

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**

NOW COMES Northern Utilities, Inc. ("Northern" or "the Company") and, pursuant to N.H. RSA 378:18, respectfully petitions the New Hampshire Public Utilities Commission ("the Commission") for approval of a Sixth Amendment of Agreement which extends the term of the Special Contract between Northern and Foss Manufacturing Company, LLC ("Foss" or "the Customer") for a term of five (5) additional years and up to five one-year renewal terms thereafter. In support of this Petition, Northern states as follows:

1. Northern is a public utility primarily engaged in the delivery of natural gas services in certain cities and towns in southeastern New Hampshire and Maine.
2. Foss is a manufacturing company with operations in Hampton, New Hampshire where it employs approximately 500 people. Foss is Northern's second largest transportation customer, and purchases gas from a third-party supplier.
3. Northern and Foss are parties to a "Special Firm Transportation Agreement" dated October 28, 1999 (Schedule NU-1-1) which was conditionally approved by the Commission in Order No. 23,381. *Re Northern Utilities, Inc.*, DG 99-171, 85 NH PUC 6 (January 6, 2000). The condition imposed by the Commission in Order 23,381 required the Company to revise the Special Contract term provision to mandate Commission approval for any extension period beyond five (5) years. *Id.* at 9. Northern complied with this condition by entering into an

Amendment of Agreement (or the First Amendment of Agreement) with Foss dated January 11, 2000. *See* Schedule NU-2.

4. Special circumstances leading to the negotiation, execution and approval of the original Special Contract included Foss's capability to utilize alternate fuels. *See Re Northern Utilities, Inc.*, 85 NH PUC at 8. The parties designed the Special Contract to retain Foss's load at a competitive price relative to the fuel switching option while enabling Northern to obtain contribution toward fixed costs to mitigate the effects on other customers of lost revenues and sales. *See id.* at 7-8.

5. The original Special Contract expired on February 28, 2005. Because Foss wanted continued certainty regarding its gas transportation costs and because Northern wished to maintain the existing revenue stream, Northern and Foss negotiated an extension of the terms and conditions of the original Special Contract for five (5) additional years. In order to insure continuation of service during the parties' negotiations and the Commission's review process, Northern and Foss entered into a Letter Agreement dated March 8, 2005 which provided that Northern would continue to deliver natural gas according to the terms of the 2000 Special Contract but that the Customer would be obligated to pay the applicable tariff rate back to March 1, 2005 in the event that the Commission did not approve an extension of the Special Contract. *See* Letter Agreement (March 8, 2005) (Schedule NU-3).

6. Northern and Foss entered into a Second Amendment of Agreement with an effective date of March 1, 2005, the purpose of which was to extend the existing Special Contract for five (5) more years, i.e. until February 29, 2010. *See* Second Amendment of Agreement (Schedule NU-4).

7. On April 1, 2005, Northern filed a Petition and supporting documents with the Commission seeking approval of the Second Amendment of Agreement. Upon reviewing Northern's filing, Commission Staff concluded that the rates contained in the original Special Contract should be increased. *See Re Northern Utilities, Inc.*, 90 NH PUC 263, 264 (July 1, 2005). In response to Staff's concerns, Northern and Foss negotiated a Third Amendment of Agreement (Schedule NU-5) for the purpose of increasing the transportation rates to be charged by Northern to Foss under the extended Special Contract. *Id.* On July 1, 2005, the Commission approved both the Second and Third Amendments of Agreement in Order No. 24,478. *Id.* at 266.

8. On February 16, 2010 Northern filed a petition with the Commission seeking approval of the Fourth Amendment to the Special Contract extending the Agreement for an additional two (2) years (Schedule NU-6). In order to insure continuation of service during the parties' negotiations, Northern and Foss entered into a Letter Agreement similar to the one dated March 8, 2005 which provided that Northern would continue to deliver natural gas according to the terms of the 2000 Special Contract but that the Customer would be obligated to pay the applicable tariff rate back to March 1, 2010 in the event that the Commission did not approve an extension of the Special Contract. The Commission approved the Fourth Amendment of Agreement on March 25, 2010. *Re Northern Utilities, Inc.*, DG 10-034, Order No. 25,085 (March 25, 2010).

9. On January 26, 2012, Northern filed a petition seeking approval of the Fifth Amendment to the Special Contract extending the Agreement for an additional five years. As the Commission noted in its Order approving the Fifth Amendment (Schedule NU-7), Northern and Foss sought to extend the mutually beneficial Special Contract because Foss represents an important firm load for Northern and offers a meaningful contribution to Northern's fixed costs, and Foss's

ability to control its energy costs is key to its continued operations as an important employer in the Hampton, NH area. *Re Northern Utilities, Inc.*, DG 12-031, Order No. 25,330 at 4 (February 6, 2012). The Commission approved the Fifth Amendment subject to the condition, also imposed in the Commission's approval of the Fourth Amendment, that Northern provide the Commission with notice of impending adjustments to the Special Contract rates. *Id.* at 6; *Re Northern Utilities, Inc.*, DG 10-034, Order No. 25,085 at 9 (March 25, 2010). Northern has provided such updates on an annual basis. *See generally* Dockets 10-034, 12-031.

