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STATE OF NEW HAMPSHIRE



PUBLIC UTILITIES COMMISSION
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Concord, N.H. 03301-2429

DG 15-121

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NHPUC 13AUG15PM8:02

August 12, 2015

Debra A. Howland, Executive Director
New Hampshire Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, NH 03301-2429

Re: Docket No. DG 15-121; Northern Utilities, Inc.
Notices of Violations PS1501NU and PS1502NU

Dear Ms. Howland:

I write in response to Northern's letter of August 10, 2015, in which Northern stated it "will consent to the Dover NOV and is willing to pay the \$17,500 civil penalty assessed in the NOV." It is Staff's position that Northern waived its right to sign the consent agreement and accept the \$17,500 civil penalty. First, by rule, Northern's request for a hearing eliminated the option of signing the consent agreement. Second, Staff formally withdrew the consent agreement to the extent it remained an open settlement offer. If Northern no longer contests the Dover NOV, Staff believes Northern must admit to the violations before the Commission and be subject to whatever sanctions the Commission may order after hearing a revised recommendation from Staff. Staff's reasons follow.

Staff issued a Notice of Probable Violation (NOPV) for the Dover over-pressuring event on January 23, 2015. The NOPV alleged the same facts that were later included in the Dover NOV at issue here. Staff alleged that two regulator vaults flooded after a brief but intense rainstorm, which caused the failure of the two regulator stations which, in turn, caused an increase in system pressure to more than twice the maximum allowable operating pressure (MAOP) for almost an hour. The NOPV (and later NOV) alleged violations of the gas pipeline safety rules because system pressure exceeded MAOP and because the regulators were not designed to operate when the vaults flooded.

Northern requested an informal conference in response to the NOPV pursuant to Puc 511.06(a)(4) and Puc 511.07. The parties did not resolve the NOPV; Staff then issued the Dover NOV. *See* Puc 511.07(c) ("If the utility and the commission staff cannot by agreement resolve the violation at this stage, the enforcement procedure shall continue as described in Puc 511.08"). The Dover NOV repeated the factual allegations of the NOPV, summarized the informal conference, and, pursuant to Puc 511.08 and Puc 511.09, offered a consent agreement

for Northern to sign. The consent agreement contained an admission that Northern violated the gas pipeline safety laws as alleged in the NOV, an agreement to pay \$17,500 in civil penalties, and several conditions (one of which Northern challenges in its August 10 letter). Upon receipt of the NOV and proposed consent agreement, Puc 511.09 afforded Northern two choices:

Within 10 days from receipt of the NOV, the respondent shall either: (a) Sign a consent agreement and remit the civil penalty; or (b) File a request in writing for a hearing before the commission.

(Emphasis added.) Northern requested a hearing by letter filed April 3, 2015: “Northern respectfully requests that the Commission commence an adjudicatory proceeding for the purpose of deciding the NOVs” (emphasis added). Northern’s request for a hearing constitutes a waiver of Northern’s option to accept the consent agreement and its proposed sanction because Puc 511.09 says Northern may “either” sign the consent agreement “or” request a hearing. To remove any doubt, Staff formally withdrew the proposed consent decree by email dated August 6, 2015: “Staff will no longer accept a signed consent agreement and check to resolve either of the NOVs. To the extent the consent agreement was an offer from Staff to resolve these NOVs, that offer is hereby withdrawn.” A redacted copy of the email is attached.

It is Staff’s position that only the Commission can now decide the NOVs and impose the appropriate sanction. Northern is free to admit to the Dover NOV at hearing and ask the Commission to issue an order to that effect, but Northern may not take advantage of a settlement offer that Northern rejected and that Staff withdrew.

Should Northern admit to the Dover NOV, and should the Commission accept that admission and find Northern violated the gas pipeline safety laws, it is also Staff’s position that it may recommend a sanction in excess of that offered in the proposed consent agreement. The sanction offered in the consent agreement is no longer appropriate for the following reasons. First, the proposed sanction was a settlement offer that Northern rejected and Staff withdrew. It is simply no longer available. Second, Staff spent substantial time litigating this case, including responses to 44 data requests, approximately half of which pertained to the Dover NOV, rendering the prior offer stale. Third, Northern’s defenses indicate to Staff that Northern does not understand the seriousness of the alleged NOV, that MAOP is a very bright line that Northern simply cannot exceed without consequences. Staff issued these NOVs in part to correct what Staff sees as Northern’s laxity in understanding the importance of MAOP and the code’s command that “no person may operate a segment of a steel or plastic pipeline at a pressure that exceeds” MAOP.” 42 C.F.R. §192.619(a).

