

THE STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

NORTHERN UTILITIES, INC.

PETITION FOR APPROVAL OF FOURTH AMENDMENT
TO SPECIAL CONTRACT WITH NATIONAL GYPSUM COMP

NOW COMES Northern Utilities, Inc. (“Northern” or “the Company”) and, pursuant to N.H. RSA 378:18 and N.H. Admin. Rule Puc 1606.03, respectfully petitions the New Hampshire Public Utilities Commission (“the Commission”) for approval of a Fourth Amendment of Agreement which amends the term of Special Contract No. 99-02 (“the Special Contract”) between Northern and National Gypsum Company (“National Gypsum” or “the Customer”) to:

- 1) extend the term of the Special Contract for five (5) additional years beyond the expiration date of November 30, 2019; and
- 2) provide for up to three (3) one-year automatic contract extension periods.

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. Northern and its customer, National Gypsum, are parties to a “Special Firm Transportation Agreement” (i.e. Special Contract 99-02) dated August 2, 1999. See Schedule NU-MS-1. The Special Contract was conditionally approved by the Commission in Order No. 23,314 issued October 5, 1999. See Re Northern Utilities, Inc., DG 99-123, 84 NH PUC 530 (October 5, 1999). The condition imposed by the Commission when it approved the Special Contract directed the Company to revise the Special Contract provision delineating the term to require Commission approval for any extension period beyond ten (10) years. See Re Northern Utilities, Inc., 84.N.H. PUC at 532. On November 1, 1999, Northern filed an Amendment of Agreement in Docket No. DG 99-123 in compliance with the condition imposed by Order No. 23,314. See Schedule NUI-MS-2.
3. The special circumstances that led to the negotiation, execution and approval of the Special Contract were that National Gypsum had a viable option to bypass Northern’s distribution system by connecting directly with an interstate pipeline. See Re Northern Utilities, Inc., 84 N.H. PUC at 531. The Special Contract was designed to retain National Gypsum’s load at a competitive price which would make the bypass option unattractive while at the same time enabling Northern to obtain contribution toward fixed costs to mitigate the effects on other customers of lost revenues and sales.

4. On October 19, 2009, Northern filed a petition with the Commission seeking approval of a Second Amendment of Agreement to extend the terms and conditions of the Special Contract with National Gypsum for two (2) additional years. The Commission granted the petition, and in so doing, found that the extension period was reasonable and would allow time for Northern and National Gypsum “to consider other options to meet National’s long term energy needs.” See Northern Utilities, Inc., DG 09-201, Order No. 25,047 (November 25, 2009) at 6.

5. On October 18, 2011, Northern filed a petition seeking approval for a third amendment to its October 1999 special contract, seeking to: (1) extend the special contract for an additional five years, until November 30, 2016; (2) provide for up to three one-year automatic extensions beyond November 2016; and (3) eliminate National’s contractual obligation to make certain minimum payments if its Portsmouth facility is permanently closed and ceases to operate. The Commission approved the petition, finding that, “the five-year proposed extension to be reasonable, as it will provide National with stability in meeting its long term energy needs.” See Northern Utilities, Inc., DG 11-231, Order No. 25,306 (December 22, 2011) at 5.

6. The circumstances that led to the filing of the original Special Contract and the Second and Third Amendments of Agreement continue to exist today. As indicated in Mr. Smith’s testimony and the Schedules submitted herewith, National Gypsum continues to have a viable option to completely bypass Northern by directly interconnecting with an interstate pipeline. The bypass option presents a risk to Northern and its other customers in the form of substantial lost transportation revenues that would be recoverable from remaining customers. Thus, special circumstances continue to exist which render departure from Northern’s tariffed rates just and consistent with the public interest. Accordingly, Northern and National Gypsum have entered into an agreement (i.e. the “Fourth Amendment of Agreement”) to extend the terms and conditions of the Special Contract for five (5) additional years beyond the current term of the Special Contract which expires on November 30, 2019. See Schedule NU 1-5.

