Unitil
Unitil Service Corp.

January 7, 2010

By Regular Mail

Debra A. Howland, Executive Director and Secretary
New Hampshire Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, NH 03301-2425

Re: Evidence of Publication, Orders of Notice

Dear Director Howland:

Enclosed please find tear sheets from the Union Leader evidencing publication of Orders of Notice in the following dockets:

DE 09-236	Unitil Energy Systems, Inc.
DG 09-239	Northern Utilities, Inc.
DG 09-201	Northern Utilities, Inc.
DG 09-141	Northern Utilities, Inc.
DE 08-085	Unitil Energy Systems, Inc.

Tear sheets from the publication were not available at the time of compliance filing with the Commission.

If you should have any questions or comments, please do not hesitate to contact our office.

Sincerely,

Joanne Robbins, Paralegal
Unitil

Enclosure

cc: Edward Damon, Staff Counsel (letter only)

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Legal Notice

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION
DG 09-201
NORTHERN UTILITIES, INC.
Petition for Approval of Second Amendment to Special Contract with National Gypsum Company
Order Nisi Granting Petition
ORDER NO. 25,047
November 25, 2009

I. PROCEDURAL AND FACTUAL BACKGROUND

On October 19, 2009, the petitioner, Northern Utilities, Inc. (Northern or Company), filed a petition seeking approval to amend its October 1999 special contract for firm gas transportation with National Gypsum Company (National). The original special contract between Northern and National was for a ten-year term ending November 30, 2009. That special contract was approved by the Commission in Northern Utilities, Inc., Order No. 23,314 (October 5, 1999), subject to certain conditions. By the current petition, the parties seek to amend the special contract to extend it for two years upon the expiration of the initial ten-year term. With its petition, Northern submitted the pre-filed testimony of Michael Smith, Senior Business Development Executive with Northern. Additionally, Northern has moved for confidential treatment relative to information included in its filing, and in response to Staff's data requests, which concerns pricing and cost information, customer-specific marginal cost information and financial analyses relating to National's gas usage and fuel supply alternatives.

National is a manufacturer of gypsum wallboard with a manufacturing plant located in Portsmouth. National was an interruptible transportation customer of Northern beginning in 1990. In the late 1990s, National desired to move to firm year-round transportation service. At the time, National had the option to bypass Northern's distribution system and connect directly to a nearby interstate gas pipeline for firm service. Northern, however, wished to retain National as a customer. The original special contract was designed to retain National as a customer at competitive rates while also maintaining National's contribution to Northern's fixed costs.

Staff's recommendation notes that the rates under the special contract exceed Northern's marginal cost of continuing to serve National. Moreover, retaining National will help to control costs for other customers, and that it will do so for a sufficient term for both Northern and National to evaluate their long-term positions. According to Staff's recommendation, because the costs and rates under the special contract are subject to the same escalation factor, it is assured that the revenues will continue to exceed marginal costs. Thus, because the rates exceed the costs to serve, and because retaining this load benefits all firm customers, Staff supports the extension. On November 25, 2009, Staff filed a letter stating that the Office of Consumer Advocate (OCA) reviewed Staff's recommendation but took no position on the matter.

III. 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." We review the Company's filing with this in mind, giving consideration to the policy precepts established in Generic Discount Rates, 77 NH PUC 650, 654-55 (1992) and Generic Discounted Rates Docket, 78 NH PUC 316, 316-17 (1993) Based upon our review of the record and for the reasons described below, we find that special circumstances exist that justify the departure from standard tariff rates and render the special contract just and reasonable and consistent with the public interest.

National represents an important firm load for Northern and offers a meaningful contribution to Northern's fixed costs. This contribution, in turn, lowers costs for other customers. Moreover, we note that National is, as stated in Staff's recommendation, an important employer in the Portsmouth area and that a key to its continued operations is the ability to control its energy costs. In order to address these concerns, both parties seek to extend the mutually beneficial special contract between them.

Northern has noted that National has an economically viable option to bypass its delivery service, and that this option may be more appealing than it was at the time the Commission approved the prior contract. Therefore, continuation of their special contract is in the interest of Northern's customers. Moreover, we do not find that the Company's request for confidential treatment of this information is unreasonable. However, we do conclude that there is a public interest in information about the prices and terms in the special contract. This information bears directly upon the finances of the utility and its ability to meet its costs. These matters are within the Commission's purview and thus there is a public interest in disclosure of them.

In weighing the identified interests, we conclude that the Company's interest, and by extension the interests of its customers, outweighs that of the public. Disclosing the information would likely lead to the erosion of Northern's ability to maintain a strong position in negotiating contracts. It would also allow competitive energy suppliers to understand Northern's costs and possibly undercut them. Therefore, Northern's interest in protecting this information, and by extension its competitive health, is high. On the other side, while there is a public interest at stake in understanding the financial picture of a public utility, disclosing this information will not provide much information about the utility, but instead will reveal only some information about its negotiation of this contract. Also, while it will to some degree reveal the Commission's analysis, that analysis is limited to the contract and not the larger health of the utility. Therefore, disclosure will not be particularly informative. Accordingly, as the Company's interest outweighs that of the public, we grant the Company's requests for confidential treatment.

