

PUBLIC / REDACTED

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2022-00333

January 27, 2023

BANGOR NATURAL GAS COMPANY
Request for Approval of Special Rate
Agreement

ORDER APPROVING
SPECIAL RATE CONTRACT

BARTLETT, Chairman; DAVIS and SCULLY, Commissioners

I. SUMMARY

The Commission, pursuant to 35-A M.R.S. § 703(3-A) and based on the record of this proceeding and the circumstances of the parties, approves the Second Amendment to the existing special rate contract (SRC) between Bangor Natural Gas Company (Bangor Gas or the Company) and Bucksport Generation LLC (Bucksport), which would otherwise expire on January 31, 2023.¹

II. PROCEDURAL HISTORY

On November 9, 2022, Bangor Gas filed a petition for approval under 35-A M.R.S § 703 (3-A) of the Second Amendment to the SRC with Bucksport, together with supporting documents.² The Second Amendment would extend the current SRC terms

¹ The term “Second Amendment to the SRC” as used herein refers to both the Second Amendment itself and the underlying SRC as modified in the First Amendment to that agreement.

² Bucksport’s identity was originally kept confidential under Protective Order No. 1, which was issued on November 8, 2022 at Bangor Gas’s request to protect competitively sensitive business information including data used in considering and negotiating the SRC, the terms of the SRC, customer identifying information, and detailed data related to customer consumption and pricing strategies. Likewise, Protective Order No. 2 was originally issued on November 30, 2022 in response to a motion by Bucksport in order to provide confidential treatment for proprietary business information filed by Bucksport, as well as Bucksport’s identity, which it claimed was necessary at that time. Access to this information was provided to the Commission, the OPA, and counsel for Bucksport.

The Hearing Examiners issued Amended Protective Order No. 2 on December 9, 2022 after being informed by Bucksport, at the case conference held on December 5, 2022, that there was no longer a need to keep its identity confidential. Amended Protective Order No. 2 retained confidential treatment for the remainder of Bucksport’s proprietary business information and also granted counsel for Bangor Gas access to this information.

through <BEGIN CONFIDENTIAL P.O. 1> [REDACTED] <END CONFIDENTIAL P.O. 1> These terms include: <BEGIN CONFIDENTIAL P.O. 1> [REDACTED]

[REDACTED]

<END CONFIDENTIAL P.O. 1> Bangor Gas Petition, Ex. A, Ex. C.

The Hearing Examiners issued a Notice of Proceeding and Opportunity to Intervene on November 16, 2022, scheduling an initial case and technical conference for November 29, 2022. The Office of the Public Advocate (OPA), Bucksport, and ND OTM LLC (ND Paper) filed timely petitions to intervene. On November 23, 2022, the OPA also filed a set of data requests concerning the Company’s petition. Bangor Gas, on November 28, 2022, filed a partial objection to the intervention of ND Paper, arguing that because ND Paper was not a party to the SRC at issue, it should only be granted intervention on a limited basis in order to participate during briefing and argument relating to legal issues surrounding special contracts.

The Hearing Examiners heard ND Paper’s reply and other parties’ views on intervention and access to confidential information at the November 29, 2022 conference and granted the petitions to intervene of the OPA and Bucksport. The Hearing Examiners took several issues, including ND Paper’s intervention under advisement. Also at the November 29th conference, the OPA posed oral data requests to the Company.

On December 6, 2022, the Hearing Examiners issued a Procedural Order establishing a schedule that allowed for intervenor comments or testimony in response to Bangor Gas’s petition, discovery, a response by Bangor Gas, and briefs by the parties.

By procedural order issued on December 9, 2022, the Hearing Examiners granted ND Paper intervenor status on a discretionary basis, limited to commenting on, briefing, and filing exceptions or objections relating to issues of law and policy relevant to SRCs.

Second Amended Protective Order No. 2 was issued on December 14, 2022 in response to a request from Bangor Gas that its outside consultant also be granted access to Bucksport’s proprietary business information, which Bucksport did not oppose.

Protective Order No. 3 governing proprietary information inadvertently disclosed during the November 29, 2022 case conference was issued on November 30, 2022 and amended on December 9, 2022.

