

STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

October 4, 2011 - 10:08 a.m.
Concord, New Hampshire

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RE: DG 11-196
UNITIL CORPORATION AND NORTHERN
UTILITIES, INC.:
Show cause proceeding.
(Prehearing conference)

PRESENT: Chairman Thomas B. Getz, Presiding
Commissioner Amy L. Ignatius

Sandy Deno, Clerk

APPEARANCES: Reptg. Unitil Corporation & Northern
Utilities, Inc.:
Gary M. Epler, Esq.

Reptg. United Steel Workers of America
Local 12012:
Kevin Chisholm, Esq.

Reptg. Residential Ratepayers:
Rorie E. P. Hollenberg, Esq.
Donna McFarland
Office of Consumer Advocate

Reptg. PUC Staff:
Lynn Fabrizio, Esq.
Randall Knepper, Dir./Gas Safety Div.

Court Reporter: Steven E. Patnaude, LCR No. 52

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P R O C E E D I N G

CHAIRMAN GETZ: Okay. Good morning, everyone. We'll open the prehearing conference in Docket DG 11-196. By Order Number 24,906 issued on October 10, 2008, the Commission authorized Unitil Corporation to acquire Northern Utilities by approving a Settlement Agreement which sets forth a number of conditions. On April 22nd of this year, Staff filed a memorandum stating that Unitil was not in compliance with the Emergency Response Standards set forth in the Settlement Agreement. We have a response from the Company on June 20 of 2011. We issued an order of notice on September 8 setting the prehearing conference for this morning.

I'll note for the record that we have the affidavit of publication. We also have the OCA's Notice of Participation. And, we have a Petition to Intervene from the United Steel Workers.

Let me just emphasize at least what is my primary concern for this morning, and that's largely a matter of process. As noted in the order from September 8th, it appears that Northern does not dispute Staff's factual assertions, though it opposes its recommended actions. So, I would like to hear from the parties a recommendation of how to set this matter up for

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1 hearing. And, it appears as -- what I want to hear is
2 whether there's opportunity for stipulated facts, or if
3 there's -- if this is something that can proceed on the
4 papers, oral argument, or, if there's some disputed facts,
5 then I guess I'd like to hear what that may be today, and
6 how we address that, either through affidavits or
7 testimony. But my primary concern is procedural at the
8 moment.

9 So, with that, let's start with -- let's
10 take appearances, and then we'll return to Mr. Epler.

11 MR. EPLER: Okay. Thank you, Mr.
12 Chairman and Commissioner. Gary Epler, on behalf of
13 Northern Utilities. And, with me today is Tom Meissner,
14 Chief Operating Officer for Unitil, and Chris LeBlanc, who
15 is the Manager of Operations of Northern Utilities.

16 CHAIRMAN GETZ: Good morning. Sir.

17 MR. CHISHOLM: My name is Kevin
18 Chisholm. I'm here with the United Steel Workers, who
19 have filed a Petition to Intervene.

20 CHAIRMAN GETZ: Thank you.

21 MR. WILEY: I'm John Wiley. I'm also
22 with the Steel Workers.

23 MS. HOLLENBERG: Good morning. Rorie
24 Hollenberg and Donna McFarland, here for the Office of

1 Consumer Advocate.

2 CHAIRMAN GETZ: Good morning.

3 MS. FABRIZIO: Good afternoon. Lynn
4 Fabrizio, on behalf of Commission Staff. And, with me at
5 the table today is Randy Knepper, Director of the
6 Commission's Safety Division.

7 CHAIRMAN GETZ: Good morning. So,
8 Mr. Epler, if you could address, you know, give a brief
9 statement of what your position is of the proceeding, talk
10 about procedural options available to us. Then, I guess,
11 if you have any response to the Petition to Intervene.

12 MR. EPLER: Okay. Thank you, Mr.
13 Chairman. Addressing them in the reverse order then,
14 addressing the Petition to Intervene first, the Company
15 has no objection to the Motion to Intervene.

16 In terms of process, we do believe that
17 there are a number of factual matters that warrant being
18 looked into. We would recommend against just going on the
19 papers at this point. And, the reason being is because
20 the criteria for reporting was decided upon in a
21 settlement, and there were -- and that was based on
22 understandings at the time as to what it would take to
23 meet those criteria. In fact, if you look at the
24 transcript of the hearing on the Settlement Agreement,

1 Mr. Knepper stated that "Northern currently meets six of
2 the nine standards easily. There's one that they're just
3 slightly a little bit less, and there's two more that
4 require a bit of focus on. That would be the 30 minute
5 after hours and weekends. I think, with some slight
6 tweaking and some management, that Unitil has ensured that
7 they will focus on it. I'm confident that they will meet
8 those."

9 That was Unitil's understanding at the
10 time as well. And, there are a number of considerations
11 that we believe would be important for the Commission to
12 take into account before considering whether penalties
13 and/or other sanctions are warranted.

14 Those are, number one, the reporting
15 requirements have changed. Unitil has much more stringent
16 reporting requirements, in terms of tracking when calls
17 come in, when the work order is assigned, tracking the
18 travel time to the site, and so on. These were not in
19 place under Northern's predecessor ownership. And, so,
20 actually, it may very well be, if you compare, on an
21 apples-to-apples basis, the response times and the
22 tracking times and all the other criteria, that we are
23 meeting those criteria. It's just that our own internal
24 recording of the times is a lot more stringent in what

1 we're capturing in terms of time. So, that would be an
2 important criteria, because, as indicated in the
3 transcript, the impression at the time was that there
4 would just be some slight tweaking that was required to
5 meet those standards.

6 The other element, in terms of
7 determining whether sanctions are appropriate, is "what
8 has been management's response? Has management paid
9 attention to this matter?" And, we believe we can show
10 you that management has been very actively involved in
11 these criteria. That we have taken a number of measures
12 through the time period, since the acquisition, to try to
13 meet those criteria to ensure that the system is operated
14 safely. And, --

15 CHAIRMAN GETZ: Are these mostly,
16 though, facts in rebuttal? I'm trying to think how we
17 would work through, you know, the burden of going forward.
18 I mean, it seems like the underlying facts of what the
19 standard is set in the Settlement Agreement and what the
20 Company's performance have been are not in dispute. It
21 sounds like what you're saying is, in light of those
22 facts, and in what the remedy, if any, should be, we
23 should take into account some other set of facts.

24 MR. EPLER: Well, a moment please.

1 (Short pause.)

2 MR. EPLER: The standard itself is not
3 clearly defined. While there is agreement on reporting
4 requirements, there isn't agreement on how you -- on how
5 you set the standard, whether it's a yearly standard, a
6 quarterly standard, or a monthly standard, or, in terms of
7 meeting the standard, what is it that you're actually
8 measuring, from what point to what point do you measure?
9 There's no agreement on that. So, we are voluntarily
10 reporting it on a certain basis and coming to certain
11 conclusions on that, but that's not necessarily an agreed
12 upon measure or the appropriate measure.

13 CHAIRMAN GETZ: But isn't that argument
14 about how we should -- what actions or measures we should
15 take?

16 MR. EPLER: No. That gets to whether or
17 not we're meeting the measurements.

18 CHAIRMAN GETZ: And, would you be
19 putting on a witness to testify to that?

20 MR. EPLER: Yes. We could put on -- we
21 would put on witnesses to explain how we are meeting those
22 measurements.

23 CHAIRMAN GETZ: This is nothing that
24 could be stipulated to?

1 MR. EPLER: It's possible it could be
2 stipulated to.

3 CHAIRMAN GETZ: Because I'm still
4 looking at this as if it's not the type of case that needs
5 a lot of factual testimony or that needs to go through
6 several rounds of discovery. But, and I'm open to
7 listening to that, but I'm still looking for -- it seems
8 there should be a way to deal with this, you know, fairly
9 quickly, in terms of what stipulated facts are, what's
10 really in dispute as a matter of fact. Am I off on that?

11 MR. EPLER: There may -- there are a
12 number of issues. And, it depends on, I guess, one's
13 perspective as to whether or not you could consider them
14 to be facts in dispute as an initial matter or facts that
15 would, as you indicated, go to rebuttal. We think that
16 there is some initial facts that would need to be
17 resolved, and that may be able to be agreed upon as a set
18 of stipulated facts, but I can't conclusively indicate
19 that at this time.

20 We would like at least one round of
21 discovery, to be able to understand what other companies
22 within the state are being held to, in terms of their
23 measurements. There's been some representations that the
24 other gas utility, EnergyNorth, is meeting the criteria,

1 but it's not clear if they're being held to the same
2 criteria. And that, perhaps, if were measured according
3 to the same criteria, we would be meeting the measures
4 themselves as well.

