

THE STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION
DOCKET No. DG 21-__

Petition for Approval of
Seventh Amendment to Special Contract
With Foss Manufacturing Company, LLC
(now known as Foss Performance Materials, LLC)

Motion for Protective Order

NOW COMES Northern Utilities, Inc. (“Northern” or “the Company”) and, pursuant to N.H. RSA 91-A:5, IV and N.H. Admin. Rule 203.08, respectfully moves the New Hampshire Public Utilities Commission (“the Commission”) to issue a protective order according confidential treatment to certain information described below and submitted herewith. Specifically, Northern requests that the Commission issue an order requiring that the pricing information, cost information, customer-specific marginal cost information, customer-specific operational and financial information, and financial analyses supporting the Seventh Amendment to the Special Contract with Foss Manufacturing Company, LLC (now known as Foss Performance Materials, LLC) (“Foss” or “the Customer”) be treated as confidential commercial information. In support of this Motion, Northern states as follows:

1. Northern is filing contemporaneously with this Motion a Petition for Approval of Seventh Amendment to Special Contract with Foss. The Seventh Amendment extends an existing special contract, as previously amended, for two (2) additional years until February 29,

2024, with an option to extend on a month-to-month basis for up to one (1) year, i.e. until February 28, 2025. Certain supporting documents filed with the Petition contain confidential information, i.e.: Prefiled Direct Testimony of Michael Smith; Special Firm Transportation Agreement (Schedule NU-1); Third Amendment of Agreement (Schedule NU-5); Letter from Foss (Schedule NU-9); and Marginal Cost Analysis (Schedule NU-11).

2. Northern specifically seeks protective treatment for information related to the agreed-upon Monthly Customer Charge, the Minimum Monthly Charge, the negotiated unit charges, the agreed-to minimum transportation and payment obligation, and the results of Northern's marginal cost analysis. Northern also seeks protective treatment for certain operational and financial information provided by the Customer in connection with its request to extend the Special Contract.

3. Northern seeks to protect this information from public disclosure in order to protect Northern's competitive position as well as the Customer's. Release of the above-described confidential information would likely result in harm to the Customer in that it would divulge sensitive confidential commercial and financial information that the Customer would not otherwise disclose. This information would be of interest to the Customer's competitors and could be utilized by them to gain a competitive advantage over the Customer. Furthermore, Northern seeks to protect this information from public disclosure to protect Northern's competitive position. Release of the above-described confidential information would likely result in harm to Northern in the form of being disadvantaged in price negotiations with customers or potential customers who have alternative options, whether from bypass, alternative fuel supplies, or from direct competitors. Public knowledge of the confidential information would impair Northern's future bargaining positions and thus its ability to obtain the maximum

possible contribution to fixed costs. Northern must be able to maximize such contributions to its fixed costs to benefit its firm ratepayers.

4. In determining whether confidential, commercial or financial information within the meaning of RSA 91-A:5, IV is exempt from public disclosure, the Commission employs the analysis articulated in *Lambert v. Belknap County Convention*, 157 N.H. 375 (2008) and *Lamy v. N.H. Public Utilities Commission*, 152 N.H. 106 (2005). See *Unitil Energy Systems, Inc.*, DE 10-055, Order No. 26,214 (April 26, 2011) at 35. Under this analysis, the Commission first determines “whether the information is confidential, commercial or financial information ‘and whether disclosure would constitute an invasion of privacy.’” *Id.* citing *Union Leader Corp. v. New Hampshire Housing Finance Authority*, 142 N.H. 540, 552 (1997) (emphasis in original); see also *Northern Utilities, Inc.*, DG 19-152, Order No. 26, 308 (Nov. 13, 2019)(“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.”) Second, when a privacy interest is at stake, the Commission assesses the public’s interest in disclosure. *Northern Utilities, Inc.*, Order No. 26, 308 at 6. In making that assessment, the Commission examines whether disclosure would inform the public of governmental conduct, and if the information does not serve that purpose, disclosure is not warranted. *Id.* When there is a public interest in disclosure, the Commission must balance that interest against any privacy interests in non-disclosure. *Id.*

5. The Commission has applied the above-described analysis to similar information for which Northern previously sought confidential treatment and has determined that such information should be exempt from disclosure. *Id.*; see also *Northern Utilities, Inc.*, DG 16-855, Order No. 26,107 (Feb. 28, 2018) and Order No. 25, 993 (Feb. 24, 2017). The Commission

determined that disclosing pricing, cost, production and financial analyses relating to Foss's energy costs "could harm both Northern and Foss, and could result in competitive disadvantage to both companies." *Northern Utilities, Inc.*, DG 16-855, Order No. 26,107 (Feb. 28, 2018) at 6. The Commission further determined that "while disclosure of the information could inform the public about the workings of the Commission, in balancing the interests of Northern and Foss in protecting information with the public's interest in disclosure, we find that the privacy interests in non-disclosure outweigh the public's interest in disclosure." *Id.* (citation omitted).

6. The confidential information described above will be made available to Commission Staff and the Office of Consumer Advocate notwithstanding any Commission order granting confidential treatment. Moreover, the Company has only redacted so much information as is necessary to protect its privacy interests and those of its Customer.

7. Northern requests that the Commission issue an order protecting the above-described confidential information from disclosure, and prohibiting copying, duplication, dissemination or disclosure of it in any form. Northern also requests that the protective order also extend to any discovery, testimony, argument or briefing relative to the confidential information.

WHEREFORE, Northern respectfully requests that the Commission:

- A. Issue an appropriate order that exempts from public disclosure and otherwise protects the confidentiality of the information designated confidential in the documents submitted herewith; and
- B. Grant such additional relief as is just and appropriate.

NORTHERN UTILITIES, INC.
By its Attorneys,
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Dated: December 29, 2021

Certificate of Service

I hereby certify that on the date set forth above a copy of the foregoing Motion was sent electronically to the Office of Consumer Advocate.



Susan S. Geiger

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