Based upon the foregoing, it is hereby

ORDERED NISI, that subject to the effective date below, the proposed special contract is APPROVED subject to the terms and conditions set forth herein; and it is

FURTHER ORDERED, that the Company shall file a contract whose terms comply with the requirements of this order on or before December 15, 2009; and it is

FURTHER ORDERED, that the Company's motion for confidential treatment of certain commercially sensitive material is GRANTED, provided that, consistent with Puc 203.08(k), the ruling granting the motions for confidential treatment is subject to the Commission's on-going authority, on its own motion, on the motion of Staff, or on the motion of any member of the public, to reconsider the Commis-

alternatives for its future energy needs. See Schedule NU-1-1 at 1-2. Northern contends that the revenues it will receive under the special contract will exceed the long-run marginal costs of continuing to serve National. Additionally, Northern states that retaining National's load will help contain the system costs related to transporting gas, which are borne by all firm customers. In other words, retaining National at the special contract rate will lower the average costs for all of Northern's firm customers compared with losing National as a customer. In addition to the per therm rate and customer charge called for in the special contract, National will be subject to all charges and fees set out in Northern's General Terms and Conditions and Transportation Terms and Conditions.

Northern contends that National continues to have an economically viable option in connecting to the interstate pipeline and bypassing Northern's system. In fact, Northern contends that economic pressures make the bypass option potentially more attractive than in 1999. Specifically, Northern's petition notes that National's competitor in the seacoast region has already directly connected to the interstate pipeline. Therefore, National's competitor is not subject to the costs associated with Northern's distribution system and is at a competitive advantage. Additionally, according to Northern's petition, National has been curtailing or eliminating operations at its other manufacturing facilities, in part because the energy costs at those facilities have been too high, and a similar fate might befall National's Portsmouth facility, if it cannot obtain a suitable arrangement for its fuel needs. Northern's petition also notes that National would be able to minimize the costs of connecting to the interstate pipeline by using high-density plastic piping rather than the steel that was used in the bypass estimate in 1999. For these reasons, Northern contends that National might leave Northern's system, and the special contract extension is needed to retain National. Northern contends, therefore, that special circumstances exist, which justify the extension of the special contract, and that the extension is just and consistent with the public interest.

Finally, Northern moves for protective treatment relative to various portions of its filing and data responses. Specifically, Northern seeks to protect information about the prices contained in the special contract, and National's natural gas usage. In addition, Northern seeks to protect information concerning National's service alternatives and the costs and value thereof. Finally, Northern seeks protection for its marginal cost of service study analysis relating to National. Northern contends that the information it seeks to protect is competitively sensitive commercial information which is exempt from disclosure under RSA 91-A:5, IV. See also N.H. Code Admin. Rules Puc 203.08. Northern contends that disclosure of this information will result in harm to it in that it will be disadvantaged in its bargaining position with other customers seeking special contracts when those customers have alternative service options. Thus, Northern argues, disclosure would impair its future bargaining position and ability to obtain the highest possible contributions to its fixed costs. Moreover, Northern argues, disclosure would allow its competitors to best its customer-specific proposals.

On November 24, 2009, Staff filed its recommendation on Northern's petition. Staff recommended that the special contract extension be granted because it satisfied the criteria identified by the Commission as important in analyzing a special contract. As to specific criteria, Regarding Northern's requests for confidentiality, the information it seeks to protect in its filing and responses to data requests from Staff reflects both Northern and National's analysis of various financial aspects of their relationship as well as National's natural gas usage. Northern contends that disclosure of this information will be competitively harmful in that it will imperil its bargaining position with other customers seeking special contracts, as well as make it more likely that competitive suppliers in Northern's service territory will be able to undercut Northern's customer-specific proposals.

RSA 91-A:5, IV states, in relevant part, that records of "confidential, commercial, or financial information" are exempted from disclosure. See Unitil Corp. and Northern Utilities, Inc., Order No. 25,014 (Sept. 22, 2009) at 2. The exemption for confidential, commercial, or financial information requires an "analysis of both whether the information sought is confidential, commercial, or financial information, and whether disclosure would constitute an invasion of privacy." Id. (quoting Union Leader Corp. v. N.H. Housing Fin. Auth., 142 N.H. 540, 552 (1997)).

