

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DG 11-196

UNITIL CORPORATION AND NORTHERN UTILITIES, INC.

Show Cause Proceeding

Order Approving Settlement Agreement

ORDER NO. 25,390

July 9, 2012

APPEARANCES: Gary Epler, Esq. for Unitil Corporation/Northern Utilities, Inc.; Law Offices of Shawn J. Sullivan, PLLC by Shawn J. Sullivan, Esq. for the United Steel Workers of America Local 12012; and Lynn Fabrizio, Esq. for the Staff of the Public Utilities Commission.

I. PROCEDURAL HISTORY

On April 22, 2011, Staff submitted a memorandum to the Commission analyzing the results of reporting received from Unitil Corporation and its affiliate Northern Utilities, Inc. (Unitil, Northern, or the Company) on its performance under emergency response time standards established by the settlement agreement approved in Docket DG 08-048, Order No. 24,906 (Oct. 10, 2008). In its memorandum, Staff raised concerns regarding the Company's performance and proposed a number of alternatives for the Commission's consideration. Staff's analysis included reports and graphs depicting the Company's performance relative to the emergency response standards, evaluated monthly.

On June 20, 2011, the Company filed a response to Staff's memorandum, acknowledging that it has been unable to meet the emergency response standards in certain of the nine benchmarks during each month of the reporting periods in question, but disputing certain positions and conclusions reached by the Staff.

On September 8, 2011, the Commission issued Order No. 25,266, finding that a proceeding was warranted for Northern to show cause why the Company and its officers should not be subject to civil penalties pursuant to RSA 365:41 and RSA 365:42 for failure to meet the emergency response standards agreed to and approved in Order No. 24,906 (Oct. 10, 2008).

On September 22, 2011, the Office of Consumer Advocate (OCA) notified the Commission that it would be participating in the proceeding on behalf of residential ratepayers, consistent with RSA 363:28. The United Steel Workers of America (USWA) Local 12012 filed a petition to intervene on September 28, 2011.

A prehearing conference was held on October 4, 2011, followed by a technical session. At the prehearing conference, Staff and Unitil presented their preliminary positions as set forth in their respective April 22, 2011 and June 20, 2011 memoranda.

On October 5, 2011, Staff filed a report of the October 4 technical session that included a proposed schedule agreed to by all parties for filing a joint stipulation of facts and a follow-up technical session, as well as a list of certain information Unitil had agreed to provide to the participants in the docket. A joint stipulation of facts signed by counsels for Unitil and Staff was filed on October 17, 2011. On November 17, 2011, Unitil filed a letter proposing procedural steps and stating that the parties had been unable to agree on a process. Staff filed an alternative proposed schedule on November 18, 2011, to which Unitil responded on November 22, 2011.

On December 2, 2011, the Commission issued a procedural order, in which it found that because Unitil had admitted that it was not in compliance with Order No. 24,906, establishing the emergency response standards at issue in this proceeding, the burden of persuasion had shifted to the Company. As a result, the approved procedural schedule included initial testimony from the Company, followed by discovery and testimony from Staff and intervenors.

Northern filed the direct testimonies of Melchore Ciulla, Manager of New Hampshire Gas Operations for Northern; Christopher J. Leblanc, Director of Gas Operations for Unitil Service Corp.; Thomas P. Meissner, Jr., Chief Operating Officer of Unitil Corporation; and Philip Sher, independent pipeline consultant, on December 16, 2011. Staff filed the direct testimony of Randall S. Knepper, Director of Safety & Security, on January 9, 2012. On February 3, 2012, the USWA filed the testimony of David P. Emerton, Unit Chairperson of Local 12012-6. While the procedural order allowed for the Company to file rebuttal testimony, the Staff and the Company mutually sought and were granted a temporary suspension of the procedural schedule while they pursued negotiations to attempt to resolve the issues raised by this docket. After a number of changes to the procedural schedule due to ongoing settlement discussions between the Company and Staff, a settlement agreement was filed on April 23, 2012. A hearing on the settlement was held on April 25, 2012. On May 30, 2012, the Company belatedly filed a work plan with the Commission as required by section 3.1 of the settlement agreement; a revised work plan was filed on June 4, 2012. On June 15, 2012, Staff filed its review of the work plan.

II. INITIAL POSITIONS OF THE PARTIES AND STAFF

A. Unitil/Northern Utilities

In its June 20, 2011 memorandum, the Company did not dispute that it has been unable to meet the performance criteria in each of the nine benchmarks set forth and approved in Order No. 24,906. The Company, however, disputed that its actions have at any time compromised the safety of emergency responders, its customers or the public, adding that it maintains strict compliance with all applicable federal and state pipeline safety rules and engages in industry best practices that often exceed code-mandated requirements. The Company stressed that the nine

emergency response performance standards approved by the Commission were the result of a negotiated settlement, not the result of an investigation and not part of code or industry standards or otherwise recognized as a “fundamental utility objective,” as Staff argued. It added that the standards did not specify a monthly “compliance objective” – in other words, according to the Company, the standards were not defined or characterized as minimum benchmarks to be met monthly, and were not included under the service quality metrics subject to penalties in the negotiated settlement agreement.

