

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DG 16-855

NORTHERN UTILITIES, INC.

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

Order Extending Special Contract and Granting Motion for Confidential Treatment

ORDER NO. 25,993

February 24, 2017

This order approves a one- year extension of the special contract between Northern Utilities and Foss Manufacturing Company for firm gas transportation.

On December 1, 2016, Northern Utilities, Inc. (Northern or the Company), filed a petition seeking approval for a sixth 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, New Hampshire. 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). Northern subsequently sought periodic amendments to the original special contract culminating in a five year term extension to February 28, 2017. *See Northern Utilities, Inc.*, Order No. 25,330 (February 6, 2012).

Northern and Foss now seek approval for an amendment extending the special contract for an additional five years and up to five successive one-year renewal terms thereafter. Northern submitted the pre-filed testimony of Michael Smith, Manager of Business Services, in support of its Petition. In addition, Northern has moved for confidential treatment relating to information included in its filing relative to pricing and cost information, customer-specific

marginal cost information, and financial analyses regarding Foss's gas usage and fuel supply alternatives. The petition and subsequent docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, is posted to the Commission's website at <http://puc.nh.gov/Regulatory/Docketbk/2016/16-855.html>.

I. BACKGROUND AND POSITIONS OF THE PARTIES

Historical background regarding the Company's special contract with Foss may be found in Order No. 25,330 (February 6, 2012) and the Commission's prior orders extending the original term of the 1999 contract. *See* Order No. 24, 478 (July 1, 2005) *and* Order No. 25,085 (March 25, 2010). Northern now petitions the Commission for authority to extend its special contract with Foss for another five years, and up to five subsequent one-year renewal terms thereafter. The existing version of the special contract will expire on February 28, 2017. Northern contends that the revenues it will receive under the special contract will exceed the long-run marginal costs of continuing to serve Foss. The Company states that Foss does not compete with local (New Hampshire) or regional (New England) companies, and that its primary business competitors in the United States are located in Georgia and the Carolinas. Those competitors benefit from lower energy costs, tax burdens, and labor costs. For example, the petition included a letter from Foss noting that labor costs at its Georgia plant average \$14.06 per hour vs. \$16.78 in Hampton and that its electricity costs in New Hampshire are approximately \$.085 per kilowatt hour vs. \$.041 in Georgia. The petition also states that Foss experiences competition from overseas markets.

According to the petition, as a result of the savings realized in connection with the current and prior versions of its special contract, Foss has invested in energy-saving initiatives in its Hampton facilities designed to reduce its overhead costs. Those measures have kept Foss competitive and allowed it to increase jobs at its Hampton facility that benefit New Hampshire's

economy. Foss indicated that reversion to regular tariff rates would cause it to consider options for mitigating increased costs, including moving some portion of its operations to other, more cost-effective regions of the country.

Northern also states that retaining Foss's load will help keep the average system costs related to transporting gas, which are applicable to all firm customers, lower than they would be if Northern lost Foss as a customer. Northern contends that special circumstances exist which justify a departure from Northern's general tariffs. Foss represents an important load for Northern and offers a meaningful contribution to Northern's fixed costs which, in turn, lowers costs for other customers. Northern asserts that the sixth amendment to the special contract is important to the retention of Foss as a customer, and that this widely beneficial agreement and the extensions thereto are just and consistent with the public interest.

The Petition states that the sixth amended special contract is in the public interest because it will continue to provide benefits to Foss, Northern, Northern's customers, and the New Hampshire economy. The Petition asserts that the requested five-year term and successive renewal terms will ensure stability and predictability for Foss and Northern. The special contract, as amended, has remained in place for more than fifteen years and continually provides the benefits discussed above, with minimal modification to its substantive terms.

Northern also filed a motion for protective order. Northern states 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 would likely result in harm to the Company by causing it to be disadvantaged in price negotiations with customers or potential customers who have alternative options, whether from bypass, alternative fuel supplies, or direct competitors.

Public knowledge of the confidential information would impair Northern's future bargaining positions, including its ability to obtain the maximum possible contribution to fixed costs.

Commission Staff reviewed the filing, conducted discovery, and met with the parties in a technical session. During this process, Staff discovered new and useful information not present in prior filings, including the unavailability of a dual-fuel option for Foss. In prior filings, this dual-fuel capability was an important factor for the Commission in approving the special contract between Northern and Foss. The dual fuel option meant that Foss could utilize another fuel to operate its facility absent the special contract with Northern. On February 15, 2017, Staff filed a memorandum indicating that the circumstances of the sixth special contract required further exploration before the Commission could approve it as filed.

