

BEFORE THE STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

**In the matter of:
Unitil Corporation
Acquisition of Northern Utilities, Inc.**

)
) **DG 08-048**
)

Direct Joint Testimony

Of

**Kenneth E. Traum
Assistant Consumer Advocate
and
Stephen R. Eckberg
Utility Analyst**

Dated: July 16, 2008

**OFFICE OF CONSUMER ADVOCATE
JOINT TESTIMONY**

1 **Q. Please state your names, business address and titles.**

2 A. My name is Kenneth E. Traum. I am the Assistant Consumer Advocate for the Office of
3 Consumer Advocate (OCA), which is located at 21 S. Fruit Street, Suite 18, Concord,
4 New Hampshire 03301. I have been employed by the OCA for approximately 18 years. I
5 include my resume as Attachment 1.

6 My name is Stephen R. Eckberg. I am a Utility Analyst for the OCA, where I have been
7 employed for 1 year. I include my resume is Attachment 2.

8

9 **Q. Mr. Traum, have you previously testified before the New Hampshire Utilities
10 Commission (Commission)?**

11 A. Yes, I have testified before the Commission on behalf of the OCA on many occasions,
12 including cases involving natural gas, electricity, water and telecommunications.

13

14 **Q. Mr. Eckberg, have you previously testified before the Commission?**

15 A. Yes, I have testified previously before the Commission while employed by the Belknap-
16 Merrimack Community Action Agency as Administrator of the Statewide Electric
17 Assistance Program.

18

19 **Q. What is Unitil requesting in this Docket?**

20 A. Unitil Corporation (Unitil) is requesting Commission approval to acquire
21 Northern Utilities, Inc. (Northern) and Granite State Gas Transmission, Inc.

1 (GSGT), from their parent NiSource, Inc., pursuant to NH RSA 374:33 and NH
2 RSA 369:8, II (b).

3
4 **Q. What is your understanding of the standards under which the Commission must**
5 **review the proposed transaction?**

6 **A:** RSA 374:33 requires that the commission must find “that such acquisition is lawful,
7 proper and in the public interest.” RSA 369:8, II (b) requires that the Commission
8 consider whether the merger has an “adverse effect on rates, terms, service, or operation
9 of the public utility.” These standards have been referred to by the Commission as
10 requiring that such transactions pass the “no net harm” test. Accordingly, we have
11 reviewed the companies’ filings and responses to discovery in light of this test.

12
13 **Q. Please briefly summarize the OCA’s position.**

14 **A.** The OCA does not believe that the companies’ proposal, as filed, meets the “no net
15 harm” test. However, we believe that with several additional elements, which could be
16 adopted by the companies or could be conditions imposed by the Commission, the
17 proposal could meet the legal standard.

18
19 **Q. Generally, to which issues in this case would these additional conditions apply?**

20 **A.** There are 8 general areas where the OCA believes further provisions are required:
21 1) Service Quality
22 2) Consumer transparency
23 3) The transition from Northern to Unitil systems and the Proposed Transition Service

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

Agreement (TSA)

- 4) “Most favored nation” clause
- 5) Rate cap on GSGT billings to Northern N.H.
- 6) Environmental remediation costs
- 7) Distribution Rate Protection for Northern’s customers
- 8) Future investigation and transparency regarding the regulation and/or existence of GSGT.

Q. Are these items listed in order of importance to the OCA?

A. No.

Q. You have not included Energy Efficiency or Low Income Programs in your list. Why not?

A. Generally, energy efficiency and low income programs are very important to the OCA. In its proposal, Unitil has committed to at least maintain current programs in both energy efficiency and low income assistance for both electric and gas customers. Unitil has also committed to work with interested parties to expand or improve these programs, and the OCA intends to work with the company and other parties to do so should the transaction be approved. See Attachment 3, Unitil’s Response to NHLA Data Response 1-6, and Unitil’s Responses to ODR 2-17 and 2-18.

1 **Q. Please discuss the first item, Service Quality.**

2 A. In the Business Integration Plan (BIP) (provided as a confidential attachment to
3 ODR 1-4), Unitil states that transition services will be in place to ensure
4 continued compliance with service quality standards. Currently, Northern must
5 meet five Service Quality (SQ) standards or be subject to a penalty. The OCA
6 believes that this should continue with Unitil. Northern also currently reports
7 three other performance measurements to the Commission, not subject to an
8 associated penalty. We believe that those three measurements should be
9 considered as SQ standards and subject to penalties. We will first discuss those
10 standards that are already in place as background.

11

12 There are currently five (5) standards (call answering time, emergency call
13 answering time, percent of busy signal, meeting appointment schedules, and
14 resolution of complaints referred to the PUC) for which automatic penalties are
15 currently imposed when monthly performance falls below agreed upon levels.
16 See Attachment 4, which contains the first three pages of the May 2008 report
17 filed by Northern on June 26, 2008 in Docket No. DG 01-182 pursuant to Order
18 No. 24,075. These are the penalties that will continue post-transaction.

