

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DOCKET NO. DG 16-855

NORTHERN UTILITIES, INC.

MOTION TO AMEND ORDER

Foss Performance Materials LLC (“Foss”) by and through its attorneys, McLane Middleton, Professional Association, submits this motion to extend the filing deadline set out in Order No. 26,107, issued February 28, 2018 (“Special Contract Order”), which approved a special contract between Northern Utilities, Inc. (“Northern”) and Foss. The New Hampshire Public Utilities Commission (“PUC” or “Commission”), among other things, required Foss to file a report on the results of an energy audit by December 31, 2019. For the reasons set forth below, Foss asks the Commission to amend the Special Contract Order pursuant to RSA 365:28, extend the December 31, 2019 deadline, and accept this filing as the required report.

I. BACKGROUND

On December 1, 2016, Northern filed a petition in the above-captioned proceeding seeking a sixth amendment to its special contract with Foss’ predecessor, Foss Manufacturing Company, LLC. The Commission approved the original special contract for a five-year term ending February 28, 2005. See Order No. 23, 381 (January 6, 2000) in Docket No. DG 99-171. The Special Contract Order extended the term until February 28, 2022.¹

Among other things, in the Special Contract Order the Commission noted the role of energy audits in reviewing special contracts pursuant to Docket No. DR 91-172, the *Generic Discounted Rates Docket*. Hence, the Commission conditioned its approval of the special

¹ Foss is currently discussing an extension of the special contract with Northern and anticipates that a new petition will be filed before year-end.

contract “on the execution of an energy audit of Foss’ current facility and operations.” Special Contract Order, p. 5. The Commission also required Foss to

file a report on the audit results and a timeline for its implementation of any recommendations made in the audit. The required report shall be filed no later than December 31, 2019, and shall include an explanation of the extent to which Foss will implement the audit recommendations. *Id.*

As required by the Special Contract Order, Foss engaged Waldron Engineering and Construction, Inc. (“Waldron”) to conduct an energy audit, which was provided to Foss on December 27, 2018. See Attachment A, Foss Performance Materials Utility Study (“Energy Audit”). Accordingly, Foss satisfied the condition to approval of the special contract.

During the pendency of this docket, which occurred in two phases,² AstenJohnson Holdings, Ltd, acquired the Northern Division of Foss Manufacturing, LLC, which became the current Foss. As noted in supplemental testimony filed on November 2, 2017, the acquisition took place on July 25, 2017. While Foss arranged to conduct the required energy audit in a timely fashion amidst the transition in ownership, it appears that no report on the audit results was filed. Because the failure to file the report was inadvertent and caused no harm, and because extension of the deadline would not affect the rights of any party, Foss asks the Commission to amend the Special Contract Order by extending the reporting deadline to December 31, 2021.

II. REPORT

The Energy Audit reviewed the Foss facilities and operations, including the cogeneration plant, steam boilers, and chiller plant, as well as the site energy requirements and operating strategy. Waldron concluded that there was “potential to improve energy efficiency and achieve savings, largely through the full utilization of waste heat.” Towards that end, Waldron made

² In the first phase, the Commission issued Order No. 25,993 (February 4, 2017) extending the special contract for one year to facilitate further development of the record. The second phase culminated in the Special Contract Order.

three specific recommendations, namely, (1) install steam and chilled water flow meters with data logging capability, (2) develop energy efficiency projects further, and (3) consider optimizing the chilled water system. The Energy Audit also included a model that generated a number of operating cases to evaluate potential costs and savings, as well as a number of energy efficiency improvement projects.

Consistent with the recommendations, Foss replaced an existing inefficient steam chiller, which was not operating at its design rating, with a new model that went on line in the summer of 2018. As for installing steam and chilled water flow meters, Foss has focused instead on capital projects designed to revitalize existing production machinery to maintain its position in a competitive industry. Finally, with respect to the potential energy efficiency projects identified as Cases 14 through 19, Foss determined that the payback periods did not justify the corresponding capital cost investments.

Foss has implemented several energy efficiency measures, however, that were not reflected in the Energy Audit. In particular, Foss (1) replaced 65 high bay lighting fixtures, (2) replaced 228 8-ft. fluorescent lighting fixtures, (3) added a small compressor properly sized to reduce larger compressor run times, and (4) replaced 25 DC motors with more efficient AC motors as part of an ongoing project to increase power factor. See Attachment B.

III. CONCLUSION

Pursuant to RSA 365:28, the Commission may, at any time after issuing an order, “alter, amend, suspend, annul, set aside, or otherwise modify any order made by it.” The New Hampshire Supreme Court has determined that RSA 365:28 should be liberally construed and that the Commission’s power is “limited only in that the modification must satisfy the

requirements of due process and be legally correct.” *Appeal of the Office of the Consumer Advocate*, 134 N.H. 651, 657 (1991); *Meserve v. State*, 119 N.H. 149, 152 (1979).

The Commission recently exercised its power under RSA 365:28 to modify an order to extend a reporting deadline. In Docket No. DW 20-064, *Pennichuck Water Works, Inc.*, (“PWW”) the Commission issued Order No. 26,354 (May 6, 2020) directing PWW to file a report regarding certain financial information by October 1, 2020. PWW subsequently filed a motion on October 28, 2020, asking the Commission to modify the prior order and extend the reporting deadline to May 2, 2021, explaining that it needed more time based on advice from its accounting firm. The Commission granted PWW’s motion to extend the reporting deadline, finding that PWW had justified the delay in filing.

The Commission’s rule for extending deadlines, i.e., Puc 202.04, while not directly applicable to these circumstances, may be instructive in considering Foss’ request. In particular, Puc 202.04 provides, in pertinent part, that the Commission shall grant a request for an extension so long as it “would not unduly delay the proceeding or adversely affect the rights of any party.” In these circumstances, the extension will not delay the proceeding. Moreover, Northern and the Office of Consumer Advocate support the motion, while Department of Energy Staff takes no position.

Finally, RSA 365:28 provides that a hearing shall not be required to alter or amend an order when the prior order did not require a hearing and a hearing was not held, as was the case in this instance. Therefore, inasmuch as Foss has provided good reason to extend the reporting deadline, it asks the Commission to amend the Special Contract Order accordingly.

WHEREFORE, Foss Performance Materials LLC respectfully requests that the New Hampshire Public Utilities Commission:

- A. Amend the Special Contract Order;
- B. Extend the filing deadline;
- C. Accept this filing as the required report; and
- D. Grant such other relief as it determines just and reasonable.

Respectfully Submitted,

Foss Performance Materials LLC

By its attorneys,

McLANE MIDDLETON,
PROFESSIONAL ASSOCIATION

Dated: September 7, 2021

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