5 CMSR. IGNATIUS: Mr. Epler, I'm trying
6 to understand what -- the distinction you're making
7 between the "requirements" and the "standards", I think
8 are different words you've used. And, is this a fair
9 example? If there's a requirement that there be a
10 30-minute response time in a particular instance, what
11 you're saying is in dispute is "do you measure by the time
12 the phone call comes in or does the clock begin when the
13 car takes off to head to the response site?" Is it that
14 kind of a distinction that you're making that needs to be
15 developed on the record?

16 MR. EPLER: There are those types of
17 distinctions. There are other distinctions, in terms of
18 "what are you" -- "what is the set of emergency responses
19 that you're including in what you're reporting?" In other
20 words, companies, in retrospect, when they have calls, may
21 be changing how they -- what they are categorizing as an
22 "emergency call". If, upon investigation, what's first
23 tagged as an "emergency call" may then -- may no longer be
24 considered an "emergency call", and it's taken out of the

1 data set that you're reporting.

2 As I indicated, Unitil has a very
3 stringent set of coding requirements, in terms of what we
4 measure and what we report. And, things are hard coded.
5 And, so, operators and technicians don't have an
6 opportunity to remove a call from the data set, although
7 it may be appropriate to have removed that call from the
8 data set if what you're trying to measure is emergency
9 response. Other companies may handle that differently.
10 So, when you're measuring the Company's response, are you
11 measuring the same thing or are you holding one to a
12 higher standard, based on what they develop as their
13 internal reporting requirements?

14 So, those issues get to the initial
15 question of "whether or not the Company is or is not
16 meeting the criteria?" What are the set of standards that
17 should be applied in order to measure emergency response
18 and whether we are meeting the standard?

19 CMSR. IGNATIUS: Another question. You
20 also said it was important to "do discovery to see what
21 other companies were required to do." And, you also,
22 however, had acknowledged that these were agreements that
23 were made as part of a Settlement Agreement specific to
24 this company. So, why, in this proceeding, is it

1 necessary to evaluate other companies' requirements, if
2 your company has made a commitment to meet the standards
3 that were set forth in the Settlement Agreement?

4 MR. EPLER: Well, it goes to the issue
5 of sanctions and civil penalties. What's at issue here, I
6 mean, there were certain assumptions that were made
7 underlying the Settlement Agreement and underlying this
8 provision, in terms of what the Company at the time was
9 meeting, in terms of its response times, and what it would
10 take to meet the criteria. I mean, and understanding,
11 this was at the acquisition level. We had not had an
12 opportunity to operate the company. We had not had a real
13 opportunity to look at the data and what were they
14 responding to. These were -- we agreed on this based on
15 representations that were made to us, I mean, all in good
16 faith, but, nevertheless, representations.

17 So, again, it does get to the issue of
18 whether or not sanctions and civil penalties are warranted
19 to look at, you know, what were the assumptions, and were
20 those responsible assumptions, and did they continue to
21 apply? And, again, to the issue of whether civil
22 penalties are appropriate, to look at whether or not the
23 measure that was agreed upon was a reasonable measure, and
24 is something that is, as the Staff, in its memo, says, you

1 know, "this is a keystone of operational safety for the
2 system." Well, maybe it's possible that the measure that
3 was agreed upon is not appropriate and is not an
4 appropriate measure of operational safety.

5 CMSR. IGNATIUS: But isn't your remedy,
6 to come back and seek an amendment, an alteration of that
7 Settlement Agreement, if the assumptions were wrong or the
8 standards turn out to be something that shouldn't be
9 there, then, isn't that what is your responsibility to
10 come forward with, rather than --

11 MR. EPLER: Oh. Yes. And, that was
12 why, in our response, we recommended, since this criteria
13 was established through a settlement agreement, that
14 perhaps the first opportunity to look at this issue was to
15 have a reconvening among the settling parties to look at
16 this issue and determine "is it" -- "has it met the
17 expectations of the parties, in terms of an appropriate
18 standard, and -- or whether there have been intervening
19 issues or facts that arisen that would warrant
20 reconsideration of that as a standard?" That was in our
21 response.

22 CMSR. IGNATIUS: Thank you.

23 CHAIRMAN GETZ: Do you have more?

24 MR. EPLER: There are, again, Mr.

1 Chairman, you know, as you've pointed out, some of these
2 -- some of the additional issues go to -- would go, I
3 guess, more to rebuttal or go to the issue of civil
4 penalties and whether or not they're warranted. One of
5 the issues we've looked at, although it's not conclusive
6 at this point, we have tried to do a survey of standards
7 around the country. And, so far, it appears that this
8 standard is the most stringent we have been able to find
9 throughout the country. And, particularly, how it's
10 applied, in having three, three levels of response, "30
11 minutes", "45", and "60 minutes", and then subcategories
12 in each of those of "regular hours", "after hours", and
13 "weekend hours". And, what happens, and we would ask the
14 Commission to consider, and we can demonstrate facts on
15 this, is that, as you subdivide these criteria into
16 smaller and smaller blocks, you're dealing with fewer and
17 fewer calls. And, when you're dealing with fewer and
18 fewer calls, the margin of error to influence whether
19 you're meeting or not meeting criteria become smaller and
20 smaller. For example, last week, we only had two calls in
21 the weekend time period. So, missing just one call meant
22 that we were only at a 50 percent level of meeting the
23 criteria.

24 But, then again, going to the issue of

1 safety, I mean, if we've only had two calls, doesn't that
2 indicate, on the other hand, that the system and what
3 we've been doing on the system, in terms of leak
4 detection, damage prevention, replacement of services,
5 replacement of pipe, has made it such that we've got the
6 number of calls down to a very, very low level. So, that
7 may have some influence on calls and the ability to
8 respond and how those -- how those measurements are made.
9 And, that's, again, another consideration that we would
10 like to be able to present some testimony on or at least
11 some facts on, to see what's really happening on our
12 system compared to other systems.

13 So, I mean, in sum, we think that there
14 are a number of issues that we would like to provide
15 testimony on, that we would like to make a presentation
16 on. We understand the Commission's concern. We don't see
17 this as a long, drawn out process. We would try to put
18 this together quickly. There are some questions that we
19 would like to ask the Staff. Again, we would, you know,
20 try to do all that very quickly, so that the Commission
21 could proceed to a resolution on this.

22 CHAIRMAN GETZ: Okay. Thank you.

23 Mr. Chisholm.

24 MR. CHISHOLM: I don't have anything to

1 add, other than, in the union's Motion to Intervene, and I
2 think it's obvious, that Mr. Wiley and the other members
3 of the union are the people who are doing the response to
4 the emergency situation. So, we're just here to
5 participate and watch out for whatever impact it has on
6 union members.

7 CHAIRMAN GETZ: Okay. Thank you.

8 Ms. Hollenberg.

9 MS. HOLLENBERG: Thank you. At this
10 point, we do not have a specific position on the request
11 for a show cause. Generally, though, we take the position
12 and have the expectation that, when a company agrees to
13 perform its metrics in the context of a settlement
14 agreement, which is approved by the Commission, that the
15 company would abide by those terms.

16 I'm a little disconcerted to hear what I
17 thought I heard, which is that the Company didn't know
18 what it was getting into when it agreed to these metrics,
19 and that they turned out to be more than they could
20 perform, and using that as a basis for not complying with
21 them.

22 And, I am open to discussing with the
23 Commission and the parties as to how best to proceed with
24 developing the appropriate record and procedurally.

1 CHAIRMAN GETZ: Do you have any
2 particular thoughts, either supporting or opposing any
3 particular procedural device?

4 MS. HOLLENBERG: I mean, the one thought
5 that came to me was it sounds as though, from the Company,
6 that there is a question about whether or not the
7 standards are clear. So, that would be basically an
8 interpretation of the Settlement Agreement, which is a
9 legal issue. Whether or not there's a monthly requirement
10 or if there's no period required, and so there's -- I
11 mean, I think what I heard the Company say is, because the
12 Settlement Agreement doesn't expressly say what period of
13 time the standard should be -- the metric should be
14 measured, and the Company can correct me if I'm wrong,
15 but, because that's not clear, that that was -- that's a
16 basis for some determination in this case. And, I guess I
17 see that as a legal issue, as an interpretation of the
18 statute -- or, the Settlement Agreement, sorry.

19 I mean, from what I've seen, it doesn't
20 sound like -- I mean, the metrics exist. There's no
21 dispute that they exist. They're in a settlement
22 agreement approved by the Commission, which, in my opinion
23 or in the OCA's opinion, would have the force and effect
24 of law, unless and until the Commission were to change

1 that. It sounds like there's no -- I mean, the Company
2 has reported performance on a monthly basis. Whether or
3 not that was the period against which the metrics should
4 be measured, I guess that's left to the determination of
5 how to interpret the Settlement Agreement. So, there
6 doesn't seem to be a lot of factual dispute to me. But I
7 am just getting into this case, so I can't really say one
8 way or the other.