The OPA filed comments on December 9, 2022 and on the same date Bucksport filed the direct testimony of Martin Collins, Senior Vice President, Acquisitions & Asset Optimization for Ironclad New England Management LLC (Ironclad), which provides Bucksport's owner JERA Americas Inc. with asset management and other services. Commission Staff, the OPA, and Bangor Gas all filed data requests on Mr. Collins's testimony, which Bucksport responded to in a timely manner.³

A technical conference was held on December 22, 2022 at which Commission Staff and the parties posed additional questions to Mr. Collins as well as follow up questions to Bangor Gas's responses to the OPA's earlier data requests.

Bangor Gas, on December 28, 2022, filed the rebuttal testimony of its consultant, Dale Parris, in response to the OPA's comments and Mr. Collins's testimony.

On January 4, 2023, Bangor Gas, Bucksport, and the OPA filed their initial briefs. Each of these parties then filed a reply brief on January 9, 2023.

The Examiners' Report (Report) was issued January 13, 2023. On January 17, 2023, Bucksport filed comments in support of the Report and pointed out a protective order designation error. Bangor Gas and the OPA filed exceptions to the Report on January 18, 2023. The Hearing Examiners issued a Corrected Examiners' Report with corrected protective order designations on January 20, 2023.⁴

III. POSITIONS OF THE PARTIES

A. Bangor Gas

Bangor Gas cites a number of electric cases to support its contention that, when reviewing SRCs the Commission has historically required utilities to demonstrate that the discounted rate was necessary, above the marginal cost of providing the service,

³ Second Amended Protective Order No. 2 was issued on December 14, 2022 in response to a request from Bangor Gas, providing access for its outside consultant to Bucksport's proprietary business information. On December 16, 2022, the OPA filed a Request for Reconsideration to modify Second Amended Protective No. 2 to also provide Bangor Gas's management with access to proprietary business information filed by Bucksport. In a Procedural Order issued on December 19, 2022, the Hearing Examiners noted that the OPA's request for this action had not been previously ruled upon and would thus be treated as a motion to modify Second Amended Protective Order No. 2 rather than a request for reconsideration. The Hearing Examiners set a deadline of December 27, 2022 for parties to file comments in response to the OPA's motion and Bucksport filed responsive comments on that date. Bucksport timely filed comments in opposition to the OPA's motion and on December 28, 2022, the Hearing Examiners issued a Procedural Order denying the OPA's motion.

⁴ The January 13, 2023 Confidential Examiners' Report was removed from CMS Item #49; the public redacted version issued January 13, 2023 remains posted there.

and reasonably maximizes the contribution of the customer. Bangor Gas Brief at 2, (citing *Maine Public Utilities Commission, Investigation of Airco Industrial Gases, Request for Interruptible Load Retention Service Rate with CMP*, Docket No. 1992-00331, Order Part II at 12 (Mar. 25, 1994); *Emera Maine, Request for Approval of Special Rate Contract with Corinth Wood Pellets, LLC Pertaining to Emera Maine*, Docket No. 2016-00281, Order (Apr. 27, 2017)). In requiring a utility to demonstrate that a discounted rate is necessary, however, Bangor asserts that in natural gas cases the Commission has stopped short of requiring every special rate customer to demonstrate that it cannot pay the full tariffed rate due to its unique financial circumstances. *Northern Utilities, Inc., Petition for Approval of Gas Sales Agreement with Auburn VPS*, Docket No. 1994-177, Order at 1 (July 8, 1994); *Northern Utilities, Inc., Request for Approval of a Firm Gas Transportation Agreement*, Docket No. 2000-00848, Order at 2 (Dec. 7, 2000); *Northern Utilities' Request for Approval of a Firm Gas Transportation Agreement*, Docket No. 2001-00706, Order at 2 (Nov. 30, 2001).

Additionally, the Company opines that in recent cases involving water utilities the Commission has recently applied a more “generic” standard of determining whether a proposed discount or negotiated arrangement is “beneficial” overall to the utility’s ratepayers. *Old Town Water District, Request for Approval of Amendment to Special Rate Contract with the Penobscot Indian Nation*, Docket No. 2021-0069, Order at 2 (May 26, 2021); *Alfred Water District, Request for Approval of Special Rate Contract with the Little Shaker Estates Homeowners Association*, Docket No. 2020-00253, Order at 2 (Jan. 5, 2021). Bangor Gas Brief at 3.

Bangor Gas argues that regardless of the standard applied, the Second Amendment to the SRC with Bucksport meets the Commission’s criteria for approval. According to the Company, there is no discount being given to Bucksport because it is only entitled to service at a negotiated rate. The Company asserts that this is because Bucksport, due to its unique characteristics, does not fall within any existing customer class.⁵ Thus, there is no default tariffed rate from which Bucksport is receiving a discount. Bangor Gas Brief at 4-5.