Foss informed Northern that if it were unable to obtain approval of the special contract with Northern, Foss would seriously consider other options to mitigate its increased operating costs, which could result in moving part of its New Hampshire operations out of state. Both parties concluded that while Staff continued to explore the issues causing concern, the fifth special contract should remain in force for a period of one year, so that Staff could complete its review. Staff agreed and recommended that the current special contract that is due to expire on February 28, 2017, be extended for a period of one year ending on February 28, 2018, to accommodate Staff's more thorough review of the issues.

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.” The standards are further detailed in *Generic Discounted Rates*, 77 NH PUC 650, 654-655 (1992), and *Generic Discounted Rates Docket*, 78 NH PUC 316, 316-317

(1993). The customer on whose behalf the special contract is sought must make every effort to decrease its utility bill and the special contract is a last resort. 77 NH PUC at 654.

In prior years, Foss has represented an important firm load for Northern as its second largest customer, and has made a meaningful contribution to Northern's fixed costs. This contribution, in turn, has lowered costs for other customers. Moreover, Foss is an important employer in the Hampton area. During the time the special contract has been in place, it has benefited Foss, Northern's customers, and the State. We accept that a key to Foss's continued operation is the ability to control its energy costs. We also accept that, as a result of savings realized in connection with the special contract, Foss has been able to invest in energy-savings initiatives throughout its Hampton facilities, which have kept the Company competitive and allowed it to preserve and even increase jobs that benefit New Hampshire's economy.

We are aware of the parties' positions that the 2012 contract price to serve Foss surpassed Northern's long-run marginal costs and that retention of the load will keep the average system costs of transporting gas to all of Northern's firm customers lower than it would if Northern lost Foss as a customer. We also understand that, because Foss is a transportation customer, the contract extension will not have an anti-competitive effect on the gas supply market.

With all of that said, Staff uncovered information that could affect our approval of the proposed sixth amended special contract between Northern and Foss, including the unavailability of a dual-fuel option of Foss. We consider the dual-fuel capacity issue an important element when deciding the existence of special circumstances that are essential to granting special contracts. We agree with Staff and the parties that it is appropriate to extend the current special contract for a term of one year, until February 28, 2018, which will afford Staff the opportunity to further explore these issues.

For the reasons discussed above, we will not act on Northern's Petition as it was filed. We find that extending the special contract as it exists today for one year, until February 28, 2018, is just and reasonable and consistent with the public interest.

We will address 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 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 both Northern and Foss, and could result in a competitive disadvantage to both of them. Further, while disclosure of that information would inform the public about the workings of the Commission, in balancing the interests of Northern and Foss in protecting information with the public's interest in disclosure, we find that the privacy interests in non-disclosure outweigh the public's interest in disclosure. *See Union Leader Corp. v. NH*

Housing Finance Auth., 142 N.H. 540, 545 (1997) (benefits of disclosure must be weighed against benefits of non-disclosure). 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. In addition, this is not a blanket grant of future filings in this docket. This order is for the material outlined in Northern's motion for confidential treatment filed in conjunction with its Petition on December 1, 2016.

Based upon the foregoing, it is hereby

ORDERED, that the proposed sixth special contract amendment as filed will not be considered at this time; and it is

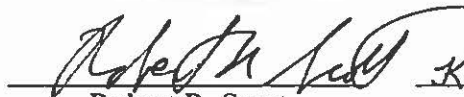
FURTHER ORDERED, that the fifth special contract amendment in force at this time is extended for one year or until February 28, 2018, subject to any and all conditions outlined in this order; and it is

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

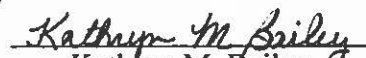
By order of the Public Utilities Commission of New Hampshire this twenty-fourth day of February, 2017.



Martin P. Honigberg
Chairman

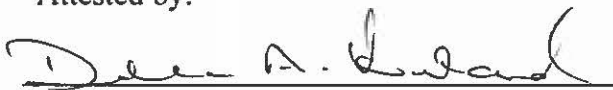


Robert R. Scott
Commissioner



Kathryn M. Bailey
Commissioner

Attested by:



Debra A. Howland
Executive Director