19

20 In addition, there are three (3) standards (average speed of answer for billing,
21 service and credit calls; monthly number of abandoned calls; and monthly average
22 time to abandon calls) which the Company currently only reports on a monthly
23 basis to the Commission, but which do not trigger penalties for a failure to meet

1 certain metrics. The OCA believes that as a condition of approval of this
2 transaction, if any of these indices deteriorate under Unitil's management,
3 automatic penalties should be imposed. We propose that penalties be triggered if
4 Unitil's performance is lower than Northern's performance during the most recent
5 12 months. See Attachment 5, Unitil's Response to OCA 1-56. These penalties
6 would provide an incentive to Unitil to ensure that Northern customers do not
7 suffer harm in the area of service quality as a result of the proposed acquisition.
8 We propose that the monthly penalty for any deterioration in service should be
9 \$5,000. Any penalties assessed should be returned to all customers in the
10 company's Local Distribution Adjustment Charge (LDAC) proceeding each year.

11
12 **Q. The second item is Consumer Transparency. Can you please explain this**
13 **term and discuss your proposed condition?**

14 A. Yes. The OCA believes that Unitil should make specific commitments in order to
15 ensure that customers will be kept informed about the acquisition, and that the
16 transition should be seamless for customers. Unitil should take all necessary steps
17 to ensure that no adverse customer impacts will occur. Copies of all planned
18 correspondence to Northern's customers should be provided, in draft form, to the
19 Commission Staff, OCA, and other parties in this docket in advance for the
20 opportunity to provide input. See Attachment 6, Unitil's Response to OCA 1-44,
21 in which the company committed to providing drafts of customer
22 communications.

1 **Q. Please explain the third item, which deals with the transition and the**
2 **Transition Services Agreement (TSA) between Unitil and**
3 **NiSource/Northern/Granite.**

4 A. The OCA believes that the transition from Northern to Unitil systems is a critical
5 part of implementing the acquisition, if it is approved. At this time we have
6 received a limited amount of information from the companies on the proposed
7 transition, and as a result we believe that there should be an ongoing dialogue
8 between the companies, the parties, and Staff so that we can be apprised of
9 progress and any issues that arise. Some examples may include Customer
10 Communications, Dispatch, Gas Control and Emergency Services in the Plaistow,
11 Salem, and Pelham area.

12
13 In addition, we also believe that the terms of the TSA are a critical component of
14 this transaction, as it describes those services which Northern will continue to
15 provide for Unitil for some period of time after the closing. We received a draft
16 of the TSA on July 10, 2008. The OCA has several questions about the draft TSA
17 that we hope to take up with the companies at the next technical session,
18 including when the parties and Staff will receive the final draft, how many and
19 what specific services will be included as “Annexes” to the TSA. Attached to this
20 draft is one sample “Annex” that shows how one of several potential services will
21 be addressed under the TSA, but it lacks detail and is only a sample. At this time
22 we are not prepared to take a final position on the TSA and whether the draft
23 provided includes enough detail.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

As a general matter, the OCA believes that the TSA should not be terminated by the companies without approval by the Commission, with the opportunity for the OCA, PUC Staff, and other Interveners to provide input, at least in certain critical areas. We acknowledge that Unitil has some 56 teams planning the transition and cutover of different areas from Northern/Granite/NiSource to Unitil, but we believe that certain areas will have a more direct impact on customers than other areas. At a minimum we believe that it is necessary for Unitil to keep the Commission, PUC Staff, OCA, and other Parties updated on the status of each planned system cutover on a regular basis. In addition, in a few discrete, but especially significant areas; i.e. customer relations/communications (Team 160 in the Business Integration Plan), the Commission should require final review and approval prior to the cutover of these systems, as well as prior to the termination of the TSA.

Q. The fourth item is a “Most Favored Nation” clause. Is this concept one that the OCA has previously advocated must be included in all multi-state acquisitions and/or mergers?

A. Yes. In order to ensure that Northern customers in New Hampshire are not directly or indirectly harmed by regulatory rulings in another jurisdiction, and to ensure that New Hampshire customers receive all benefits that are provided to customers in other jurisdictions, those conditions should also be applicable in New Hampshire, unless there are already more stringent conditions pertaining to

1 the subject area required or agreed to before this Commission.

2

3 **Q. Please explain the fifth item, a rate cap on GSGT billings to Northern N.H.**

4 A. At this time the OCA has not received adequate assurance that Northern's New
5 Hampshire customers will not face the risk of higher billings from GSGT as a
6 result of the proposed change in ownership. In addition, we recently read that
7 Unitil has stated that they intend to be "more aggressive in applying for rate
8 increases" after the transaction is approved. See Attachment 7, an article from the
9 NH Business Review on July 9, 2008 titled "Unitil Seeks More Stock for Gas
10 Acquisitions." The OCA is concerned that Unitil may be more likely to seek a
11 rate increase at the Federal Energy Regulatory Commission (FERC) than
12 NiSource, which has not sought an increase in approximately ten years. One way
13 to protect New Hampshire customers from any harm relating to rate increases is
14 for Unitil to agree to a 5 year cap for Northern customers related to GSGT costs
15 as of November 1, 2008, or as of the close of the proposed acquisition. Absent
16 such a condition, Northern customers could be adversely impacted by the
17 proposed transaction if Unitil seeks a rate increase for GSGT sooner than
18 NiSource planned to do so.