10. Northern recently notified Foss that the existing Special Contract, as amended, will expire at the end of February 2017, and that Foss would thereafter take service from Northern under tariff rates. In response, Foss requested an extension of the Special Contract. *See* Letter from Paul Koroski to Mike Smith dated November 3, 2016 (Schedule NU-8). In support of its request, Foss stated that it does not compete with local (New Hampshire) or regional (New England) companies, and that its primary competition in the United States are companies in Georgia and the Carolinas that benefit from lower energy costs, tax burdens, and labor costs. *Id.* Foss also experiences competition from companies in China and Mexico. *Id.* 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. *Id.* Foss indicated that reversion to regular tariff rates would cause the Company to consider options for mitigating increased costs, including moving some portion of its operations to other, more cost-effective regions of the country.

11. With these factors in mind, Northern and Foss have negotiated a Sixth Amendment of Agreement with an effective date of March 1, 2017 to extend their Special Contract for an initial

term through February 28, 2022. *See* Sixth Amendment of Agreement (Schedule NU-9). The Sixth Amendment also allows for up to five successive one-year renewal terms that will become effective automatically unless terminated by one of the parties. *Id.*

12. The extension of the Foss Special Contract for a term of five (5) additional years with up to five successive one-year renewal terms is in the public interest because it will continue to provide benefits to Foss, Northern, Northern's customers, and the New Hampshire economy. The requested five year term and successive renewal terms will ensure stability and predictability for Foss and Northern; the Special Agreement, as amended, has remained in place for more than fifteen years and continually provided the above-referenced benefits with little modification to its substantive terms.

13. The annual revenues under the Special Contract extension will exceed the long-run marginal costs of serving this load as shown in the marginal cost of service analysis accompanying this filing (See NU-10, Marginal Cost Analysis). The marginal cost is based on the 2012 marginal cost study used to support Northern's current distribution rates, updated to reflect inflation as of February 2017. Retention of the load will keep the average system costs of transporting gas applicable to all of Northern's firm customers lower than it would be if Northern lost Foss as a customer. Because Foss is a transportation customer, this contract extension will not have an anti-competitive effect on the gas supply market.

14. Special circumstances exist which support the extension of the Special Contract for an initial term of five (5) additional years with up to five successive renewal terms. 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. As explained in Schedule NU-1-8, the Special Contract has enabled Foss to make significant financial investments to improve its facilities and retain, and even grow, its employees. Foss faces competitive pressures from competitors located in

Mexico and China, as well as southern states like North Carolina, South Carolina and Georgia, where labor and energy costs and tax burdens are lower than in New Hampshire. Thus, Foss is under pressure to maintain its energy costs such that it remains competitive. Foss has indicated that if it were required to take transportation service under Northern's tariff rates, the savings it has achieved from a variety of improvement efforts made to remain competitive would be lost and would cause the Company to evaluate out-of-state solutions. The Special Contract is important to the retention of Foss as a customer, and Northern believes that the Commission should approve the extension of what has proven to be a widely beneficial agreement.

15. In view of the foregoing, Foss's circumstances are special and render departure from Northern's general tariffs just and consistent with the public interest.

16. The following documents are submitted with this Petition: Prefiled Direct Testimony of Michael Smith; Special Firm Transportation Agreement (Schedule NU-1); Amendment of Agreement (Schedule NU-2); Letter Agreement (March 8, 2005) (Schedule NU-3); Second Amendment of Agreement (Schedule NU-4); Third Amendment of Agreement (Schedule NU-5); Fourth Amendment of Agreement (Schedule NU-6); Fifth Amendment of Agreement (Schedule NU-7); Letter from Paul Koroski to Michael Smith (November 3, 2016) (Schedule NU-8); Sixth Amendment of Agreement (Schedule NU-9); Marginal Cost and Revenue Analysis (Schedule NU-10); Cost data supporting Marginal Cost Analysis (Schedule NU-11).

WHEREFORE, Northern respectfully requests that the Commission:

- A. Find that special circumstances exist that render the Sixth Amendment of Agreement just and consistent with the public interest; and
- B. Grant such further relief and make such findings or orders as may be necessary and consistent with the relief requested herein.

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

Respectfully submitted,

Northern Utilities, Inc.

By Its Attorney,



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