Finally, and perhaps most important, Staff issued the NOV based on evidence of a single over-pressuring event on a single day arising from a single set of flooded vaults. Northern’s defense, in part, was the following: “The Company has never experienced flooding in these regulator vaults. The vaults had occasionally required pumping out after a significant rain event,

but the level of water has not previously reached the regulators.”¹ In discovery Staff asked Northern to “provide field notes or inspection documents indicating how many times per year for the past 5 years that each underground vault within Northern’s system has been pumped out.” Staff 1-3. Northern’s response consists of Regulator Station Inspection Forms and Annual Inspection Forms which indicate that water was pumped from vaults at Northern’s regulator stations on more than 600 occasions, including 30 times at the Rutland Street vaults at issue in the Dover NOV. Although most of these forms provide no detail (only a technician’s circle around the “Y” indicating “Yes” the “vault” was “pumped”), a number of the forms include comments relevant to a sanction. Examples include the following: “worker vault flooded – pumped - checked vent line – still dry;” “Vault lids buried – vaults full of water (over recorder);” “vaults both flooded – replaced recorder clock + removed vents of regs to check for water – both clear;” “both vaults flooded – checked vents.” These forms and examples of the Rutland Street station being pumped are attached.

Staff believes this new evidence and the other factors cited above justify Staff making a new recommendation as to an appropriate sanction for the Dover NOV upon the Commission accepting Northern’s admission. Puc 511.08(b)(2) authorizes Staff to rely on the following factors in recommending a particular sanction: “gravity of the violation ... cooperativeness of respondent ... effect of penalty on the utility, and any other identifiable factors which would tend to either aggravate or mitigate the violation.” *See* RSA 374:7-a, III (“In determining the amount of the penalty, ... the appropriateness of the penalty to the size of the business of the person charged, the gravity of the violation, the good faith of the person charged in attempting to achieve compliance, after notification of a violation, the degree of culpability of the person, the history of prior violations, the effect of the penalty on the person, and any other identifiable factor related to the circumstances of the person and the nature and circumstances of the violation, shall be considered”). Staff thus asks the Commission to reject Northern’s attempt to sign the consent agreement and pay the civil penalty offered in that document.

Sincerely,



Michael J. Sheehan
Staff Counsel

enclosures

cc: service list

¹ From the “Overview of Issues Related to” the NOPVs, prepared by Northern and provided to Staff at the informal conference.

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.

Executive.Director@puc.nh.gov
david.burnell@puc.nh.gov
epler@unitil.com
joseph.vercellotti@puc.nh.gov
leblanc@unitil.com
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robert.wyatt@puc.nh.gov
whewitt@roachhewitt.com

Docket #: 15-121-1 Printed: August 12, 2015

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
EXECUTIVE DIRECTOR
NHPUC
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.**

Sheehan, Michael

From: Sheehan, Michael
Sent: Thursday, August 06, 2015 3:50 PM
To: 'William Hewitt'
Subject: 15-121 Northern NOVs

Bill,

To confirm my rambling voice message, (~~the consent agreement was an offer from Staff to resolve these NOVs, that offer is hereby withdrawn.~~)
~~company. The consent agreement was an offer from Staff to resolve these NOVs, that offer is hereby withdrawn.~~
~~agreement. The consent agreement was an offer from Staff to resolve these NOVs, that offer is hereby withdrawn.~~
~~and (3) Staff will no longer accept a signed consent agreement and check to resolve either of~~
the NOVs. To the extent the consent agreement was an offer from Staff to resolve these NOVs, that offer is hereby
withdrawn. :

I am away tomorrow (Friday), but will be in next week.

Mike

Michael J. Sheehan, Esq.
Staff Attorney/Hearings Examiner
New Hampshire Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, New Hampshire 03301-2429
(603) 271-6028
Michael.Sheehan@puc.nh.gov



ID# 9

NEW HAMPSHIRE

REGULATOR STATION INSPECTION FORM

LOCATION: OAK ST
 TOWN: DOVER

Equipment Sequence# 30091

MAOP Inlet: 56PSI
 Outlet: 13.8WC

Date:	3-15-2016
Time arrived:	10:30
Time departed:	11:20
Operator:	3041

Normal Set Pt: 10WC

Inspected for leaks:	Y or N
Leaks found:	Y or N
Leaks repaired :	Y or N

Arrival Departure

Inlet Pressure:	51	51	PSE
Inermediate:			
Outlet Pressure:	12.5	10.25	"WC

Vault:	Y or N		
Inspected:	Y or N		
Pumped:	Y or N	W	M

Building Inspected:	N/A	Y or N
Condition:		
Fence:	Y or N	
Condition:		

