

**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. 26,107

February 28, 2018

This order approves a four-year extension of an existing special contract between Northern Utilities, Inc. (Northern or the Company), and Foss Manufacturing Company, LLC (Foss), for firm gas transportation.

I. BACKGROUND

On December 1, 2016, Northern filed a petition seeking approval of a sixth amendment to its special contract with Foss, a manufacturer of specialty fibers and textiles with a manufacturing plant in Hampton, New Hampshire. The original special contract between Northern and Foss for a five-year term ending February 28, 2005, was approved by the Commission in *Northern Utilities, Inc.*, Order No. 23,381 (January 6, 2000). Since then, Northern has sought periodic extensions of the original contract terms.

Historical background regarding Northern's special contract with Foss may be found in Order No. 25,330 (February 6, 2012), as well as in the Commission's prior orders extending the original term of the contract. *See, e.g.*, Order No. 24,478 (July 1, 2005) *and* Order No. 25,085 (March 25, 2010); *see also* Petition at 1-4.

On February 24, 2017, the Commission granted a one-year extension to February 28, 2018, to facilitate development of the record concerning the unavailability of a dual-fuel option for Foss, an issue that was revealed in the course of discovery conducted by Staff. *See Northern Utilities, Inc.*, Order No. 25,993 (February 24, 2017). The petition and subsequent docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are posted to the Commission's website at <http://puc.nh.gov/Regulatory/Docketbk/2016/16-855.html>.

II. POSITIONS OF THE PARTIES

A. Petition for Approval of Special Contract Extensions

In its petition, Northern requested authority to extend its contract with Foss for an additional five years to February 28, 2022, with up to five automatic one-year renewals thereafter. In support of the petition, Foss made the following representations: Foss is Northern's second largest transportation customer; revenues Northern will receive under the special contract will exceed the long-run marginal costs of continuing to serve Foss; Foss does not compete with local (New Hampshire) or regional (New England) companies, and Foss's primary domestic competitors have lower (energy, tax, and labor) costs. Foss also experiences competition from overseas markets, as well, including Mexico and China.

Foss has invested in a number of energy-saving initiatives in its Hampton facilities designed to reduce overhead costs, the most recent of which involved the installation of a new "state of the art" resin drying system. Those investments have enabled Foss to remain competitive and to increase jobs at its Hampton facility, thereby benefiting New Hampshire's economy. Foss has told Northern and submitted testimony in this matter that a reversion to Northern's regular tariff rates would cause Foss to consider cost mitigation options, including

moving a portion of its operations to more cost-effective regions of the country. According to Northern, retaining Foss's load will enable Northern to keep its average system costs related to the transport of gas lower than they would be if Northern were to lose Foss as a customer.

Northern contends that special circumstances exist that justify a departure from Northern's general tariff – notably, that Foss represents an important load for Northern and therefore offers a meaningful contribution to Northern's fixed costs, which, in turn, lowers costs for other customers. Based on the above, Northern asserts that the requested amendment of the special contract with Foss is in the public interest, because it will continue to provide benefits to Foss, Northern, Northern's customers, and the New Hampshire economy. Specifically, the requested five-year extension and successive one-year renewal terms of the contract, which have been in place for more than 15 years, will ensure stability and predictability for Foss and Northern.

Commission Staff conducted discovery, reviewed supplemental filings from the companies, and met with parties in a technical session. Based on the supplemental filings and discussions with the parties, Staff recommended that the contract be extended to February 28, 2022. Staff further recommended that the Commission not approve the five automatic, one-year extensions proposed in the petition and that any future requests for extensions be submitted for Commission review and approval.

B. Motion for Protective Order

Northern filed a motion for protective order with respect to certain supplemental prefiled testimony submitted subsequent to Order No. 25,993. In its motion, Northern contends that the information it seeks to protect is competitively sensitive commercial information that is exempt from disclosure under RSA 91-A:5, IV. *See also* N.H. Code Admin. Rules Puc 203.08.

Northern maintains that disclosure of that 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 options, whether from bypass, alternative fuel supplies, or direct competitors. Northern further maintains that 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.

III. 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 applicable standards are further detailed in *Generic Discounted Rates Docket*, 77 NH PUC 650, 654-655 (1992), and *Generic Discounted Rates Docket*, 78 NH PUC 316, 316-317 (1993). The customer on whose behalf a special contract is sought must make every effort to decrease its utility bill and the special contract should be considered a last resort. 77 NH PUC at 655.

