

STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION

Docket No. DG 15-121

NORTHERN UTILITIES, INC.

Request for Hearing on Notices of Violations PS1501NU and PS1502NU

**The Safety Division's Post-Hearing Memorandum**

The Commission's Safety Division (Safety Division), through counsel, respectfully submits the following memorandum to address issues raised during the evidentiary hearing in this matter.

**Do the Safety Division's Civil Penalty Recommendations Bind the Commission?**

Notice of Violation PS1501NU (the Dover NOV) alleged that, due to flooding in two regulator vaults that caused the regulators to fail, Northern Utilities, Inc. (Northern) "violated 49 CFR §192.619 and §192.195 for operating pipeline segments for approximately 50 minutes on August 13, 2014, in excess of identified and previously established ... MAOP for the system." Exhibit 2-28 at 1.<sup>1</sup> Northern advised the Commission prior to the hearing that it would not contest the Dover NOV, and confirmed that admission at hearing. T1 at 6.<sup>2</sup> Northern expected to pay the civil penalties contained in the Dover NOV. T1 at 10; *see* Exhibit 2-28 at 5-6. The Safety Division argued that the recommended civil penalties are not binding on the Commission and sought to introduce evidence developed since writing the Dover NOV to

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<sup>1</sup> Exhibit 2 consists of 29 separate documents, numbered and tabbed 1 through 29. They will be referenced by exhibit and tab number. *See* T1 at 22.

<sup>2</sup> Transcript references are "T1" for the Day 1 transcript of the hearing held August 19, 2015, and "T2" for the Day 2 transcript for the hearing day of August 26, 2015.

support an increased penalty. T1 at 8. The Safety Division made an offer of proof and marked several exhibits to provide the facts supporting its request for a larger civil penalty. T1 at 23-32; Exhibits 2-17, 2-18, 2-19, 2-23, 2-24, and 2-25. The Commission took the issue under advisement to allow the parties to file briefs. T1 at 12.

Later in this memorandum the Safety Division similarly recommends a penalty for Notice of Violation PS1502NU (the Portsmouth NOV) that is greater than initially proposed in the Portsmouth NOV, should the Commission find that Northern violated the gas safety rules in that case. Thus, this legal discussion applies to both NOVs.

**Issues.**

Can the Safety Division recommend after hearing, and may the Commission impose, penalties greater than those proposed in the NOVs?

May the Safety Division introduce evidence in support of the increased penalty requests?

That is, after an adjudicative hearing on the NOVs conducted pursuant to Puc 200, is the Commission's statutory authority to impose civil penalties circumscribed by the Safety Division's proposed penalties in the underlying NOVs?

**Summary of Argument.**

The Commission delegated to the Safety Division specific authority to enforce gas pipeline safety standards, which delegation is limited to the process described in Puc 511. Puc 511 only grants authority to propose or recommend penalties through an NOPV or an NOV, which penalties go into effect only when the utility accepts them by signing a consent agreement. Puc 511 does *not* grant, and thus the Safety Division does not possess, authority to impose civil penalties over the utility's objection. At the end of the Puc 511 process when the Safety Division has issued an NOV, the utility may either conclude the process within the confines of Puc 511 by

accepting the proposed civil penalty, or the utility may go beyond the Puc 511 process by requesting an adjudicatory hearing before the Commission. If the utility requests a hearing, the rules plainly state that the Puc 511 enforcement process is over (and with it the Safety Division's delegated enforcement authority) and the parties enter a different enforcement process, "an adjudicatory proceeding" over which the Commission has sole authority through Puc 200.

At the end of the Commission-supervised adjudicatory process, the Commission - not the Safety Division - determines whether the utility violated the gas safety rules and exercises its statutory authority and discretion to impose the appropriate penalty, without restrictions imposed by the Safety Division through the no-longer-applicable Puc 511 process. Therefore, the Commission should make its own determination of the appropriate civil penalty for the Dover NOV based on all the evidence provided, and similarly for the Portsmouth NOV if it finds a violation.

