

THE STATE OF NEW HAMPSHIRE

BEFORE THE

PUBLIC UTILITIES COMMISSION

DOCKET NO. DG 16-___

**Petition of Northern Utilities, Inc. for Approval of
Sixth Amendment to Special Contract With Foss Manufacturing, LLC**

Motion for Protective Order

NOW COMES Northern Utilities, Inc. ("Northern" or "the Company") and, pursuant to N.H. RSA 91-A:5, IV and N.H. Admin. Rule Puc 203.08, respectfully moves the New Hampshire Public Utilities Commission (the "Commission") to issue a protective order according confidential treatment to certain information described below and submitted herewith. Specifically, Northern requests that the Commission issue an order requiring that the pricing information, cost information, customer-specific marginal cost information and financial analyses supporting the Sixth Amendment Special Contract with Foss Manufacturing, LLC filed herewith be treated as confidential commercial information. In support of this Petition, Northern states as follows:

1. Northern is filing contemporaneously with this Motion, a petition for approval of the Sixth Amendment of a Special Contract with Foss Manufacturing Company, LLC ("Foss" or "the Customer"). The Sixth Amendment extends an existing special contract, as previously amended, for an initial term of five additional years, with up to five successive one-year renewal terms. Certain supporting documents filed with the petition contain confidential information: Prefiled testimony of Michael Smith; Special Firm Transportation Agreement (Schedule NU-1); Third

Amendment of Agreement (Schedule NU-5); Letter from Foss (Schedule NU-8); and Marginal Cost Analysis and supporting data (Schedules NU-10, NU-11).

2. Northern specifically seeks protective treatment for information related to the agreed-upon Monthly Customer Charge, the Minimum Monthly Charge, the negotiated unit charges, the agreed-to minimum transportation and payment obligation, and the results of Northern's marginal costs analysis. In addition, Northern seeks protective treatment for certain financial information provided by the Customer in connection with its request to extend the Special Contract.

3. Northern seeks to protect this information from public disclosure in order to protect Northern's competitive position as well as that of the Customer. Release of the above-described confidential information would likely result in harm to Northern in the form of being disadvantaged in price negotiations with customers or potential customers who have alternative options, whether from bypass, alternative fuel supplies, or from direct competitors. Public knowledge of the confidential information would impair Northern's future bargaining positions and thus its ability to obtain the maximum possible contribution to fixed costs. Northern must be able to maximize such contributions to fixed costs as this benefits its firm ratepayers.

4. In determining whether confidential, commercial or financial information within the meaning of RSA 91-A:5, IV is exempt from public disclosure, the Commission employs the analysis articulated in *Lambert v. Belknap County Convention*, 157 N.H. 375 (2008) and *Lamy v. N.H Public Utilities Commission*, 152 N.H. 106 (2005). Under this analysis the Commission first determines “whether the information is confidential, commercial or financial information, ‘and whether disclosure would constitute an invasion of privacy.’” *Unitil Energy Systems, Inc.*, DE 10-055, Order No. 25,214 at 35 (April 26, 2011)(citing *Union Leader Corp. v. New Hampshire*

Housing Finance Authority, 142 N.H. 540, 552 (1997) (emphasis in original); *see also Re Northern Utilities, Inc.* DG 12-031, Order No. 25,330 at 5 (February 6, 2012) (“In determining whether confidential, commercial, or financial information should be deemed confidential, we first consider whether there is privacy interest that would be invaded by the disclosure.”). When a privacy interest is at stake, the public’s interest in disclosure is assessed. *Id.* (citing *Unitil Corp. and Northern Utilities, Inc.*, Order No. 25,014, 94 NH PUC 484, 486 (2009)). 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.*

5. Applying the above-described analysis, the Commission has previously found the categories of information for which Northern seeks protective treatment to be exempt from disclosure. *See id.* at 6 (citing *Northern Utilities, Inc.*, DG 09-201, Order No 25,047 at 7-9 (November 25, 2009)); *see also Northern Utilities, Inc.*, DG 10,034, Order No 25,085 at 8-9 (March 25, 2010); *Northern Utilities, Inc.*, DG 05-065, Order No. 24,478 at 5-6 (July 1, 2005); *Northern Utilities*, DG 99-171, Order No. 23,370 at 1-2 (December 20, 1999).

6. The confidential information described above will be made available to the Commission Staff and the Office of the Public Advocate notwithstanding any Commission order granting confidential treatment. Moreover, the Company will only redact so much information as is necessary to protect its privacy interests and the privacy interests of its customer, Foss.

7. Northern requests that the Commission issue an order protecting the above-described information from disclosure and prohibiting copying, duplication, dissemination or disclosure of it in any form. Northern requests that the protective order also extend to any discovery, testimony, argument or briefing relative to the confidential information.

WHEREFORE, Northern respectfully requests that the Commission:

- A. Issue an appropriate order that exempts from public disclosure and otherwise protects the confidentiality of the information designated confidential in the documents submitted herewith; and
- B. Grant such additional relief as is just and appropriate.

Dated at Hampton, NH on this 1st day of December, 2016.

Respectfully submitted,

Northern Utilities, Inc.

By Its Attorney,



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