As we found in Order No. 25,993, which approved a one-year extension of Northern's special contract, Foss represents an important firm load for Northern and the special contract has made a meaningful contribution to Northern's fixed costs, which, in turn, has lowered costs for other Northern customers. We maintain our conclusions in Order No. 25,993 that Foss is an important employer in the Hampton area and that Foss's continued operation in New Hampshire depends, in key part, on its ability to continue its special contract with Northern. We accept Northern's position that the 2012 contract price to serve Foss exceeded Northern's long-run marginal costs and that retention of Foss's load will keep Northern's average system costs to transport gas to its firm customers lower than would be the case if Northern were to lose Foss as

a customer.¹ In the past, we have relied on the availability of alternative fuel options to Foss to justify a special contract because an alternative fuel option would allow Northern to interrupt service to Foss during periods of peak demand. Staff has determined, however, that Foss no longer has such an option. Accordingly, we base our decision on the economic and commercial factors noted above, which satisfy the requirements of the Checklist for Economic Development and Business Retention Discounted Rates established in *Generic Discounted Rates Docket*, 78 NH PUC at 316-317.

Finally, we acknowledge that Foss has implemented a number of energy savings initiatives in past years while benefiting from the special contract with Northern. Nonetheless, we note that Foss last performed an energy audit, as required by Order No. 20,882, in 2009. We consider the conduct of such audits and their resulting recommendations to be essential to our review and approval of special contracts pursuant to the *Generic Discounted Rates* dockets. We therefore condition our approval of an extension of the special contract between Northern and Foss on the execution of an energy audit of Foss's current facility and operations. We further require Foss to file a report on the audit results and a timeline for its implementation of any recommendations made in the audit. The required report shall be filed no later than December 31, 2019, and shall include an explanation of the extent to which Foss will implement the audit recommendations.

For the reasons set forth above, we find that extending the special contract between Northern and Foss for four years, until February 28, 2022, is just and reasonable and consistent with the public interest. We decline to approve additional automatic extensions and will require

¹ Because Foss is a transportation customer, and not a gas supply customer, a four-year contract extension of the transportation contract should not have any impact on the gas supply market.

Northern to seek further extensions after Foss conducts the energy audit and determines which recommendations, if any, it will implement.

We now address Northern's motion for confidential treatment of supplemental testimony and exhibits filed in this proceeding. 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, (September 22, 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 disclosure. Second, when a privacy interest is at stake, the public's interest in disclosure is assessed. 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. Finally, when there is a public interest in disclosure, that interest is balanced against any privacy interests in non-disclosure. *Id.* at 3-4. This is similar to the Commission's rule on requests for confidential treatment. *See* N.H. Code Admin. Rules Puc 203.08.

As stated in Order No. 25,993 approving Northern's prior motion for confidential treatment in this docket, the Commission has previously found the categories of information for which Northern seeks protection to be exempt from disclosure. *See, e.g., Northern Utilities, Inc.*, Order No. 25,993 at 6 (February 24, 2017); *Northern Utilities, Inc.*, Order No. 25,047 at 7-9 (November 25, 2009). The information at issue relates to pricing, cost, production, and financial analyses relating to Foss's energy costs. Disclosure of that information would reveal internal business decisions and financial data that could harm both Northern and Foss, and could result in a competitive disadvantage to both companies. Further, while disclosure of the information could 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.

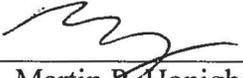
Consistent with Puc 203.08(k), our grant of the motion for confidential treatment is subject to our on-going authority, on our own motion, on the motion of Staff, or on the motion of any member of the public, to reconsider our determination. In addition, this is not a blanket grant of future filings in this docket. This order is for the material outlined in Northern's motion for confidential treatment filed in conjunction with its petition in this docket on November 2, 2017.

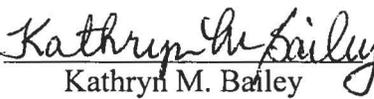
Based upon the foregoing, it is hereby

ORDERED, that the special contract between Northern Utilities, Inc. and Foss Manufacturing Company be extended for four years or until February 28, 2022, subject to any and all conditions outlined in this order; and it is

FURTHER ORDERED, that Northern's motion for confidential treatment is granted.

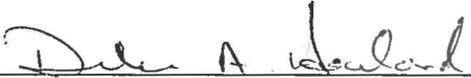
By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of February, 2018.


 Martin P. Honigberg
 Chairman


 Kathryn M. Bailey
 Commissioner


 Michael S. Gaimo
 Commissioner

Attested by:


 Debra A. Howland
 Executive Director