In addition to Bucksport receiving no discount for service, Bangor Gas contends that the revenue the Company would receive under the Second Amendment to the SRC would exceed at least the short run marginal cost of providing service to Bucksport.⁶ By

⁵ Bangor Gas describes these unique characteristics as including Bucksport: **<BEGIN CONFIDENTIAL P.O. 1>** [REDACTED]

[REDACTED] **<END CONFIDENTIAL P.O. 1>** Bangor Gas Brief at 4.

⁶ Bangor Gas calculates its annual costs associated with the Bucksport/Orrington lateral that are attributable to Bucksport’s services as totaling approximately **<BEGIN CONFIDENTIAL P.O. 1>** [REDACTED] **<END CONFIDENTIAL P.O. 1>** Minimum annual

allowing Bangor Gas to recover more than its marginal costs of providing service, the Second Amendment to the SRC benefits the Company's other ratepayers by ensuring that they are not subsidizing service to Bucksport and reducing their overall cost of service. Bangor Gas Brief at 8. The Company describes the Second Amendment to the SRC with Bucksport as also maximizing the revenues to the Company because: (1) it was negotiated at arm's length between the two entities; (2) while Bucksport supports approval of the Second Amendment to the SRC, it has also voiced the opinion that it will pay more than it should under that agreement; and (3) Bucksport's ability to operate using only oil rather than gas puts Bangor Gas at risk of losing all revenue from Bucksport if it were to do so. Bangor Gas Brief at 6-7.⁷

In its Reply Brief, Bangor Gas responded to the OPA's assertions, described below, that Bangor Gas did not maximize the revenue from the Second Amendment to the SRC and that the Company should have obtained confidential business information from Bucksport to support the need for the negotiated rate. Bangor Gas Reply Brief at 7-8. Bangor describes the fact that the Second Amendment to the SRC does not change the existing pricing mechanism as being the result of an impasse in negotiation and not a lack of effort. The Company also notes that if the OPA believed that there was confidential evidence that should have been obtained from Bucksport to better evaluate the rate in the Second Amendment to the SRC the OPA had the opportunity to do so in this proceeding but did not avail itself of the opportunity. Bangor Gas Reply Brief at 7-8.

Also in its Reply Brief, Bangor Gas takes issue with Bucksport's statement that, under the Second Amendment to the SRC, Bucksport will be paying all or most of the costs associated with the Bucksport/Orrington lateral. In response, Bangor Gas seeks to clarify that Bucksport is only paying for those costs attributable to providing it with service, not the entire cost of operating the lateral. Bangor Gas Reply Brief at 9-10.

B. Bucksport

Bucksport argues that the Second Amendment to the SRC should be approved as it is fair to the parties and Bangor Gas's other customers. Like Bangor Gas,

revenues under the contract <BEGIN CONFIDENTIAL P.O. 1> [REDACTED] <END CONFIDENTIAL P.O. 1> This means that Bangor Gas is expected to recover annually and during the term of the contract at least <BEGIN CONFIDENTIAL P.O. 1> [REDACTED] <END CONFIDENTIAL P.O. 1> more than the costs attributable to serving Bucksport. Bangor Gas Brief at 5.

⁷ In its Reply Brief, Bangor Gas also addresses what it perceives to be the OPA seeking "disparate and discriminatory treatment" of the Company due to what the OPA has agreed to concerning SRC customers of Summit Natural Gas of Maine, Inc. (Summit) in a proposed stipulation filed in Summit's ongoing rate case in Docket No. 2022-00025. Bangor Gas Reply Brief at 4-7. Because the facts of the Summit rate case are not part of the record in this proceeding, the Commission makes no findings with regard to Bangor Gas's assertions concerning this issue.

Bucksport maintains that the revenues the Company would receive under Second Amendment to the SRC would exceed the marginal cost of providing service to Bucksport:

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Bucksport Brief at 4. And, according to Bucksport, Bangor Gas’s marginal cost analysis shows that the Second Amendment to SRC would subsidize other ratepayers and thus be fair and favorable for the Company and its customers. Bucksport Brief at 9. This is especially true where Bucksport takes service directly from the Bucksport/Orrington lateral, with no usage of the Company’s distribution system and no provision for gas procurement by Bangor Gas. Bucksport Brief at 3. Bucksport also asserts that

<BEGIN CONFIDENTIAL P.O. 1> [REDACTED]
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<END CONFIDENTIAL P.O. 1> Bucksport Brief at 10.⁹

⁸ Bucksport further argues that the marginal costs associated with providing it with service **<BEGIN CONFIDENTIAL P.O. 2>** [REDACTED]

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CONFIDENTIAL P.O. 2> Bangor Reply Brief at 11-14, Bangor Gas exceptions at 2-6. The Commission concurs with Bucksport in that this decision need not, and does not, reach a conclusion on whether marginal cost should be calculated in the manner that Bucksport argues for, due in part to that approach being more conservative than the marginal cost calculation used by Bangor Gas. However, if Bucksport were to prevail on this point, the positive revenue contribution from Bucksport’s contract would potentially be even greater than the Company’s analysis shows.

⁹ Bucksport also contends that the Bucksport/Orrington lateral is a stranded asset due to

Bucksport agrees that Bangor Gas does not offer it a default tariff rate under which it may take service. The costs Bucksport would pay under the Second Amendment to the SRC are, it argues, thus not a discount from any tariff rate. Bucksport Brief at 14-15, Bucksport Reply Brief at 3. And, in circumstances like here where there is no applicable tariff rate, Bucksport argues that the OPA's argument that a utility must "maximize" the revenue from an SRC is an invitation for the utility to "exact monopoly rents" from an SRC customer. Bucksport Reply Brief at 3.

Taking further issue with the OPA's argument, Bucksport describes the contention that SRC revenues must be "maximized" as having no limitations. *Id.* Bucksport also responds to the OPA's call for an embedded cost of service study as unreasonable because it would likely require 12-18 months to complete litigation thereof, holding up a single contract unnecessarily and subjecting it to disparate treatment. Further, such a study requires resolution of contentious issues regarding the valuation of Bangor Gas's rate base which have been highly litigated in two previous rate cases where such issues are more appropriately addressed. *Id.* at 6-8. Further, Bucksport concludes that, under the Second Amended SRC, it is paying all of the operating and other costs and expenses as shown in the Company's marginal cost analysis to the benefit of the Company and other ratepayers. *Id.* at 5. Bucksport contends that the OPA's position could hurt Bangor Gas's revenue position and other customers by subjecting Bucksport to a long, drawn out proceeding at substantial additional cost. *Id.* at 4, 8. And Bucksport maintains that the record demonstrates that the revenue that Bucksport pays under the SRC already exceeds its cost of service and maximizes revenues. *Id.* at 8.

C. OPA

The OPA states that it is not necessarily opposed to the Second Amendment to the SRC but argues that there is not currently enough information in the record for the Commission to approve it. OPA Brief at 12. According to the OPA, the Commission has held that SRCs are permissible and warranted when they provide "substantial benefits" to other ratepayers. In determining whether such a benefit exists, the OPA states that the Commission has applied the three-part test described above by Bangor Gas: (1) Is the rate discount in fact necessary? (2) If so, is the rate above the marginal cost of

the closure of the former Bucksport Paper Mill and the fact that Bucksport <BEGIN CONFIDENTIAL P.O. 2> [REDACTED] <END CONFIDENTIAL P.O. 2>. Bucksport goes on to argue that Bangor Gas's recovery of <BEGIN CONFIDENTIAL P.O. 2> [REDACTED]

[REDACTED] <END CONFIDENTIAL P.O. 2> Bangor Gas strongly disputes Bucksport's arguments. Bangor Gas exceptions at 2-6. <BEGIN CONFIDENTIAL P.O. 2> [REDACTED]

[REDACTED] <END CONFIDENTIAL P.O. 2> there is no need for the Commission to address this issue.

providing service?; and (3) Is the contribution above marginal costs substantial and is the contribution maximized? *Id.* at 2 (citing *Central Maine Power Company, Request for Approval of Special Rate Contract with Newpage Corporation (Formerly Mead Oxford Corp.)*, Docket No. 2005-00451, Order Part II (Feb.17, 2006) at 3; *Bangor Hydro-Electric Company, Proposed Tariff for Space Heating Rate*, Docket No. 2000-00435 (Nov. 14, 2000)).

