

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DG 21-144

NORTHERN UTILITIES, INC.

Petition for Special Contract with Foss Performance Materials, LLC

Order *Nisi* Approving Limited Extension of Special Contract

O R D E R N O. 26,723

November 14, 2022

On December 29, 2021, Northern Utilities, Inc. (Northern or the Company) filed a petition for approval of a seventh amendment to its current special contract for gas transportation with Foss Manufacturing Company, Inc. (now known as Foss Performance Materials, LLC) (Foss). The proposed extension would permit the contract to continue the discounted rate terms and conditions of the existing contract for two years, until February 29, 2024, with an option to extend further, on a monthly basis, for a period of one year, until February 28, 2025. The Commission grants approval of the amended special contract by order *nisi* and cancels the hearing on this matter scheduled for Wednesday, November 16, 2022.

I. BACKGROUND AND PROCEDURAL HISTORY

The Commission first approved a five-year special contract between Northern and Foss for firm gas transportation service in *Northern Utilities, Inc.*, Order No. 23,381 (January 6, 2000). That initial contract expired on February 28, 2005. Subsequently, Northern has sought periodic extensions through sequential amendments of the original contract terms, including a four-year extension approved on February 28, 2018 by Commission Order No. 26,107 in Docket No. DG 16-855. In that order, the

Commission denied a concurrent request for approval of five automatic one-year renewals thereafter, as proposed by the Company in that docket.

On December 29, 2021, Northern filed its petition in the current docket requesting approval of a seventh amendment to its contract with Foss. The amendment would extend the contract to February 29, 2024, with an option to extend, on a monthly basis, for a period of one year thereafter.

On February 18, 2022, the New Hampshire Department of Energy (DOE) filed a recommendation in support of extending the current contract as consistent with the public interest, noting that the estimated marginal revenues that Foss would earn under the contract extension will exceed the estimated marginal costs to serve Foss. The DOE further noted that Foss has asserted that it does not compete with other New Hampshire companies in its market sector, and that it has implemented a number of recent energy efficiency technologies. DOE Letter (Feb. 18, 2022).

On September 13, 2022, the Commission convened a prehearing conference. On September 22 and 26, 2022, Northern and Foss responded to record requests from the Commission.

On October 25, 2022, the DOE filed a second letter recommending approval of the proposed contract amendment, based on its review of the additional filings made in response to discovery and record requests. The DOE reiterated its conclusion that the projected marginal revenues that Northern would receive from Foss under the amended contract exceed the projected marginal costs to serve Foss, and that the revenue differential will result in a contribution toward fixed costs to the benefit of all customers. The DOE further stated that the data demonstrate that the loss of Foss as a customer would significantly increase the distribution revenue requirement borne by Northern's remaining customers, because the direct and indirect benefits that Foss

brings to the New Hampshire economy are substantial. DOE Letter (Oct. 25, 2022) (citing Foss's response to DOE Data Request 1-8).

On November 3, 2022, the Commission sent an additional record request, to which the Company responded on November 10, 2022.

The petition and subsequent docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are available on the Commission's website at

www.puc.nh.gov/Regulatory/Docketbk/2021/21-144.html.

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 . . .” The applicable standards for such contracts are detailed in *Generic Discounted Rates Docket*, 77 NH PUC 650, 654–55 (1992), and *Generic Discounted Rates Docket*, 78 NH PUC 316, 316–17 (1993). Those standards include, *inter alia*, that the discount does not have material adverse competitive consequences on other New Hampshire firms. The customer on whose behalf a special contract is sought must make every effort to decrease its utility bill, and the special contract should be considered a last resort. 77 NH PUC at 655.

Northern's special contract with Foss is now in its twenty-second year. While we continue to have reservations regarding the necessity of a special contract at below-general tariff rates for a single commercial customer, we find that the statements and data provided by Northern, Foss, and the DOE support a limited extension of the existing contract at this time as just and consistent with the public interest. We therefore approve the requested extension of the existing special contract between

Northern and Foss until February 29, 2024, with an option to extend further, on a monthly basis, for a period of one year until February 28, 2025.

We note that in the Commission's review of the first special contract between Northern and Foss in Docket No. DG 99-171, then-Commission Staff expressed concern—which the Commission shared—regarding the duration of the contract. In that docket, the Commission noted Staff's concerns and recommended that the Commission retain its right to re-evaluate the appropriateness of such contracts after the initial five-year term. Order No. 23,381 at 5 (Jan. 6, 2000). At that time, Staff noted that the special contract as proposed was open-ended after the initial five-year period and that it would be appropriate for the Commission to be afforded an opportunity to re-examine whether special circumstances exist after the initial five-year period of the contract to justify its continuation. *Id.* at 5.

