

DM 03-117

METRA INDUSTRIES INC.

Show Cause Proceeding

Order Approving Settlement Agreement

O R D E R N O. 24,190

July 9, 2003

I. BACKGROUND

This matter was docketed by the Commission on its motion, ordering Metra Industries (Metra) to Show Cause why, given the failure of Metra to respond to five validly issued Notices of Probable Violation (NOPV) and Notices of Violation (NOV), utilities regulated by the Commission not be barred from doing business with Metra. See, Order No. 24,180 (June 3, 2004). A hearing on the Show Cause was held on June 24, 2003. Northern Utilities, a natural gas utility serving several of the communities where Metra was engaged in excavation work, and the owner of utility facilities which were found by the Commission's Pipeline Safety Division to have been damaged by certain actions of Metra, was granted intervention.

As an initial matter, the Commission heard extended argument regarding the Commission's authority and jurisdiction on this matter. During the course of the hearing the Commission Staff and counsel for Metra indicated that they had begun settlement discussions in an attempt to resolve this matter. The Commission suspended the hearing and requested that the parties

regularly advise it of their progress on achieving a resolution of the issues, noting that issues of public safety were of the highest priority for the Commission.

Subsequent to this hearing, Northern Utilities obtained a Temporary Restraining Order in Strafford County Superior Court prohibiting Metra from engaging in excavation activities in any of the 21 cities or towns in which Northern Utilities has natural gas pipeline facilities, within 50 feet of such facilities.

(*Northern Utilities v. Metra Industries, Inc.*, Docket No. 03-E-111, *Slip Op.* at 2.) The TRO provides, further, that "[e]ither party may move to vacate this order in the event that there is an agreement approved by the Public Utilities Commission to approve further or continued excavation activities by the defendant Metra." *Id.*

Subsequent to the issuance of the TRO, Staff and Metra continued to engage in settlement discussions, and as a result, filed a Settlement Agreement with the Commission on July 9, 2003. Staff advised the Commission that Intervenor Northern Utilities does not oppose the settlement.

The Settlement Agreement contains several provisions:

1. The Settlement notes that on July 1, 2003, Metra paid in full the fines previously levied for Notice of Violation Nos. 02216, 02254, 02255, 02256 and 02280;
2. With respect to Notice of Probable Violation Nos. 03039 and

03045, Metra has withdrawn its Requests for Informal Conference pursuant to N.H. Code Admin. Proc. Rule Puc 806.03(a)(2), and has agreed to pay fines of \$3000 and \$5000, respectively, no later than July 22, 2003;

3. Metra agrees to pay all reasonable damages incurred by utilities with respect to NOPV Nos. 03039 and 03045, and NOV Nos. 02216, 02254, 02255, 02256 and 02280 within 30 days of receipt of a bill for damages, up to a total of \$7,025.71. As of June 25, 2003, the Settlement represents that the utilities have received \$4,480.21 from Metra as partial payment of such damages;

4. Metra agrees to hire an independent inspector, on the recommendation of the Commission, to supervise all remaining work at the Company's current job sites in Dover and Portsmouth, New Hampshire, which implicates the Underground Damage Prevention Program, RSA 374:48-56, and to comply with the inspector's directions regarding Damage Prevention matters. The Settlement recognizes Metra's right to hire, at its sole discretion, a subcontractor to complete such work, but also agrees to hire an inspector to supervise the subcontractor's work if requested to do so, upon a good faith determination by the Division of Safety that such inspector is necessary;

5. Metra agrees and accepts its obligations under RSA 374:48-56, as well as the Commission's rules and procedures relating to the Dig Safe program; agrees not to contest the jurisdiction of the

Commission with respect to any NOPV which may be issued as a result of the current work in Dover and Portsmouth; and agrees to designate an agent for service to receive any outstanding or future Dig Safe or Safety Division related matter;

6. Metra agrees not to commence any new work in New Hampshire until it has completed Dig Safe training as approved by the Safety Division, and that such training shall not commence prior to September 22, 2003. In addition, for a two year period, the Company agrees to train or retrain their employees in Dig Safe procedures prior to commencing new work in New Hampshire;

7. Lastly, the Company agree to pay all reasonable court reporter fees associated with the June 24, 2003 hearing.

II. ANALYSIS

As we pointed out in the Show Cause order, and emphasized during the hearing on this matter, the Commission was very concerned that Metra had completely failed to respond to the previously issued NOPVs and NOVVs. This failure, coupled with Metra's activities and conduct described in these notices raised serious concerns as to the continued safety of Metra's operations in New Hampshire. This Settlement directly addresses the Commission's concerns, by ensuring that current operations will be supervised by a competent inspector with authority to direct compliance with Dig Safe procedures, by engaging the Company in an ongoing safety training program if it intends to continue to

work in New Hampshire, and by ensuring the Commission's continued oversight of Metra's current and future work. On this basis the Commission finds that the proposed Settlement Agreement is in the public good and should be approved. We will require that the Division of Safety report to us on a regular basis as to Metra's compliance with the terms of this Agreement and to advise us immediately of any additional Dig Safe violations should they occur.

Based upon the foregoing, it is hereby

ORDERED, that the Settlement Agreement proposed by Staff and Metra is hereby approved.

By order of the Public Utilities Commission of New Hampshire this ninth day of July, 2003.

Thomas B. Getz
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary