

THE STATE OF NEW HAMPSHIRE

BEFORE THE

PUBLIC UTILITIES COMMISSION

NORTHERN UTILITIES, INC.

Petition for Approval of

Fifth Amendment to Special Contract

With Foss Manufacturing Company, LLC

Docket No. DG 12-_____

MOTION FOR PROTECTIVE ORDER

NOW COMES Northern Utilities, Inc., (“Northern”), by and through its undersigned attorneys, and, pursuant to RSA 91-A:5, IV and N.H. Admin. Rule, Puc 203.08, respectfully moves the New Hampshire Public Utilities Commission (“Commission”) to issue a protective order which accords 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 and financial analyses supporting the Fifth Amendment of a Special Firm Transportation Contract with Foss Manufacturing, LLC filed herewith be treated as confidential commercial information, and not be made part of the public record or available for public disclosure.. However, to ensure the filing meets the public interest standard required for approval of the Amendment to the Foss Special Contract, Northern asks that such information be made available on a confidential basis to the Commission Staff and the Office of Consumer Advocate.

In support of this Motion, Northern states the following:

1. Northern is filing contemporaneously with this Motion, a petition for approval of the Fifth Amendment of a Special Contract with Foss Manufacturing Company, LLC (“Foss” or “the Customer”). The Fifth Amendment extends an existing special contract, as previously amended, for five additional years. Certain supporting documents filed with the petition contain confidential information. Those documents are: Prefiled testimony of Michael Smith; Special Firm Transportation Agreement (Schedule NU-1-1); Third Amendment of Agreement (Schedule NU-1-5); Letter from Foss (Schedule NU-1-7); and Marginal Cost Analysis (Schedule NU-1-10).

2. Northern seeks protective treatment for the above-referenced documents, and in particular for the various references 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 costs analysis, conducted as required by the Commission to justify the benefits of the Amended Special Contract. In addition, Northern seeks protective treatment for certain financial information provided by the Customer as the basis for its request to extend the Special Contract.

3. The above-referenced documents contain competitively sensitive commercial information that Northern does not disclose to anyone outside of its corporate organization or authorized representatives. As such, the information is entitled to be protected from public disclosure under RSA 91-A:5, IV. *See also* RSA 350-B (“Uniform Trade Secrets Act”).

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 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 fixed costs as this benefits 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). 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.'" *Unitil Energy Systems, Inc.*, DE 10-055, Order No. 25,214 (April 26, 2011), p. 35. If a privacy interest is implicated, the Commission then balances the asserted private confidential, commercial or financial interest against the public's interest in disclosure in order to determine if disclosure would inform the public of the government's conduct. *Id.* If it does not, then "disclosure is not warranted." *Id.*

6. Under the balancing test set forth in *Union Leader Corp. v. New Hampshire Housing Fin. Auth.*, 142 N.H. 540 (1997) and the other orders cited above, the above-described interests of Northern and its customers in non-disclosure outweigh the public's interest in gaining access to the information. The Commission has employed this test when it accorded protective treatment to similar information in 1999 with regard to this Customer's and Northern's initial Special Contract, *see Re Northern Utilities*, DG 99-171, Order No. 23,370, 84 NH PUC 695 (December 20, 1999), in 2005 with regard to the Second Amendment of Agreement, *see Re Northern Utilities, Inc.*, DG 05-065, Order No. 24,478, 90 NH PUC 263 (July 1, 2005), and again in 2010 with regard to the Fourth Amendment of Agreement. *See Re*

Northern Utilities, Inc., DG 10-034, Order No. 25,085 (March 25, 2010). The Commission has also recently employed this test when it accorded protective treatment for similar information with regard to another special contract with a Northern customer, National Gypsum Company. *See Re Northern Utilities, Inc.*, DG 11-231, Order No. 25,306 (December 22, 2011)

7. Northern has filed this motion for a protective order to allow this confidential commercial information to be made available to Commission Staff and the Consumer Advocate during this proceeding, subject to the requested order from the Commission that such information should be accorded confidential treatment.

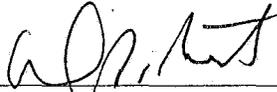
8. Northern requests that the Commission issue an order protecting the above-described information from disclosure and prohibiting copying, duplication, dissemination or disclosure of it in any form. Northern requests that the protective order also extend to any discovery, testimony, argument or briefing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

WHEREFORE, Northern respectfully requests that this honorable 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 it deems appropriate.

Respectfully submitted,
NORTHERN UTILITIES, INC.
By its attorneys,
Orr & Reno, P.A.

Dated: January 26, 2012



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Certificate of Service

I hereby certify that a copy of the foregoing Motion has on this 26th day of January, 2012 been served electronically on the Office of Consumer Advocate.

A handwritten signature in black ink, appearing to be "D. Patch", is written over a horizontal line.

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