We find, with respect to the central issue of “special circumstances,” that Foss's “special circumstance” is high operational costs, including energy costs, and that the Company needs the time provided by this extension to resolve those issues. Although we agree with the DOE's recommendation to extend the special contract, we are not persuaded by the reasoning underlying that recommendation. The DOE's foundational assumption appears to be that Foss will stay in New Hampshire if the requested extension of this special contract is approved, and that it will leave if it is not approved. Thus, the DOE suggests, the marginal cost analysis supports extension, because if Foss leaves New Hampshire, other ratepayers would have to pick up the resulting stranded fixed costs. However, Foss's position was that it needs more time to work through its power supply and operational cost options, including the optimal electric and gas solutions. So, although we agree that Foss will need more time to implement its optimal strategy, and we therefore grant the extension of time for Foss

to execute its power strategy, the record does not support the argument that Foss will leave the state if the special contract is not extended, leaving ratepayers with stranded fixed costs.

We further note that Foss asserts that the cost of fuel in New Hampshire is more expensive than in other states in which it operates. While this assertion may be valid, the record suggests that the special contract saves only approximately 1 percent of Foss's operating costs. With this extension, we find such a benefit to be small enough and the timeline long enough for the Company to successfully resolve its cost issues.

Northern's response to the Commission's November 3, 2022 record request indicates that, as a special contract customer, Foss pays significantly less per year than it would as a regular customer under the tariff applicable to Northern's G-52 rate class. While we do not have visibility into the competitive consequences on G-52 New Hampshire firms, we note, based on the record, that Foss has no direct competition in the state. While the impact on G-52 customers is material, we support the parties' transition timeline, and note that, based on the record in the instant docket, the extension granted appears to be sufficient to permit Foss to work through its operational cost issues.

Foss has taken steps toward limiting operational costs pursuant to the "Checklist for Economic Development and Business Retention Discounted Rates" approved by Order No. 20,882 on June 23, 1993. Those steps include an energy audit that Foss filed on December 29, 2021, pursuant to Order No. 26,107 issued on February 28, 2018,¹ as well as the evaluation of options to optimize power supply for

¹ Foss filed its Audit Report pursuant to an extension of time granted by Order No. 26,526 issued on September 23, 2021.

its operations, including analysis of electric and gas alternatives. Importantly, the Commission notes, the initial justifications for and approval of the original special contract were not intended to provide an advantage to Foss's operations in New Hampshire at a cost to Northern's other New Hampshire ratepayers.

We will expect that both Foss and Northern will continue to seek and consider any further steps that may be warranted to lower costs and to minimize or eliminate the potential shifting of fixed costs to other Northern customers. We accept the filings presented in this proceeding and find the extension of the special contract, as amended, until February 29, 2024, with the option to continue on a month-to-month basis until February 28, 2025, to be just and consistent with the public interest. We therefore approve the contract, as amended.

We take this opportunity to thank the parties for the clarity of their responses, in particular, the September 26, 2022 record response from Foss and Attorney Getz.

Based upon the foregoing, it is hereby

ORDERED NISI, that, subject to the effective date below, Northern's petition to approve a special contract between Northern and Foss is GRANTED, resulting in an extension to February 29, 2024, with an option to continue on a month-to-month basis until February 28, 2025; and it is

FURTHER ORDERED, that Northern shall cause a copy of this order to be published on the Company's website within two business days of this order, and to be documented by affidavit filed with the Commission on or before November 23, 2022; 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, stating the reason and basis for a hearing no later than November 30, 2022, for the Commission's consideration; and it is

FURTHER ORDERED, that that any party interested in responding to such comments or request for hearing shall do so no later than December 7, 2022; and it is

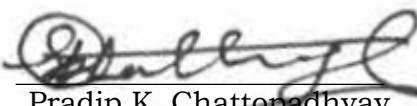
FURTHER ORDERED, that this order shall be effective on December 14, 2022, unless Northern fails to satisfy the publication obligation set forth above or the Commission provides otherwise in a supplemental order issued prior to the effective date; and it is,

FURTHER ORDERED, that the hearing scheduled for November 16, 2022, is hereby CANCELLED.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of November, 2022.



Daniel C. Goldner
Chairman



Pradip K. Chattopadhyay
Commissioner

Service List - Docket Related

Docket#: 21-144

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