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STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

July 23, 2015 - 10:04 a.m.
Concord, New Hampshire

NHPUC AUG06'15 AM 8:19

RE: DG 15-121
NORTHERN UTILITIES, INC.:
Request for Hearing on Notices of
Violations PS1501NU and PS1502NU.
(Prehearing conference)

PRESENT: Chairman Martin P. Honigberg, Presiding
Commissioner Robert R. Scott

Sandy Deno, Clerk

APPEARANCES: Reptg. Northern Utilities, Inc.:
William D. Hewitt, Esq. (Roach, Hewitt...)
Christopher J. LeBlanc, Dir./Gas Operations

Reptg. PUC Staff:
Michael J. Sheehan, Esq.
Randall Knepper, Dir./Safety Division
Joe Vercellotti, Safety Division

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

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P R O C E E D I N G

CHAIRMAN HONIGBERG: We are here this morning in Docket DG 15-121, Northern Utilities' request for a hearing on Notices of Violations. Before we go any further, let's take appearances.

MR. HEWITT: Good morning. Bill Hewitt, of the law firm Roach, Hewitt, Ruprecht, Sanchez & Bischoff, based in Portland, Maine. With me today, I have Chris LeBlanc, who is Director of Gas Operations for Northern Utilities.

CHAIRMAN HONIGBERG: Good morning.

MR. LeBLANC: Good morning.

MR. SHEEHAN: Good morning, Commissioners. Mike Sheehan, for designated Commission Staff. And, present with me is Randall Knepper, Director of the Safety Division, and Joe Vercellotti of the Safety Division.

CHAIRMAN HONIGBERG: As you all know, there were two Notices of Violation issued by the Safety Division to Northern Utilities. Northern has, as is its right, requested a hearing. My understanding, and the Order of Notice is consistent with that happily, is that we're here to talk about the process that we're going to follow in the hearing. Northern wants some more process

1 than I think is typical for a Notice of Violation. The
2 Staff, I'm sure, has some opinions on that. And, I
3 believe there's a technical session scheduled after,
4 correct?

5 MR. SHEEHAN: Yes, sir.

6 MR. HEWITT: That's correct.

7 CHAIRMAN HONIGBERG: All right. I know
8 that the Staff has the burden of proof, ultimately, in all
9 of this. But, really, I think this is Northern's request
10 for process. So, unless someone thinks that we should go
11 otherwise, I'm interesting in hearing from Northern first,
12 about why we should follow a different set of rules than
13 we normally follow on a Notice of Violation.

14 MR. HEWITT: Sure.

15 CHAIRMAN HONIGBERG: So, Mr. Hewitt, go
16 ahead.

17 MR. HEWITT: Thank you, Chairman
18 Honigberg. Chapter 500 allows the Company to request that
19 this Commission hear the Company's defense to the Notices
20 of Violation as an adjudicatory proceeding. And, this
21 Commission -- and it specifically references this
22 Commission's Chapter 200 rules. If you go into the -- to
23 the Commission's Chapter 200 rules, the Company is merely
24 seeking the types of process that are allowed and, in some

1 parts, mandated by the Commission's rules in Puc 203. So,
2 really what we are doing is we are following the
3 Commission's own procedures, I believe. And,
4 specifically, 511.10, sub (b) states that "Hearing
5 requests pursuant to 511.09 shall be treated as a request
6 for an adjudicatory proceeding." And, then, if you go to
7 Part 203 of your rules, there is an entire section that's
8 entitled "Adjudicative Proceedings". And, even within the
9 "adjudicative proceedings" portion of the rule, the
10 Commission refers to "adjudicatory proceedings" and
11 "adjudicative proceedings" as really being synonymous.

12 So, I think that the rule doesn't just
13 contemplate a hearing, in the sense of "we gather in a
14 room, witnesses are sworn, and the Commission takes
15 evidence." I really think that the way the rule is
16 established, this is supposed to be treated as an
17 adjudicative process, and an adjudicative process within
18 your rules. Which I do believe contemplates, typically,
19 the filing of prefiled testimony, which, as the petitioner
20 under your rules, you have really the right to do when you
21 file your petition.