9 CHAIRMAN GETZ: Okay. Thank you.

10 Ms. Fabrizio.

11 MS. FABRIZIO: Thank you, Mr. Chairman.
12 Staff believes that the facts, really, that underlie the
13 issue raised here are quite simple, and can probably be
14 set forth in a stipulation of facts fairly quickly. I
15 think the issues raised by Attorney Epler go beyond the
16 facts and head into perhaps policy and legal issues.
17 Staff feels that the memo filed on April 22nd is clear,
18 and the data shows that Unitil has not been able to comply
19 with the benchmarks set forth in the Settlement Agreement
20 in Docket Number DG 08-048. And, in the response to
21 Attorney Epler's statement that "the standard itself is
22 not clear", the Settlement Agreement lays forth very
23 detailed elements for monthly reporting. And, perhaps the
24 standards could have been targeted for monthly or

1 quarterly based on monthly data, but, frankly, I'm not
2 sure that changing the periodic reporting requirement or
3 benchmark assessment is going to change the picture,
4 because the fact is that the data collected by the Safety
5 Division over the past two and a half years shows that the
6 Company is not meeting the benchmark. And, I think what
7 the Company is suggesting is that we average response
8 times. And, the Staff disagrees that this is an
9 appropriate way to go forward, because we believe that
10 averaging disguises poor performance and eliminates the
11 statistical basis from which we can actually pinpoint
12 where the problems lie, and therein where the remedies
13 possibly lie.

14 Staff would simply add that we believe
15 the standards that have been agreed to in the Settlement
16 are reasonable. They're the exact same standards that
17 apply to National Grid, the other major gas distribution
18 company here in the state. The same elements of monthly
19 reporting are imposed on National Grid through a
20 settlement agreement as well.

21 And, with respect to comparing standards
22 that are applied in other states, we need only look as far
23 as New York State to see very similar standards, with
24 similar breakdowns of 30, 45, and 60 minutes, and during

1 work hours, after hours, and during weekends and holidays.

2 So, -- and, then, on the last point that
3 Attorney Epler made with respect to "only two calls in the
4 last week", I think, and "one call being missed". Well,
5 it's Staff view that, if there are only two calls coming
6 in, that those two calls should be responded to within
7 benchmark standards set. And, if the Company is unable to
8 meet these standards that are agreed to in the Settlement,
9 and that were based on the Safety Division's careful
10 assessment of the pipeline footprint for the Company in
11 the state, then, we've got something more going on,
12 perhaps, within the management policies of the Company, or
13 something is going on, and perhaps that requires further
14 investigation.

15 But, as far as the standards established
16 in the Settlement Agreement, Staff believes that they are
17 reasonable and should remain in place, especially with the
18 federal attention now given to gas pipeline safety, in the
19 wake of the San Bruno and other gas pipeline incidents in
20 residential neighborhoods, we believe that the Commission
21 should be enforcing the standards as agreed to and
22 approved in that docket, and not lowering the standards
23 per the Company's request, as the Company seems to be
24 requesting in its response memorandum.

1 So, in sum, Staff would urge the
2 Commission to enforce the standards as approved in Docket
3 DG 08-048. Thank you.

4 CHAIRMAN GETZ: All right. Thank you.
5 Ms. Hollenberg, I neglected to ask your position on the
6 Petition to Intervene?

7 MS. HOLLENBERG: No. No position, no
8 objection.

9 MS. FABRIZIO: Staff has no objection.

10 CHAIRMAN GETZ: Thank you.

11 (Chairman Getz and Commissioner Ignatius
12 conferring.)

13 CHAIRMAN GETZ: Well, first of all, let
14 me say that we grant the Petition to Intervene, finding
15 that it's in the interest of justice to do so. We'll give
16 the opportunity to respond, Mr. Epler, but I think a
17 couple of things first. One, I assume that there's a
18 technical session or a meeting afterwards, and I would
19 urge, to the extent possible, the parties come to some
20 agreement on process, and noting at least these thoughts:
21 That trying to get some set of stipulated facts, I think,
22 should not be that difficult, at least to my reading, at
23 least on to the first step. It appears what the Staff has
24 stated in its memo, and which I still see is not disputed,

1 is there are a set of standards, and then the standards
2 have not been met in all instances. So, it goes,
3 Mr. Epler, at least to my reading of this, in terms of the
4 burden of persuasion, burden of going forward, it sounds
5 like most of what you are saying, in terms of facts, are
6 responding to that initial position by Staff. And, it
7 seems to be kind of in the categories of, if I understand
8 what you said earlier, was there a meeting of the minds
9 between the Company and the parties in the original
10 settlement and what the standards met? I don't know if
11 that's one set of facts that you hope to bring forward.
12 And, then, the other issues you've raised, in terms of
13 "what do other states do?" and "what other utilities are
14 held to?" It seems, again, that that's all responsive or
15 rebuttal. But I think we would like to see an attempt to
16 come up with an efficient process here, and see if there
17 are facts that can be stipulated to. If there are other
18 ways of interpreting what we've done, then, whether that
19 amounts to a factual assertion or an argument, I think
20 we'll let the parties try that in the first instance. If
21 there's an agreement, then we'll take it under
22 consideration. If there's not an agreement, then we'll
23 make the decision on what the appropriate procedure should
24 be.