19

20 **Q. Your sixth item is Environmental Remediation costs. Please describe your
21 proposed condition related to this issue.**

22 A. As the Commission is aware, the costs of environmental remediation can be
23 significant, and they are often borne, at least in part, by ratepayers. In order to

1 protect customers, we propose two conditions on this subject:

2 a) First, Environmental Remediation expenses have historically been dealt
3 with in the State where the site is located. Unitil should agree to continue
4 this approach, as well as agreeing to accept the current “sharing”
5 methodology of these costs between ratepayers and shareholders.

6 b) Second, NiSource shall provide Unitil an indemnification agreement that
7 caps Unitil’s potential liability and financial exposure with respect to
8 environmental remediation at the currently estimated levels. The OCA
9 assumes that the current estimates were provided by Northern to Unitil
10 and were one of the items upon which Unitil relied in making its decision
11 to proceed with the acquisition.

12
13 **Q. Please discuss your seventh item to address rate protections for customers**
14 **related to Northern’s distribution rates.**

15 A. Unitil is not seeking an increase in distribution rates at this time; however, if their
16 Petition is approved as filed, the OCA is concerned that the proposed cost
17 structure for the combined company could lead to higher rates sooner than under
18 NiSource. We reviewed Unitil’s Data Response to ODR 1-6 (Attachment 8),
19 which shows that even if one accepts Unitil’s assertion of synergy savings, which
20 we do not because they are hypothetical,¹ the changes to Rate Base and Cost of
21 Debt will result in the risk of increases in distribution rates. Utilizing Unitil’s

¹ We also note that the synergies savings have not yet been updated by the company since the original filing, despite their statements that this information would be available at the end of June. See Attachment 9, Unitil’s Responses to OCA 105 and ODR 2-2.

1 figures in ODR 1-6, we estimate that rates could increase in the range from 0.6%
2 to as much as 7.2%. This, in our view, would result in harm to customers.

3
4 Therefore, in order to avoid any net harm due to potentially higher rates if the
5 transaction is approved, the OCA proposes the following conditions;

- 6 1. Accumulated Deferred Income Taxes, which reduce rate base, are
7 declining significantly under this Acquisition proposal due to the Section
8 338(h)(10) tax election under the Internal Revenue Service Code.
9 Ratepayers should not be disadvantaged by this Section 338(h)(10)
10 election insofar as accumulated deferred income tax balances would be
11 eliminated by this election. Therefore, for rate base purposes in future rate
12 proceedings, Unitil should be required to maintain pro forma accounting
13 for regulatory purposes to continue to provide ratepayers with the
14 ratemaking benefit of Northern's accumulated deferred income tax
15 balances, until such time as Unitil's deferred income taxes equal or exceed
16 what Northern's would have been absent the transaction.
- 17 2. Unitil should not be allowed to include in rate base an estimated \$3.0
18 million of Integration Costs,² which would not have been incurred absent
19 the proposed transaction. These costs simply are not appropriate to
20 include in rate base because they relate only to activities required by the
21 transaction.
- 22 3. Unitil plans to replace Northern's lower cost debt with more expensive
23 issues. For rate making purposes the lower cost of Northern's debt should

² Integration Costs are discussed in the testimony of Laurence M. Brock at p. 14 line 19.

1 continue to be used for cost of debt purposes until that debt would have
2 naturally matured.

3 4. Finally, Unitil should not be allowed to include in its cost of equity in
4 future rate cases the “flotation costs” related to raising equity for this
5 transaction. These are clearly costs caused by the transaction that should
6 not be passed on to ratepayers.

7

8 **Q. Please address your final item relating to future investigation and**
9 **transparency regarding GSGT.**

10 A. Unitil should formally agree to fully cooperate with both state’s Commissions,
11 PUC Staffs, Consumer Advocates and other parties in determining whether
12 customers would be better served by integrating GSGT into Northern at a future
13 date. If such determination is made, Unitil should agree not to oppose that
14 decision in other venues. Should the decision be that the current regulatory
15 structure is the appropriate one, Unitil should agree now to make GSGT’s
16 operations as transparent to the state Commissions as possible, including agreeing
17 to state oversight, subject to FERC jurisdiction of gas safety issues.

18

19 **Q. Does the OCA have any additional conditions to propose at this time?**

20 A. No, although we do reserve our rights to propose further conditions pending the
21 review of additional information from the companies, and the testimony of other
22 parties.

23

1 Q. Does this conclude your testimony?

2 A. Yes.