The Company argued that its emergency response has been “excellent and improving” since its acquisition of Northern, and is better than the emergency response under the predecessor owner of Northern, adding that it has “focused extensive efforts on meeting the Emergency Response Standards,” including additions to both staffing and working hours at a cost that will be ultimately recovered from customers. The Company added that, despite having overall responses as measured by average response time (23-24 minutes per call across all benchmark time periods)¹, it has been unable to consistently meet the standards for 30-minute responses at the established percentages. The Company complained that Staff did not give any weight to average times in its April 22, 2011 memorandum. Furthermore, according to the Company, it will be exceedingly difficult to further reduce its responses times, given that they include: (a) call handling time, (b) call-out/dispatching time; and (c) drive time to the location of the emergency. The Company also argued that since the ultimate goal of such standards is public safety, meeting or surpassing the nine response standards in total should be the overall goal, even where certain individual benchmarks may be missed – that is, as long as the Company is surpassing more benchmarks than it is missing. The Company submitted that the percentage

¹ The standards approved in DG 08-048 include 30-minute, 45-minute and 60-minute response time benchmarks for Normal Hours, After Hours, and Weekends/Holidays. The DG 08-048 settlement agreement is available at <http://www.puc.nh.gov/Regulatory/Docketbk/2008/08-048.htm>.

benchmarks for 30 minute responses may not be properly designed, it is not practical to meet the 30-minute benchmarks, and there is no objective standard and no basis in code, regulation or industry standards for the 30-minute response benchmark. Finally, the Company asked the Commission to direct the settlement parties to pursue an alternative performance standard.

At the prehearing conference, the Company reiterated the positions it had stated in its June 20, 2011 memorandum, emphasizing that the standards had been established through a 2008 settlement agreement based on an understanding of Northern's emergency response performance at that time, and that the Company had relied on Staff's representation at the hearing on the 2008 settlement agreement that meeting standards would require only slight tweaking and management focus. The Company complained that New Hampshire's response time standards are more stringent than those in place in other states, and that it is concerned that it is being treated differently than other New Hampshire companies. The Company further suggested that the standards should be revised, given the lessons learned from its experience since their implementation.

In its prefiled testimonies, the Company again reiterated the positions it set out in its memorandum. In Mr. Ciulla's testimony, the Company asserted that it had followed through in a timely manner to develop a format for reporting the response data to Staff, and that it had hired staff to replace those performing emergency response activities of the predecessor company and implemented various work shifts in an attempt to meet the standards. The Company argued, however, that meeting the standards will require major changes to operations and staffing, and that the 30-minute standards cannot be met with traditional standby and on-call procedures. According to the Company, the cost of meeting the standards will be \$1.1 to 1.5 million annually to hire and outfit nine to eleven additional service technicians.

The Company argued through Mr. Leblanc's testimony that Northern's system is constructed of state of the art materials not prone to leaks; that leak-prone pipe will be eliminated entirely by 2017; that only 4 to 5 leak or odor calls per year turn out to be potentially hazardous; and that it maintains a pipeline safety program, including inspection, maintenance, and preventative measures, that exceeds state and federal standards and is at the forefront of industry best practices. Moreover, according to the Company, effective emergency response involves more than meeting response time standards.

In Mr. Meissner's testimony, the Company reiterated its arguments that the standards were not developed as part of a rulemaking, were not based on specific studies, analyses or data, and that no evaluation of costs and benefits or comparative analyses had been made. Moreover, the Company argued that it has taken great lengths to meet the standards and is currently averaging 22 minutes for all calls, across all hours. The Company recommended modifying the standards and creating a 45-minute response standard for after hours and weekend/holiday time periods.

The Company's consultant, Phillip Sher, acknowledged in his testimony that delayed emergency response can lead to explosions, fire, death, injury and property damage; regulators, however, should assess the relative risk of such results when establishing performance standards and determine whether the increased safety results warrant the increased expenditure. Mr. Sher added that the Company has the least control over emergency responder travel time, which is the key variable in the Company's inability to meet the existing standards. Mr. Sher suggested that Staff had conducted a less than rigorous analysis of Northern's footprint when it concluded that Unitil should be able to meet the agreed-upon standards, and that Unitil relied on Staff's conclusions when it signed the 2008 settlement agreement, because Unitil had only limited

access to Northern's records and data at the time of settlement. Mr. Sher added that rural areas should expect longer response times, that monthly targets are subject to more anomalies and individual circumstances, and that simpler annual targets would smooth out those anomalies. In conclusion, Mr. Sher suggested that penalties would be inappropriate in this instance because the standards are simply not attainable.

