

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DG 11-231

NORTHERN UTILITIES, INC.

**Petition for Approval of Third Amendment to Special Contract with National Gypsum
Company**

Order *Nisi* Approving Petition, and Granting Motion for Confidential Treatment

ORDER NO. 25,306

December 22, 2011

I. BACKGROUND AND POSITIONS OF THE PARTIES

On October 18, 2011, the petitioner, Northern Utilities, Inc. (Northern or Company), filed a petition seeking approval for a third amendment to its October 1999 special contract for firm gas transportation with National Gypsum Company (National), a manufacturer of gypsum wallboard with a manufacturing plant located in Portsmouth. The original contract was for a ten-year term ending November 30, 2009, and was approved in *Northern Utilities, Inc.*, Order No. 23,314 (October 5, 1999) 84 NH PUC 530 and subsequently extended with Commission approval in *Northern Utilities, Inc.*, Order No. 25,047 (November 25, 2009) 94 NH PUC 679.

Northern and National now seek to: (1) extend the special contract for an additional five years, until November 30, 2016; (2) provide for up to three one-year automatic extensions beyond November 2016; and (3) eliminate National's contractual obligation to make certain minimum payments if its Portsmouth facility is permanently closed and ceases to operate. With its petition, Northern submitted the pre-filed testimony of Michael Smith, a Manager of Business Services for 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. The petition and subsequent docket filings, other than information for which confidential treatment is requested of or granted by the Commission, is posted to the Commission's website at

<http://www.puc.nh.gov/Regulatory/Docketbk/2011/11-231.html>

Background regarding the Company's special contract with Northern may be examined in Order No. 25,047, at 1-5. 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. 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 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. For these reasons, Northern contends, special circumstances exist to justify the extension of the special contract and, further, the extension is just and consistent with the public interest.

Regarding confidentiality, 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 competitive disadvantage in its bargaining position with other

customers seeking special contracts when those customers have alternative service options and thus it will be unable to obtain the highest possible contributions to its fixed costs. Moreover, Northern argues, disclosure would allow its competitors to undercut its customer-specific proposals.

On November 30, 2011, Staff filed a memorandum recommending that the special contract amendment be granted, subject to certain conditions. According to Staff, 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 the longer five-year extension term will provide more stability for Northern and National. Because the costs and rates under the special contract are subject to certain federal escalation factors, Staff considers it reasonable to assume that the revenues will continue to exceed marginal costs. Staff also noted that the extension of the special contract between Northern and National was in the general public interest, as it would enhance the continued viability of a major industrial facility in the seacoast region and its associated employment.

Nonetheless, Staff recommended certain modifications. To ensure that the special contract rate will continue to exceed the marginal cost of serving National, Staff recommended that Northern be required to file an update of the contract rate and marginal cost analysis with the Commission seven months prior to the first of three annual self-executing contract extensions (*i.e.*, no later than April 30, 2016). Staff also recommended that Northern be required to provide the Commission with written notice of actual or impending termination of the special contract, resulting either from closure of National's Portsmouth facility or from one party giving written notice to the other of its intent to terminate the contract extension.

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.” These standards are further detailed in *Generic Discount Rates*, 77 NH PUC 650, 654-655 (1992) and *Generic Discounted Rates Docket*, 78 NH PUC 316, 316-317 (1993). 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 which in turn lowers costs for other customers. Moreover, as Staff notes, National is a significant employer in the Portsmouth area; key to its continued operations is the ability to control its energy costs. 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. Continuation of the contract is essential for the retention of National. The agreement they seek to continue has been in place since 1999, and is fundamentally unchanged save for its duration and renewal by this proposal.

Staff’s memorandum confirms Northern’s assertion that the contract price to serve National will surpass Northern’s long-run marginal costs and will continue to do so, given the escalator clause of the agreement. In addition to providing a contribution to Northern’s fixed costs, which reduces the obligations of other customers; Northern will be better positioned to achieve its allowed rate of return. In light of the benefits to Northern, National and other

customers, we will extend the special contract. We also find the proposed elimination of the post-termination minimum payments clause to be appropriate, given Northern's recoupment of its 1999 investment to serve National. We agree with Staff that Northern must file an update of the special contract rate and marginal cost analysis seven months prior to the commencement of the first of the three annual self-executing special contract extensions, or no later than April 30, 2016.

Regarding the term of the contract, we find the five-year proposed extension to be reasonable, as it will provide National with stability in meeting its long term energy needs. Additionally, Northern has noted that, because 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. Though we do not favor automatic contract extensions, in this instance, given the long business relationship between Northern and National, we accept this term but agree with Staff that, for supervisory purposes, Northern must provide the Commission with written notice of the actual or impending termination of this special contract, either resulting from closure of National's Portsmouth facility or non-adoption of one of the annual self-executing extensions.

In regard to Northern's motion for confidential treatment, RSA 91-A:5, IV states, in relevant part, that records of "confidential, commercial, or financial information" are exempted from disclosure. *See Unital Corp. and Northern Utilities, Inc.*, Order No.25,014, 94 NH PUC 484, 486 (2009). In determining whether commercial or financial information should be deemed confidential, we first consider whether there is a privacy interest that would be invaded by the disclosure. *Id.* Second, when a privacy interest is at stake, the public's interest in disclosure is assessed. *Id.* 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.* This is similar to the Commission's rule on requests for confidential treatment. *See* N.H. Code Admin. Rules Puc 203.08.

The Commission has previously found the categories of information for which Northern seeks protection to be exempt from disclosure. *See Northern Utilities, Inc.*, Order No. 25,047 (November 25, 2009) 94 NH PUC 679 at 7-9. Disclosure would reveal internal business decisions and financial information, could harm Northern, and could result in a competitive disadvantage to Northern, ultimately to detriment of ratepayers. Further, there is no indication that disclosure would inform the public about the workings of the Commission. In balancing the interests of Northern in protecting information with the public's interest in disclosure, we find that the privacy interests in non-disclosure outweigh the public interests in disclosure and, therefore, we grant Northern's motion. Consistent with Puc 203.08(k), our grant of this motion is subject to our on-going authority, on our own motion, on the motion of Staff or of any member of the public, to reconsider our determination.

Based upon the foregoing, it is hereby

ORDERED NISI, that subject to the effective date below, the proposed special contract amendment 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 January 10, 2012; and it is

FURTHER ORDERED, that the Company's motion for confidential treatment is GRANTED, and it is


FURTHER ORDERED, that the Company 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 2, 2012 and to be documented by affidavit filed with this office on or before January 20, 2012; 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 January 9, 2012 for the Commission's consideration; and it is

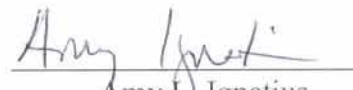
FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than January 17, 2012; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective December 1, 2011, 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.

By order of the Public Utilities Commission of New Hampshire this twenty-second day of December, 2011.



Thomas B. Getz
Chairman



Amy D. Ignatius
Commissioner

Attested by:



Kimberly Nolin Smith
Assistant Secretary