### **Discussion.**

The analysis summarized above arises from a careful reading of Puc 511, titled "Enforcement Procedures for Gas Pipeline Utilities."<sup>3</sup> Puc 511 begins with a delegation of specific authority to the Safety Division to enforce gas pipeline safety standards, which delegation is limited to the process described in Puc 511:

The commission in exercising and implementing its inspection and enforcement authority pursuant to Puc 511 shall act by and through the commission's safety division.

Puc 511.01(c). The Safety Division thus has authority to enforce the gas safety laws only so far as described in Puc 511.

Important to this docket, Puc 511 only grants authority to propose or recommend civil penalties which go into effect only if the utility accepts them. Puc 511 does *not* grant authority

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<sup>3</sup> Attached to this memorandum is a copy of Puc 511 for reference.

to impose civil penalties. That is, Puc 511 does not authorize the imposition of civil penalties if the utility objects. The textual support for these statements follows.

As to NOPVs, Puc 511.05 requires the NOPV to include the following: a “statement ... that civil penalties might be imposed pursuant to RSA 374:7-a in the event of an unfavorable judgment;” the “amount of the civil penalty;” “a description of the factors relied upon by [the Safety Division] in making its determination” as to the proposed civil penalty; and “[p]rocedures for resolving the” NOPV. Puc 511.05(c)(3), (4), (5), and (7). Puc 511.06, titled “Responses to Notice of Probable Violation,” gives the utility the option of submitting “evidence refuting” the NOPV, filing “a written plan of action ... to correct the violation,” signing “a consent agreement” paying the civil penalty, “or” requesting “an informal conference” with the Safety Division. Puc 511.06(a)(1) through (4). In this case, Northern requested an informal conference, Puc 511.06 (a)(4). If the NOPV is not resolved after the informal conference, “the enforcement procedure shall continue as described in Puc 511.08,” the NOV stage. Note that the only way a civil penalty goes into effect in the NOPV process pursuant to Puc 511.06 and Puc 511.07 is if the utility “execute[s] a consent agreement ... resolving the probably violation and remit[s] the civil penalty.” Puc 511.06(a)(3). The Safety Division cannot order the utility to pay.

As to NOVs, Puc 511.08 and Puc 511.09 similarly limit the Safety Division’s authority to merely recommend a civil penalty which goes into effect only if accepted by the utility. Puc 511.08 requires the NOV to include the “factual and statutory basis for the unfavorable preliminary determination,” the “civil penalty, if any, *proposed to be imposed*,” the “factors relied upon” to set the amount of the proposed civil penalty, and the “procedures for remitting the penalty.” Puc 511.08(b)(1), (3), (2), and (4) (emphasis added). Once the Safety Division issues the NOV, the rules provide the utility with a choice: “Within 10 days from receipt of the NOV, the respondent shall either: (a) Sign a consent agreement and remit the civil penalty; or (b) File a

request in writing for a hearing before the commission.” Puc 511.09. Again, the rules do not allow the Safety Division to impose a civil penalty over the utility’s objection. A penalty goes into effect only when the utility chooses to “sign a consent agreement and remit the civil penalty.”

If the utility does not request a hearing under Puc 511.09, but elects to sign the consent agreement, Puc 511.10(a) closes the loop on the Commission’s delegation of authority to the Safety Division: “The commission shall act upon staff’s recommendation unless the respondent requests a hearing pursuant to Puc 511.09.” That is, if the utility chooses to sign the consent agreement and pay the penalty pursuant to Puc 511.09(a), the Commission accepts the NOV. Although no other Commission action is likely necessary if the utility signs the consent agreement, Puc 511.09(a) signals the end of the Safety Division’s enforcement authority.

If the utility requests a hearing pursuant to Puc 511.09, the next paragraph removes any doubt that the Puc 511 enforcement process is over and with it the Safety Division’s delegated authority. The parties then enter a different enforcement process, which is “an adjudicatory proceeding” over which the Commission has sole authority under Puc 200:

(b) Hearing requests pursuant to Puc 511.09 shall be treated as a request for an adjudicatory proceeding.

(c) Upon a hearing request pursuant to Puc 511.09, the commission shall provide the respondent with notice and an opportunity for a hearing, held pursuant to Puc 200.

Puc 511.10. Once engaged in the Commission-supervised adjudicatory process, it is the Commission, not the Safety Division, that determines whether the utility violated the gas safety rules, and it is the Commission, not the Safety Division, that exercises its statutory authority to impose the appropriate penalty. The Commission exercises this authority without restrictions imposed by the Safety Division through the no-longer-applicable NOV process under Puc 511. Therefore, the Commission should make its own determination of the appropriate civil penalty

for the Dover NOV based on all the evidence provided (and for the Portsmouth NOV if it finds a violation).<sup>4</sup>

In contrast to the enforcement process under Puc 511 described above, the Commission specifically granted to the Safety Division the authority to impose civil penalties under the Dig Safe Program. In *Designation of Commission Staff Relative to Underground Utilities Damage Prevention Program Enforcement*, Order No. 24,347 at 2 (July 9, 2004), the Commission specifically designated the “Director of the Commission’s Safety Division, and any member of the Safety Division ... to enforce violations of the Underground Utilities Damage Prevention Program in accordance with RSA 374 and Chapter Puc 800.” This designation included the authority to,

consider and resolve complaints, decide whether a situation is or was deemed an emergency situation, issue written Notices of Probable Violation, issue Notices of Violation, assess civil penalties, assess excavators for expenditures made to collect civil penalties, and perform other enforcement measures consistent with RSA 374 and Chapter Puc 800.

*Id.* The Commission’s unambiguous delegation of authority to impose civil penalties in the Dig Safe Program does not exist under Puc 511. This contrast reinforces the Safety Division’s argument that only the Commission has the authority to impose civil penalties under Puc 511.

### **Safety Division Recommendation as to the Dover NOV.**

As to the Dover NOV, the Safety Division repeats its recommendation that the Commission impose a civil penalty of \$10,000 for the single event of exceeding the MAOP on August 13, 2014,<sup>5</sup> and \$112,500 for the failure to properly design the regulator vaults (\$7,500 for the

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<sup>4</sup> RSA 374:7-a limits the Commission to a fine of \$200,000 per violation or 42,000,000 in aggregate, which is consistent with the current maximum penalties under federal law.

<sup>5</sup> The NOV contains the Safety Division’s recommendation of a \$10,000 penalty for the MAOP violation, Exhibit 28. Counsel stated an incorrect figure (\$5,000), but clearly stated that the Safety Division’s recommendation for this violation had not changed. See T1 at 41 (“That stays as a \$5,000 [sic] recommendation”).

Rutland Street vaults that flooded in August 2014, and \$7,500 for the other 14 times that Exhibit 2-18 demonstrated regulator vaults had flooded on other occasions), for a total civil penalty of \$122,500. T1 at 40.

### **Portsmouth NOV.**

The other issue covered in this memorandum is a brief recap of the argument in support of the Portsmouth NOV.

The Portsmouth NOV alleged that Northern exceeded the Maximum Allowable Operating Pressure (MAOP) during the second test of the New Hampshire Avenue regulator station. The parties do not dispute the material facts. *See* August 12, 2015, *Joint Statement of Stipulated Facts*. The relevant MAOP was 56 psig. *Id.* at ¶2. Northern had set the monitor regulator being tested at 55 psig. *Id.* at ¶3. Northern knew that “there is an expected build-up of pressure that temporarily causes pressure to rise above the monitor regulator’s set point.” *Id.* at ¶4. During a test intended to simulate the failure of a worker regulator so that the Safety Division could assess performance of the monitor regulator, and while the involved piping was connected to the downstream system, the system pressure rose to 57.2 psig. *Id.* at ¶¶7, 8.

The hearing centered on the legal question of whether these facts support the Safety Division’s allegations that Northern violated 42 C.F.R. §192.619<sup>6</sup> (“no person may operate a segment of steel or plastic pipeline at a pressure that exceeds” MAOP) and §192.195 (“failure to incorporate into Design of Pipeline Components pressure regulation devices [that are] designed so as to prevent accidental overpressuring”). The evidence the Safety Division presented in support of the first allegation is that the system pressure rose to 57.2 psig, which is higher than

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<sup>6</sup> All references to the Code of Federal Regulations in this memorandum are to Title 42. The remaining citations will only include the section numbers.

the 56 psig MAOP. The evidence presented in support of the second allegation is that Northern had set the monitor regulators at 55 psig, which is too close to the MAOP of 56 psig to keep the system pressure at or below 56 psig given the “expected build-up of pressure” that occurs before the monitor takes control of system pressure. The Safety Division’s case is that simple. Northern would only need to set its monitor regulators a couple psig lower to make sure that the expected build-up of pressure does not exceed 56 psig.

Northern presented a lengthy and complicated defenses to the Portsmouth NOV. Given the substantial hearing time devoted to these defenses and the Safety Division’s responses to them, they will only be highlighted here.

Northern relied on outdated and often inapplicable interpretations from Pipeline and Hazardous Materials Safety Administration (PHMSA), even though PHMSA prohibits the reliance on an interpretation to govern another situation: “A pipeline safety regulatory interpretation applies a particular rule to a particular set of facts and circumstances, and may be relied upon only by those persons to whom the interpretation is specifically addressed.” [www.phmsa.dot.gov/pipeline/regs/interps](http://www.phmsa.dot.gov/pipeline/regs/interps) (last visited Sept. 23, 2015).<sup>7</sup> To the extent the interpretations may seem to apply at some level, careful examination leads to a convoluted journey from one code section not cited in the NOV and its related interpretations, to another code section not cited in the NOV and its interpretations. Much of the hearing involved Northern’s difficult path through these interpretations and Staff’s critiques. For example, in response to the Safety Division’s allegation that Northern “operated” above MAOP in violation of §192.619, which is in the “operations” section of the code, Northern cited §192.201 and

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<sup>7</sup> The PHMSA letter Northern requested in this case, Exhibit 1 at 73, contains a similar disclaimer: “These letters reflect the agency’s current application of the regulations to the specific facts presented by the person requesting the clarification. Interpretations do not create legally-enforceable rights or obligations and are provided to help the public understand how to comply with the regulations.”

related interpretations and their discussion of “capacity” above MAOP, which is in the “design” section of the code. These defenses effectively required Northern to insert words into the code where those words do not appear,<sup>8</sup> and disregard other code language where it does appear.<sup>9</sup>

The Safety Division’s allegations, in contrast, rest on a simple statement of undisputed facts and a plain application of the code. The first violation in the Portsmouth NOV alleges that the pressure of 57.2 psig recorded on the system with a 56 psig MAOP violates §192.619, which states, “no person may operate a segment of steel or plastic pipeline at a pressure that exceeds” MAOP. The second violation rests on Northern’s decision to set the monitor regulator at 55 psig, just below the 56 psig, knowing that there is a pressure build-up before the monitor regulator take control. The Safety Division alleges this violated §192.195(b)(2), which is in the “design” section of the code and requires the system to “be designed so as to prevent accidental overpressuring.” As discussed at hearing, the “design” that the Safety Division cites is the 55 psig set point, nothing more.

Finally, the core of Northern’s case can be reviewed and rejected by reading the April 21, 2015, interpretation letter from PHMSA. Exhibit 1 at 73 (Attachment N to LeBlanc/Pfister testimony) (the PHMSA letter). The PHMSA letter undoubtedly supports the Safety Division’s position. Northern’s September 5, 2014, request to PHMSA, which is largely repeated in the PHMSA letter, described the configuration of the New Hampshire Avenue station and the undisputed facts of what happened during the simulated failure at issue in this docket. Exhibit 1 at 65-66. Northern then proposed two questions for interpretation. The first question asked,

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<sup>8</sup> Northern argued §192.619(a) really says, “Under normal operating conditions, no person may operate a ... pipeline at a pressure that exceeds” MAOP.

<sup>9</sup> Northern argued §192.201(a)(2)(ii) really says, “each pressure relief station ... installed to protect a pipeline must ~~have enough capacity, and must be set to operate, to~~ insure [that] the pressure may not exceed the [MAOP] plus 6 psi.”

“During normal operation (i.e., no system emergency) of a high pressure distribution system with a properly established MAOP of 56 psig, does the operation violate §192.621(a) if the system is operated above 56 psig?” Exhibit 1 at 66. PHMSA answered, “yes, the operator violates §192.621(a) if the MAOP is exceeded during normal operating conditions.” Exhibit 1 at 74. There is not issue with this question.

Northern’s second question was, “During a system emergency, such as a failed worker regulator, on a high pressure distribution system with a properly established MAOP of 56 psig, does the operator violate §192.201(a) if the system pressure does not exceed 62 psig?” Exhibit 1 at 66-67. PHMSA answered,

No, the operator does not violate §192.201(a) as long as the MAOP limits are met during a system emergency and the pipeline meets the Subpart D – Design of Pipeline Components requirements. In this case, the emergency operating limit is 62 psi (56 + 6 psi). Emergency operating overpressure conditions are only allowed for the time required to activate the overpressure protection device and are not meant for long term or frequently occurring normal operating or periodic maintenance conditions and, therefore, require immediate response by the operator either to shut down or reduce the operating pressure to the normal operating conditions.

Exhibit 1 at 75 (emphasis added). First, note that Northern asked whether §192.201 was violated. The Portsmouth NOV alleges violations of §192.195 and §192.621. PHMSA’s interpretation of §192.201 is thus irrelevant. Second, note that in its answer to the question Northern posed, PHMSA did not endorse Northern’s suggestion that “a failed worker regulator” is an emergency. The interpretation does not rest on what caused the hypothetical emergency, but what happens in an emergency. Third, note the statement that, “Emergency operating overpressure conditions ... are not meant for long term or frequently occurring operating or periodic maintenance conditions.” This suggests “periodic maintenance” falls in the “normal” operating conditions as the Safety Division testified.

Finally, and most directly, the PHMSA letter directly answers the question posed in this docket: “there may be some confusion about appropriate testing and maintenance of a pressure limiting or regulator station for buildup set point. Conducting a simulated test on a pressure limiting or regulator station that is not isolated from the system does not constitute a system emergency. It is a normal operation subject to the limitations described above.” Exhibit 1 at 75. The “limitations described above,” of course, include the prohibition against exceeding MAOP.

The Commission need go no further. The Safety Division’s case rests on a plain reading of the code, which reading the PHMSA letter endorsed. Even Northern’s expert witness conceded the violation: “And, if it is a normal operation, and not an emergency, then MAOP was violated on this day, correct? A. Yes.” T2 at 145. There is no need to turn to other interpretations. The Commission should find Northern violated the code as alleged in the Portsmouth NOV and as conceded by Mr. Shur.

Finally, as the Safety Division did with regard to the Dover NOV, it has modified its recommended sanction. The Safety Division recommends that the Commission impose a civil penalty of \$32,500. The calculation is as follows.

The Portsmouth NOV proposed civil penalties of \$5,000 for the single MAOP violation during the simulated failure. Exhibit 2-29 at 5. That recommendation remains unchanged. The Portsmouth NOV recommended a \$7,500 civil penalty for the design violation (setting the regulator monitor at 55 psig on a 56 psig system, knowing the monitor regulator requires an approximately 2 psig buildup in pressure before it assumes control). Northern’s witnesses testified that it has the same set pressure philosophy at the other 4 regulator stations. The Safety Division recommends a similar civil penalty for each of the other four regulator stations, thus adding \$30,000 to the previously recommended \$12,500 total civil penalty.

The Safety Division also recommends that the Commission order Northern to maintain its Procedure 2L as it appears in Exhibit 1 at 39 (and was “replaced” by Exhibit 5, the procedure in effect at the time of the NOV). In particular, Northern should be required to keep Procedure 1.0(e), which embodies the Safety Division’s position in this docket. Exhibit 1 at 40.

Respectfully submitted,  
Safety Division,  
By its attorney

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I certify that today, September 23, 2015, I electronically served a copy of this memorandum to the docket service list.

/s/ Michael Sheehan  
Michael J. Sheehan, Esq.

## PART Puc 511 ENFORCEMENT PROCEDURES FOR GAS PIPELINE UTILITIES

### Puc 511.01 Jurisdiction Scope and Application of Authority.

(a) Pursuant to RSA 370:2 the commission shall enforce safety standards and practices for utilities, referred to in Puc 506.01, consistent with the Natural Gas Pipeline Safety Act which is set forth at 49 U.S.C. § 60101, et seq.

(b) In enforcing safety standards and practices the commission shall consider:

(1) Pipeline safety data;

(2) The appropriateness and reasonableness of a safety standard applied to a particular incident or circumstances; and

(3) Other relevant information regarding the particular circumstances of an incident.

(c) The commission in exercising and implementing its inspection and enforcement authority pursuant to Puc 511 shall act by and through the commission's safety division.

(d) Pursuant to RSA 365:8 and RSA 370:2, and consistent with the Natural Gas Pipeline Safety Act, the commission shall:

(1) Investigate all methods and practices of utilities relating to pipeline safety;

(2) Require the maintenance and filing of reports, records and other information relating to pipeline safety in such form and detail as the commission shall prescribe;

(3) Enter at all reasonable times to inspect the property, building, plants and offices of utilities to investigate and determine compliance with pipeline safety requirements; and

(4) Inspect all books, records, papers and documents relevant to the pipeline safety.

(e) Each utility shall cooperate fully with the commission and its staff in its investigations and inspections pursuant to Puc 511, including maintaining and providing all relevant information and data and providing such access as the commission shall require.

### Puc 511.02 Intervals of Inspection.

(a) Each utility shall allow the commission staff, upon presentation of identifying credentials, to enter upon, inspect, and examine the records and properties of persons to the

extent such records and properties are relevant to determining the compliance of such persons with commission rules or orders.

(b) Each utility shall permit the commission to conduct inspections in response to or related to any of the following:

- (1) Routine scheduling;
- (2) A complaint received from a member of the public or any party;
- (3) Information obtained from a previous inspection;
- (4) Pipeline accident or incident; and;
- (5) Compliance with Puc 500.

(c) The commission shall schedule and conduct inspections if:

- (1) Results obtained in an initial inspection show a defect, irregularity or non-compliance which establishes the need for a subsequent or follow-up inspection;  
or
- (2) The commission determines that additional inspections are required to provide sufficient information to allow it to determine utility compliance with commission rules and orders.

#### Puc 511.03 Inspection of Utilities.

(a) Inspections conducted pursuant to Puc 511.02 shall include a thorough review of the utility's records concerning inspection, operation, maintenance, and emergency procedures.

(b) Field inspections combined with office inspections shall cover:

- (1) Operational checks of corrosion control provisions;
- (2) Overpressure and regulating equipment;
- (3) Odorization;
- (4) Repaired leaks;
- (5) Emergency valves;
- (6) New construction;
- (7) Maintenance of facilities;

(8) Selection of material and design of components;

(9) Qualifications and training of personnel;

(10) Public awareness programs, emergency response programs, quality assurance programs, underground damage prevention programs, and integrity management programs for transmission and distribution pipeline facilities;

(11) Control room management; and

(12) Any other components of the facility.

Puc 511.04 Verbal Notice to Utility of Probable Violation.

(a) When an evaluation of a utility's records and facilities indicates that the utility is apparently not in compliance with a pipeline safety regulation, the commission investigator shall informally discuss the probable violation or noncompliance with the utility before concluding his inspection.

(b) In situations where an inspection is performed without utility personnel on site, probable violations or potential non-compliance of Puc 500 shall be communicated to the utility upon completion of the inspection.

(c) The utility shall provide any documentation or physical evidence related to the alleged non-compliance which the commission representative shall request during the inspection or by letter.