B. United Steel Workers of America Local 12012

The USWA Local 12012 urged the Commission to maintain the existing emergency response standards as established in Order No. 24,906, noting that the safety of the workers and general public require prompt response times and quality personnel. According to the USWA Local 12012, as it had testified in DG 08-048 when Unifil acquired Northern in 2008, Unifil's operational plans for its acquisition were not clearly defined and the Company wanted to assume a greater responsibility without the resources to do so. The USWA also reiterated its testimony from DG 08-048 that the Salem, Plaistow, and Atkinson areas are geographically distant from Northern's main base of operations in Portsmouth, and that the levels of response times, safety and service under the prior owner could not be maintained under Unifil's ownership without an evaluation of workloads and emergency response requirements, and the hiring of additional labor. USWA noted that Northern had added one new service technician that performs emergency response functions, as well as a distribution operator that does not.

The USWA stated that Northern had a number of options to meet emergency response obligations that would not require renegotiating the collective bargaining agreement (CBA), including the creation of six new service technician positions to provide a larger pool from which to draw "on call" personnel; creation of one new service technician position to allow for a

standby call schedule that puts each service technician on call once every four days; or extend regular work shifts through the periods when emergency responses are below standards.

The USWA noted that the current CBA was negotiated between April 2010 and April 20, 2011, when it was signed, and added that at any point during a CBA term, the parties to the agreement may create a memorandum of understanding on issues mutually agreed upon. According to the USWA, the CBA does not need to be changed for the Company to address emergency response needs, because the Company is free to hire new staff and the USWA remains willing to discuss any mutually beneficial option to resolve the issue.

C. OCA

At the prehearing conference held on October 4, 2011, the OCA stated that, while it did not have a specific position on the issues raised, it generally takes the position that when a company agrees to performance metrics in the context of a Commission approved settlement agreement, it should abide by those metrics. The OCA also expressed concern that the Company was, in part, basing its excuse for non-compliance on the argument that it did not know what it was getting into when it agreed to the standards and they turned out to be more than it could perform.

D. Staff

In its April 22, 2011 memorandum, Staff notified the Commission that Unitil was not in compliance with the Emergency Response Standards approved in Order No. 24,906. Staff's memorandum included attachments depicting compliance data covering the period January 2009 to February 2011, as well as detailed data submitted for the years 2009 and 2010, including locations, dispatch times, emergency response times, types of calls, and employee personnel involved. Staff stated that it had met with Unitil representatives to discuss the performance

metrics, and that Unitil had summarized actions taken to-date and emphasized their commitment to meeting the standard in a cost effective manner. Nonetheless, despite these efforts, the Company remained out of compliance.

Staff concluded that Unitil's failure to meet the agreed-upon performance standards is unacceptable and troubling, noting that emergency response standards are a cornerstone of an operator's requirement for planning, preparing, and implementing an effective emergency response, and that emergency response cannot be compromised. Staff added that the assessment of severity and subsequent action plans subsequent to a leak or odor call cannot be determined until operators have arrived on the scene; thus, according to Staff, it is essential that undue delays be eliminated. Moreover, Staff argued, the public demands confidence in the ability of an operator to respond to potential emergencies promptly and without delay.

According to Staff, the Company failed to meet the response time requirements in 58 instances within the 26-month period for which data was available prior to the filing of Staff's memorandum, and that Unitil had not met the performance standards consistently in any month. Staff expressed its concern that the pattern appears to be on-going, even with the operational changes the Company had implemented during that period. According to Staff, its evaluation and conclusions regarding the post-merger data and potential remedies allowed consideration for the time required for merger implementation plans to be realized; dispatching operations to be redeployed, reconstructed and retrained; contract negotiations with bargaining units to be completed; and alterations of shift schedules to be made. Staff added that it believes that uniform and consistent standards the public can rely on throughout the state regardless of location are in the best interest of emergency responders and New Hampshire businesses, citizens and visitors.

In its memorandum, Staff set forth a number of options for the Commission to consider, including civil penalties; a show-cause hearing pursuant to RSA 365:5 to determine why civil penalties should not be imposed; linking compliance with emergency response thresholds with executive incentive compensation plans; and requiring Unitil to submit a written report each month, signed by a senior executive and explaining each instance of non-compliance.

At the prehearing conference, Staff stated that it believed the existing standards agreed to and approved in DG 08-048 are reasonable, and the data show that Unitil has not complied with those standards. Staff disagreed that averaging of response times would be appropriate, as the Company appeared to be suggesting, because averaging can disguise poor performance and eliminate the statistical basis from which problems and potential remedies can be pinpointed. Staff reiterated that the existing standards should be enforced, rather than lowered so that the Company can meet them, noting increased federal attention to gas pipeline safety in the wake of San Bruno, California and other gas pipeline incidents in residential neighborhoods.

Staff added that its concern at the time of the Northern acquisition was that the gas company operations would go from two work centers to one, but the Company had assured Staff that it would be able to meet the standards that were ultimately agreed to and approved. According to Staff, it is very important that emergency response times be as prompt as possible for public safety, and that while a leak or odor call may turn out to be a non-hazardous situation, that conclusion cannot be made until someone arrives on the scene and assesses the situation.

In its prefiled testimony, Staff reiterated its overarching concern that the continuing pattern of missed benchmarks evidenced by the Company's monthly data submitted pursuant to the settlement agreement has serious implications for public safety. Staff noted that Unitil states in its training presentation for emergency first responders that "[r]esponse to odor complaints is

the *most important* job that any gas company employee performs. All odor complaints are considered to be hazardous leaks until *proven* otherwise.” See Direct Testimony of Randall S. Knepper at p. 4, lines 7-10. According to Staff, the response time is a critical component in a utility’s ability to begin the site assessment of the degree of hazard posed by a reported threat, which cannot be eliminated until arrival on scene and must be considered an emergency until proven otherwise. Staff noted that federal regulations require “prompt and effective response” to emergencies, including the detection of gas inside or near a building, and that the instant proceeding is focused on the promptness of such responses, not the effectiveness of the response activities that include performing and classifying a leak investigation or repairs that may be required to clear the emergency. Staff added that federal regulations set out minimum safety regulations for operators of natural gas and other flammable gas pipelines, but not granular requirements, which would have to take into account local conditions and circumstances or expectations of the public in all locales. According to Staff, the states have authority to adopt more stringent or more specific standards under the Pipeline Integrity, Protection, Enforcement, and Safety Act of 2006 and most states, including New Hampshire, have implemented more specific standards, either through statute, regulations, or commission orders. In this case, Staff states, the federal requirement of a ‘prompt’ response is clarified and defined by establishing the minimum response time benchmarks at issue in this proceeding.

Staff reiterated its concern regarding the implications of Unitil’s continuing inability to meet the time response standards and the Company’s testimony position that, rather than seek compliance with the existing standards, the standards should be lowered. In particular, Staff noted that the Company had been unable to comply with the After Hours, and Weekend/Holiday response time standards. In Staff’s view, compromise of the established standards could have a

direct negative impact on utility emergency responders, local emergency responders such as fire and police officials, other utilities' employees who may be on the scene, and the safety of Unitil customers and the general public. According to Staff, not meeting the existing standards could lead to an escalation of potentially hazardous situations, where local emergency responders may be hindered in their ability to determine subsequent actions until utility personnel have arrived on the scene to assess the cause of the leak or odor and the potential hazard, placing incremental risk upon local emergency responders and adversely affecting the overall emergency response effort.

Staff noted that its review in this proceeding was limited to emergency response times, and that the Safety Division was not contending that all other conditions in the settlement agreement reached in DG 08-048 were in full compliance; rather, those subject areas fall outside of the scope of Staff's April 22, 2011 memorandum. Staff added that in the nine months since the filing of its memorandum, the Company had missed the response time benchmarks an additional 28 times, bringing the total misses to 80 since the Company had started reporting data pursuant to the settlement in DG 08-048. Staff repeated its concern regarding the number of instances in which Unitil has been unable to meet emergency response time standards, as well as the overall trend of substandard emergency response performance during the After Hours and weekend/Holiday timeframes, adding that the Company's performance has been steady at best or even slightly declining, as measured over 35 months versus the 26 months measured in the memorandum.

Staff suggested in its testimony that rather than hire 9 to 11 additional service technicians at an annual cost of \$1.1 to 1.5 million, Unitil could consider increasing the pool of emergency responders beyond the existing traditional standby method of using only service technicians through cross-training; ensuring that the length of time calls are held at the dispatch stage ("Held

Times”) are less than five minutes; ensuring that the time in which a first responder receives and accepts a call from dispatch (“Acceptance Times”) are no greater than ten minutes; or realigning existing on-call assignments to fit the geographical on-call patterns. Further, according to Staff’s review of discovery in this proceeding, 6 out of the Company’s 11 designated first responders do not live in Unitil’s service territory. Staff added that the Company had 18 months of emergency response time data prior to the negotiation of the current collective bargaining agreement, thus allowing ample opportunity to modify the agreement to address emergency response times.

Staff stated that the potential for a gas pipeline hazard to occur exists 24 hours a day, not just during normal business hours – in fact, “After Hours” represents approximately 43 percent of the time during the course of a year in which a potential emergency could occur, and Weekend/ Holiday Hours represent approximately 32 percent of that time. As a result, Staff sought to minimize the possibility that a delayed emergency response time would be a potential contributing factor to an incident and stated that the reporting of data in three separate timeframe classifications adds transparency and permits refinement in emergency response performance, while combining timeframes or averaging compliance measurements, as the Company proposes, would mask issues or weaknesses in emergency response procedures.

III. SUMMARY OF THE SETTLEMENT AGREEMENT

The Settlement Agreement (or Agreement) filed in this docket was signed by Staff and Northern Utilities, Inc. The stated intent of the Agreement is to resolve all outstanding issues in the proceeding and includes, among other things, a modification of emergency response standards and additional emergency response commitments from the Company.

A. Modification of Emergency Response Standards

The Company and Staff agreed to modify the current Emergency Response Standards to more clearly define how response times are to be evaluated, in a manner consistent with public safety considerations and the characteristics of the Company's service area. Accordingly, Northern's Emergency Response Standards performance will be measured as part of an evaluation of safety performance as outlined below.

Northern will comply with the following modified Emergency Response Standards to respond to gas leak or odor calls made to Northern:

Emergency Response Standards		
Performance Measure	Response Time	Percent to Achieve
Normal hours	30 minutes	87%
All hours	30 minutes	80%
Normal hours	45 minutes	93%
After hours	45 minutes	88%
Weekends and Holidays	45 minutes	86%
Normal hours	60 minutes	98%
After hours	60 minutes	97%
Weekends and Holidays	60 minutes	96%

Response Time Measurement: For purposes of evaluating performance under these standards, Northern's response time will include every call received by the Company from a caller reporting a gas leak or gas odor, regardless of the outcome or what is determined on-scene once a responder arrives. The time of response will be measured from the time the call is received by Northern and a work order is created during that call, until the time when a qualified responder arrives at the scene. The response time will not include repair time.

Reporting: Northern will report on its performance on a monthly basis using the same format and detail that it has provided to Staff since January 2010. As part of its monthly

reporting, the Company will provide a detailed explanation, including any actions taken to prevent recurrence, for any individual response exceeding 60 minutes. In addition, Northern will provide a detailed explanation of any failure to meet an Emergency Response Standard, and include a remediation plan to prevent recurrence, with supporting documentation and a proposal for implementation.

Monthly Evaluation: The Company's response performance will be evaluated against the Emergency Response Standards each month using the preceding 12 consecutive months of reported emergency response times.

Penalties: The Company will be subject to an automatic penalty of \$8,000 per month for failing to meet any of the Emergency Response Standards in the preceding twelve consecutive month period. Multiple failures to meet the Emergency Response Standards within any given month (for the preceding twelve consecutive month period) shall not be subject to multiple penalties and the Company's maximum monthly penalty exposure shall be \$8,000. The Company will not be subject to a cumulative penalty of more than \$96,000 in any calendar year under this provision.

Effective Date of Evaluation and Penalties: The effective date of the monthly evaluation and the penalties will be 90 days after the date of approval of this Settlement Agreement by the Commission for all Emergency Response Standards except "All Hours." The evaluation and penalties applicable to the "All Hours" Emergency Response Standard will go into effect January 2013.

If the Staff is not satisfied with the explanations provided by the Company required under the Agreement and believes safety is being materially compromised by the Company's poor performance, the Staff may request that the Commission open an investigation to determine

whether additional actions should be taken to address the Company's performance. Such actions could include financial penalties associated with future performance in addition to the penalties provided for in the Agreement, if the Commission deems appropriate.

B. Additional Emergency Response Commitments

The Company agrees to develop and file with the Commission within three weeks of the date of the Agreement a work plan by which it will meet the Emergency Response Standards. The work plan will be subject to Staff review and approval.² Northern agrees to designate a Vice President with responsibility for compliance with the Emergency Response Standards and review of all submittals regarding Emergency Response Standards prior to filing with the Commission or Staff.

Northern agrees to work with the Commission's Safety Division to establish a schedule of quarterly meetings to review the Company's reporting and performance under the Emergency Response Standards. In addition, Staff and the Company agree to review the terms and conditions of this Agreement, as well as the performance results achieved, no later than five years from the date of the approval of the Agreement, to determine whether changes to those terms and conditions are appropriate. If agreement cannot be reached on a recommendation to the Commission regarding terms and conditions going forward at that time, Staff may petition the Commission to immediately reinstate the Emergency Response Standards established in DG 08-048. Staff will report to the Commission on the outcome of such review.

IV. POSITIONS OF THE PARTIES AND STAFF REGARDING THE SETTLEMENT

A. Unitil/Northern Utilities

The Company reiterated its position that the existing standards were not developed in the course of an investigation, that there was no identified technical basis for them nor were they

² The Company filed a Work Plan on May 30, 2012, and a revised version on June 4, 2012.

shown to relate to any particular perceived level of safety and that the standards were raised for the first time toward the end of settlement discussions in DG 08-048. The Company also testified that it relied on Staff's presentation of the standards and that Unitil itself did not have any particular experience with Northern Utilities. Further, according to the Company, it did not have a detailed understanding of Northern's history in terms of meeting any particular response time, although it gained information from Northern shortly after the acquisition that led it to understand that Northern was not then attaining the standards agreed to and was missing several categories of standards fairly significantly. Thus, according to the Company, management did not become aware of Northern's response time performance until a month or so after it signed and filed the 2008 settlement agreement setting forth the current standards.

The Company claimed that local management makes sure that first responders are dispersed at different locations within Northern's service territory at all times so that there is always a responder somewhere close to where the call will most likely come in and, in that way, a 30-minute response objective can be met a high percentage of the time. Outside regular hours, however, there are no employees working in the field; the Company therefore relies on on-call procedures during those hours. According to the Company, the on-call procedures are the root cause of its inability to meet the 30-minute standard outside normal business hours, as responders may be asleep, need to get dressed and get to their vehicles, and may not be located in close proximity to the call location. The Company has determined that it cannot meet a 30-minute response objective 80 percent of the time with on-call employees, although it has made some changes to expand the coverage hours employees are working by adjusting shifts. The Company added that it cannot rely on an on-call arrangement to meet the existing 30-minute

response time objectives, because of the travel time between where responders live and where the calls originate in Northern's service territory.

The Company argued that while 60 percent of leak and odor calls occur on Saturdays, overall the number of calls that come in during the After Hours and Weekend/Holiday timeframes are sporadic and, as a result, according to the Company, the standards are effectively higher in application during those time periods.

The Company testified at hearing that it believes the standards in the settlement agreement proposed in this proceeding are as strict or stricter than the ones they are replacing, with the exception of the All Hours standard, which is a 30-minute standard that applies to all time periods (Normal Business Hours, After Hours, Weekends/Holidays) as an overall measurement. According to the Company, the 80 percent standard for All Hours was derived from the Company's past and current performance measured across all time periods, such that achievement of that standard is comparable to the Company's performance since the existing DG 08-048 standards were established. To meet the 80 percent All Hours standard, the Company stated that it will have to make every single 30-minute response it can across all time periods, and that it is the intent of the Company to try to achieve 30-minute responses during Weekends/Holidays and After Hours, even though those benchmarks have been eliminated, and that its current performance is not meeting the new All Hours standard. In response to questioning at the hearing, the Company acknowledged that its achievement of the 30-minute standards for Weekends/Holidays and After Hours under the existing standards averaged 45-54 percent in the past two-plus years.

B. United Steel Workers of America Local 12012

The USWA Local 12012 clarified, through cross-examination of the Company witnesses, that the work plan proposed in section 3 of the Agreement could entail changes in shifts and staffing, and that the line manager responsible for Portsmouth operations will have the most direct responsibility for meeting the new standards, with concurrent responsibility held by the director of gas operations for Until Service Corp. and the senior vice president/chief operating officer of Until Corporation. The USWA Local 12012 took no position on the Settlement Agreement.

C. Staff

At hearing, Staff presented data tables and graphs that represented an update of the data reviewed in Staff's April 22, 2011 memorandum, extending the monthly performance data from 27 to 39 months. According to Staff, the compilation of monthly data and conversion to graphical representation enables Staff to monitor trends in the Company's response time performance and pinpoint where the issues are. The data presented by Staff also indicate that Until receives on average about a thousand calls a year, with more received in the winter than in the summer. Staff noted that the data and graphics show that the challenging benchmarks for the Company are the 30-minute categories for Weekends/Holidays and After Hours. Staff testified that its analysis suggests that the root cause of the Company's inability to meet those benchmarks is the Company's reliance on an on-call arrangement which is dependent upon a limited pool of personnel resources within the Company, and that many of those personnel are responding on weekends from their homes, which to a large extent are not located in the Company's service territory.

Staff noted that although the 30-minute standards for After Hours and Weekends/Holidays have been eliminated in the proposed settlement agreement, the Company will continue to report the same monthly data for those time periods, which will enable Staff to monitor performance during those timeframes. Staff added that it believes a focus on meeting a 30-minute response time should be maintained, because the response time itself is a very small portion of the overall response to a potential emergency and a prompt response time will facilitate a prompt and effective response. According to Staff, the Company is already meeting the modified standards measured on a 12-month rolling basis, as provided in the proposed settlement, and would not trigger the new penalty provisions based on current performance.

Staff testified that it agreed to the settlement because it provides clarity in terms of how the benchmark performance is evaluated and measured, a slight increase in performance requirements for 30, 45 and 60-minute benchmarks during Normal Business Hours as well as the 45 and 60-minute benchmarks for After Hours and Weekends/Holidays, and automatic penalties for failures to meet the benchmarks. In addition, Staff stated that the quarterly meetings with the Company, the continued reporting of monthly data, and the ability to revisit the Agreement in the future provide an improvement.

V. COMPANY WORK PLAN

Section 3 of the Settlement Agreement provides that the Company will develop and file with the Commission within three weeks of the signing of the Agreement a work plan by which it will meet the Emergency Response Standards, subject to Staff review and approval. The Work Plan was filed with the Commission on May 30, 2012, with a revised version filed on June 4, 2012. Staff accordingly reviewed the revised Work Plan and filed a report with the Commission on June 15, 2012, with a recommendation that the Commission deem that condition of the

Agreement to be met. In its report, Staff noted that overall, the work plan is consistent with Staff testimony and incorporates certain recommendations and alternatives Staff had suggested during discussions with the Company in the course of this proceeding, including an expansion of the first responder pool, a residency requirement for future hires, and adjustments to shift assignments, coverage areas, and on-call procedures.

VI. COMMISSION ANALYSIS

Pursuant to N.H. Code Admin. Rules Puc 203.20(b), the Commission shall approve disposition of a contested case by settlement “if it determines that the result is just and reasonable and serves the public interest.” *See also* RSA 541-A:31, V(a). In determining the public interest, the Commission serves as arbiter between the interests of customers and those of the regulated utilities. *See* RSA 363:17-a; *see also Public Service Co. of N.H.*, Order No. 24,919 (Dec. 5, 2008) at 7-8.

In general, the Commission recognizes that settlement of issues through negotiation and compromise provides “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.” *See National Grid USA et al.*, Order No. 25,370 (May 30, 2012) at 27; *see also EnergyNorth Natural Gas, Inc. d/b/a National Grid NH*, Order No. 24,972 (May 29, 2009) at 48. Even where all parties join a settlement agreement, however, the Commission must independently determine that the result comports with applicable standards. *Unitil Corporation*, *supra* at 32. The issues must be reviewed, considered and ultimately judged according to standards that provide the public with assurance that a just and reasonable result has been reached. *Concord Electric Company*, 87 NHPUC 694, 708, Order No. 24,072 (2002), quoting

from *Concord Electric Company*, 87 NHPUC 595, 605, Order No. 24,046 (2002), and orders cited therein.

In this case, we are guided by RSA 374:1, which requires every public utility to furnish “such service and facilities as shall be reasonably safe and adequate and in all other respects just and reasonable,” as well as our duty under RSA 374:4 to keep informed with respect to the safety, adequacy and accommodation offered by utility service, and utility compliance with all provisions of law, orders of the commission, and charter commitments. The subject matter of the settlement agreement in this case concerns emergency response time standards, which fall under the gas safety standards.

This Commission has recognized that gas safety standards are vital to the public’s health and welfare, and that it is the Commission’s responsibility to ensure that public safety is secure, that service requirements are met, and that utilities adhere to the standards set by this Commission. *See Promulgation of Rules for Gas Service*, Order No. 17,614 (May 21, 1985), 70 NHPUC 397 at 399; and *EnergyNorth Natural Gas, Inc.*, Order No. 23,470 (May 8, 2000), 85 NHPUC 360 at 367. The Commission’s authority to regulate gas utility operations and service under RSA 374:3 is derived through section 1(b) of the Natural Gas Act, which reserves to the states jurisdiction over, *inter alia*, local distribution of natural gas and the facilities used for such distribution. *See* 15 U.S.C.A. 717(b). The Commission derives further authority to address gas safety concerns through the Pipeline Integrity, Protection, Enforcement, and Safety Act of 2006. *See* 49 U.S.C.A. 60104(c); *see also* RSA 362:4-b, III (commission authority to monitor or enforce the provisions of federal pipeline safety standards relative to liquefied petroleum gas systems). The Commission implements its statutory authority through its orders and the gas service regulations. *See, e.g.*, N.H. Admin. Code Rules Chapter Puc 500. In assessing the

settlement presented in this proceeding, we consider all interests involved and all relevant circumstances in determining what is reasonable.

Consistent with the foregoing, we have reviewed the settlement agreement in light of the record as a whole. An important factor in our review is whether the concerns raised in testimony by Staff regarding potential harm to customers of Northern and to public safety, in general, as a result of the proposed modification of emergency response standards are adequately addressed by the settlement. Our assessment of the Settlement Agreement in this proceeding includes a review of the Company's emergency response performance under the existing standards, staffing and management commitments made for the future, and an evaluation of the reasonableness of the proposed modification of emergency response time standards. For the reasons discussed below, we conclude that the Settlement Agreement provides a just and reasonable result and is in the public interest.

This proceeding was launched as a result of a memorandum filed by Staff regarding Northern's performance under certain emergency response time standards agreed to and approved in Order No. 24,906 as part of an overall settlement regarding Unitil's acquisition of Northern. According to the data provided by Northern and analyzed by Staff, Northern has been achieving a compliance rate of approximately 45-54 percent during the past two years in responding to gas leak and odor calls within 30 minutes during the After Hours and Weekend/Holiday timeframes. We agree with Staff that a prompt response is not only a minimum federal safety requirement applicable to all gas pipelines, but that it is a critical element of an effective emergency response and an important component in mitigating potential damage in the event of a gas leak. We interpret the federal requirement for a "prompt" emergency response through performance standards such as those approved in Order No. 24,906.

The emergency response standards are safety standards, not customer service metrics, and performance under such standards has real implications for public safety. *See* 49 CFR §192.615(a)(3)

The low performance rate cited above is based on the 35 months of data provided by the Company and involved 24 months in which the 30-minute benchmark for After Hours was not met, and 34 months in which the 30-minute benchmark for Weekends/Holidays was not met. In testimony, the Company referenced a few instances in which its response was just one or two minutes over 30 minutes, and that its overall response time across all time periods, including Normal Business Hours averaged 22-24 minutes. Staff, on the other hand, testified that the 35 months of data provided by the Company showed 16 calls that exceeded 60 minutes during the After Hours and Holiday/Weekend timeframes, and that averaging of such data camouflages problems in response times and does not permit granular pinpointing of issues and potential remedies.

The proposed modifications of the existing response time standards eliminate the 30-minute benchmarks for the After Hours and Weekend/Holiday timeframes, and establish a new, combined “All Hours” 30-minute benchmark that covers Normal Hours as well as After Hours and Weekend/Holiday Hours. Although the new “All Hours” benchmark does not result in an averaging of the data, it allows the Company flexibility to achieve compliance, because the evaluation of performance under that standard will pool all gas leak and odor calls that the Company receives during the course of a year. Data will continue to be evaluated on a monthly basis, however, allowing the pinpointing of problem areas that may arise.

We note the Company’s arguments that Northern maintains a distribution system that is in compliance with regulatory requirements such as the cast iron bare steel program, and that

Company management has taken a number of steps to address its response times. As Staff argued, however, utilities are required by statute to furnish safe and adequate service and facilities. Emergency response is part and parcel of safe and adequate service. We do not consider the safety standards agreed to by Company management in the 2008 settlement agreement to be any less significant or binding than standards that might have been established through a rulemaking process. We note, however, the Company's commitment at hearing to adhering to the new standards and striving for improvement of the 30-minute response time during the After Hours and Weekend/Holiday timeframes, as well as the All Hours standard. We direct Staff to monitor the monthly data provided by the Company and to alert us to any degradation in response times during any timeframe, including the 30-minute timeframes for After Hours and Weekends/Holidays, even though those timeframes will no longer be figured into mandatory performance evaluations.

The Agreement states that Staff may request an investigation to determine whether additional actions, including financial penalties, should be taken to address the Company's performance under the new standards if Staff "believes safety is being materially compromised by the Company's poor performance." As the Agreement does not define "materially," we determine here that any degradation in performance will be sufficient for Staff to file a request with the Commission in the event it believes an investigation is warranted. We anticipate, however, that the automatic penalties as well as the possibility of an investigation may provide adequate incentive to make the operational changes necessary to meet the new standards.

The additional emergency response commitments set forth in section 3 of the Agreement, including the revised work plan, add what we find to be important elements of an earnest management effort to address Staff's concerns regarding prompt emergency response. We note,

in particular, the commitment at the vice presidential level to assume responsibility for compliance with the new standards and for reviewing all Company filings under the standards prior to submittal, and the development of a work plan with the union to make management and operational changes intended to improve response performance. Each of these provisions should help to ensure the Company's attention to and diligence in meeting the new standards.

While we note that the standards contained in the Settlement Agreement eliminate the 30-minute benchmarks for After Hours and Weekends/Holidays, we find that the new standards, in conjunction with the further commitments of the Company, are adequate in ensuring public safety for the following reasons. As the Company notes, the standards that will be maintained (30 minutes for Normal Hours, and 45 and 60 minutes for Normal Hours, After Hours, and Weekends/Holidays) are slightly higher than the existing standards, although, as the Company acknowledged, they are lower than what the Company has been achieving. We tend to agree with the Company that the All Hours 30-minute standard provides a certain incentive for the Company to ensure attention to performance across all time periods.

In addition, the additional commitments the Company is making should help to ensure sufficient management attention and accountability toward improving response time performance. We note the Company's commitment through its Work Plan to increase first responder staffing, alter shift schedules, and institute a residency requirement for future first responder hires, as well as assign senior executive-level oversight of emergency response performance. Each of those commitments reflects Staff's recommendations to address concerns regarding the Company's inability to comply with some of the existing standards. The residency requirement, in particular, addresses the key underlying reason identified by Staff, as well as the Company's consultant, for the Company's inability to meet the 30-minute response time

standards during non-business hours – that is, the distance first responders must travel to reach the site of gas leak and odor calls. Each of those commitments are positive steps that, when implemented, should enable the Company to improve its response times. Overall, we find that the Settlement Agreement addresses the concerns raised by Staff and engages the Company in more concerted efforts to improve its response times. As a result, we find that approval of the Settlement Agreement is in the public interest.

We must reiterate, given the position of the Company that the 2008 standards should not have been binding because they were the product of a settlement negotiation with Staff, that the standards approved in this Settlement Agreement will be strictly enforced. By this order we are accepting the commitments agreed to by the Company and will enforce those commitments.

Due to the unique circumstances in this case including automatic penalties agreed to by the Company, and in light of the Company's commitment to make certain operational changes to ensure compliance, we are satisfied that no penalty is necessary at this time. We will not hesitate, however, to consider additional penalties in the event the Company fails to meet the new standards established in the Settlement Agreement.

VII. CONCLUSION


We have reviewed the terms of the Settlement Agreement, as well as the filings by Staff, the Company, and USWA Local 12012, supporting testimony, and exhibits presented at the April 25, 2012 hearing. Based on our review of the record, we find that the terms set forth in the Settlement Agreement are just and reasonable and in the public interest.

Based upon the foregoing, it is hereby


ORDERED, that the Settlement Agreement is approved; and it is

FURTHER ORDERED, that the Company shall commence reporting its performance under the new standards in accordance with the terms of this order.

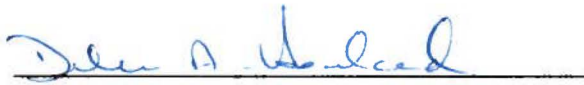
By order of the Public Utilities Commission of New Hampshire this ninth day of July, 2012.


Amy C. Ignatius
Chairman


Michael D. Harrington
Commissioner


Robert R. Scott (KNS)
Commissioner

Attested by:


Debra A. Howland
Executive Director

SERVICE LIST - EMAIL ADDRESSES - DOCKET RELATED

Pursuant to N.H. Admin Rule Puc 203.11 (a) (1): Serve an electronic copy on each person identified on the service list.

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