

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DG 11-196

UNITIL CORPORATION AND NORTHERN UTILITIES, INC.

Show Cause Proceeding

Order Setting Procedural Schedule

ORDER NO. 25,296

December 2, 2011

On September 8, 2011, the New Hampshire Public Utilities Commission (Commission) issued Order No. 25,266, opening a proceeding to determine appropriate remedies for the failure of Northern Utilities, Inc. (Northern, or Unitil, or the Company) to meet certain Emergency Response Standards approved in Docket No. DG 08-048. In its September 2011 order, the Commission stated that Northern will be required 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 non-compliance with Commission Order No. 24,906 (October 10, 2008) approving those standards.

A pre-hearing 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 memoranda filed on April 22, 2011, and June 20, 2011, respectively. 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, the company should abide by those metrics. 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 parties. A Joint Stipulation of Facts signed by counsel for Unitil and Staff was filed on October 17, 2011. On November 3, 2011, the parties notified the Commission that they had agreed to cancel the follow-up technical session and to develop a proposal for further procedural steps. 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 filed a response on November 22, 2011.

This commission has established that, in a show cause proceeding such as this one, the burden of going forward to present an affirmative or *prima facie* case is on the complainant, or the Commission, through its Staff. The burden of going forward requires that a party establish the basis of the complaint and provide an initial demonstration of non-compliance or violation of an order, rule or statutory requirement. Once an affirmative case has been made, the ultimate burden of persuasion on the subject matter of the complaint or investigation is on the public utility. *See Wilton Telephone Company et al.*, Order No. 23,744 (July 26, 2001) at 22-25.

In the instant case, Staff has asserted that Unitil is not in compliance with certain emergency response standards established by settlement agreement and approved by the Commission in Order No. 24,906 (October 10, 2008). Unitil has admitted that it is not in compliance with the standards approved in Order No. 24,906. *See Unitil Response Memorandum* (June 20, 2011) at 2 (“The Company does not dispute that it has been unable to meet the performance criteria in each of the nine benchmarks...”). Moreover, Unitil and Staff have submitted a Joint Stipulation of Facts that substantiates Unitil’s non-compliance. *See Joint Stipulation of Facts* at items 6 (“The data show that the Company failed to meet the Emergency

Response Standards in 58 of the 234 benchmarks during the 26 month period from January 2009 through February 2011.”); 7 (Unitil “acknowledged that it has been unable to meet the Emergency Response Standards in each of the nine benchmarks during each month of the reporting periods in question. The Company does not dispute the data provided...”); and 9 (Unitil and Staff “reiterated the positions set out in their [April 22, 2011 and June 20, 2011] filings.”) Because Unitil has admitted that it is not in compliance with the order in question, the burden as contemplated in *Wilton Telephone Company, et al.* has shifted. As a result, we find that the procedural schedule set forth in Staff’s November 18, 2011 letter is appropriate, with an adjustment of dates in order to accommodate the schedule suggested by Staff and modified by Unitil.

Accordingly, we adopt the following procedural schedule and direct Staff to include, in any response testimony it may file, its recommendation, to the extent it has one, for appropriate remedies in its testimony.

Approved Procedural Schedule:

Unitil Testimony	December 16, 2011
Data Requests to Unitil	December 23
Data Responses from Unitil	December 30
Staff/Intervenor Response Testimony	January 6, 2012
Data Requests to Staff/Intervenors	January 13
Data Responses from Staff/Intervenors	January 20
Unitil Rebuttal Testimony	January 27
Hearing	February 2
Briefing on appropriate remedies (as needed)	

We acknowledge that there are numerous holidays included in the above schedule that may necessitate revisions. We encourage the parties to work together to propose appropriate modifications, as needed.

By order of the Public Utilities Commission of New Hampshire this second day of December, 2011.


Thomas B. Getz
Chairman


Clifton C. Below
Commissioner


Amy L. Ignatius
Commissioner

Attested by:


Kimberly Nolin Smith
Assistant Secretary

