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### **Via Federal Express**

August 26, 2015

Debra Howland  
Executive Director and Secretary  
New Hampshire Public Utilities Commission  
21 South Fruit Street, Suite 10  
Concord, NH 03301-2429

**Re: DG 15-090 Northern Utilities, Inc. 2015 Summer Cost of Gas – PNGTS  
Refund Methodology**

Dear Ms. Howland:

Sprague Operating Resources, LLC (“Sprague”) and Global Montello Group Corp. (“Global”) respectfully seek leave file this short sur-reply to the August 25<sup>th</sup> replies of Staff and Northern Utilities, Inc. d/b/a Unitil (“Northern”) in the above proceeding.

As posed by Staff and Northern, the issue before the Commission is whether Sprague and Global’s purported oral agreement of settlement should be enforced against them over their objection. The answer is no.

The Commission must “consider the situation of the parties at the time of their agreement and the object that was intended thereby, together with all the provisions of their agreement taken as a whole.”<sup>1</sup> Even in its reply, Northern does not assert that it cannot protect sales customers from dilution of the refund by the migration of transport customers; merely that any representations it made to Sprague and Global on that material point on June 2 should be concealed by a cloak of settlement.

No party under the Commission’s plenary regulatory authority should be permitted to misrepresent (negligently or otherwise) material facts in order to induce settlement. Northern made a material statement of fact that induced Sprague and Global to enter into settlement. Neither Staff nor Northern deny the statement was made, they simply hide behind process. Only Northern knows from an evidentiary perspective whether its customer information and billing system will or will not accommodate

<sup>1</sup> *Huguelet v. Allstate Ins. Co.*, 141 N.H. 777, 779, 693 A.2d 408 (1997) (citation omitted).

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identifying returning transport customers. Sprague and Global can say only that Northern would not affirm one way or the other as part of the settlement precepts. It is important to note that Sprague and Global were justified to rely on Northern's material representation of fact, given the tenor of the discussions, the ardent disapproval of Staff and the fact that the settlement discussions took place just minutes before the hearing.

Northern's procurement of the agreement by means of its negligently offered misrepresentation constitutes sufficient defense to Staff and Northern's claim that the settlement should be enforced against Sprague and Global.<sup>2</sup> Northern "made a representation with knowledge of its falsity or with conscious indifference to its truth with the intention to cause another to rely upon it."<sup>3</sup> Sprague's and Global's reliance on Northern's representation was justified but misplaced.<sup>4</sup> Contrary to Staff's and Northern's claims, public policy no longer protects the sanctity of the settlement discussions once Staff and Northern announced their intent to enforce the purported agreement against Sprague and Global.<sup>5</sup>

The Commission shall disapprove disposition of any contested case by settlement if the result is not just or is unreasonable.<sup>6</sup> Of course parties should attempt to settle issues through negotiation and compromise "as it is an opportunity for creative problem-solving, allows the parties to reach a result more in line with their expectations, and is often a more expedient alternative to litigation."<sup>7</sup> However, the Commission cannot endorse the terms of the settlement "without independently determining that the result comports with applicable standards."<sup>8</sup> Any settlement induced by negligent misstatement of material fact over the objections of those directly harmed by the misrepresentation must be rejected, at least as it would purport to apply to the objecting parties.

Thank you for your assistance with this filing. If you have any questions, please do not hesitate to contact me.

Sincerely,



Patricia M. French

Enclosure (7 copies of letter)

cc: Service List in DG 15-090 (via electronic mail only)

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<sup>2</sup> See, *Nashua Trust Co. v. Weisman*, 122 N.H. 397, 400, 445 A.2d 1101 (1982) (citations omitted).

<sup>3</sup> See, *Snierson v. Scruton*, 145 N.H. 73, 77, 761 A.2d 1046 (2000).

<sup>4</sup> See, *id.*

<sup>5</sup> See generally 3 CORBIN ON CONTRACTS § 580, at 431-39 (1960) (fraud, mistake, illegality, and accident can be proved by parol evidence).

<sup>6</sup> N.H. Code Admin. Rules Puc 203.20(b). See also RSA 541-A:31, V(a) (authorizing resolution of contested cases by stipulation, agreed settlement, consent order or default).

<sup>7</sup> See, *Concord Electric Co.*, 87 NH PUC 694,708 (2002).

<sup>8</sup> See, *id.*