

THE STATE OF NEW HAMPSHIRE

BEFORE THE

PUBLIC UTILITIES COMMISSION

DOCKET NO. DG 16-855

**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 certain sensitive commercial and financial information, including pricing information, cost information, customer-specific marginal cost information, and financial analyses filed in further support of the Sixth Amendment Special Contract with Foss Manufacturing, LLC be treated as confidential commercial information. In support of this Motion, Northern states as follows:

1. On December 1, 2016, Northern filed a petition (the "Petition") for approval of the Sixth Amendment of a Special Contract with Foss Manufacturing Company, LLC¹ ("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 contained confidential information, including pricing information, cost information, customer-specific marginal cost information and

¹ On or about July 25, 2017, AstenJohnson Holdings, Ltd acquired the Northern Division of Foss Manufacturing, LLC (i.e., the New Hampshire facility). The Northern Division of Foss Manufacturing, LLC is now Foss Performance Materials LLC.

financial analyses. Accordingly, the Company filed with its Petition a Motion for Confidential Treatment seeking protection for this information.

2. On February 24, 2017, the Department issued Order No. 25,993 (the “Order”) in the above-referenced docket. The Order indicated that Commission Staff had uncovered information that could affect the Commission’s approval of the Sixth Amendment to the Special Contract, including the unavailability of a dual-fuel option for Foss. As a result, the Commission extended the existing Special Contract for a term of one year, to February 28, 2018 to afford the Staff additional time to explore these issues related to the Sixth Amendment. The Order also granted the Company’s Motion for Confidential Treatment.

3. Northern is now filing Supplemental Joint Testimony of Michael Smith (of Northern) and Paul Koroski and Bill Cummings (of Foss) in further support of the Company’s Petition. Included with this Supplemental Joint Testimony are two Attachments demonstrating that the Special Contract rates exceed Northern’s projected long-run marginal costs over the length of the Special Contract. The Supplemental Joint Testimony and its two Attachments contain sensitive and confidential commercial and financial information.

4. This confidential information contained in the Supplemental Joint Testimony is similar in nature to the information for which the Commission has already granted confidential treatment in this docket. As such, the Company now requests that the Commission extend the confidential treatment granted in the Order to the sensitive information contained within the Company’s Supplemental Joint Testimony and attachments.

5. Specifically, the Company requests that the Commission granted confidential treatment to sensitive and confidential commercial and financial information including: pricing and cost information; Customer loan and financing information; Customer production capability

information; Customer property tax and tax credit information; savings related to the renegotiation of the Customer's property lease agreement; and information related to the Customer's energy costs. The Company also seeks to protect customer-specific marginal cost information contained in the attachments to the Supplemental Joint Testimony. These attachments are updates to schedules for which the Commission granted confidential treatment in the Order.

6. 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 the Customer in that it would divulge sensitive and confidential commercial and financial information that the Customer would not otherwise disclose. This information would be of interest to competitor entities and may be utilized to gain a superior competitive position over the Customer. Furthermore, Northern seeks to protect this information from public disclosure in order to protect Northern's competitive position. 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.

7. 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.*

8. 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). As noted above, the Company has already granted confidential treatment to similar information in this Docket. *Northern Utilities, Inc.*, DG 16-855, Order No. 25,993 at 6-7 (February 24, 2017).

9. 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 has only only redacted so much information as is necessary to protect its privacy interests and the privacy interests of its customer, Foss.

10. 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 November, 2017.

Respectfully submitted,

Northern Utilities, Inc.

By Its Attorney,



Patrick H. Taylor
Senior Counsel
Unitil Service Corp.
6 Liberty Lane
Hampton, NH 03842-1720
Telephone: (603) 773-6544
Email: taylorp@unitil.com