

THE STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION
DG 21-144

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

SECOND 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 (“Foss” or “the Customer”) be treated as confidential commercial information. In support of this Motion, Northern states as follows:

1. On December 29, 2021, Northern filed a Petition for Approval of Seventh Amendment to Special Contract with Foss. On that date, Northern also filed a Motion for Protective Order seeking confidential treatment of supporting documents filed with the Petition that 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). To date, the Commission has not ruled on the Motion for Protective Order.

2. On February 23, 2022, the Commission issued an order commencing an adjudicative proceeding in this docket which identified several issues presented by Northern's filing. To address these issues, Northern is filing, contemporaneously with the instant Motion, Supplemental Prefiled Testimony of Michael Smith and Christopher Goulding, as well as two schedules, Supplemental Schedule NU-11 (Marginal Cost Analysis) and Schedule NU-12 (Letter from Foss dated September 7, 2022).

3. Northern seeks protective treatment for information in Supplemental Schedule NU-11 related to customer-specific pricing and usage data, 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 Schedule NU-12. The specific information for which confidential treatment is sought has been highlighted/shaded in the confidential versions of Supplemental Schedule NU-11 and Schedule NU-12 submitted herewith. The Company has redacted from the public versions of Supplemental Schedule NU-11 and Schedule NU-12 only that information as is necessary to protect its privacy interests and those of its Customer.

4. 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.

5. 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.*

6. 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).

7. The confidential information described above will be provided only to the Commission and its Staff, Staff of the New Hampshire Department of Energy, and the Office of Consumer Advocate, with the understanding that it will be maintained confidential until such time as the Commission orders otherwise.

8. 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: September 9, 2022

Certificate of Service

I hereby certify that on the date set forth above a copy of the foregoing Motion was sent electronically to the Service List for this docket.



Susan S. Geiger