

NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

Docket No. DG 15-121

Northern Utilities, Inc.

Request for Hearing on Notices of Violations PS1501NU and PS1502NU

Staff's Motion to Strike Testimony

Designated Commission Staff (Staff), through counsel, respectfully moves the Commission to strike a portion of Mr. LeBlanc's prefiled testimony that describes a conversation with an unidentified PHMSA representative because it is inappropriate to admit such evidence.

In support of this motion, Staff represents as follows:

1. The central issues in the Notice of Violation arising out of the over-pressuring event at the New Hampshire Avenue regulator station in Portsmouth (Portsmouth NOV), are whether the federal safety rules allow or forbid the pressure to exceed MAOP under the particular circumstances of this case, and whether the monitor regulator set points were too close to MAOP and thus did not take into account the expected "build up" in pressure before assuming control.
2. The parties have submitted and will provide testimony from live witnesses on the applicable rules and their interpretation. Those witnesses will be subject to cross examination.
3. Mr. LeBlanc's prefiled testimony, however, refers to a conversation with a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), the federal agency charged with enforcing federal pipeline safety laws:

Q. Has the Company discussed with PHMSA the regulator set points and performance of the regulators during Staff's inspection?

A. Yes. Following Commission Staff's June 25, 2014 inspection, Mr. Leblanc had an informal discussion with PHMSA's Training and Qualification Division. PHMSA personnel told Mr. LeBlanc that the Company's worker and monitor set points and regulator performance were consistent with Federal Code requirements.

Direct Testimony of Christopher J. LeBlanc and Jonathan R. Pfister, at 19, lines 1 through 6.

4. Staff moves to strike this testimony for the following reasons. First, it is hearsay within hearsay. Although the Rules of Evidence do not apply to Commission hearings, they provide guideposts for determining the reliability of evidence, the lynch pin of the Commission's admissibility analysis. *See Public Serv. Co. of N.H.*, Order No. 25,714 at 9 (Sept. 8, 2014) (citing Rule 602 to grant a motion to strike speculative evidence). The unspecified statement by an unidentified PHMSA employee is patently unreliable.
5. Second, Northern has already admitted PHMSA's official position on the issues in this case through PHMSA's April 21, 2015, formal interpretation (attachment N to the LeBlanc testimony), provide in response to Northern's September 5, 2014, request (attachment M). PHMSA's written interpretation is an accepted means for PHMSA to express its opinions on the rules, it provides context and explanation for its conclusions, and it thus enables Staff to respond effectively.
6. Third, Staff is unable to respond to the challenged testimony. Unlike PHMSA's written interpretation, Staff does not know the question asked, the context, and what the PHMSA representative meant by saying Northern's conduct was "consistent with" the rules. There is no way for Staff to test the validity of the PHMSA statement through cross-examination. *See RSA 541-A:33, IV* ("A party may conduct cross-examinations required for a full and true disclosure of the facts").
7. Finally, Staff also had informal conversations with PHMSA employees who have agreed with Staff's position in this case. Staff did not intend to introduce these conversations for the reasons stated above. If the Commission allows Mr. LeBlanc's

testimony to stand, however, Staff will respond in kind with much more detailed testimony of its conversations with PHMSA. It is Staff's position, however, that such testimony should not be allowed from either party.

WHEREFORE, designated Commission Staff respectfully moves the Commission to:

- a. Strike page 19, lines 1 through 6, of Mr. LeBlanc's testimony, quoted above;
- b. Grant any further relief deemed just and proper.

Respectfully submitted,
Designated Commission Staff,
By its attorney



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I certify that today, August 13, 2015, I electronically served a copy of this motion to the docket service list.



Michael J. Sheehan, Esq.