The OPA disagrees with Bangor Gas's claim that because there is no applicable tariff rate for Bucksport there is also no discount to Bucksport under the Second Amendment to the SRC. Instead, the OPA argues that the Company must perform an embedded cost of service analysis to determine the full cost to serve Bucksport, the amount of the discount provided to Bucksport by the Second Amendment to the SRC, and how much that discount would increase costs for other ratepayers. *Id.* at 3-4.

The OPA also contends that Bangor Gas has failed to conduct the proper "due diligence" in connection with the price for retaining Bucksport as a customer. According to the OPA, the Company has made no showing that the revenues above the marginal cost of serving Bucksport have been maximized under the Second Amendment to the SRC. The OPA characterizes Bangor Gas as proposing **<BEGIN CONFIDENTIAL P.O. 1>** [REDACTED]

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CONFIDENTIAL P.O. 1> based on the assumption that Bucksport would refuse to provide any. *Id.* at 8-9.

The OPA adds that Bangor Gas should have had access to this information because, in the context of an SRC, "it is incumbent on utility management that it has access to all the information it needs to successfully negotiate on behalf of ratepayers". *Id.* at 9. The OPA posits that once a customer requests an SRC, it understands that normal rules about customer confidentiality are modified and to qualify for an SRC, "the customer must prove that due to its unique financial circumstances, it cannot or will not pay the full tariffed rate but is prepared to pay a lesser rate." *Id.* at 9. To evaluate such a claim, the utility must have full access to all of the customer's relevant information, which, according to the OPA, Bangor did not seek to obtain in connection with extending the SRC with Bucksport. *Id.* at 9-10.

The OPA also argues that Bangor Gas has not shown that approving the Second Amendment of the SRC would not result in the subsidization of service to Bucksport by other ratepayers. Even while making a contribution to Bangor Gas's operating revenues, Bucksport could still be subsidized by other ratepayers if it was not paying its fully allocated share of the Company's operating expenses. *Id.* at 10. The OPA maintains that there is not enough information in the record to determine if such subsidization would occur if the Second Amended SRC were approved. *Id.* at 10-11. In

its exceptions, the OPA also suggested that the order issued at this time should be an interim order, allowing a brief extension of the existing SRC rate while a cost of service analysis is completed by BNG. OPA exceptions at 5.

IV. STANDARD OF REVIEW

Pursuant to 35-A M.R.S. § 703(3-A), governing “special contracts,” a public utility may, subject to the Commission's approval, “make a contract for a definite term for its product or service, but the published rates for the product or service may not be changed during the term of the contract without the commission's consent.”

Bangor Gas and the OPA have described different standards of review that the Commission may apply when determining whether to approve an SRC under 35-A M.R.S. § 703(3-A). These include: (1) the standard most often associated with electric transmission and distribution utilities of requiring a demonstration that the discounted rate was necessary, above the marginal cost of providing the service, and reasonably maximizes the contribution of the customer; and (2) the more general standard sometimes used with water utilities of determining whether a proposed discount or negotiated arrangement is “beneficial” overall to the utility’s ratepayers and consistent with the interests of the utility, the SRC customers, and the utility’s other ratepayers. See e.g., *Maine Public Utilities Commission, Investigation of Airco Industrial Gases, Request for Interruptible Load Retention Service Rate with CMP*, Docket No. 1992-00331, Order Part II at 12 (Mar. 25, 1994); *Central Maine Power Company, Request for Approval of Special Rate Contract with Newpage Corporation (Formerly Mead Oxford Corp.)*, Docket No. 2005-00451, Order Part II at 3 (Feb.17, 2006); *Emera Maine, Request for Approval of Special Rate Contract with Corinth Wood Pellets, LLC Pertaining to Emera Maine*, Docket No. 2016-00281, Order (Apr. 27, 2017);¹⁰ *Old Town Water District, Request for Approval of Amendment to Special Rate Contract with the Penobscot Indian Nation*, Docket No. 2021-0069, Order at 2 (May 26, 2021); *Alfred Water District, Request for Approval of Special Rate Contract with the Little Shaker Estates Homeowners Association*, Docket No. 2020-00253, Order at 2 (Jan. 5, 2021). And the OPA further argues that in order to qualify for an SRC a “customer must prove

¹⁰ The decision in *Maine Public Utilities Commission, Investigation of Airco Industrial Gases, Request for Interruptible Load Retention Service Rate with CMP*, Docket No. 1992-00331, was issued on March 25, 1994, prior to the enactment of 35-A M.R.S. § 703(3-A) in P.L. 1995 Ch. 254. And the order in *Central Maine Power Company, Request for Approval of Special Rate Contract with Newpage Corporation (Formerly Mead Oxford Corp.)*, Docket No. 2005-00451, issued on Feb.17, 2006 addresses whether the contract at issue was unduly discriminatory in violation of 35-A M.R.S. § 702. The Order in *Emera Maine, Request for Approval of Special Rate Contract with Corinth Wood Pellets, LLC Pertaining to Emera Maine* Docket No. 2016-00281, issued on April 27, 2017 was based on an analysis under 35-A M.R.S. § 703(3-A), but was focused on the “transmission and distribution utility’s incentive to minimize lost revenue as a result of the special rate contract.”

that due to its unique financial circumstances, it cannot or will not pay the full tariffed rate but is prepared to pay a lesser rate.” OPA Brief at 9.

Bangor Gas also references the standard used historically in natural gas cases under Section 703(3) or (3-A),¹¹ in which the Commission has approved SRCs entered into by natural gas utilities for a number of reasons other than any inability of the customer to pay the tariffed rate. These include: (1) to encourage a dual fuel customer’s use of natural gas; (2) to avoid a large customer by-passing the utility’s distribution system; (3) to retain a large volume customer whose revenue contribution reduces the average unit cost of service for other customers; and (4) to support an extension of the utility’s system. *Northern Utilities, Inc., Petition for Approval of Gas Sales Agreement with Auburn VPS*, Docket No. 94-177, Order at 1 (July 8, 1994); *Northern Utilities, Inc., Request for Approval of a Firm Gas Transportation Agreement*, Docket No. 2000-00848, Order at 2 (Dec. 7, 2000); *Northern Utilities’ Request for Approval of a Firm Gas Transportation Agreement*, Docket No. 2001-00706, Order at 2 (Nov. 30, 2001). And rather than requiring that the terms of these SRCs be based on the financial condition of the requesting customer or focusing on any discount due to the difference between the price for service under the SRC and the tariffed rate, the Commission has instead been most concerned with whether the revenue produced by the contract rates would exceed the marginal cost of providing service. *Northern Utilities, Inc., Request for Approval of a Firm Gas Transportation Agreement*, Docket No. 2000-00848, Order at 2 (Dec. 7, 2000) (new interstate pipeline presented a bypass option); *Northern Utilities Request for Approval of a Firm Gas Transportation Agreement*, Docket No. 2001-00706, Order at 2 (Nov. 30, 2001) (dual fuel customer). Such a finding can be made upon information in the possession of the utility. The Commission’s use of marginal cost as a standard in the Northern Utilities decisions cited above is also consistent with the regulatory treatment of special rate contracts for natural gas utilities operating under Alternative Rate-making Mechanisms pursuant to Section 4706.¹²

¹¹ The prior version of Section 703(3) stated, in part, “It shall be lawful for a public utility to make a contract for a definite term subject to the commission’s approval for its product or service, but the published rates shall not be changed during the term of the contract without the commission’s consent.”

¹² When approving a rate plan for Maine Natural Gas Corporation’s predecessor, the Commission established, as follows:

In the meantime, we will require CMP Natural Gas to file in this docket for informational purposes any special contracts it enters into with customers. When a special contract is filed, the Company should indicate its view of the relationship of the contract price to short-run marginal cost, and, if the contract rate is lower than short-run marginal cost, to indicate why, in its view, it is prudent to enter into the contract. We will not review and approve each contract, reserving the question of specific ratemaking treatment for a

Additionally, in these Northern Utilities cases Northern asserted that alternative fuel options available to the SRC customer in the competitive market created the risk that without the SRC it would lose revenue contributions from large customers, harming other customers.¹³ Northern argued that obtaining or retaining a revenue contribution in these instances would contribute to reducing the unit cost of service to other customers. The SRC proposals and supporting analyses were reviewed by the Commission to determine whether the threat of loss of revenue from bypass was real, and whether there would be a benefit to other ratepayers of obtaining or retaining the proposed revenue contribution of the SRC customer.¹⁴ The Commission approved these special

rate case. At the time of the next general rate proceeding, we will scrutinize special contracts very carefully to avoid any possibility of subsidization.

In re Central Maine Power Co., Order, Docket No. 98-00786, Order (Dec. 17, 1998) at 13.

