DG 99-171

NORTHERN UTILITIES, INC.

Petition for Approval of a Special Firm Gas Transportation Agreement with Foss Manufacturing Company, Inc.

Order NISI Approving Special Contract No. 99-03

O R D E R N O. 23,381

January 6, 2000

On November 5, 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 with Foss Manufacturing Company, Inc. (Foss). Foss is a vertically integrated producer of engineered fabrics. Foss manufactures specialty fibers such as fossfiber (pigment dyed polyester), polyethylene, polypropylene, polybutyltriethylamine, and nylon. Foss' manufacturing facility is located in Hampton, New Hampshire. Northern's filing included Special Contract No. 99-03, which was executed on October 30, 1999, and the supporting testimony and exhibits of Paula A. Strauss, Senior Pricing Analyst.

On November 5, 1999, Northern also filed a Motion for Protective Order requesting confidentiality of specific pricing information, cost information, customer-specific marginal cost information, and financial analyses supporting the contract and the customer's selection of the contract over other alternatives. By Order No. 23,370 (December 20, 1999), the Commission granted Northern's Motion for Protective Order.

Foss is currently a firm transportation customer of Northern and purchases gas through a third party supplier. Foss has multiple fuel capabilities. Northern asserts in its petition that although Foss has significantly increased its consumption of natural gas on summer rates since becoming a transportation customer, Foss is not expected to continue to do so on Northern's winter transportation rates without a special contract due to Foss' ability to use alternate fuels.

In order to have sufficient capacity to serve Foss' peak day requirements when the weather begins to approach Northern's design day, Northern must upgrade its existing distribution system. The investment in the distribution system meets Northern's twenty-five percent (25%) net investment test as outlined in Northern's tariff. The results of the test reflect the relatively low investment necessary to serve Foss' additional load.

In its petition, Northern asserts that Special Contract No. 99-03 is designed to retain and increase Foss' load at a competitive price. Northern believes that, absent approval of Special Contract No. 99-03, Foss will utilize its alternate fuels. Northern conducted a value of service analysis to assist in the development of a special rate for transportation service for Foss. Northern has, therefore, priced Special Contract No. 99-03 to provide Foss with a discount sufficient to incite Foss to use natural gas. Additionally, Foss 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 will continue for successive one-year periods unless terminated by Northern or Foss.

Northern argues that the increased 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. 99-03 consists of rates for natural gas service that are lower than otherwise available under applicable tariff rates. Foss has also agreed to certain take or pay provisions not included in Northern's tariff.

Northern performed an analysis of its long-run marginal cost of serving Foss. Foss' expected gas usage is characteristic of the Extra Large Volume (XLV) Customer Class and the marginal costs associated with the XLV Class were applied to Foss' 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 the cost of capital, the inflation rate, and the 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 rates in the Special Contract exceed Northern's long-run marginal cost to serve Foss' facility.

On December 30, 1999, Commission Staff (Staff) filed a recommendation that the Commission approve Northern's Special Contract No. 99-03 with Foss. Staff stated it had reviewed the filing and engaged in informal discovery with Northern. Staff stated that the rates negotiated in the

Special Contract exceed the marginal cost of serving Foss and that approval of this contract would enable Northern to retain and increase load that might otherwise be lost to the use of alternate fuels. Further, Staff noted that there are no other similarly situated customers in Northern's service territory that have, as Foss does, multiple fuel capabilities. Additionally, Northern's ratepayers will see the benefit of Foss' increased contribution to the recovery of Environmental Response Costs.

Staff did note, however, its concern regarding the duration of the Special Contract. Although the Special Contract states that either Northern or Foss can terminate the contract after the initial five-year period, Staff recommended that the Commission retain its right to review the appropriateness of the continuance of the Special Contract and its terms after the first five years of the contract. Staff stated that the natural gas industry is continuously evolving and the circumstances which justify a special contract today may not exist in the future. Staff noted that the Special Contract is open-ended after the initial five year period, and, therefore, 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 which would justify its continuance.

We have reviewed Special Contract No. 99-03 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..."

Based upon our review of the filing and Staff's recommendation, we will approve Special Contract No. 99-03 between Northern and Foss subject to conditions. In approving this contract, we note that Foss has the capability to utilize alternate fuels. Thus, there are special circumstances that qualify it for departure from standard tariff rates pursuant to RSA 378:18. We also note that the rates negotiated with Foss exceed Northern's long-run marginal cost, a requirement we established in Order No. 20,633, Re Generic Discounted Rates Docket 77 NHPUC 650 (1992).

We share Staff's concern that the ultimate duration of the Special Contract should not be decided upon solely by Northern and/or Foss and that there are other factors which must be considered. Therefore, we will approve Special Contract No. 99-03 for a five-year period, but as a condition of our approval, we will require that the provision of the Special Contract that delineates the term of the contract be revised to require Commission approval for any extension period beyond five (5) years.

Lastly, we note that our approval of this Special Contract does not authorize Northern to recover from ratepayers any revenue loss resulting from the Special Contract. We reserve the right to address this issue at an appropriate time in the future. See Order No. 20,633, Re Generic Discounted Rates, 77 NHPUC 650, 655 (1992).

Based upon the foregoing, it is hereby

ORDERED NISI, that the Special Contract No. 99-03 between Northern and Foss, as filed on November 5, 1999, is APPROVED subject to the condition that Northern files an amendment to Special Contract No. 99-03 as indicated herein and makes no other changes; 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 January 13, 2000 and to be documented by affidavit filed with this office on or before January 20, 2000; 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 January 20, 2000; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than January 26, 2000; and it is

FURTHER ORDERED, that this Order Nisi shall be effective February 1, 2000, 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 sixth day of January, 2000.

Douglas L. Patch Chairman	Susan S. Geiger Commissioner	Nancy Brockway Commissioner

Attested by:

Thomas B. Getz
Executive Director and Secretary