

STATE OF NEW HAMPSHIRE

Inter-Department Communication

NHPUC 22FEB'16AM8:04

DATE: February 19, 2016

AT (OFFICE): NHPUC

FROM: Randall S. Knepper 

SUBJECT: DG 16-240 Northern Utilities, February 10, 2016 Waiver Request of Puc 511, Staff Recommendation

TO: Commission
Debra A. Howland, Executive Director
Steve P. Frink, Asst., Director Gas & Water Division
David J. Shulock, Sr. Hearings Examiner

The Safety Division objects to Northern Utilities February 10, 2016 waiver request regarding the Safety Division's Notice of Probable Violations (NOPVs) PS1601NU and PS1602NU and recommends **not** issuing a waiver of the NOPV provisions of Puc 511. In support of this recommendation we include the following observations.

Public Interest Standard

Puc 201.05 (a) (1) requires the waiver serve the public interest. The waiver request does not serve the public interest but rather only serves the interest of Northern Utilities (Unitil). The public interest is best served by adherence to the minimal safety regulations required by the federal government as outlined in 49 CFR Part 192 and those required by the entirety of Puc 500 including Puc 511. This includes the inspection and enforcement provisions of Puc 511 for compliance actions. Adhering to minimal safety regulations assures the public that the gas pipeline systems can be relied upon for the safe delivery of natural gas to the customers that use natural gas as well as those portions of the general public that are within the vicinity of the gas pipeline systems but are not customers. The public interest in safety related matters is not limited to only the customers of Northern Utilities but extends to those who have the potential to be affected.

Unitil within the February 10 letter *"believes that the public interest would not be served by imposing a series of civil penalties upon Northern's current ownership for events that occurred many years (and in some cases decades) prior to Unitil Corporation's acquisition of Northern"*. Unitil further requests a waiver for the *"NOPV provisions of Puc 511"* and seeks alternative cooperative process. Unitil does not state why potential civil penalties would not serve the public interest and somehow removes current ownership responsibilities that originated when the initial decision to acquire the assets from previous and former management from the continual associated critical mission responsibilities of ensuring safety of the systems essential for public service. Lastly, Unitil does not specifically address which sections of Puc 511 they are asking to be waived. Presumably this would include multiple sections of Puc 511 which outlines a process to resolve probable violations

informally and expediently but also protects Unitil's ability to request an adjudicatory hearing. Since the waiver is non-specific in nature it should be denied.

Ethical Conduct Required

The Company seeks a meeting with Commissioners and Safety Division. This is the alternative method proposed by Northern Utilities as required by Puc 201.05(b) (2) and Puc 201.05 (e). RSA 363:12 specifically precludes the Commission from meeting with Northern Utilities outside of a public and formal process without full transparency especially before a case that may be pending before the Commission. The NOPV issued can be considered as a case that may be pending but even if there is any doubt Unitil on page 2 of 17 states "*Northern simply desires to work cooperatively with the Commission and its Safety Staff to develop and implement a mitigation plan that is acceptable to the Commission while causing the least disruption to Northern's customers, and avoiding the time and expense of litigation through the NOPV and NOV process*". This signals and infers that Northern intends to litigate which would be part of Puc 511.09 which would then be a docketed pending matter before the Commission. The Safety Division believes it would be highly inappropriate for the Commission to directly meet with Unitil and questions the legality of such a proposed alternative process.

Current process already identified is efficient

Puc 511.01 (c) states the Commission grants the inspection and enforcement authority to the Safety Division for provisions consistent with the Natural Gas Pipeline Safety Act. The Commission relies on the Safety Division to understand the technical aspects of regulations and by assigning the responsibilities to the Safety Division enables an efficient process to be conducted. Further, in remaining sections (511.04 through 511.09) a process for the Company and Staff in the enforcement process for compliance related activities is specifically outlined. The requested waiver **will** disrupt the orderly and efficient resolution of matters before the commission which does not meet Puc 201.05 (a) (2). Unitil in effect wants to short circuit the current process and make arguments directly to the Commission without attempting any resolution or understanding the basis of the NOPV.