¹³ At the time of these decisions, Maine energy policy supported expansion of natural gas to new areas of the state to reduce carbon emissions from the predominant use of oil. The legislature enacted new statutory authority for regulating natural gas utilities that allowed the Commission greater flexibility in designing regulatory structure. 35-A M.R.S. § 2104, 4706, and 4707. In accordance with these changes in law and policy, the Commission crafted lighter-handed regulatory treatments based on the recognized that, unlike electric utilities, natural gas utilities had to obtain customers in a highly competitive marketplace of alternative fuels, including oil, propane, kerosene, electricity, wood, biomass, and even other natural gas utilities. This included the freedom for start-up natural gas utilities operating under Alternative Rate Mechanisms (sec. 4706) to enter into special rate contracts without prior approval, subject to shareholder risk. See *In re Central Maine Power Co.*, Order, Docket No. 98-00786, Order (Dec. 17, 1998) at 13 and *Bangor Gas Company*, Docket No. 1997-00795, Supplemental Order (Feb. 17, 1999) (“We strive to conduct our regulatory oversight in a manner which does not unbalance the competitive ‘playing field.’ Consequently, consistent with the policy established in Docket No. 96-786, we allow Bangor Gas to enter into special rate contracts with customers with no prior approval, subject to the informational filing conditions established in the CMP Natural Gas Order. Operating under its approved 10-year price cap plan, Bangor Gas’s shareholders will bear the entrepreneurial risks of the gas utility start-up venture.”) The Commission’s decisions regarding Northern reflect this understanding of the effect of the competitive market on natural gas utilities as well.

¹⁴ The Commission stated:

Northern asserts that the special contract is necessary to avoid IBC’S bypassing its distribution system and that by entering this agreement, it retains a large volume customer whose revenue contribution will reduce the average unit cost of transportation service, thereby benefiting Northern’s other customers. The Advisory Staff has reviewed the contract and the supporting

contract arrangements but deferred ratemaking treatment to a future rate case. Similarly, the Commission also found that entering into SRC to build a pipeline extension to a large “anchor” customer would allow the utility to offer service to smaller customers along that extension, all to the mutual benefit of the utility and its customers. *Northern Utilities Inc., Petition for Approval of Gas Sales Agreement with Auburn VPS Partnership, L.P.*, Docket No. 1994-00177. Order (July 8, 1994), approving Stipulation and Agreement.¹⁵

In accord with this past practice concerning natural gas utilities, the Commission finds that the appropriate standard of review here is to determine whether the revenues that Bangor Gas would receive as a result of the Second Amendment to the SRC would exceed the marginal cost of providing service to Bucksport such that it is in the interests of the utility, the SRC customer, and other ratepayers.¹⁶ This standard recognizes the reality of the competitive nature of the natural gas market in Maine, where large customers like Bucksport often have viable options in choosing fuels and suppliers, and natural gas utilities compete for customers with one another.¹⁷ The market realities of natural gas industry do not allow utilities the leverage that electric utilities have over their large customers for a utility to “maximize” its revenue in negotiating an SRC.

financial analyses to ascertain that the contract rates will exceed the long-run marginal costs of serving this load. Staff also reviews special contract arrangements to confirm that the threat of by-pass is credible.

Northern Utilities Inc., Docket No. 2000-00848, Order (Dec. 7, 2000) at 2.

¹⁵ The Stipulation and Agreement states that, because the annual revenue under the agreement exceeded long run marginal cost, the agreement should provide benefits to the utility and its firm customers, as well as economic and environmental benefits to the State of Maine.

¹⁶ See also *In re Central Maine Power Co.*, Order, Docket No. 98-00786, Order (Dec. 17, 1998) (1998 WL 995254 at 7-8) (“Northern [utilities] currently operates under a traditional regulatory structure; it has no alternative regulatory structure (i.e. performance-based rate plan or rate cap plan) in place which would allocate risks and profit in a manner that would place the risks of price discounts more directly on shareholders. Thus, consistent with traditional rate of return regulation, we must review all special contracts proposed by Northern to ensure that other ratepayers will not be disadvantaged.”)

¹⁷ Title 35-A, section 2104(2) establishes that natural gas utilities may expand to any municipality in which no other natural gas utility is providing service without Commission approval.

