple alternative fuel capabilities. Prior to the execution of the Special Contract, this fuel switching capability had resulted in substantial reductions in Foss's natural gas usage. Although Foss had significantly increased its gas consumption during the times when the Company's summer season rates applied, it was not expected to do the same during the times when the Company's winter season rates applied, given the Customer's fuel switching capabilities. Northern negotiated the Special Contract in October, 1999 to obtain more of the Customer's firm load year round at a competitive price while minimizing the risks to other customers.

Q. Please summarize the terms and conditions under which Northern is currently providing service to Foss.

A. The Special Contract dated October 28, 1999 (Schedule NU-1) together with the Third Amendment of Agreement (Schedule NU-5) and Sixth Amendment of Agreement (Schedule NU-8) establish the current contractual service and payment obligations. Northern is obligated to transport and deliver to the Customer during any Gas Day up to a Maximum Transportation quantity of 15,500 therms. However, such transportation and delivery is limited to no more than 860 therms per hour. In each contract year, the Customer is required to use and/or pay Northern for the transportation services for a minimum of 2,400,000 therms of natural gas. The Special Contract rates are subject to an inflation factor.

Currently, the Customer is required to pay a monthly customer charge of $[redacted] a monthly minimum fixed charge of $[redacted] for the first 200,000 therms or less of usage, and a minimum annual payment of $[redacted]. Further, monthly usage volumes above 200,000 therms are billed at the following rates:

- Quantities between 200,000 and 300,000 therms: $[redacted] per therm
- Quantities between 300,000 and 400,000 therms: $[redacted] per therm
- All quantities over 400,000 therms: $[redacted] per therm

In addition to the above-described service and payment provisions, the Customer is subject to all of the other charges and fees set out in Northern's General Terms and Conditions and Transportation Terms and Conditions as are in effect from time to time (unless otherwise specified in Article 3 of the Special Contract).

Q. Please describe the initial term of the Special Contract and any extension thereof.

A. Commission Order No. 23,381 dated January 6, 2000 in Docket DG 99-171 approved the Special Contract for a five (5) year term and required that the provisions of the Special Contract describing the term thereof be revised to require Commission approval for any extension period beyond five (5) years. The Amendment of Agreement dated January 11, 2000 (Schedule NU-2) was executed in compliance with Commission Order No. 23, 381. It provides that the initial term of the contract is five (5) years from the Service Commencement Date which is described in Article 5 of the Special Contract.

IV. <u>Second and Third Amendments</u>

Q. Please explain the circumstances that led to the execution and submission to the Commission of the Second Amendment of Agreement.

A. The amended Special Contract expired on February 28, 2005. Foss and Northern executed the Second Amendment of Agreement (Schedule NU-4) effective March 1, 2005 to extend the Special Contract term for another five (5) years until February 29, 2010. By letter agreement dated March 8, 2005 (Schedule NU-3), Foss and Northern agreed that if the Commission did not approve the Second Amendment of Agreement in form and substance acceptable to Northern and Foss, the rate for transportation service rendered from March 1, 2005 would be Northern's applicable rate schedule, and that Northern would recalculate the charges for services rendered since March 1, 2005 and Foss would be responsible for those charges. The Second Amendment to Agreement stated that Commission approval was required to effectuate an extension of the Special Contract beyond the stated expiration date of February 29, 2010. On April 1, 2005, Northern filed a Petition and supporting documents with the Commission seeking approval of the Second Amendment of Agreement.

Q. Please provide some additional background on the Second and Third Amendments, the Staff recommendation to the Commission, and the Commission's approval of those amendments.

A. In the April 1, 2005 Petition requesting approval of the Second Amendment Northern explained that the Customer's desire for cost certainty and Northern's commitment to continue to provide firm transportation service were the primary reasons for Northern's willingness to negotiate a contract extension for five (5) more years at the 2000 rates expressed in the amended Special Contract. The filing also indicated that there were no system improvements needed to continue serving the Customer under the amended Special Contract and that revenue generated under the amended Special Contract would clearly exceed the annual marginal cost revenue requirement. The filing further stated that the amended Special Contract would provide Northern with a continued guaranteed revenue stream that might escalate with inflation through the application of an annual inflation escalator provision, and that this guaranteed revenue stream would benefit Northern's other ratepayers.

Staff's investigation of the April 1, 2005 filing led it to conclude that an increase in the Special Contract rate would be appropriate because the value of service to Foss had increased slightly from when the initial Special Contract rates were established and because the actual usage over the five years of the Special Contract greatly exceeded the must-take provisions of the Special Contract. At Staff's request, Northern approached Foss regarding an increase in the minimum payment requirements. Foss agreed to the proposed increase and, along with Northern, executed the Third Amendment of Agreement (Schedule NU-5) reflecting the increase. On July 1, 2005, the Commission issued Order No. 24,478 approving the Second Amendment of Agreement (extending the contract term to February 29, 2010 and subjecting the contract rates to an annual inflation adjustment) and the Third Amendment of Agreement (which increased Foss's minimum payment obligations).

V. <u>Fourth Amendment</u>

Q. Please explain the circumstances that led to the execution and approval of the Fourth Amendment of Agreement (Schedule NU-6).

A. Northern informed Foss that the Special Contract as amended was scheduled to expire at the end of February 2010 and that, at that time, Foss would take service from Northern under tariff rates. Foss responded with a letter dated February 2, 2010 requesting that a filing be made with the Commission to extend the Special Contract as amended. In support of its request, Foss stated that if it reverted to tariff rates, the company's operations and job security at Foss's Hampton facility would be adversely affected. Foss noted that it employed 319 employees whose wages have a positive economic impact to the State of New Hampshire. Foss also advised Northern that the State of New Hampshire, through the Business Finance Authority and Coastal Economic Development Corporation, had assisted Foss with $[redacted] in loans to acquire a state of the art production line to improve operational efficiencies to maintain jobs and to keep Foss competitive with its competition located in other areas of the U.S. where utility costs are lower. Foss further stated that it was trying to preserve jobs that benefit New Hampshire but that if the Company's tariff rates applied, Foss would have to seriously consider eliminating skilled associate positions in its New Hampshire facility. In reaction to Foss's circumstances, Northern and Foss executed the Fourth Amendment to Agreement to extend the existing terms under which firm transportation service was being provided to Foss for two (2) additional years, i.e. until February 29, 2012.

Northern and Foss sought Commission approval for the Fourth Amendment of Agreement because the Second Amendment of Agreement expressly stated that any further extension of the amended Special Contract beyond February 29, 2010 required Commission approval in a form and substance acceptable to Northern and Foss, and because the marginal cost to serve Foss was less than the marginal revenue. The Commission approved the Fourth Amendment of Agreement in Order No. 25,085 issued on March 25, 2010.

VI. Fifth Amendment

Q. Please explain the circumstances that led to the execution and approval of the Fifth Amendment of Agreement (Schedule NU-7)

A. Northern informed Foss that the Special Contract as amended was scheduled to expire at the end of February 2012 and that, at that time, Foss would take service from Northern under tariff rates. Foss responded with a letter dated January 17, 2012 requesting that a filing be made with the Commission to extend the Special Contract as amended. In support of its request, Foss stated that if it were required to pay the Company's tariff rates for gas transportation service, the savings it had achieved from a variety of improvement efforts made to remain competitive with companies from Mexico and China, as well as from southern U.S. states, which it detailed in the letter (including 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. In reaction to Foss's circumstances, Northern and Foss executed the Fifth Amendment to Agreement to extend the existing terms under which firm transportation service was being provided to Foss for five (5) additional years, i.e. until February 28, 2017.

Northern and Foss sought Commission approval for the Fifth Amendment of Agreement because the Fourth Amendment of Agreement expressly stated that any further extension of the amended Special Contract beyond February 29, 2012 required Commission approval in a form and substance acceptable to Northern and Foss, and because the marginal cost to serve Foss was less than the marginal revenue. The Commission approved the Fifth Amendment of Agreement in Order No. 25,330 issued on February 6, 2012.

VII. <u>Sixth Amendment</u>

Q. Please explain the circumstances that led to the execution of the Sixth Amendment of Agreement (Schedule NU-8).

A. Northern informed Foss that the Special Contract as amended was scheduled to expire at the end of February 2017 and that, at that time, Foss would take service from Northern under tariff rates. Foss responded with a letter dated November 3, 2016 requesting an extension of the amended Special Contract. In support of its request, Foss stated that it does not compete with local companies (in New Hampshire or New England) and that its major U.S. competition is from companies located in Georgia and the Carolinas which benefit from lower energy costs, tax burdens, and labor costs. In addition, Foss stated that it continues to experience competition from companies in China and Mexico, and that savings experienced from the existing amended Special Contract have enabled Foss to invest in multiple energy savings initiatives throughout its Hampton facilities. Foss also stated that it undertook these initiatives not only to remain competitive, but also to preserve and increase the number of employees at its Hampton facility. Foss has indicated that, if required to pay the Company's tariff rates, it would consider options to mitigate the increased operating costs which could lead to moving parts of its New Hampshire operation to more cost effective areas of the U.S.

In reaction to Foss's circumstances, Northern and Foss executed the Sixth Amendment of Agreement to extend the amended Special Contract for five (5) additional years, i.e. until February 28, 2022. Northern sought Commission approval for the Sixth Amendment of Agreement because the Fifth Amendment of Agreement expressly stated that any further extension of the amended Special Contract beyond February 28, 2017 required Commission approval in a form and substance acceptable to Northern and Foss. In Order No. 25,993 issued on February 24, 2017, the Commission deferred consideration of the Sixth Amendment and ordered that the Fifth Amendment to the Special Contract be extended for one year (until February 28, 2018) to allow Commission Staff to explore the issue of Foss's dual-fuel option, an issue that the Commission identified as an important element of the existence of special circumstances warranting the approval of a special contract.

The Commission approved the Sixth Amendment of Agreement in Order No. 26,107 issued on February 28, 2018, subject to the conditions that Foss complete an energy audit of is current facility and operations, and file a report on the audit results no later than December 31, 2019, along with an explanation of the extent to which Foss will implement the audit recommendations.

Q. What is the status of Foss's energy audit, audit report, and implementation of audit recommendations?

A. On September 7, 2021, Foss filed with the Commission a motion to amend Order No. 26, 107 to extend the deadline for filing the audit report until December 31, 2021. With its motion, Foss also filed a report entitled "Foss Performance Materials Utility Study". In Order No. 26, 526 issued September 23, 2021, the Commission granted Foss's motion to extend the energy audit filing deadline, and also determined that the above-referenced report did not fully address the requirements of Order No. 26, 107. The Commission further ordered Foss to file a report by December 31, 2021 that: (1) addresses the energy audit results and a timeline for implementation of any recommendations made in the audit; and (2) includes an explanation of the extent to which Foss will implement the audit recommendations. Foss has indicated in a letter to Northern (Schedule NU-9 at page 3) that it will be filing a report with the Commission on its energy audit as required by the Commission's September 23, 2021 Order.

VIII. <u>Seventh Amendment</u>

Q. Please explain the circumstances that led to the execution of the Seventh Amendment of Agreement (Schedule NU-10) and this submission to the Commission for approval.

A. Northern informed Foss that the Special Contract as amended was scheduled to expire at the end of February 2022 and that, at that time, Foss would take service from Northern under tariff rates. Foss responded with a letter dated December 20, 2021 requesting an extension to the amended Special Contract (Schedule NU-9). In support of its request for the contract extension, Foss provided compelling information demonstrating the existence of special circumstances warranting the extension of its special contract. Foss stated that its overarching challenge is that the cost of doing business in the Northeast is high relative to other parts of the country and the world, and the labor market is much tighter. In particular, Foss cited New Hampshire's 3% unemployment rate as a factor that contributed to Foss's recent decision to expand operations in Texas which has a 6% unemployment rate.

Foss's main U.S. competition is from companies located in Georgia and the Carolinas which benefit from significantly lower energy costs, lower labor and freight costs, and lower tax burdens. In addition, Foss continues to experience competition from companies in China and Mexico, which have similar cost advantages as well as lower regulatory costs. Foss also noted that it does not compete with other New Hampshire companies, therefore the discounted special contract rate would not create material adverse competitive consequences.

Foss's letter states that competitive challenges have led to a decline in revenue and a reduction in jobs over the last two years, but that Foss is committed to reversing this position. Because of its high energy costs, Foss has focused a significant effort on transitioning away from relying primarily on natural gas to fuel its manufacturing operations, and has worked with Unitil on system upgrades to enable Foss to utilize electricity for its operations. Foss's goal is to increase energy reliability and optionality in an economically efficient manner such that production in New Hampshire can be maintained (and potentially expanded) to the greatest extent possible. Foss's letter describes concrete steps it has taken to improve the efficiency of its manufacturing infrastructure, as well as its energy usage. Foss is also committed to making significant capital investments for energy-related and energy efficiency projects in 2022. In addition, Foss has taken steps to address it local tax burden which has yielded savings through 2024.

In reaction to Foss's circumstances, Northern and Foss executed the Seventh Amendment of Agreement to extend the amended Special Contract for two (2) additional years, i.e. until February 29, 2024. The amended Special Contract shall further continue thereafter for successive one month periods unless terminated by the Company or Customer. However, there shall be no more than twelve (12) one-month renewals, and the amended Special Contract shall terminate on February 28, 2025.

This filing is being made because the Sixth Amendment of Agreement expressly states that any further extension of the amended Special Contract beyond February 28, 2022 requires Commission approval in a form and substance acceptable to Northern and Foss.

Q. Has Northern performed an analysis of its marginal costs to serve the Customer? If so, please describe that analysis.

A. Yes. Northern's marginal cost and revenue analysis is contained in Schedule NU-11. Northern is providing two estimates of annualized long-run marginal cost to serve Foss. The first marginal cost analysis is based on the 2017 marginal cost study developed by Paul Normand of Management Applications Consulting and used to support Northern's current distribution rates approved by the Commission in the Company's last rate case proceeding, Docket DG 17-070. The marginal cost data (unit cost) has been updated by inflation to February 2022 dollars when the proposed Seventh Amendment of Agreement is to become effective. The DG 17-070 marginal cost analysis indicates the estimated annual cost to serve the Customer is $[redacted] in February 2022 dollars (see Schedule NU-11, Page 1 of 3).

The second marginal cost analysis is based on the 2020 marginal cost study developed by Ronald Amen and John Taylor of Atrium Economics which supports Northern's proposed distribution rates in the Company's current rate case proceeding, Docket DG 21-103. This marginal cost data has also been updated by inflation to February 2022 dollars when the Seventh Amendment of Agreement is proposed to become effective. The DG 21-103 marginal cost analysis indicates the estimated annual cost to serve this Customer is $[redacted] in February 2022 dollars. *See* Schedule NU-11, Page 2 of 3.

Q. Has Northern made any modifications to its prior methodology for calculating marginal costs?

A. Yes. In the prior calculation, the marginal cost data was adjusted by a scaling factor used in the rate case that adjusts the total marginal cost to the Company's revenue requirement. As a matter of practice, the marginal cost study establishes marginal revenue levels and prices for each rate class on the basis of marginal costs, and is then adjusted by a scaling factor to recover the total distribution revenue requirement. Delivery service marginal costs by class (which differ from the revenue requirement) are adjusted on an equal percentage basis to equal the delivery system total revenue requirement. The resulting scaled marginal costs by class and cost component then become the theoretical initial revenue targets for the design of delivery service rates. The revenue targets may be altered after giving consideration to other goals of rate design, such as rate continuity. After further review, the Company has determined that because the scaling factor is used in the context of revenue allocation and rate design, it is not appropriate for use in connection with special contracts. Here, the objective is simply to calculate and confirm that the revenues under the special contract will exceed marginal costs.

Q. Please explain whether the price and revenue to be paid by Foss during the extension of the amended Special Contract proposed in this filing exceeds Northern's estimated marginal cost to serve this Customer.

A. Given the pricing provisions of the Seventh Amendment, the estimated annual revenue to be paid by Foss is $[redacted] as adjusted to February 2022 dollars (see Schedule NU-11, Page 3 of 3.) This is above the aforementioned estimated annualized marginal cost of $[redacted] utilizing the DG 17-070 study, and the marginal cost of $[redacted] utilizing the DG 21-103 study. During each year of the contract extension, marginal costs are expected to escalate. Accordingly, the Seventh Amendment prices are subject to an inflation factor. Therefore marginal revenue is expected to exceed the long-run marginal costs to serve Foss.

Q. Based on your analysis, do you believe that extending the amended Special Contract for two (2) years, extended on a monthly basis until February 28, 2025 will allow Foss to gain an unfair advantage over its competitors?

A. No. In my opinion special circumstances exist which support the extension of the amended Special Contract for at least two (2) more years. As explained in Schedule NU-9, Foss does not compete with New Hampshire companies; it faces competitive pressures from companies located in southern states, like North Carolina, South Carolina and Georgia, as well as companies located in Mexico and China, where labor, energy and freight costs are lower. Foss has made significant expenditures to improve its production processes and optimize its energy usage. It is clear that Foss is under significant pressure to maintain its energy costs such that it remains competitive.

Q. Based on your analysis, do you have an opinion as to whether extending the amended Special Contract for two years with a month-to-month extension for another year thereafter is just, reasonable and in the public interest?

A. Yes. I believe that Foss's competitive situation continues to present special circumstances which permit departure from Northern's tariff rates. Foss has demonstrated that it is doing its part to be a successful manufacturer and to preserve jobs that benefit New Hampshire in a challenging business climate as other companies look to move their operations elsewhere. As Foss's letter (Schedule NU-9) indicates, Foss competes in an increasingly global market, and to remain competitive, Foss must weigh and consider alternatives such as its recent decision to pursue construction of a new plant in Texas and the potential to expand operations at its St. Louis, Missouri affiliate, Eagle Nonwovens. Retaining Foss's load under the amended Special Contract for two more years with the option to renew monthly for one additional year, provides benefits to Northern's other customers because the annual revenue under the amended Special Contract is expected to exceed Northern's marginal cost to serve this Customer. Thus, retaining Foss as Northern's customer should continue to keep the average system cost of transporting gas applicable to all of Northern's firm customers lower than if Northern were to lose this Customer. In addition, the amended Special Contract helps Foss to remain competitive with other manufacturers and to continue its operations in New Hampshire which contributes positively to the state's economy.

Q. Does this conclude your testimony?

A. Yes.

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