Individual NOPV's should remain separate

The Safety Division objects to comingling PS1602NU and PS1601NU as Northern does throughout the request as they are written as completely separate and distinct violations and were purposely issued as separate documents. By combining each of the notices, the Safety Division believes the orderly and efficient resolution of matters before the commission will be confusing, allow for misinterpretation, misunderstanding and misapplication of appropriate regulations which can lead to an undesired result. Each notice is independent of the other and Unitil does not demonstrate any link between the two except by their own comingling. Unitil's request states "*there are two pending NOPVs issued by Staff related to these MAOP and uprating issues*" (p 4 of 17) when in fact PS1601NU does not discuss any issue with uprating in each of the particular violations cited. (On pp 14 and 15 of 17) Unitil states "*Northern is concerned that Staff is requesting this information for the purpose of identifying other distribution systems that were uprated by the prior owner of Northern and other services that were installed by the prior owner that Staff contends were not performed in conformity with Part 192*". The Safety Division never stated that was the intention as the Safety

Division does request documents of the uprates themselves but merely asks for a list of system names and dates to facilitate the review of services installed after those dates and make sure that this is not a systemic issue of violating MAOP. The Safety Division's goal was to make a determination that this is associated with a portion of a single system, differentiated from a practice allowed for all systems applicable to a larger universe of pipelines. Rather than looking at an expansive list of all systems, Staff narrowly focused upon those similar factors that were involved in the NOPV cited.

Historical Precedence of Safety Related Matters

The PUC has only granted a single waiver regarding pipeline safety regulations in its history that the Safety Division is aware of. The Commission granted a waiver in Order No. 20,740 (Feb. 3, 1993), to Northern Utilities, Inc., *see 78 NH PUC 57 (1993)* for a temporary mobile LNG for a temporary situation to be used during peak hours for a limited time period until the PNGTS pipeline was constructed. This waiver was the first of a 2 step process that requires waivers to ultimately be approved by PHMSA and subsequently was.

Northern Utilities request of a waiver of Part Puc 511. It does not directly request a waiver from the cited federal regulations 49 CFR Part 192. 553, 192.557, 192.619 192.605, 192.603 and 192.13 but requesting a waiver of Puc 511, the Safety Division feels may indirectly lead to approval of a waiver of the specific federal regulations which require **both** the State and Federal regulatory approval. The Commission alone does not have that authority.

Other inconsistencies

Finally, the Safety Division objects to many of the statements made by Northern Utilities throughout the document and will address each to the Commission in a subsequent document. Northern Utilities has brought forth that multiple systems may not be in compliance with state and federal regulations and that many of the MAOP(s) established of its systems are questionable. The Safety Division was not aware of such issues because it has not thoroughly reviewed those systems nor attempted to. The Safety Division did not realize the quantity of systems that were established by uprating compared to those established by other methods. It is highly likely that the Safety Division will in the near future recommend an investigation be initiated regarding validating previously established MAOPS by comprehensively reviewing documentation supporting the establishment of those MAOPs as well as review of documentation of pipeline segments that have subsequently been installed that would continue to support such MAOP levels. The Safety Division notes such an investigation would require a multi-year effort and would not be a small undertaking.

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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FILING INSTRUCTIONS:

- a) Pursuant to N.H. Admin Rule Puc 203.02 (a), with the exception of Discovery, file 7 copies, as well as an electronic copy, of all documents including cover letter with:**
- DEBRA A HOWLAND
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21 S. FRUIT ST, SUITE 10
CONCORD NH 03301-2429
- b) Serve an electronic copy with each person identified on the Commission's service list and with the Office of Consumer Advocate.**
- c) Serve a written copy on each person on the service list not able to receive electronic mail.**

PURSUANT TO N.H. ADMIN RULE PUC 203.09 (d), FILE DISCOVERY

DIRECTLY WITH THE FOLLOWING STAFF

RATHER THAN WITH THE EXECUTIVE DIRECTOR

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BULK MATERIALS:

Upon request, Staff may waive receipt of some of its multiple copies of bulk materials filed as data responses. Staff cannot waive other parties' right to receive bulk materials.

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