V. DISCUSSION AND DECISION

Bangor Gas lists the marginal costs associated with serving Bucksport in Exhibit D to its petition, including maintenance costs for: <BEGIN CONFIDENTIAL P.O. 1>

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CONFIDENTIAL P.O. 1>

The Commission agrees with the OPA that, in some circumstances or utility industries, it may be necessary to perform a fully embedded cost of service study in order to determine the cost of serving a customer seeking an SRC to ensure that other ratepayers would not be subsidizing service to that customer. In this case, however, where Bangor Gas provides service to Bucksport without making any use of the distribution system used to provide service to other customers, the Company's marginal costs appear to include the majority, if not all, of the costs reasonably associated with providing service to Bucksport. And while the OPA argues for an embedded cost study to be performed here, it has not articulated what additional information it believes is necessary to determine the size of any discount being given to Bucksport. Thus, the Commission finds that the annual revenue from the Second Amendment to the SRC would exceed the annual marginal costs of service at recent usage levels.

The record suggests that both the extent of costs included in the Company's marginal cost calculation and the excess revenue over marginal costs benefit Bangor Gas's other ratepayers by defraying some of the costs the Company incurs in providing service to them, and that without this arrangement those costs would be shifted to all other customers. And although the record does not explicitly indicate whether or when Bucksport's ability to operate using oil rather than natural gas might cause it to cut its connection with Bangor Gas, the Second Amendment to the SRC makes this less likely for at least the next three years. The Commission therefore also finds that the Second Amendment to the SRC significantly exceeds short run marginal cost as calculated by the Company and provides a positive revenue contribution when compared to the costs of operating the Bucksport/Orrington pipeline. Therefore, the Commission finds that the Second Amendment to the SRC is beneficial to Bangor Gas's other ratepayers and approves it pursuant to 35-A M.R.S. § 703(3-A).

This approval, however, is based on the current level of Bucksport's operation and the amount of the gas typically delivered to it by Bangor Gas. As described by Bucksport's witness Mr. Collins, <BEGIN CONFIDENTIAL P.O. 2>

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

END CONFIDENTIAL P.O. 2> <BEGIN CONFIDENTIAL P.O. Nos. 1 and 2> [REDACTED]

[REDACTED]

[REDACTED] **END CONFIDENTIAL**

P.O. Nos. 1 and 2> The record is not clear, however, on whether and to what amount the cost of providing service to Bucksport would increase with greatly increased delivery amounts. To ensure that the marginal costs of service do not exceed the revenue which Bangor Gas will receive under the Second Amendment to the SRC, the Commission directs that Bangor Gas report any significant changes to Bucksport’s usage to the Commission in this docket together with a statement of whether the costs of providing service to Bucksport have increased due to increased usage or any other cost driver, and its analysis indicating whether revenue exceeds the service costs with these changes.

Finally, the Commission does not find, as the OPA argues, that when a natural gas customer seeks an SRC the normal rules of confidentiality do not apply, and the utility therefore has access to all of the customer’s relevant financial information. There is nothing in the text of 35-A M.R.S. § 1311-A, governing the Commission’s treatment of confidential information, 35-A M.R.S. § 703(3-A), or Commission precedent that suggests this is the case.

Accordingly, the Commission

O R D E R S

1. That, pursuant to 35-A M.R.S. 703 (3-A) and the natural gas utility precedent cited herein, Bangor Natural Gas Company’s proposed Second Amendment to the Firm Transportation Service Agreement and Amended and Restated Collateral Agreement, including its initial Firm Gas Transportation Service Agreement as modified by its First Amendment to Firm Transportation Service Agreement, all as provided in Confidential Exhibits A, B, and C to its Petition and referred to herein as its Special Rate Contract with Bucksport Generation LLC, is approved at the customer’s current level of operation, subject to the condition in ordering paragraph 2 herein;

2. That Bangor Natural Gas Company shall report any significant changes in usage or cost to serve Bucksport Generation LLC with an explanatory statement of the changes and an analysis that demonstrates whether the revenue continues to exceed the costs of service with these changes; and

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S. § 9061 requires the Public Utilities Commission to give each party at the conclusion of an adjudicatory proceeding written notice of the party's rights to seek review of or to appeal the Commission's decision. The methods of review or appeal of Commission decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 11(D) of the Commission's Rules of Practice and Procedure (65-407 C.M.R. ch. 110) within **20** days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought. Any petition not granted within **20** days from the date of filing is denied.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21** days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S. § 1320(5).

Pursuant to 5 M.R.S. § 8058 and 35-A M.R.S. § 1320(6), review of Commission Rules is subject to the jurisdiction of the Superior Court.

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.