

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DG 15-121

NORTHERN UTILITIES, INC.

Request for Hearing on Notices of Violations PS1501NU and PS1502NU

Order Finding Violations and Imposing Penalties

ORDER NO. 25,866

February 12, 2016

APPEARANCES: Roach, Hewitt, Ruprecht, Sanchez & Bischoff, PC, by William D. Hewitt, Esq. on behalf of Northern Utilities, Inc.; and Michael J. Sheehan, Esq. on behalf of Staff.

In this order, the Commission finds that Northern exceeded the maximum allowable operating pressure of its natural gas distribution systems in Dover and Portsmouth on August 13, 2014, and June 25, 2014, respectively. The Commission also finds that Northern failed to properly design its Rutland Street regulator station in Dover and its New Hampshire Avenue regulator station in Portsmouth. The Commission imposes civil fines totaling \$30,000 for these violations, and requires Northern to redesign systems to meet or exceed minimum safety code requirements.

Northern's request for a hearing, Staff's response, the NOVs, and subsequent docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are posted to the Commission's website at

<http://puc.nh.gov/Regulatory/Docketbk/2015/15-121.html>.

I. PROCEDURAL HISTORY

On March 26, 2015, Commission Staff (Staff) issued two notices of violation (NOV) to Northern Utilities, Inc. (Northern or Company).¹ The first NOV related to an overpressurization event in Dover at the Rutland Street regulator station on August 13, 2014, (Dover NOV). The second NOV related to an overpressurization event in Portsmouth at the New Hampshire Avenue regulator station on June 25, 2014, (Portsmouth NOV).

On April 3, 2015, Northern notified the Commission that it disputed both NOVs. Northern requested consolidated adjudicatory proceedings and a stay until April 30, 2015. The Commission issued an Order of Notice on June 5, 2015, opening an adjudicative proceeding to resolve the two NOVs. The Commission placed the burden of proving the violations and the appropriate fines on Staff. Pursuant to RSA 363:32, II, the Commission designated the Director of the Safety Division, Randall Knepper, P.E., and Staff Attorney Michael Sheehan as staff advocates. The Commission denied Northern's request for a stay as moot due to the passage of time. A prehearing conference was held on July 23, 2015.

On August 11, 2015, Northern withdrew its request for a hearing with regard to the Dover NOV. Northern stated that it no longer disputed that NOV and would pay the \$17,500 civil penalty; however, the Company requested that the Commission not impose a condition cited in the Dover NOV that related solely to design of the New Hampshire Avenue regulator station and other regulator stations that depend on monitor regulators. Commission Staff (Staff) objected to Northern's withdrawal of its request for a hearing and asserted a right to make a new recommendation related to penalties.

¹ Northern Utilities is the operating company subsidiary of Unitil Corporation. Staff testimony and exhibits refer to the operating company interchangeably as "Northern" and "Unitil." In this Order, we refer to the operating company as "Northern" or the "Company."

On August 12, 2015, Northern filed the direct joint testimony of Christopher LeBlanc, Director of Gas Operations for Unitil Service Corp., and Jonathan Pfister, Manager of Gas System Operations for Unitil Service Corp.; along with the testimony of Rick Ahlin, System Operations Supervisor for the New Hampshire Division of Northern Utilities, Inc.; and Philip Sher, an independent pipeline consultant hired by Northern.

On August 12, 2015, Staff filed a Joint Statement of Stipulated Facts. The hearing on the merits took place on August 19 and August 26, 2015. Northern and Staff filed post-hearing memoranda.

II. PRELIMINARY MATTERS

A. Acceptance of the Dover NOV and Withdrawal of Request for Hearing

As stated above, the Company withdrew its request for a hearing regarding the Dover NOV. The Dover NOV charged that Northern exceeded the maximum allowable operating pressure (MAOP) when its underground pressure regulating equipment located on Rutland Street failed after being flooded during a rainstorm on August 13, 2014. Northern conceded the Dover NOV and made assurances that appropriate redesign measures had been taken to avoid similar below-ground regulator station incidents. The Company agreed to pay the \$17,500 civil penalty assessed in the NOV on one condition. Specifically, Northern asked that the Commission not impose a condition that would require amendment of the Company's Operating and Maintenance Manual relative to setting monitor regulator pressures. Northern asserted that the Dover incident had nothing to do with regulator set points. Northern argued that the condition would require Northern to implement a remedy that was associated solely with the Portsmouth incident, even if the Commission ruled in Northern's favor on the Portsmouth NOV. *See* Hearing Transcript of August 26, 2015 ("8/26/15 Tr."), at 172-173.

On August 13, 2015, Staff filed a response contending that Northern's request for a hearing constituted a waiver of its option to accept the Consent Agreement attached to the Dover NOV. Staff stated that it had formally withdrawn the proposed consent decree by email dated August 6, 2015. Staff asserted that if Northern no longer contested the allegations in the Dover NOV, then the Company would have to admit the violations and agree to be subject to any sanctions or penalties the Commission might order after hearing Staff's revised recommendation.

B. Staff's Motion to Strike Testimony

On August 13, 2015, Staff filed a motion to strike the portion of Northern's witness Christopher LeBlanc's direct testimony describing a conversation that Mr. LeBlanc had with an unidentified Pipeline and Hazardous Materials Safety Administration (PHMSA) representative. Staff argued that the testimony is hearsay and should not be admitted as evidence.

Northern argued that if the Commission strikes the question and answer objected to in Staff's motion, it should apply the same standard to Staff's evidence regarding similar statements attributable to PHMSA about the Portsmouth NOV.

Northern and Staff stipulated at hearing that the Commission could ignore both sets of statements, and the Commission so ruled. *See* Hearing Transcript of August 19, 2015 (8/19/15 Tr.), at 4-6.

III. POSITIONS OF THE PARTIES AND STAFF

A. Dover NOV

Although Northern conceded a violation with respect to the Dover NOV, the parties disagreed about what sanctions the Commission may impose. It is therefore necessary to review the parties' positions on the Dover NOV.

1. Staff

Staff stated that the underlying facts in the Dover NOV are not disputed.

(08/19/15 Tr. at 3). Northern constructed and installed an underground vault that contained pipeline components that, when configured, make up a district regulator station. Exh. 2 at EX20145. The vault was in place for many years and was located on Rutland Street in Dover. In the summer of 2014, Rutland Street was being reconstructed with new drainage structures, sidewalks, and other roadway changes. On August 13, 2014, the location was subjected to a thunderstorm that delivered a substantial amount of water over a short period of time. Staff research showed that the flash flooding that occurred was well below that of the 100 year flood level, or even the 10 year flood level that are typical standards used in civil engineering projects for this region for rainfall intensities. Staff's visit to the Rutland Street vault revealed that the gas pressure regulator's vents were not extended outside the vault as is customarily done by other gas distribution system operators in New Hampshire. The vents became filled with water which caused the incorrect operation of the pressure regulators. *Id.*

Pursuant to Puc 504.05(c), Northern self-reported to Staff that the Company exceeded the maximum allowable operating pressure (MAOP) for the entire Dover Low Pressure distribution system on August 13. Digital pressure recording devices confirmed that the MAOP of 13.5 inches of water column (w.c.) was exceeded.² The devices recorded pressure at a level of approximately 32 inches of w.c., representing a 237% overpressurization. (Exh. 2 at EX20144). According to Staff, Northern's operation of its system at 32 inches of w.c. violated federal

² Pursuant to N.H. Code Admin Rules Puc 504.03, pipeline systems with cast iron segments may not exceed 13.8 inches of w.c. and the pressure at the outlet of any customer's service meter may never be greater than 13.8 inches of w.c. Reference to 13.5 inches of w.c. appears to be a typographical error in the NOV. The difference, in this case, is not material.

pipeline safety regulations established by the United States Department of Transportation set forth in 49 C.F.R. Part 192 (the Code or Code), specifically 49 CFR §192.619. *Id.*

Staff also alleged that the Company did not adequately design the Rutland Street regulator station equipment and thus subjected the system to potential pressures exceeding the MAOP. *Id.* at EX20145. Staff maintained that with a proper design the overpressurization should have been avoidable. *Id.* at EX20146. Staff hypothesized that Northern's distribution system could be subject to flooding due to any number of things, including intense natural precipitation, broken water mains, opened hydrants, motor vehicle accidents involving hydrants, or water trucks that roll over because of traffic accidents. Staff asserted that those considerations needed to be designed into equipment selection because both accidental and environmental conditions should be routinely considered within design parameters. More broadly, Staff took the position that the Company's equipment design and component selection did not consider the types of situations that may be encountered in the geographic area in which they are required to safely supply natural gas service. *Id.* For those reasons, Staff alleged that the Company violated 49 CFR §192.195.