Recorder:	Downloaded	Y or N
	Chart changed:	Y or N

Reason for Inspection:	
General	<input checked="" type="checkbox"/>
Water / Vault	<input checked="" type="checkbox"/>
Pressure Adjustment	<input type="checkbox"/>

Corrosion Inspection: Y or N

Heater Inspection: Y or N N/A

Abnormal Conditions:

Worker vault flooded

Comments:

Pumped checked vent line - still dry

REGULATOR AND STATION INSPECTION REPORT 46

Fed. Reg. 192.739, 743, 749

Date: 1-26-10 Arrival Time: 8:43 Departure Time: 9:53

Inspected By: B

Location: Rte 107 @ Andy's Mobile Home Seabrook, NH

MAOP: 56 PSI

	INLET	OUTLET
Pressure at arrival	_____	_____
Pressure at departure	_____	_____
Gauges	_____ <u>x</u> _____	_____ <u>x</u> _____
Recorder	_____ <u>x</u> _____	_____ <u>x</u> _____
Telemetering	_____	_____
Conditions of building	_____	Fence _____ Other _____
Underground vault condition:	Wet _____ Dry _____ Wet, no pumping required _____	
Leak check: Structure	_____ Piping _____	
General condition:	Good <u>x</u> Fair _____ Poor _____	

Maintenance or changes needed/comments:

vault was found - vaults full of water (cover recorder) Reasons for visit (check)

all that apply):

- Pressure Change
- Snow Removal
- Emergency Call
- Pump Pit
- General Maintenance
- Pressure Check

<u>x</u>

<u>x</u>

<u>x</u>

- Calibration
- Change Chart
- Yearly Inspection
- 5-Year Inspection
- Periodic Inspection
- LEL Test

<u>x</u>

Other: Recorder needs new clock

Time Spent on Job : _____ No. of Men Required: 1 Travel Time: _____



NEW HAMPSHIRE

ID# 52

REGULATOR STATION INSPECTION FORM

LOCATION: RTE 107@ANDY'S MOBILE
 TOWN: SEABROOK

Equipment Sequence# 30351
 MAOP Inlet: 125PSI
 Outlet: 56PSI

Date: 12-19-2012
 Time arrived: 11:00
 Time departed: 12:00
 Operator: 3041

Normal Set Pt: 50PSI

Arrival Departure

Inlet Pressure:	118 PSI	118 PSI
Inermediate:		
Outlet Pressure:	49 PSI	49 PSI

Inspected for leaks: Y or N
 Leaks found: Y or N
 Leaks repaired : Y or N

Building Inspected: N/A Y or N
 Condition:
 Fence: Y or N
 Condition:

Vault: Y or N
 Inspected: Y or N
 Pumped: Y or N W M

Recorder: Downloaded Y or N
 Chart changed: Y or N

Reason for Inspection:
 General
 Water / Vault
 Pressure Adjustment

Corrosion Inspection: Y or N
 Heater Inspection: Y or N N/A

Abnormal Conditions:

Comments: Vaults both flooded - Replaced recorder clock + removed vents of regs to check for water -> both clear



ID# 23

NEW HAMPSHIRE

REGULATOR STATION INSPECTION FORM

LOCATION :CHURCH ST
 TOWN: GONIC

Equipment Sequence# 30421
 MAOP Inlet: 150PSI
 Outlet: 56PSI

Date: 2-24-2014
 Time arrived: 12:25
 Time departed: 13:10
 Operator: 3041

Normal Set Pt: 50PSI

Inspected for leaks: Y or N
 Leaks found: Y or N
 Leaks repaired : Y or N

	Arrival	Departure
Inlet Pressure:	139 PSI	139 PSI
Inermediate:		
Outlet Pressure:	BAI	40 PSI

Vault: Y or N
 Inspected: Y or N
 Pumped: Y or N W M

Building Inspected: N/A Y or N
 Condition:
 Fence: Y or N
 Condition:

Recorder: Downloaded Y or N
 Chart changed: Y or N

Reason for Inspection:
 General
 Water / Vault
 Pressure Adjustment

Corrosion Inspection: Y or N
 Heater Inspection: Y or N N/A

Abnormal Conditions:

Both vaults pladed - checked vents

Comments:

needs new clock



ID# 11

NEW HAMPSHIRE

REGULATOR STATION INSPECTION FORM

LOCATION: RUTLAND ST
 TOWN: DOVER

Equipment Sequence# 30001
 MAOP Inlet: 55PSI
 Outlet: 13.8WC

Date:	12-13-2010
Time arrived:	11:05
Time departed:	11:25
Operator:	3041

Normal Set Pt: 53PSI

Inspected for leaks:	<input checked="" type="radio"/> or N
Leaks found:	Y or <input checked="" type="radio"/>
Leaks repaired :	Y or <input checked="" type="radio"/>

Arrival Departure

Inlet Pressure:	50 PSI	58 PSI
Inermediate:		
Outlet Pressure:	12" wc	12" wc

Vault:	<input checked="" type="radio"/> or N		
Inspected:	<input checked="" type="radio"/> or N		
Pumped:	<input checked="" type="radio"/> or N	<input checked="" type="radio"/>	<input checked="" type="radio"/>

Building Inspected:	N/A	Y or N
Condition:		
Fence:	Y or N	
Condition:		

Recorder:	Downloaded	Y or N
	Chart changed:	<input checked="" type="radio"/> or N

Reason for Inspection:	
General	<input checked="" type="radio"/>
Water / Vault	<input checked="" type="radio"/>
Pressure Adjustment	

Corrosion Inspection: or N

Heater Inspection: Y or N N/A

Abnormal Conditions:

Comments:

REGULATOR AND STATION INSPECTION REPORT

Fed. Reg. 192.739, 743, 749

Date: 10-15-2010 Arrival Time: 08:20 Departure Time: 09:20

Inspected By: JS-AB

Location: Rothland ST - Door

MAOP:

	INLET	OUTLET
Pressure at arrival	<u>51.2 PSI</u>	<u> </u>
Pressure at departure	<u>51.2 PSI</u>	<u>11.2" WC</u>
Gauges	<u>X</u>	<u>X</u>
Recorder	<u>X</u>	<u>Y</u>
Telemetry	<u> </u>	<u> </u>
Conditions of building	<u> </u>	Fence <u> </u> Other <u> </u>
Underground vault condition:	Wet <input checked="" type="checkbox"/> Dry <input type="checkbox"/> Wet, no pumping required <input type="checkbox"/>	
Leak check:	Structure <u> </u> Piping <u> </u>	
General condition:	Good <input checked="" type="checkbox"/> Fair <u> </u> Poor <u> </u>	
Maintenance or changes needed/comments:	<u> </u>	

Reasons for visit (check

all that apply):

Pressure Change
 Snow Removal
 Emergency Call
 Pump Pit
 General Maintenance
 Pressure Check

Calibration
 Change Chart
 Yearly Inspection
 5-Year Inspection
 Periodic Inspection
 LEL Test

Other: Checked vent - vent flooded

Time Spent on Job: 60 No. of Men Required: 2 Travel Time: 25



ID# 11

NEW HAMPSHIRE

REGULATOR STATION INSPECTION FORM

LOCATION: Rutland St
 TOWN: Dover

Equipment Sequence# 30001
 MAOP Inlet: 55 PSI
 Outlet: 13.8 WC

Date:	4-1-2013
Time arrived:	10:25
Time departed:	10:50
Operator:	3046

Normal Set Pt: 10.0 WC

Inspected for leaks:	<input checked="" type="checkbox"/> Y or <input type="checkbox"/> N
Leaks found:	Y or <input checked="" type="checkbox"/> N
Leaks repaired :	Y or <input checked="" type="checkbox"/> N

Arrival Departure

Inlet Pressure:	47.52	47.52
Inermediate:		
Outlet Pressure:	11" WC	11" WC

Vault:	<input checked="" type="checkbox"/> Y or <input type="checkbox"/> N		
Inspected:	<input checked="" type="checkbox"/> Y or <input type="checkbox"/> N		
Pumped:	<input checked="" type="checkbox"/> Y or <input type="checkbox"/> N	<input checked="" type="checkbox"/> W	<input checked="" type="checkbox"/> M

Building Inspected:	N/A	Y or N
Condition:		
Fence:	Y or N	
Condition:		

Recorder:	Downloaded	Y or N
	Chart changed:	<input checked="" type="checkbox"/> Y or <input type="checkbox"/> N

Reason for Inspection:	
General	<input checked="" type="checkbox"/>
Water / Vault	<input checked="" type="checkbox"/>
Pressure Adjustment	<input type="checkbox"/>

Corrosion Inspection:	Y or <input checked="" type="checkbox"/> N	
Heater Inspection:	Y or N	<input checked="" type="checkbox"/> (N/A)

Abnormal Conditions:

Comments: