

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DG 12-031

NORTHERN UTILITIES, INC.

**Petition for Approval of Fifth Amendment to Special Contract
with Foss Manufacturing Company, LLC**

Order Approving Petition, and Granting Motion for Confidential Treatment

ORDER NO. 25,330

February 6, 2012

I. BACKGROUND AND POSITIONS OF THE PARTIES

On January 26, 2012, the petitioner, Northern Utilities, Inc. (Northern or Company), filed a petition seeking approval for a fifth amendment to its October 1999 special contract for firm gas transportation with Foss Manufacturing Company, LLC (Foss), a manufacturer of specialty fibers and textiles with a manufacturing plant located in Hampton. The original special contract between Northern and Foss was for a five-year term ending February 28, 2005, and was approved by the Commission in *Northern Utilities, Inc.*, Order No. 23,381 (January 6, 2000), 85 NH PUC 6. Northern subsequently sought to amend the original special contract with a five year term extension, to February 28, 2010, which was approved by the Commission in *Northern Utilities, Inc.*, Order No. 24,478 (July 1, 2005), 90 NH PUC 263. The contract was renewed for an additional two years in 2010, which was approved by the Commission in *Northern Utilities, Inc.*, Order No. 25,085 (March 25, 2010), 2010 WL 1258509 (N.H.P.U.C.).

By the current petition, Northern and Foss seek approval for an amendment of the special contract to extend it for five years, until February 28, 2017. 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 which concerns pricing and cost information, customer-specific marginal cost information, and financial analyses relating to Foss'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 www.puc.nh.gov/Regulatory/Docketbk/2012/12-031.html.

Historical background regarding the Company's special contract with Foss may be examined in Order No. 25,085, at 1-5. Northern now petitions to be permitted to extend its special contract with Foss for an additional five years. According to the petition, Foss continues to have a viable option to switch to fuel oil, a factor discussed in the prior petitions relating to this special contract, *see* Order No. 25,085 at 4, but both Foss and Northern continue to desire that Foss 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 Foss. Additionally, Northern states that retaining Foss's load will help contain the system costs related to transporting gas, which are borne by all firm customers. Foss will continue to be subject to all transportation delivery service minimum monthly charges, per therm rates and customer charges called for in the special contract. For these reasons, Northern contends, special circumstances exist which 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 fuel 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 February 2, 2012, 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 Foss. Moreover, retaining Foss will help to control costs for other customers, and the longer five-year extension term would provide more stability for Northern and Foss. According to Staff's recommendation, because the costs and rates under the special contract are subject to certain federal cost-escalation factors, it is 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 Foss 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. Staff recommended that Northern be required to inform the Commission, with written notice, of any future inflation-related special contract rate adjustments made pursuant to the terms of the special contract with Foss. Staff also recommended that such notice should include updated rate schedules in a format similar to what is currently being used by the Company, to facilitate Staff review and appropriate recommendations.

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.

Foss 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 Foss is, as stated in Staff’s recommendation, an important employer in the Hampton 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 Foss has a viable option to switch fuels. Therefore, continuation of their arrangement is essential for the retention of Foss. The agreement they seek to continue has been in place since 1999, and, except for its duration, is fundamentally unchanged by this proposal.

Northern’s petition indicates, and Staff has confirmed, that the contract price to serve Foss 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, Foss and other customers, we will approve extension of the special contract. We agree with Staff that, for supervisory purposes, Northern must provide the Commission with written notice of impending inflation/escalator clause-related adjustments to its special contract rates, for Staff review and recommendations.

Regarding the term of the contract, we find the five-year proposed extension to be reasonable, as it will provide Foss 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 Foss as a customer.

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 Unitil 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 of the information at issue; pricing and cost information, customer-specific marginal cost information, and financial analyses relating to Foss's gas usage and fuel supply alternatives, would reveal internal business decisions and financial information that could harm Northern, and could result in a competitive disadvantage to Northern, ultimately to the detriment of ratepayers. Further, there is no indication that disclosure of the information 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 on the motion of any member of the public, to reconsider our determination.

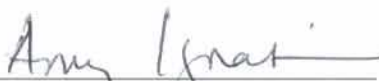
Based upon the foregoing, it is hereby

ORDERED, that the proposed special contract amendment is APPROVED subject to the terms and conditions set forth herein, including that Northern must provide the Commission with written notice of impending inflation/escalator clause-related adjustments to its special contract rates, notification to include updated rate and marginal cost calculations supporting the inflation/escalator related adjustments, and an explanation of the changes,; and it is

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

By order of the Public Utilities Commission of New Hampshire this sixth day of
February, 2012.


Clifton C. Below
Commissioner


Amy L. Ignatius
Commissioner

Attested by:


Debra A. Howland
Executive Director