7. The extension of the Special Contract for five (5) additional years will provide benefits to Northern and its firm customers because the annual revenues under the Special Contract will exceed the long-run marginal costs of serving this load, and because 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 were to lose the Customer to bypass. Northern and National Gypsum have considered National Gypsum’s “long term energy needs” and have agreed that those long term needs can best be served by extending the terms and conditions of the Special Contract for another five (5) year period and by permitting the parties to automatically extend the Contract term for up to three (3) one year periods after the expiration of the above-reference five (5) year extension period.

8. Northern is mindful of the concerns expressed in Order No. 23,314 that led to the Commission requiring Northern to amend the original Special Contract by eliminating the self-executing extension clause so that Commission approval would be required for any extension of the Contract's initial term. Those concerns were that because of the length of the Special Contract term, the circumstances that justified the Special Contract in 1999 might not exist in the future, and therefore an extension without Commission review would be inappropriate. However, the ensuing years have demonstrated that the circumstances that justified the Special Contract in 1999 have continued and will likely continue for the foreseeable future. Accordingly, in order to provide Northern and National Gypsum with long-term certainty regarding the terms and conditions upon which gas transportation service will be furnished, and for administrative efficiency for Northern, National Gypsum, the Commission and Commission Staff, the Fourth Amendment of Agreement contains a self-executing extension clause which will allow the Special Contract terms and conditions to continue for up to three (3) years (i.e., three (3) one year automatic extension periods) beyond the proposed expiration date of November 30, 2024, unless either party notifies the other to the contrary at least six (6) months prior to the upcoming/applicable expiration date. An identical provision was approved by the Commission in Order No. 25,306.

9. The following information is submitted in support of this Petition:

- i. Exhibit NUI-MS-1 - Prefiled Direct Testimony of Michael Smith (Confidential and Redacted);
- ii. Schedule NUI-MS-1 - Special Contract (Confidential and Redacted);
- iii. Schedule NUI-MS-2 - Amendment to Special Contract;
- iv. Schedule NUI-MS-3 – Second Amendment to Special Contract
- v. Schedule NUI-MS-4 – Third Amendment to Special Contract
- vi. Schedule NUI-MS-5 – Fourth Amendment to Special Contract
- vii. Schedule NUI-MS-6 – Letter from National Gypsum (Confidential and Redacted)
- viii. Schedule NUI-MS-7 - Marginal Cost of Service Analysis (Confidential and Redacted).

10. The specific rates and charges for the firm transportation service are set forth on page 2 of Schedule NUI-MS-7. In addition, by the terms of the Special Contract, the Customer will be subject to all charges and fees set out in the Company's General Terms and Conditions and Transportation Terms and Conditions, as are in effect from time to time.

11. As explained above, Northern is making the instant filing because the circumstances that justified the Special Contract in 1999, and the subsequent contract amendments and extensions, continue to exist today, and support the extension of the Special Contract for at least five (5) more years. As explained in Schedule NUI-MS-6, the Customer faces increasing competitive

pressures. The Customer's direct competitor, Georgia Pacific (located in Newington, New Hampshire) has bypassed the Northern system and is therefore avoiding the charges that National Gypsum is paying under the Special Contract. Given that its competitors' energy costs are presumably lower than National Gypsum's, the Customer is under pressure to maintain its energy costs such that it remains competitive.

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

WHEREFORE, Northern respectfully requests that the Commission:

A. Find that the Fourth Amendment of Agreement is just and consistent with the public interest;

B. Issue an order nisi with an effective date no later than November 30, 2019 approving the Fourth Amendment of Agreement; and

C. Grant such further relief as it deems appropriate.

Dated: September 13, 2019

Respectfully submitted,

NORTHERN UTILITIES, INC.

By its Attorney:



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Certificate of Service

I hereby certify that on this 13th day of September, 2019, a copy of the foregoing Petition was served electronically upon the Office of Consumer Advocate.



Gary Epler