

DG 99-109

NORTHERN UTILITIES, INC.

Petition for Approval of a
Special Firm Gas Transportation Agreement
with Simplex Technologies, Inc.

Order NISI Approving Special Contract No. 99-01

O R D E R N O. 23,307

September 28, 1999

On July 19, 1999, Northern Utilities, Inc. (Northern) filed with the New Hampshire Public Utilities Commission (Commission) a Petition for Approval of a Special Firm Gas Transportation Agreement (Special Contract) with Simplex Technologies, Inc. (Simplex), a division of Tyco International. Simplex is a leading manufacturer of long-distance fiber optic telecommunication cables. Simplex's manufacturing plant is located on Woodbury Avenue in Newington, New Hampshire. Northern's filing included Special Contract No. 99-01, which was executed on May 20, 1999, and the supporting testimony and exhibits of Paula A. Strauss, Senior Pricing Analyst.

On July 19, 1999, Northern also filed a Motion for Protective Order requesting confidentiality of the name of the customer, pricing information, the term of the contract, cost information, customer-specific marginal cost information, and financial analyses supporting the contract and the customer's selection of the contract over other alternatives. On September 16, 1999, Northern filed a letter with the Commission to withdraw

its request for confidential treatment as it relates to the customer's name and the length of the contract.

Simplex is currently a firm transportation customer of Northern. However, Simplex now has the option to bypass Northern by connecting directly with an interstate pipeline recently constructed by Portland Natural Gas Transmission System (PNGTS) and Maritimes and Northeast Pipeline, L.L.C. (Maritimes). Simplex has actively pursued this option and has contracted with PNGTS for an installation of a tee interconnection for possible future use. On December 4, 1998, PNGTS filed with the Federal Energy Regulatory Commission (FERC) a petition for approval to construct and own a short tee on the pipeline on the Newington lateral in order to provide natural gas service directly to Simplex. On December 31, 1998, FERC issued Order 62,214 granting the certificate. Simplex has had discussions with another customer that intends to bypass Northern about contributing toward the construction costs of a take station. Accordingly, Northern negotiated the Special Contract with Simplex for firm transportation service.

In its petition, Northern asserts that Special Contract No. 99-01 is designed to retain Simplex's load at a competitive price. Northern believes that, absent approval of Special Contract No. 99-01, Simplex will bypass the distribution system and connect directly with the joint facilities of PNGTS and Maritimes. Northern conducted a value of service analysis which

indicated that bypass is a viable alternative to remaining a customer of Northern. Northern has, therefore, priced Special Contract No. 99-01 to provide Simplex with a discount sufficient to make bypass unattractive. Additionally, Simplex is subject to all charges and fees as detailed in Northern's General Terms and Conditions and Transportation Terms and Conditions, as are in effect from time to time. The Special Contract has an initial term of five years. After the first five years, the contract can be renewed for successive one-year periods for a maximum of another five years.

Northern argues that retaining the load and the resulting contribution to fixed costs, among other things, will help to mitigate upward pressure on rates thereby protecting Northern's customers from the effects of lost revenues and sales. The pricing in Special Contract No. 99-01 consists of a rate for natural gas service that is lower than otherwise available under applicable tariff rates. Simplex has also agreed to certain take or pay provisions.

Northern performed an analysis of its long-run marginal cost of serving Simplex. Simplex's gas usage is characteristic of the Extra Large Volume (XLV) Customer Class and the marginal costs associated with the XLV Class were applied to Simplex's specific load characteristics. Northern updated the marginal cost of service study that was filed in Docket DE 95-121 to reflect: actual sales and cost data through 1998; a ten year

forward-looking distribution reinforcement study; current costs to add peaking capacity and pressure support; a reassignment of an appropriate portion of uncollectible accounts expense to the gas component; and a revision to carrying charges rates based on current estimates of cost of capital, inflation rate, and property tax rate. The updated marginal cost of service study includes: a monthly customer charge; pressure support from Northern's manufactured gas facilities per design day dekatherm; main reinforcement costs per design day dekatherm; and main extension costs per design day dekatherm. The analysis showed that the rate in the Special Contract exceeds Northern's long-run marginal cost to serve Simplex's facility.

In its filing, Northern also presented two alternate long-run marginal cost analyses, both derivatives of the updated marginal cost study. One analysis excluded main extensions and the other excluded both main extensions and reinforcements. Northern stated that the unique circumstances surrounding Simplex and the proposed fixed duration contract allow for the possibility of alternative cost measurements.

On September 24, 1999, Commission Staff (Staff) filed a recommendation that the Commission conditionally approve Northern's Special Contract No. 99-01 with Simplex. Staff stated it had reviewed the filing and engaged in informal discovery with Northern. Staff stated that approval of this contract would enable Northern to retain load that might otherwise be lost to

bypass. Further, Staff recommended that approval should be granted conditionally upon the customer, with which Simplex intended to share the costs of bypass, actually leaving Northern's distribution system. Should the other customer remain a Northern customer, then the analysis that Staff relied upon to make its recommendations to the Commission is no longer valid; thus, requiring further investigation into the prudence of the Special Contract and the rates negotiated thereunder.

The Commission has reviewed Special Contract No. 99-01 and the supporting materials. We have conducted our review pursuant to the language of RSA 378:18, which gives the Commission the authority to approve special contracts when "special circumstances exist which render such departure from the general schedules just and consistent with the public interest..." Similarly, we note that for electric utilities, the Legislature, under RSA 378:18-a, II (effective June 3, 1996), requires that load retention contracts be available to customers only if the utility represents that the load would have otherwise left the utility, the contracts are approved pursuant to RSA 378:18, and the Commission determines that no tariffed rate is sufficient to retain the load.

Based upon our review of the filing and Staff's recommendation, we will conditionally approve Special Contract No. 99-01 between Northern and Simplex. In approving this contract, we note that Simplex has a viable bypass option. Thus,

there are special circumstances that qualify it for departure from standard tariff rates pursuant to RSA 378:18. We note, however, that the value of service analyses contained in the filing were developed with the assumption that a large customer, with which Simplex would share the costs of bypass, would leave Northern's distribution system. We understand this other customer has decided to bypass Northern, and is building the necessary facilities, which should be complete around November 1, 1999. Should the other customer remain a customer of Northern, then the prudence of the Special Contract and the terms negotiated thereunder may have to be reevaluated.

We note that the rate negotiated with Simplex exceeds Northern's long-run marginal cost, a requirement we established in Order No. 20,633, Re Generic Discounted Rates Docket 77 NHPUC 650 (1992). Given the results of the traditional long-run marginal cost analysis, the two alternate marginal cost analyses presented by Northern in its filing were not considered in reaching our decision. Northern may present those or other alternate marginal cost presentations to support a future petition with the Commission at which time the validity of the analyses will be evaluated.

Based upon the foregoing, it is hereby

ORDERED NISI, that Special Contract No. 99-01 between Northern and Simplex, as filed on July 19, 1999, is APPROVED;

and it is

FURTHER ORDERED, that Northern shall notify the Commission in the event that for some reason the other larger customer does not leave the system; and it is

FURTHER ORDERED, that Northern 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 October 6, 1999 and to be documented by affidavit filed with this office on or before October 18, 1999; and it is

FURTHER ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or file a written request for a hearing on this matter before the Commission no later than October 18, 1999; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than October 22, 1999; and it is

FURTHER ORDERED, that this Order Nisi shall be effective November 1, 1999, unless the Commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of September, 1999.

Douglas L. Patch
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Thomas B. Getz
Executive Director and Secretary