22 Now, admittedly, this case is a little
23 bit different, because, as you noted, Mr. Chairman,
24 although it's the Staff's allegations, it was the Company

1 who had to really come in and say "well, we want this
2 additional process." So, I think the rules, in
3 particular, 203.06(b), states that "If a petitioner wishes
4 to submit testimony with a petition in the interest of
5 expediting the proceedings, the Commission shall accept
6 such testimony." And, that really is what we're talking
7 about here, is trying to expedite the hearing on this
8 matter.

9 The legal issues that are before the
10 Commission involve interpretations of the federal Gas
11 Safety Code. This Commission has, you know, very broad
12 jurisdiction in terms of all the various issues that you
13 folks have hearings on. It's my impression that you don't
14 have hearings very frequently on the ins and outs, if you
15 will, and the nuances of the federal Gas Safety Code. So,
16 in order to allow the Commissioners to better understand
17 how the various portions of the Code work, vis-a-vis the
18 facts that are at issue in this proceeding, the Company
19 believes that it's going to be much easier for the two or
20 three of you, depending on the timing of this, to be able
21 to look at the Staff's NOV, which I understand is
22 basically their prefiled testimony, and to be able to
23 consider the Company's prefiled testimony before you even
24 walk into the hearing room. Otherwise, you're going to be

1 faced with having to understand all of these issues on the
2 fly, if you will, during a live hearing. And, I think
3 it's going to be, frankly, much simpler for you, and
4 you'll be able to be better prepared, if you have that
5 information before you even step foot into the hearing
6 room.

7 And, in fact, the Company has already
8 prepared the prefiled testimony, and we're prepared to
9 file it. And, so, it's not going to delay a hearing. A
10 hearing is scheduled for this matter, I believe, on August
11 the 19th, and we can have this testimony filed with you
12 next week. And, so, from the Company's perspective, it's
13 not going to harm anything, no one is going to be
14 prejudiced by our filing of the testimony. We think it's
15 only going to be helpful to you, because you'll be able to
16 be better prepared.

17 And, if you -- and, frankly, if you
18 don't allow me to file it, what I'll do is just put my
19 witnesses on walk them through the prefiled testimony that
20 we've already prepared, more likely than not.

21 CHAIRMAN HONIGBERG: Okay. Maybe I'm
22 going to need to hear from Mr. Sheehan before asking
23 questions, but I do have some questions about what you
24 just said.

1 Are you done? I didn't mean to
2 interrupt you, but are you done?

3 MR. HEWITT: In terms of why we need
4 prefiled testimony, that's the essence of the argument.

5 CHAIRMAN HONIGBERG: Well, let me ask
6 you, do you need our permission to file prefiled
7 testimony?

8 MR. HEWITT: I think that I don't,
9 although, as I read the -- as I read the Order of Notice,
10 it suggests that there was going to be an argument as to
11 whether prefiled testimony would be allowed. So, in my
12 mind, there was some question as to whether you folks were
13 going to say, you know, "we really don't want you to file
14 it." And, when I appear before regulators, I don't like
15 to file something, if there's a suggestion that I
16 shouldn't be filing it.

17 CHAIRMAN HONIGBERG: Understood.
18 Mr. Sheehan.

19 MR. SHEEHAN: Certainly. The overview
20 comment is, this proceeding is different, largely because
21 the 500 rules delegate to the Safety Division many of the
22 steps that normally would be involved in a rate case, for
23 example. And, most of the time, the Safety Division acts
24 as fact-finder and judge/jury/prosecutor, if you will.

1 And, so, when it does, and they do have a right to this
2 hearing, but, when they do request it, it comes with a
3 fairly different backdrop than the normal case.

4 That being said, our concern leading up
5 to this was that the Safety Division is -- we did not want
6 this kind of hearing to turn into a rate case. We wanted
7 to keep it fairly straightforward, fairly direct, because
8 a lot of the work has already been done. So, that was our
9 overriding concern.

10 Based on what your question was, and
11 Mr. Hewitt's presentation, if they want to file prefiled
12 testimony, it's not going to hurt anybody, of course. We
13 don't want the obligation to. We think our Notice of
14 Violation is, in effect, our prefiled testimony. We've
15 already answered data requests voluntarily to the Company
16 earlier this week, and we expect to get some from them,
17 once we give them the questions soon. So, there will be
18 some brief discovery. But that's all that we anticipated.
19 A quick exchange of discovery, you know what our case is
20 based on the NOV's, and let's have a hearing.

21 CHAIRMAN HONIGBERG: Maybe I'm wrong,
22 but I actually think everybody here is roughly on the same
23 page. Mr. Hewitt, I think you said, and I think
24 Mr. Sheehan agrees, that the Notice of Violation is

1 essentially their prefiled testimony, the Staff's prefiled
2 testimony. If you want to file prefiled testimony, and as
3 I understand 203.06, it's actually not a requirement that
4 people file prefiled testimony, but it's a great idea.
5 And, so, you can do that.

6 And, I'm not sure, am I wrong? Are we
7 all now agreeing?

8 MR. HEWITT: I believe I'm -- I'm
9 certainly in agreement with that.

10 MR. SHEEHAN: I'm not objecting.

11 CHAIRMAN HONIGBERG: All right.
12 Wonderful. Peace in our time. We've brought peace to the
13 Kingdom.

14 For the record, I will note that, when
15 we do get to hearing, barring some cataclysm, you will
16 have Commissioner Bailey sitting to our right. She was
17 confirmed yesterday by the Council, and all that's left is
18 to have her sworn in, and move from one corner office to
19 another corner office. And, she's in the back of the
20 room.

21 MR. HEWITT: Terrific.

22 CHAIRMAN HONIGBERG: So, I think all
23 that, if you guys have a technical session to hash through
24 timing, that's great. Is there anything else from the

1 Order of Notice that really needs to be locked down?

2 MR. HEWITT: The other issue that we had
3 raised was a post-hearing briefing, and that was also
4 raised in the notice. And, again, sort of similar to the
5 prefiled testimony, there was just a question as to
6 whether that would be -- whether that would be permitted.
7 And, we certainly think it would be helpful to encapsulate
8 and summarize "Here's what the testimony was, here's what
9 we view the law to be, and this is how we apply these
10 facts to this law."

11 CHAIRMAN HONIGBERG: Mr. Sheehan.

12 MR. SHEEHAN: My response is similar. I
13 don't think it's required. I think this case is much
14 simpler than Mr. Hewitt is describing it to be. I think,
15 at the end of the hearing, you will know exactly what the
16 issues are and exactly where the point of conflict is.
17 And, it's a interpretation of two rules that are fairly
18 clear.

19 Again, if they want to file a brief, I
20 can't stop them. We, again, are trying to keep, to the
21 extent this process, we have not done one of these in a
22 while, an NOV hearing, we don't want it to set a template
23 that is more burdensome on Staff than it needs to be.

24 CHAIRMAN HONIGBERG: Understanding that

1 we do not want to set a precedent, is there time
2 sensitivity to issuing an order on this Notice of
3 Violation?

4 MR. SHEEHAN: No.

5 CHAIRMAN HONIGBERG: So, if we were to
6 allow post-hearing memos, brief post-hearing memos, as
7 those who appear here a lot, at least since I've become
8 the Chair, I am a believer in page limits, so, if the
9 Parties wanted to file brief post-hearing memos, that
10 wouldn't be a problem, from your perspective, Mr. Sheehan?

11 MR. SHEEHAN: Again, it's the same as
12 before. We would not object to it. We can't stop -- I
13 mean, I completely understand. If I were in Mr. Hewitt's
14 shoes, I may be saying the same thing. So, I'm not going
15 to object to it. And, in fact, if -- so, I'll leave it at
16 that.

17 CHAIRMAN HONIGBERG: Okay. I think what
18 we'll do, Mr. Hewitt, is, I think you should assume you're
19 going to be allowed to file a post-hearing memo. It may
20 be, by the time we get there, everyone agrees this is
21 really pretty straightforward, and it's obvious that the
22 Commissioners understand the relatively narrow issues and
23 you don't need it. Or, you may conclude that you do, and
24 we'll deal with it with a specific schedule, once we have

1 a sense of how long the transcripts are going to be and
2 what you might need. Commissioner Scott.

3 COMMISSIONER SCOTT: I just wanted to
4 ask the Company is, in the context of the Chair just
5 mentioned that there's no particular urgency to get to a
6 resolution of this, the urgency in my mind would be, if
7 activity -- if there is really indeed a safety issue
8 caused by overpressurization, are we assured that there's
9 no -- that activity is not continuing while we figure all
10 this out?

11 MR. HEWITT: We can certainly make that
12 assurance. Our systems are safe, they are reliable.
13 These particular NOV's do not address, in the Company's
14 view, sort of long-standing issues. They were really,
15 frankly, isolated incidents that the Company has taken
16 measures to ensure that they will not occur again. And,
17 in the Company's mind, we are very confident that any time
18 to decision that is necessary in this docket will have
19 really zero impact on the safety of the public of the
20 people of the State of New Hampshire.

21 COMMISSIONER SCOTT: Thank you.

22 MR. SHEEHAN: In response to that, the
23 philosophical disagreement in this case is between one
24 section of the Code that says "you shall not operate over

1 your maximum pressure", and another section of the Code
2 that allows the design of the system to accommodate
3 pressures above that maximum.

4 We believe the Company thinks it's okay
5 to, on occasion, go into that 10 percent cushion above
6 maximum pressure; we disagree vehemently. So, to the
7 extent there may be overpressurization, as Commissioner
8 Scott mentioned, we were concerned -- that would be our
9 concern is that they are continuing to move into that
10 10 percent window that we think is not permissive, and
11 they think, at least it appears, there may be some belief
12 that it is okay on occasion to go into that range.

13 CHAIRMAN HONIGBERG: Mr. Hewitt, just,
14 not necessarily addressing the second part of what
15 Mr. Sheehan said, but the first part, in outlining the
16 interplay between those two sections being the crux of the
17 dispute, is that something you agree with?

18 MR. HEWITT: That is certainly one of
19 the issues that is of significance in this, in this
20 matter. That's correct.

21 CHAIRMAN HONIGBERG: Do you want to
22 respond at all to the second thing Mr. Sheehan said?

23 MR. HEWITT: You're going to have to
24 help me with the first and the second, because --

1 CHAIRMAN HONIGBERG: The first was "we
2 got a philosophical difference between one provision and
3 another."

4 MR. HEWITT: Yes.

5 CHAIRMAN HONIGBERG: The second issue
6 that Mr. Sheehan outlined was their concern that "the
7 Company believes it's okay to operate in an area above
8 what appears to be a limit."

9 MR. HEWITT: Sure. And, rather -- and,
10 without arguing the case too much before the evidence is
11 in, so, Mr. Sheehan is correct, the Company does believe
12 that the system can be operated above MAOP. But let us be
13 very clear. The Company takes that position that that --
14 that the system MAOP can exceed -- or, that the pressure
15 on the system can exceed MAOP, only during an emergency
16 situation, such as when the primary means for regulating
17 pressure on that system fails. And, so, you have a backup
18 means for regulating the pressure on that system. It's
19 called "overpressure protection". And, when you have to
20 rely on that overpressure protection, because of a failure
21 of your primary mode of pressure regulation, the Code
22 provides, and PHMSA has confirmed, that you can then have
23 the pressure on your system, temporarily, during this
24 emergency situation, go into that 10 percent overage.

1 And, to provide you assurance that this
2 is -- that this does not present a public safety hazard,
3 these systems are designed purposefully, as you might
4 expect, with a safety factor. So that, if you have what's
5 called the "MAOP" on a system, okay, if you just go a
6 little bit over that MAOP, there's not -- there's not a
7 concern that pipes are going to start deforming or that
8 you're going to have significant problems with the system.
9 These systems are constructed with a safety factor built
10 in. And, the 10 percent amount that the Staff is talking
11 about is well within the safety factor that's already
12 designed into the system.

13 So, I want to be very clear that the
14 Company's position here is that, yes, the system can
15 experience a pressure that exceeds MAOP, but only in very,
16 very limited circumstances, that only arise if there is a
17 failure of that system. Okay? And, it's temporary in
18 nature.

19 So, when I said it's an isolated
20 incident, it really is an isolated incident. It is an
21 emergency type of situation when this is allowed.

22 CHAIRMAN HONIGBERG: All right. That's
23 helpful from both of you to outline -- helpful from both
24 of you to outline what the issues are, I think.

1 Is there anything else, Mr. Sheehan,
2 that you want to add?

3 MR. SHEEHAN: Other than vehemently
4 disagreeing.

5 CHAIRMAN HONIGBERG: No, I understand.
6 You guys are going to disagree about how it all applies.
7 But, I mean, I appreciate you laying out where the -- the
8 nature of the disagreement, I think that's helpful.

9 MR. SHEEHAN: And, Mr. Knepper reminded
10 me, to the extent there is a safety concern, the Staff
11 believes the MAOP is a bright line that shall never be
12 exceeded. And, we believe, at the end of this process,
13 there will be an order from the Commission reaffirming
14 that. So that, between now and that order, we would
15 appreciate a commitment from the Company that they won't
16 go above the MAOP, regardless of Mr. Hewitt's statements
17 that "the system can probably handle it." It's still, in
18 our view, not permissive. And, to the extent that
19 Commissioner Scott had a concern about what's happening
20 between now and decision time, that would be -- that would
21 satisfy Staff, is a commitment from the Company they won't
22 go there.

23 CHAIRMAN HONIGBERG: In large measure, I
24 think that's a situation that's probably outside the

1 Notice of Violation proceeding that's before us. I think
2 that's really a matter for the Safety Division and the
3 Company as to how they're operating today.

4 I mean, Mr. Hewitt, if you want to make
5 such a representation, you can. I'm not going to require
6 it as you sit there.

7 MR. HEWITT: Yes. I think what Staff's
8 essentially asking for is some, you know, sort of
9 prejudgment relief.

10 CHAIRMAN HONIGBERG: Well, no, I
11 wouldn't say that. I think what they're asking for is
12 some interim commitment that, while this is uncertain at
13 least legally while you are disagreeing about what's
14 required, what they'd like you to do is commit to staying
15 on the low -- staying below the line until there's an
16 order.

17 MR. HEWITT: We operate, and I'm
18 hesitant to start arguing -- really start arguing the
19 merits of the case. But we operate these systems
20 substantially below the MAOP. So that, if an emergency
21 situation does occur, and our backup means for
22 overpressure protection on these systems is required to
23 kick in, the exceedance is for a very short period of time
24 while that overpressure protection gains control of system

1 pressure.

2 CHAIRMAN HONIGBERG: Don't -- yes, you
3 don't need to do any more. We're not going to order the
4 Company to do something that they don't believe the rules
5 require them to do that you do, and that's the dispute
6 that's in front of us. I think, if the Safety Division
7 believes that some visit to the Company, some regular
8 checking of their numbers is appropriate, I think you
9 should do that. But I don't think that they need to make
10 any further commitments than what they have made. And, if
11 they turn out to be wrong, they're going to be wrong. But
12 I understand where the nature of the dispute is.

13 I'm sorry, I cut you off. Was there
14 something else you needed to say?

15 MR. HEWITT: No. You understood the
16 point that I was making.

17 CHAIRMAN HONIGBERG: Okay.

18 MR. HEWITT: So, I appreciate that.

19 CHAIRMAN HONIGBERG: Is there anything
20 else we can do for you, before you do your technical
21 session? Mr. Sheehan.

22 MR. SHEEHAN: The Order of Notice did
23 say, at the prehearing conference, the parties would
24 "state positions", which, in effect, we've already done,

1 and "to identify any facts detailed in the NOV's that are
2 disputed". What we're going to do in the technical
3 session is to try to work out an agreed statement of
4 facts. So, I do believe that we will probably find out
5 then what's disputed and what isn't.

6 CHAIRMAN HONIGBERG: Yes. I don't think
7 it's necessary to have -- to make Mr. Hewitt or his
8 witness state in front of us what they disagree with. I
9 think, if you can work out, to the greatest extent
10 possible, an agreed statement of facts, it would certainly
11 simplify everything for the hearing and crystallize what
12 the nature of the dispute is. And, I think, in large
13 measure, you'll probably be able to do that.

14 Is there anything else?

15 MR. SHEEHAN: That's all from Staff.
16 Thank you.

17 MR. HEWITT: Nothing from the Company.
18 Thank you.

19 CHAIRMAN HONIGBERG: All right. Thank
20 you very much. Good luck with your technical session.

21 MR. HEWITT: Thank you.

22 **(Whereupon the prehearing conference was**
23 **adjourned at 10:26 a.m., and a technical**
24 **session was held thereafter.)**