

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DG 16-855

NORTHERN UTILITIES, INC.

**Petition for Approval of Sixth Amendment to
Special Contract with Foss Manufacturing, LLC**

Order Partially Granting Motion to Amend

ORDER NO. 26,526

September 23, 2021

I. PROCEDURAL HISTORY

On December 1, 2016, Northern Utilities, Inc. (Northern) filed a petition for approval of a sixth amendment to its special contract with Foss Manufacturing Company, LLC, a natural gas customer of Northern, which would extend the term of the contract for an additional five years with the possibility of five successive one-year renewals. The Commission approved an extension of the contract for one year, until February 28, 2018, to provide Commission staff with an opportunity to explore issues related to the sixth amendment. Order No. 25,993 at 5-7 (February 24, 2017). These issues concerned the availability of a dual-fuel option for Foss Manufacturing Company, LLC, which could allow it to use another fuel to operate its facility without a special contract with Northern.

Northern submitted supplemental testimony to address these issues on November 2, 2017. On February 28, 2018, the Commission issued Order No. 26,107, in which it granted an extension of the special contract for four years, or until February 28, 2022. The Commission conditioned its approval of the four-year extension “on the execution of an energy audit of Foss’s current facility and

operations. We further require Foss to file a report on the audit results and a timeline for its implementation of any recommendations made in the audit.” *Id.* at 5. The report was required to be filed by December 31, 2019 and to “include an explanation of the extent to which Foss will implement the audit recommendations.”

Foss Manufacturing Company, LLC did not file its report by the December 31, 2019 deadline. On September 7, 2021, Foss Performance Materials LLC (Foss) filed a motion to amend Order No. 26,107 to extend the deadline for filing the report to December 31, 2021. In its motion, Foss noted that, on July 25, 2017, AstenJohnson Holdings, Ltd acquired the Northern Division of Foss Manufacturing, LLC, which became Foss Performance Materials LLC. Foss also requested the Commission to accept its filing, which included several attachments, as the required report.

II. POSITIONS OF THE PARTIES

A. Foss

Foss stated in its motion to amend that it engaged Waldron Engineering & Construction, Inc. to conduct an energy audit, which was provided to Foss on December 27, 2018. Although Foss asserted that it had arranged to have the energy audit conducted in a timely manner during its transition of ownership, the resulting report was, inadvertently, never filed. A copy of the report, entitled “Foss Performance Materials Utility Study” is filed as Attachment A.

Foss noted that it addressed the energy audit’s recommendation regarding steam and chilled water flow meters and implemented a number of energy efficiency measures not reflected in the energy audit. It maintained that the failure to file the report by the December 31, 2019 deadline should be excused, because it caused no harm and did not affect the rights of any party.

B. Northern

According to Foss, Northern assents to Foss's motion to amend.

C. Department of Energy

The New Hampshire Department of Energy has taken no position on Foss's motion to amend.

III. COMMISSION ANALYSIS

RSA 365:28 permits the Commission, after notice and hearing, "to alter, amend, suspend, annul, set aside, or otherwise modify" its orders at any time after they have been issued. The Commission is not required to hold a hearing before modifying one of its orders when no hearing was required by statute, or in fact held, before the order issued. *Id.* The Commission's statutory authority to reconsider and modify its orders has been "liberally construed" and "is limited only in that the modification must satisfy the requirements of due process and be legally correct." *Elec. & Gas Utilities*, Order No. 26,375 at 3 (June 30, 2020) (internal quotations and citation omitted).

We exercise our authority under RSA 365:28 to modify the filing deadline contained in Order No. 26,107, as requested by Foss, to December 31, 2021. However, we do not find that the Foss's September 7, 2021 filing fully addresses the requirements of Order No. 26,107. Foss shall file a report by December 31, 2021, which: (1) addresses the energy audit results and a timeline for its implementation of any recommendations made in the audit; and (2) "include[s] an explanation of the extent to which Foss will implement the audit recommendations."

Based upon the foregoing, it is hereby

ORDERED, that Foss's motion to amend is granted, in part; and it is

FURTHER ORDERED, that Order No. 26,107 (February 28, 2018) is modified so that the December 31, 2019 deadline is now December 31, 2021.

By order of the Public Utilities Commission of New Hampshire this twenty-third day of September, 2021.

	
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Dianne Martin Chairwoman	Daniel C. Goldner Commissioner

Service List - Docket Related

Docket# : 16-855

Printed: 9/23/2021

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