

**THE STATE OF NEW HAMPSHIRE**  
**BEFORE THE**  
**PUBLIC UTILITIES COMMISSION**

**NORTHERN UTILITIES, INC.**

**Petition for Approval of**

**Seventh Amendment to Special Contract with**

**Foss Manufacturing Company, LLC**  
**(now known as Foss Performance Materials, LLC)**

**Docket No. DG 21-\_\_\_\_\_**

**THE STATE OF NEW HAMPSHIRE**  
**BEFORE THE**  
**PUBLIC UTILITIES COMMISSION**  
**NORTHERN UTILITIES, INC.**

**Docket No. DG 21-\_\_\_\_\_**

**PETITION OF NORTHERN UTILITIES, INC.**  
**FOR APPROVAL OF SEVENTH 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 Seventh Amendment of Agreement which extends the term of the Special Contract between Northern and Foss Manufacturing Company, LLC (f/k/a Foss Manufacturing Company, Inc., n/k/a Foss Performance Materials, LLC) (“Foss” or “the Customer”), for an additional term of two (2) years, until February 29, 2024, with an option to extend the contract on a month-to-month basis for a period of up to one (1) year. 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 approximately 300 people. Foss is Northern’s second largest firm transportation customer and 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).

4. The “Special Firm Transportation Agreement” 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 with Foss dated January 11, 2000. *See* Schedule NU-2.

5. Special circumstances leading to the negotiation, execution and approval of the original Special Contract included Foss’s capability to utilize alternate fuels. *See Re Northern Utilities, Inc.*, 85 NH PUC at 8. The parties designed the Special Contract to retain Foss’s load at a competitive price relative to the fuel switching option while enabling Northern to obtain contribution toward fixed costs to mitigate the effects on other customers of lost revenues and sales. *See id.* at 7-8.

6. 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, Northern and Foss negotiated an extension of 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 Foss 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-3).

7. 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-4).

8. On April 1, 2005, Northern filed a Petition and supporting documents with the Commission seeking approval of the Second Amendment of Agreement. Upon reviewing 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-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. *Id.* at 266.

9. 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-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 Foss 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. The Commission approved the Fourth Amendment of Agreement on March 25, 2010. *Re Northern Utilities, Inc.*, DG 10-034, Order No. 25,085 (Mar. 25, 2010).

10. On January 26, 2012, Northern filed a petition seeking approval of the Fifth Amendment to the Special Contract extending the Agreement for an additional five years. As the Commission noted in its Order approving the Fifth Amendment (Schedule NU-7), Northern and Foss sought to extend the mutually beneficial Special Contract because Foss represented an important firm load for Northern and offered meaningful contribution to Northern's fixed costs, and Foss's ability to control its energy costs is key to its continued operations as an important employer in the Hampton, New Hampshire area. *Re Northern Utilities, Inc.*, DG 12-031, Order No. 25,330 at 4 (Feb. 6, 2012). The Commission approved the Fifth Amendment subject to the condition, also imposed in the Commission's approval of the Fourth Amendment, that Northern provide the Commission with notice of impending adjustments to the Special Contract rates. *Id.* at 6; *Re Northern Utilities, Inc.*, DG 10-034, Order No. 25,085 at 9 (Mar. 25, 2010). Northern has provided such updates on an annual basis. *See generally*, Docket Nos. DG 10-034 and DG 12-031.

11. On December 1, 2016, Northern filed a petition seeking approval for a Sixth Amendment to the Special Contract (Schedule NU-8) for an additional five years, and up to five successive one-year renewal terms thereafter. The Commission deferred consideration of the Sixth Amendment, and ordered that the Fifth Amendment to the Special Contract be extended for one year or until February 28, 2018 to allow Commission Staff the opportunity to explore the issue of Foss's dual-fuel option, an issue the Commission identified as an important element of the existence of special circumstances warranting the approval of a special contract. *Re Northern Utilities, Inc.*, DG 16,855, Order No. 25,993 at 5 (Feb. 24, 2017).

12. On February 28, 2018, the Commission approved the extension of the Special Contract for four years, until February 28, 2022, subject to the conditions that Foss complete an energy audit of its current facility and operations, file a report on the audit results, and provide a timeline for implementing any recommendations made in the audit. *Re Northern Utilities, Inc.*, DG 16,855, Order No. 26,107 at 5 (Feb. 28, 2018). The Commission further ordered that the above-referenced audit report be filed no later than December 31, 2019, along with an explanation of the extent to which Foss will implement the audit recommendations. *Id.*

13. 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”. Although the Commission granted Foss’s request to extend the energy audit report filing deadline to December 31, 2021, the Commission found that the report filed on September 7, 2021 did not fully address the requirements of Order No. 26, 107, and 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. *Re Northern Utilities, Inc.*, DG 16,855, Order No. 26,526 at 3 (Sept. 23, 2021).