In determining whether commercial or financial information should be deemed confidential, we consider whether there is a privacy interest at stake that would be invaded by the disclosure; when commercial or financial information is involved, this step includes a determination of whether an interest in the confidentiality of the information is at stake. Unitil Corp. and Northern Utilities, Inc., Order No. 25,014 (Sept. 22, 2009) at 2-3. Second, when a privacy interest is at stake, the public's interest in disclosure is assessed. Id. at 3. Disclosure should inform the public of the conduct and activities of its government; if the information does not serve that purpose, disclosure is not warranted. Id. Finally, when there is a public interest in disclosure, that interest is balanced against any privacy interests in non-disclosure. Id.

The Commission's rule on requests for confidential treatment, N.H. Code Admin. Rules Puc 203.08, similarly addresses this balancing test by requiring petitioners to: (1) provide the material for which confidential treatment is sought or a detailed description of the types of information for which confidentiality is sought; (2) reference specific statutory or common law authority favoring confidentiality; and (3) provide a detailed statement of the harm that would result from disclosure to be weighed against the benefits of disclosure to the public. N.H. Code

Admin. Rules Puc 203.08(b); see also Unitil Corp. and Northern Utilities, Inc., Order No. 25,014 (Sept. 22, 2009) at 3.

Here, Northern seeks protection of information that could place it at a competitive disadvantage. This disadvantage would arise in relation to other potential customers who may seek special contracts, as well as to competitors in Northern's service territory, and could ultimately prove detrimental to Northern's customers. As such, Northern has an interest in the confidentiality of the information. Unitil Corp. and Northern Utilities, Inc., Order No. 25,014 (Sept. 22, 2009) at 2-3.

Next, we must determine whether there is a public interest in disclosure. The information for which Northern seeks protection consists mainly of financial information relating to the costs and benefits to National in bypassing Northern, and National's gas usage. The bulk of this information would reveal information about National and Northern, but would not illuminate the Commission's analysis or workings. Therefore, there is virtually no public interest in disclosure of much

In its petition on the original contract, Northern asserted that National had a viable option to bypass Northern's system, but that with some system upgrades and a discounted price, National would remain Northern's customer. Also, the original special contract called for an initial term of ten years followed by successive, automatic one-year renewals unless the contract was terminated by Northern or National.

After noting that National, in fact, had a viable option to bypass Northern's system, and that the special contract rate exceeded Northern's long-run marginal costs, the Commission approved the original special contract. See id. at 5-6. In approving the contract, the Commission rejected the automatic renewal provision and ordered that any extension of the contract after the initial term would require Commission approval. Id. at 6. Following the issuance of the order, the parties submitted an amendment to the agreement complying with the requirement that the automatic renewal period be eliminated.

II. PETITION TO AMEND

Northern now petitions to be permitted to extend the special contract for two years following the end of the initial term on November 30, 2009. It does not propose to amend any other portions of the agreement. According to the petition, National continues to have a viable option to bypass Northern's system, but both National and Northern continue to desire that National remain as Northern's customer. According to a letter from National to Northern, National desires to remain on Northern's system while it explores arrangement is essential for the retention of National. The agreement they seek to continue has been in place since 1999, and is unchanged save for its duration.

Northern's petition indicates, and Staff has confirmed, that the cost to continue to serve National will surpass Northern's long-run marginal costs. Moreover, given the nature of the escalator clause of the agreement, this will remain the case. Thus, with a relatively small change to the duration, Northern and National have agreed to the continuation of an agreement that will benefit both companies. We note also that, in addition to providing a contribution to Northern's fixed costs, retention of National actually reduces the obligations of others and that keeping National will make it more likely that Northern can achieve its allowed rate of return. In sum, Northern and National have both analyzed the benefits of the special contract and found it beneficial. We agree that because it is beneficial to both firms as well as Northern's other customers, the special contract should be extended.

Regarding the term of the contract, we note that it is only for two years as requested by National. This amount of time is reasonable and will allow both parties time to consider other options to meet National's long term energy needs. Additionally, Northern has noted that, since the agreement does not undercut the commodity costs, it does not gain an unfair advantage over other area suppliers in retaining National as a customer. For these reasons, pursuant to RSA 378:18, we approve the extension of the special contract.

sion's determination; and it is

FURTHER ORDERED, that the Petitioner shall cause a copy of this Order Nisi to be published once in a statewide newspaper of general circulation or of circulation in those portions of the state where operations are conducted, such publication to be no later than December 4, 2009 and to be documented by affidavit filed with this office on or before December 8, 2009; and it is

FURTHER ORDERED, that all persons interested in responding to this Order Nisi be notified that they may submit their comments or file a written request for a hearing which states the reason and basis for a hearing no later than December 15, 2009 for the Commission's consideration; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than December 22, 2009; and it is

FURTHER ORDERED, that this Order Nisi shall be effective December 1, 2009, unless the Petitioner 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 Petitioner shall file a compliance tariff with the Commission on or before December 11, 2009, in accordance with N.H. Ad-