(d) The utility may notify the commission staff and undertake on-site corrective action of the facility where the probable violation exists, thus correcting any identified deficiency.

Puc 511.05 Written Formal Notice of Probable Violation.

(a) After the commission staff receives evidence of a possible violation, the commission shall issue a written notice of probable violation (NOPV) to the party alleged to have committed the violation.

(b) The commission staff shall send information regarding the NOPV by certified mail to the party alleged to have committed the violation.

(c) The NOPV shall include the following:

(1) A description of the probable violation and reference to the rule or statute regarded as violated;

(2) The date and location of the probable violation;

(3) A statement notifying the party or parties involved that civil penalties might be imposed pursuant to RSA 374:7-a, in the event of unfavorable judgment;

(4) The amount of the civil penalty;

(5) A description of factors relied upon by commission staff in making its determination, such as the size of the business of the utility, gravity of the violation, history of prior violations, degree of culpability of the respondent, how quickly the respondent took action to rectify the situation, cooperativeness of respondent, history of prior violations, effect of penalty on the utility, and any other identifiable factors which would tend to either aggravate or mitigate the violation;

(6) Statutory rights of the respondent as enumerated in RSA 374:7-a; and

(7) Procedures for resolving the complaint.

(d) The operator shall respond in writing to the commission within 30 days of its receipt of the violation notice referred to in (a) above.

#### Puc 511.06 Responses to Notice of Probable Violation.

(a) Upon receipt of the NOPV the respondent shall:

(1) Submit to the commission within 30 days, in writing, evidence refuting the probable violation referenced in the NOPV;

(2) Submit to the commission within 30 days a written plan of action outlining action the respondent will take to correct the violations, including a schedule and the date when compliance is anticipated;

(3) Execute a consent agreement with the commission resolving the probable violation and remit the civil penalty; or

(4) Request in writing within 30 days, an informal conference with the commission staff to examine the basis of the probable violation.

(b) Any utility involved in the NOPV shall provide a representative for any informal conference or hearing scheduled relative to that NOPV.

#### Puc 511.07 Informal Conferences.

(a) After receiving the request for the informal conference, the commission staff shall:

(1) Arrange a date, time, and location for the informal conference; and

(2) Notify the respondent by certified mail of the date, time, and location of said informal conference.

(b) At the informal conference, the commission staff shall review the basis for the violation(s). The utility may explain its position and may present alternatives for solution of the problem.

(c) If the utility and the commission staff cannot by agreement resolve the violation at this stage, the enforcement procedure shall continue as described in Puc 511.08.

#### Puc 511.08 Notice of Violation.

(a) If the commission staff, after reviewing evidence and testimony obtained in writing or in conferences, determines that a violation of RSA 370:2, RSA 362:4-b, or Puc 500 has occurred, the commission staff shall issue a notice of violation (NOV) to the respondent.

(b) The NOV so issued shall include:

(1) The factual and statutory basis for the unfavorable preliminary determination;

(2) A description of factors relied upon by commission staff in making its determination, such as the size of the business of the utility, gravity of the violation, history of prior violations, degree of culpability of the respondent, how quickly the respondent took action to rectify the situation, cooperativeness of respondent, history of prior violations, effect of penalty on the utility, and any other identifiable factors which would tend to either aggravate or mitigate the violation;

(3) The civil penalty, if any, proposed to be imposed;

(4) Procedures for remitting penalty; and

(5) Statutory rights of the respondent as enumerated in RSA 374:7-a.

Puc 511.09 Response to Notice of Violation. Within 10 days from receipt of the NOV, the respondent shall either:

(a) Sign a consent agreement and remit the civil penalty; or

(b) File a request in writing for a hearing before the commission.

#### Puc 511.10 Commission Action.

(a) The commission shall act upon staff's recommendation unless the respondent requests a hearing pursuant to Puc 511.09.

(b) Hearing requests pursuant to Puc 511.09 shall be treated as a request for an adjudicatory proceeding.

(c) Upon a hearing request pursuant to Puc 511.09, the commission shall provide the respondent with notice and an opportunity for a hearing, held pursuant to Puc 200.