14. Northern recently notified Foss that the existing Special Contract will expire at the end of February, 2022 and that Foss would be subject to Northern’s tariff rates as of March 1, 2022. In response, Foss requested that Northern extend the terms and conditions of the existing contract for an additional period of two years, until February 29, 2024, with an option to extend on a monthly basis for a period of one year. *See Letter*

from Dean Landry, VP Operations, to Michael Smith dated December 20, 2021 (Schedule NU-9). In support of its request, Foss provided specific information concerning the competitive pressures it was facing from other domestic and foreign companies with lower business costs, including lower energy costs. Foss's letter also described Foss's investments and efforts to manage its energy costs, and indicated that Foss would be filing its energy audit report with the Commission as required by Order No. 26,526,

15. Northern and Foss have negotiated a Seventh Amendment of Agreement with an effective date of March 1, 2022 to extend their Special Contract until February 29, 2024, with the option to extend on a month-to-month basis for a period of up to one year. *See* Seventh Amendment of Agreement (Schedule NU-10).

16. The extension of the Foss Special Contract for two (2) additional years with an option to extend monthly for up to one (1) year 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-11, 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.

17. Special circumstances exist which support this extension of the Special Contract. As explained in Schedule NU-9, Foss has faced significant competition such that it has lost sales revenues and reduced its workforce over the past few years. Foss's

competitors located in Mexico, China, North Carolina, South Carolina and Georgia, have production and freight costs, including energy costs, that are significantly lower than Foss's. As a consequence of its high energy costs, Foss has focused a significant effort over the past several years on transitioning away from relying primarily on natural gas to fuel its operations. Foss has worked with Unitil Energy Systems, Inc. ("Unitil") to upgrade its system and install a transformer so that Foss is better positioned to use electricity in lieu of natural gas for some of its operations, and Foss is currently working with Unitil to install a second transformer in order to achieve full redundancy and greater flexibility to react to natural gas price volatility. Foss has also made significant financial investments to improve its facilities, upgrade its equipment, and install energy efficiency measures. In particular, Foss has made a significant capital expenditure commitment for energy-related projects in 2022. *See* Schedule NU-9 at p. 3. Because Foss is under pressure to maintain its energy costs such that it remains competitive, it is continually weighing and considering other alternatives, including a recent decision to pursue construction of a new plant in Texas, and the potential to expand its operations at Foss's St. Louis, Missouri affiliate, Eagle Nonwovens. It is in light of all of these circumstances that Foss seeks a continuation of the discounted rate for natural gas delivery, which will help Foss regain competitive market share and may also enhance its ability to create future jobs.

18. 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.

19. A utility may enter into a special contract for services at rates other than those fixed by its tariffs if special circumstances exist which render such departure from tariffed rates just and consistent with the public interest. RSA 378:18. The Commission

shall by order allow such contract to take effect without a hearing. *Id.*; see also *Appeal of the Office of the Consumer Advocate*, 148 N.H. 134, 138-139 (2002) (Commission's decision to approve an amended special contract without a hearing was not a violation of due process).

20. The following documents are submitted herewith in support of this Petition: Prefiled Direct Testimony of Michael Smith; Special Firm Transportation Agreement (Schedule NU-1); Amendment of Agreement (Schedule NU-2); Letter Agreement (March 8, 2005) (Schedule NU-3); Second Amendment of Agreement (Schedule NU-4); Third Amendment of Agreement (Schedule NU-5); Fourth Amendment of Agreement (Schedule NU-6); Fifth Amendment of Agreement (Schedule NU-7); Sixth Amendment of Agreement (Schedule NU-8); Letter from Dean Landry to Michael Smith (December 20, 2021) (Schedule NU-9); Seventh Amendment of Agreement (Schedule NU-10); and Marginal Cost and Revenue Analysis (Schedule NU-11).

WHEREFORE, Northern respectfully requests that the Commission:

A. Issue an order by February 28, 2022 finding that special circumstances exist that render the Seventh Amendment of Agreement 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: December 29, 2021

Certificate of Service

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



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Susan S. Geiger

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