1 So, opportunity to respond, Mr. Epler?

2 MR. EPLER: Yes, just briefly. We will,
3 as you indicated, work in a tech session to see if we can
4 get to an agreement on process and make a recommendation
5 to the Commission, and also see if we can get to a
6 stipulated set of facts on this.

7 I would just point out, just in response
8 to two points that Staff made in its presentation. One,
9 we're not seeking to weaken the standard. But, again,
10 just looking at that example of what occurred over the
11 last week with the two calls. Requiring us to meet -- to
12 adhere to that standard in that instance with those few
13 calls would require 100 percent adherence, you know,
14 meeting both calls, and that's increasing the standard,
15 that's not weakening the standard. So, the number of
16 calls that are coming in have a direct influence on the
17 reasonableness of the criteria. Again, that may go to
18 mitigation issues, but it's still an important
19 consideration.

20 Staff also pointed to the fact that
21 EnergyNorth is under the same criteria and the same
22 reporting requirements. And, we're not sure if that's the
23 case. And, we would like to understand how they report,
24 because it may be that applying the same criteria that

1 EnergyNorth uses to our set of facts may result in Unitil
2 actually meeting the same set of criteria, thus there
3 wouldn't be a dispute here. So, that's an important issue
4 to look at.

5 CHAIRMAN GETZ: Okay. Anything further?
6 Ms. Fabrizio.

7 MS. FABRIZIO: Mr. Knepper would like to
8 add a response to the Company's statement just now.

9 MR. KNEPPER: Yes. There's a lot of
10 statements going on in here that are very disturbing to
11 me. If you have two responses, you better get there, if
12 you only have two or if you only have four. You should be
13 able to easily meet the standard. It's not a burden. I
14 find it very problematic that you need to have a lot of
15 odor, a lot of odor, people calling in for odors or leaks
16 or concerns to be able to say "well, I can't get to all of
17 them." That, to me, is very disturbing. So, if you got
18 one call, I would expect you to get there. So, if we got
19 this boiled down to a single call, I would expect
20 100 percent, yes.

21 And, we clearly have, in our standards
22 that, if you can't, you need to be able to respond to the
23 Division, the Safety Division, with the reasoning why,
24 what happened. Was it a snow storm? Was there a train in

1 front of you that you couldn't get there? Did your truck
2 break down? So, we don't put it in absolutes. But, if
3 it's just because "I don't have enough people" or "they're
4 spaced apart" or "two calls came in at once", those aren't
5 acceptable to us. So, clearly, if there's a difference of
6 opinion on that, we need to get that straightened out now.

7 The second is, when -- I did mention
8 during the issue when this acquisition did occur, my
9 concern was that they were going from two work centers
10 down to one. And, so, I was concerned about the
11 statistics dropping off. And, so, those comments I made
12 in the transcript were directed at Unitil, because I was
13 kind of assured that it would be able to meet the
14 standards and be able to hit these compliance times. So,
15 with more focus and attention, I thought that they would.
16 Unfortunately, the statistics bear out that's not
17 happened.

18 And, so, I know you're looking for a
19 process. But, to me, this is very clear and simple. We
20 just want them to meet them. It's as simple as that.
21 And, whatever it takes to be able to do that, we think is
22 totally responsible. There's a lot of ways to do this.
23 And, clearly, in my mind, if you can meet it during eight
24 hours of the day, I don't see why you can't meet it during

1 the weekend or why you can't meet it during after hours.
2 Their own statistics show that they have the ability to do
3 it, it just doesn't happen during all hours of the day.
4 And, so, the ability to meet the standards are there.

5 I think it's very important for
6 emergency response times to be as prompt as possible for
7 the public. When someone has a concern and they smell gas
8 at their house, and they want to be assured that they're
9 going to have undued and no delayed responses to that
10 situation. Now, it may turn out to be a non-hazardous
11 situation. But there's no way you can know until you
12 actually get there on the scene and determine what that
13 is. So, the response itself is not a measurement of what
14 it takes to repair something, to ventilate an area, to
15 make it -- all it is is a measurement from when someone
16 calls to when you got there. We do have steps in between
17 that we ask for, so we can determine if it's a dispatch
18 problem? Is it a travel time problem? Is it some of
19 those issues? But, in the end, it's when someone calls
20 and someone gets there.

21 The difference between Unitil and
22 National Grid is very simple. When we first put the same
23 requirements in for them, they started to call on their
24 own, you know, their own technician would call in a leak,

1 and then they would have a zero response time and a zero
2 dispatch time. And, so, we said the only difference, we
3 said to Unitil is "you can't do that. We're talking about
4 externally, outside-the-company calls." And, so, we were
5 a little bit more specific. That's the only difference
6 that's there.

7 So, as far as the process going forward,
8 I think the Commission is going to have to recommend to
9 us, because it seems like the people here aren't really
10 sure. But, if we're going to go off on a tangent on some
11 things, I'm concerned about that.

12 CHAIRMAN GETZ: Anything further?

13 Mr. Epler, opportunity to go last?

14 MR. EPLER: Is it all right if

15 Mr. Meissner says some words? Thank you.

16 MR. MEISSNER: Thank you for the
17 opportunity to speak for a minute. I just wanted to
18 clarify a couple of things that might help crystallize
19 what I think the issues are from our standpoint. You
20 know, as Mr. Knepper indicated, that, you know, we're
21 being compared to another company in some respects. And,
22 there's an implication that the same exact standards are
23 being applied to both companies. But, from our
24 standpoint, the issue is, first of all, the actual

1 definition of what constitutes an "emergency call" is not
2 defined. It's not in the Settlement Agreement, it's not
3 defined anywhere. So, we actually make that determination
4 ourselves. We have a definition. And, to some extent, we
5 actually allow the customer to determine whether it's an
6 emergency call. So, if they perceive it's an emergency
7 call, they make the determination, we respond.

8 We've done some analysis and determined
9 that roughly 87 percent of the calls we respond to are, in
10 fact, not emergency calls. So, some -- if we tweaked our
11 definition of what constitutes an "emergency call", we
12 could, in fact, change the entire set of data that we're
13 talking about. And, there's no -- there's no way to know
14 right now if our definition and the other company's
15 definition are in any way comparable. So, we could be
16 talking about different data sets.

17 The other issue is that the actual time
18 frame we're measuring, Mr. Knepper indicated that "it's
19 from the time it comes in until the technician is on the
20 scene." That's not defined anywhere. So, there's no way
21 to know if that's how each company is actually defining
22 their calls. That is, in fact, how we're doing it.

23 And, to draw an analogy that maybe
24 clarifies some of, you know, the minor variations in this,

1 in 2008, when we were negotiating this Settlement
2 Agreement, there was certain statistics in there for
3 service quality indicators, including call answering
4 times. And, we've been, you know, held to those as well.
5 And, on the surface, it appeared that our call answering
6 times were significantly worse than the predecessor
7 company, which was a concern in developing our service
8 quality indicators. But, as we worked through the process
9 in that case, what we found was, first of all, they were
10 using a call answering standard of 30 seconds, we were
11 using a call answering standard of 20 seconds. That's
12 quite a bit different.

13 We also found that, whereas we were
14 measuring our statistics on the basis of calls that went
15 to a live person, which, in our interpretation, is what
16 you're trying to measure, they were, in fact, averaging
17 all calls received by the company, including those handled
18 by the IBR. And, the IBR actually handles the majority of
19 calls. So, they were averaging in calls with zero call
20 handling time into all their statistics.

21 Once we worked through all that, it was
22 determined that our call handling time was actually
23 better. And, then, we were able to develop the specific
24 standards that led to the service quality indicator.

1 And, I think our concern now is that the
2 benchmark for Emergency Response Standards was never
3 clearly defined. There's no definition of what an
4 "emergency call" is. There's no definition that says that
5 the time you're measuring is from the time the call is
6 received or the time the work order is issued or the time
7 the call is dispatched.

8 We've taken a very stringent approach to
9 that. As Mr. Epler indicated, we hard code it into the
10 system. It's based on when the call is received. We've
11 used that to drive our own internal performance, and we
12 were never concerned with how it might be compared to
13 other companies, nor did we ever, you know, anticipate
14 that we might be here today. We could have perhaps taken
15 less stringent approaches, in terms of a definition of a
16 call or other things, and our statistics might look a lot
17 different.

18 So, you know, we have, you know,
19 aggressively pursued trying to improve our Emergency
20 Response Standards. And, I did -- I thought I heard that
21 Northern, under the prior owner, was actually performing
22 better, and that there was a concern with the fact that we
23 have one location. But, when we've looked at the data on
24 an apples-to-apples basis, our Emergency Response

1 Standards are better than they were prior to the
2 acquisition.

3 MS. HOLLENBERG: Excuse me. May I just
4 interject here? I'm getting a little bit concerned,
5 because, basically, Mr. Knepper and Mr. Meissner are
6 possible witnesses in this case, and they're giving
7 statements of facts from the Bench, and they're not sworn
8 testimony. And, I guess I'm wondering how much further
9 this is going to proceed? And, if it is, then I would
10 like to register an objection.

11 CHAIRMAN GETZ: An objection in what
12 respect?

13 MS. HOLLENBERG: An objection to the
14 fact that we're receiving testimony that is unsworn from
15 the witnesses at this point in time. I mean, it's not
16 something that I had -- I appreciate that there's a
17 clarification going on. But, I guess, to the extent that
18 it could be clear that this is not going to be used as a
19 basis for a decision later, they're not subject to
20 cross-examination, this is -- I'm hearing all of this for
21 the first time this morning.

22 CHAIRMAN GETZ: Well, it's a prehearing
23 conference.

24 MS. HOLLENBERG: Okay.

1 CHAIRMAN GETZ: The parties have an
2 opportunity to make a brief statement of their case.

3 MS. HOLLENBERG: Uh-huh.

4 CHAIRMAN GETZ: I think that's what
5 we're doing, whether it comes from counsel or a witness.
6 We're not going to be making any decision in this case
7 based solely on what happens here in the prehearing
8 conference. So, to the extent necessary, your objection
9 is overruled. Ms. Ignatius.

10 CMSR. IGNATIUS: Thank you. I will take
11 up Mr. Knepper's request that maybe some guidance from the
12 Bench might help in developing a procedural plan on how to
13 work through this case. And, this is my point of view,
14 and Chairman Getz may not agree with this. But my sense
15 is that, whatever the standards are in other states is not
16 material in this case. States will do what they do. They
17 have authority that may be different. They have their own
18 business practices that may be different. I don't find
19 that relevant. And, so, discovery on that issue, I think,
20 is not time well spent.

21 As to whether Unitil compares favorably
22 or unfavorably to its predecessor company, I don't find
23 relevant. The Company agreed to a settlement agreement,
24 and the performance standards are either clear or not

1 clear. And, I had assumed that they were clear, but, if
2 they're not, I think that is a relevant question, to be
3 sure that people understand the definitions and the
4 measurement. But whether it's better today than it was
5 four years ago is not the matter at hand, to my thinking.

6 Whether this company compares favorable
7 or unfavorably to other gas companies in the state, I
8 don't find relevant. We're not having a generic docket on
9 performance of companies, we're looking at an agreement
10 executed by this company to meet certain standards and its
11 performance since agreeing to those standards.

12 So that it's a question of whether we
13 are clear in what the standards are, clear on how to
14 measure those things, is what's at issue, not what other
15 companies may use as their metrics, personally. So, I see
16 this as a far more narrow question than the Company may
17 see it as. And, that it may not be as straightforward as
18 I had thought coming into it today, in what was being
19 required and how the metrics are set forth, in that I,
20 having heard all of this, see a basis for more development
21 on the record of the facts than I might have thought
22 otherwise. But I still see those as related to the
23 standards for this company and the ways in which those
24 metrics are measured is what we're looking at.

1 You may have a different view, Chairman
2 Getz, so I don't want to speak for you. But that's my
3 thinking.

4 CHAIRMAN GETZ: Is there anything
5 further? I guess, Ms. Fabrizio, are we set from Staff?

6 MS. FABRIZIO: Yes. Staff has nothing
7 further at this point.

8 CHAIRMAN GETZ: Mr. Epler, last chance?

9 MR. EPLER: Nothing further. Thank you.

10 CHAIRMAN GETZ: Well, then, we'll give
11 the parties an opportunity to see if there's some
12 agreement as to recommended procedures for handling this
13 case, and wait for something in writing from the parties.

14 So, if there's nothing else, then we'll
15 close the prehearing conference. Thank you, everyone.

16 **(Whereupon the prehearing conference**
17 **ended at 10:57 a.m. and a technical**
18 **session was convened thereafter.)**