In addition to civil penalties in the amount of \$17,500,³ Staff sought to impose a further condition that the Company amend Section 2-L, subsection 6, of its Operating and Maintenance Manual to clarify that pressure regulators must be set to prevent a 10% build-up over the MAOP. *Id.* at EX20148-149.

Staff amended its proposed fine at hearing. Staff contended that responses to data requests indicated that Northern was in violation on many more occasions than Staff was initially aware. Staff stated that it believed this new evidence, along with other factors justified a new

³ The NOV sought a \$10,000 fine for exceeding the MAOP on August 13, 2014, and a \$7,500 fine for failure to properly design the regulator vaults.

recommendation for additional civil penalties. Staff recommended the \$7,500 penalty for the design failure of the Rutland Street regulator station remain the same and that Northern be fined \$7,500 for each of 14 additional instances where there was evidence that a vault of similar design had been pumped or flooded. *See* 8/19/15 Tr. at 40-41; *see also* Staff's Post-hearing Memorandum at 5-6.

2. Northern Utilities

Northern stated at hearing and in its post-hearing brief that it would accept the Dover NOV and pay the \$17,500 civil penalty. The Company objected, however, to Staff's recommendation that the Company amend its Operating and Maintenance Manual regarding "the set point condition." According to Northern, the set point condition Staff included in the Dover NOV has no logical connection to the Dover incident. The condition focuses solely on regulator set points and those set points were not at issue in the Dover incident. Northern argued that the imposition of a condition that has no bearing on the alleged design defect would be unjust and unreasonable. *See* Northern's Brief and Offer of Proof on NOV Related to Rutland Street Regulator Station at 4.

Northern argued that it was irrelevant that it did not accept the Consent Agreement because Northern was willing to accept the terms of the NOV with the exception of the set point condition. Northern pointed out that Staff cited no authority for the proposition that the Commission is prohibited from allowing Northern to accept the terms of the NOV without the set point condition, during adjudication. *Id.* at 3.

Northern argued that Staff could not significantly modify the scope of the Dover NOV and increase the civil penalty from \$17,500 during the hearing. Northern stated that modifying the Dover NOV as Staff requested would violate its due process rights, would be unjust and

unreasonable, and would be a clear error of law. *Id.* at 1. According to Northern, PUC rules do not allow Staff to expand the scope of the NOV after it has been issued. Specifically, Northern argued that N.H. Code Admin. Rules Puc 511.08 requires the NOV to contain the factual and statutory basis for the NOV as well as the civil penalty to be imposed. Expanding the scope of facts to include other regulator stations and increasing the penalty, especially at hearing, would provide insufficient notice of a potential factual finding and violate due process guaranteed by the New Hampshire and United States Constitutions. *Id.* at 5-6.

Northern asserted that even if the NOV could be amended after it was issued, there is no evidence that regulator vaults have previously filled with water above the pilot vent extension within the vault, causing overpressurization. Northern represented in its post-hearing brief that the Rutland Street station was designed and constructed with pilot vents that were extended 48 inches above the vault floor, which allow the regulator to work properly even when the regulator (at 24 inches above the vault floor) is completely submerged. According to Northern, Staff cannot prove that the Rutland Street regulator vaults, or any other vaults, previously filled with enough water to submerge the pilot vents extended within the vaults. Northern maintained that pumping water from the vaults is routine and does not typically hamper the operation of the regulator station. *Id.* at 7-8. The Company theorized that if not for the roadside construction that caused the storm drain to become clogged, the extended pilot vents within the vaults at Rutland Street would not have been submerged. *Id.* at 9.

Finally, Northern asserted in its post-hearing brief that the Company's pilot vent extension design that terminated inside the vault was consistent with standard industry practice and complied fully with the provisions of 49 C.F.R. Part 192 that govern regulator station design, including Section 192.195. The design, whether above ground or below ground, must be

assessed on a case-by-case basis according to Northern, because both configurations have certain benefits and disadvantages. *Id.* at 11-12.

B. Portsmouth NOV

1. Stipulated Facts

Staff and Northern stipulated to the following facts: On June 25, 2014, at Staff's request, Northern separately simulated the failure of two worker regulators at the Portsmouth Intermediate Pressure (IP) System (the tests). At the time of the tests, Northern had established the MAOP for the Portsmouth IP System at 56 pounds per square inch gauge (psig). At the time of the tests, Northern had set one worker regulator at 52 psig, the other worker regulator at 50 psig, and both monitor regulators at 55 psig. At the time of the tests, Northern knew that when a monitor regulator assumes control over the system pressure there is an expected build-up of pressure that temporarily causes pressure to rise above the monitor regulator's set point. As a result of the tests, the system pressure exceeded 56 psig on both occasions, as measured at a gauge located within the regulator station, approximately six feet downstream of the regulators. The first test resulted in a pressure reading of 56.9 psig before that test was stopped. The second test resulted in a pressure reading of 57.2 psig for approximately 1-2 minutes. In both cases the monitor regulator then engaged and the pressure at the pressure gauge stabilized at the monitor's set point of 55 psig. During each test, the regulators being tested were connected to the downstream system. Joint Statement of Stipulated Facts (8/12/15).

2. Staff

Staff asserted that Northern violated New Hampshire state law (RSA 370:2 and N.H. Code Admin. Rules Puc 500) and the Natural Gas Pipeline Safety Act 49 U.S.C. §60101 *et seq.*, and specifically 49 CFR §192.619, by operating the system 2% above the identified and

previously established MAOP for the Portsmouth IP system. According to the Notice of Violation, the system was improperly operated during the inspection and improperly designed. Exh. 2 at EX20153. According to Staff, 49 CFR 192.619 is a bright line and does not allow the operation of a pipeline to exceed MAOP by any amount. 8/19/15 Tr. at 152-53. Staff asserted that the Company was “operating” during the test because customers were connected and system loads caused flow through the pipeline. Further, according to Staff, “operations” were being conducted because gas was being “transported.” Ex. 2 at EX20154; see also 49 CFR §192.3.

Staff alleged that Northern violated 49 CFR §192.195 by failing to incorporate pressure regulation devices designed to prevent accidental overpressuring into its design of pipeline components. According to Staff, Northern did not adequately design the district regulator station equipment when it set its worker and monitor regulators to operate under conditions that allowed the MAOP to be exceeded. Exh. 2 at EX20154. During a test intended to assess performance of the monitor regulator, the involved piping was connected to the downstream system, and the observed pressure exceeded MAOP. Staff’s Post Hearing Memorandum at 7.

Under Staff’s interpretation of the Gas Pipeline Safety Code, the gas pressure regulator’s control settings were set too close to the MAOP and did not account for pressure buildup that can be expected when monitor and worker regulator set points are configured in close proximity. Staff stated that the distribution system overpressurization was avoidable with a proper design and settings that account for pressure buildup. This is a design variable that should have been planned “to prevent accidental overpressuring.” Exh. 2 at EX20154.

Staff noted that throughout its discussions with Northern, the Company continually incorrectly applied maintenance subparts of the Code (Part 192 Subpart M) and design subparts

(Part 192 Subpart D)⁴ to the operations subparts of the Code (Part 192 Subpart L). Exh. 2 at EX20156.

Staff sought civil penalties in the amount of \$12,500 pursuant to RSA 374:7-a. Staff also sought to impose a condition that the Company amend Section 2-L, subsection 6, of its Operating and Maintenance Manual regarding setting pressures of monitor regulators so that MAOP is not exceeded. Exh. 2 at EX20156. In its post-hearing memorandum, Staff recommended that the Commission impose a \$7,500 civil penalty for each of 4 additional regulator stations where monitor regulators are set at 55 psig on a 56 psig system, for a total of \$42,500 in civil penalties.

3. Northern Utilities

Northern stated that clear and consistent interpretation of the federal gas safety regulations is imperative for training personnel on Code compliance. Northern asserted that the Code is clear regarding the circumstances outlined in the Portsmouth NOV and that the Company followed the Code exactly as written. Northern requested and received an interpretation letter from the PHMSA. Northern argued that PHMSA's interpretation "confirmed that the Company's design was sound," and personnel "performed consistent with Code requirements" regarding failure of a regulator. Northern argued that PHMSA and Staff interpret the Code differently, which places Northern in an impossible position because Northern cannot achieve Code compliance without consistent interpretation of the Code. Northern insisted that the Company's "holistic interpretation" of the Code is consistent with PHMSA. *See* Northern's Post-Hearing Brief on NOV Related to New Hampshire Regulator Station ("Portsmouth Brief") at 1-2. Northern charged that Staff's interpretation would render large segments of the Code

⁴ Subparts of the Gas Pipeline Safety Code Part 192 can be found in Exhibit 4.

meaningless and require the Company to operate its distribution systems at lower pressures, resulting in a significant reduction of capacity and insufficient gas supply. *Id.* at 3.

Northern stated that the standard for interpreting a statute is to apply the statute according to its terms if the statute is unambiguous. To determine if a statute or regulation is ambiguous, the courts will ascribe plain and ordinary meaning. Northern further noted that it is well-settled that courts do not read words and phrases in isolation, but in context of the entire statutory scheme. Courts seek to harmonize statutory provisions so as to avoid absurd results. Northern asserted that New Hampshire courts interpret federal statutes and regulations in accordance with federal policy and precedent. *Id.* at 4-5.

Northern stated that the fundamental issue in this proceeding is whether an operator violates Sections 192.619 and 192.195 of the Code when: (1) a monitor regulator takes over pressure control from a failed worker regulator; (2) downstream pressure temporarily exceeds MAOP due to the monitor build-up pressure; and (3) the monitor limits the build-up pressure to no greater than the limit allowed by Section 192.201. Northern claimed there was no violation of Section 192.619 because that section only applies during normal operation. Failure of a worker regulator, according to Northern, is an emergency condition, for which Section 192.201(a)(2) establishes a limit of 62 psig. Portsmouth Brief at 5. Northern claimed there was not a violation of Section 192.195 either because the monitor regulators were set at 55 psig and equipped with a “blue spring” that has a 2 psi lock-up to ensure that the downstream pressure would stop at 57 psig and therefore stay below the 62 psig limit established by the Code. 8/19/15 Tr. at 183. Northern charged that Staff’s interpretation of these two sections of the Code completely ignore other Code provisions, including Section 192.201, and render them meaningless. If the Commission were to adopt Staff’s interpretation, Northern claimed that gas supply to customers

during peak winter loads would be insufficient. Northern opined that reducing the operating pressure would cause the systems to have less gas capacity and Northern would likely not be able to supply gas at a sufficient pressure for some customers' equipment. Northern theorized that it would cost millions of dollars to build new pipeline system improvements to address the capacity issues such an interpretation would affect. Northern asserted that Staff cannot meet its burden of proof, so the Commission must reject the NOV in its entirety. Portsmouth Brief at 6-7.

Northern believes that it is necessary to examine the Code beyond the two sections that the NOV contends were violated by the Company. Portsmouth Brief at 8. Northern noted that Part 192 of Title 49 of the Code contains the minimum federal safety standards for the transportation of natural gas by pipeline, including design, operation, maintenance, and training, and each must be read collaboratively with the others. Northern argued that (1) Section 192.195(b), a design standard, requires Northern to design its system in conformity with Section 192.201; (2) Section 192.739(a)(3), a maintenance standard, requires Northern to inspect its regulator stations periodically to ensure that regulators are "set to control or relieve at the correct pressure consistent with the pressure limits of §192.201(a); and (3) Section 192.605(b)(5), an operations standard, requires Northern to include in its operations and maintenance procedures a provision that limits regulator build-up pressure during system start-up and shutdown to "the build-up allowed for operation of pressure-limiting and control devices." Portsmouth Brief at 8-13.

Northern concluded that its analysis of each Code section proves that Section 192.201 provides the standard for regulator set points that should be applied during regulator station design (Section 192.195), maintenance (Section 192.739(a)(3)) and operation (Section 192.605(b)(5)). Portsmouth Brief at 13.

Northern asserted that the Company's Code interpretation follows PHMSA's Guidance section on PHMSA's website. PHMSA provides Enforcement Guidance to ensure that federal regulations are being consistently enforced and to clarify the regulatory obligations imposed by the Code. Northern believes that PHMSA's Enforcement Guidance makes clear that Section 192.619 applies to "normal" operations and "normal pressure controlling devices" (i.e., worker regulators); Sections 192.201 and 192.739 are to be followed for overpressure requirements; and Section 192.739 references Section 192.201 as providing the standard for monitor regulator set points. Portsmouth Brief at 14-15.

Northern reported that it requested and received from PHMSA an interpretation letter which answered two questions. Responding to the first question, PHMSA confirmed that an operator violates Section 192.621(a) if MAOP is exceeded during normal operation of the system. Northern stated that it agreed with the conclusion and set its worker regulators accordingly. Portsmouth Brief at 16. In response to the second question, PHMSA confirmed that Section 192.201(a) allows system pressure to exceed MAOP temporarily for the time required to activate the overpressure protection device (i.e., monitor regulator) during a system emergency, and that Section 192.201(a) establishes the pressure limit for a system with a 56 psig MAOP at 62 psig. Northern agreed with that interpretation and set its monitor regulators below MAOP consistent with Section 192.201. Portsmouth Brief at 17.

Northern posited that PHMSA read Sections 192.619 and 192.201 in harmony, and concluded that Section 192.619 applies the system pressure limit during normal operation, while Section 192.201(a) applies the system pressure limit during a system emergency. Northern asserted that there is no conflict between the two provisions, and neither provision is more

stringent than the other; they apply to their own separate set of circumstances (i.e., normal operation versus emergency condition). Portsmouth Brief at 17.

Northern summarized Staff's interpretation of the Code as "(1) Section 192.619 does not allow MAOP to ever be exceeded, and when the pressure at the New Hampshire Avenue Station exceeded MOAP by 1.2 psig during Staff's inspection, that was a violation of 192.619; (2) Section 192.195 was violated because the design of the Station allowed MAOP to be exceeded. Staff offers various characterizations of its Code interpretation that include 'simple,' 'clear' and 'bright line.'" Portsmouth Brief at 19.

Regarding Staff's "bright line" argument, Northern alleged that Staff contradicted itself, identifying three provisions of the Code that allow MAOP to be exceeded in discovery responses, yet testifying that MAOP can never be exceeded. Portsmouth Brief at 20. Northern asserted that Staff's bright line argument, is inconsistent with Staff's response to discovery. *Id.* at 21. If MAOP could never be exceeded as Staff contends, then the provisions in Subpart K, Subpart J and Subpart L referenced by Staff in its responses to discovery would be rendered meaningless. *Id.* at 21. Staff's "simple" and "bright line" interpretation, Northern challenged, defies common sense. Since the provisions of the Code that govern design, operation, and maintenance all rely on Section 192.201(a)(2), it is absurd that the Code would require regulator stations to be designed, maintained, and operated in compliance with the build-up pressure standards of Section 192.201(a)(2), to then be deemed in violation of the same Code if there is a build-up of pressure within the Section 192.201(a)(2) limitation during a system emergency. Portsmouth Brief at 22.

Northern asserted that the authorities Staff cited to support Staff's interpretation were "distinguishable" and irrelevant. Those authorities included: (1) an NOPV issued to Liberty

Utilities dated July 29, 2014, (2) a PHMSA letter concluding that the operational requirements of Subpart L of Part 192 apply to facilities that were designed and constructed prior to the adoption of the Code, and (3) PHMSA's Enforcement Guidance for Section 192.619. Portsmouth Brief at 22-23.

Northern hypothesized that if Staff's interpretation of the Code were adopted, the Company would be required to reduce operating pressures on all of its distribution systems, because monitor regulator set points would need to be lowered to avoid build-up pressure from ever exceeding MAOP during a system emergency. Worker regulator set points would also need to be lowered to avoid the monitor and worker regulators "fighting" each other for control over the system pressure. In addition, the Company's distribution systems would require millions of dollars in system improvements to increase the gas capacity so there would be sufficient gas available for customers during the winter peak demand. Northern asserted that there is no simple fix to the capacity deficiency issue. According to Northern, neither Staff's suggestion that MAOP could be raised for the Company's distribution systems, nor a pilot with a one-pound lock-up, are viable solutions. Northern emphasized that since Staff did not introduce into the record evidence that such a pilot existed, the Commission cannot rely on the information as a basis for its decision. *Id.* at 24.

Northern rejected Staff's suggestion that Northern's personnel should have offered to perform a different procedure than the test Staff directed. Northern stated that personnel present during the test viewed Commission Staff as enforcers of the Code and obeyed Staff's directive knowing the procedure might cause the build-up pressure to exceed MAOP. The Company employee testified at hearing that he assumed Staff would not instruct him to do something that

would violate the Code; he only followed Staff's instructions. *Id.* at 26. Northern asserted that it would be "grossly unfair to penalize the Company for following Staff's directives." *Id.* at 28-29.

Northern urged the Commission to estop Staff from pursuing the NOV, apply principles of entrapment, and reject the NOV to the extent it is based on the Company's compliance with Staff's directives. Northern urged the Commission to reject the Portsmouth NOV in its entirety.

IV. COMMISSION ANALYSIS

In this case, we are guided by RSA 374:1, which requires every public utility to furnish "such service and facilities as shall be reasonably safe and adequate and in all other respects just and reasonable." We are also cognizant of our duty under RSA 374:4 to keep informed with respect to the safety, adequacy and accommodation offered by utility service, and utility compliance with all provisions of law, orders of the commission, and charter requirements. RSA 370:2 provides the Commission with authority to ascertain and establish standards for the measurement of quality, pressure, or any other condition relating to a utility's act of furnishing service. RSA 374:7-a specifically provides the Commission with the authority to levy fines for violations of provisions of RSA 370:2 or any standards or regulations promulgated by the Commission relative to gas pipelines. The Commission derives further authority to address gas safety concerns through the standards at 49 Code of Federal Regulations Part 192, promulgated by the United States Department of Transportation pursuant to the Natural Gas Pipeline Safety Act, applicable to the Company as a matter of federal law and pursuant to N.H. Admin. Code Puc 506.01(a).

A. Dover NOV

We first consider whether Northern could elect not to contest the facts and violations alleged by Staff while "denying guilt" and challenging, on legal grounds, one of the

non-monetary conditions proposed by Staff.

Staff's position is that, by operation of rule, Northern waived its right to sign the consent agreement and accept the penalty proposed by Staff once Northern requested a hearing.

According to Staff, the process outlined in Puc 511 ends once the utility requests a hearing, and from that point, the Commission must decide the matter. In addition, Staff wanted to introduce evidence at hearing supporting a revised Staff recommendation on sanctions. Staff argued that Northern should be required to admit the violations before the Commission and be subject to whatever sanctions the Commission might order after considering Staff's revised recommendation.

Northern argues that it was not attempting to sign a consent agreement, but was instead consenting to a notice of violation, one which contains the same penalties as those proposed in the consent agreement. Northern argues that it was compelled to request a hearing solely to avoid accepting a condition relating to pressure set-points, which Northern argues bears no relation to the violations alleged in the Dover NOV.

We hold that a utility's withdrawal of a request for hearing does not control whether the Commission will hold a hearing. While Northern is of course free to admit to violations alleged in a notice of violation and decide not to produce evidence, Northern's choices do not preclude the Commission from holding a hearing given our plenary authority under RSA 374:4. Nor do Northern's choices preclude the Commission from accepting additional evidence from Staff bearing on appropriate penalties and conditions related to admitted violations.

At the same time, we are concerned that Staff does not appreciate the full extent of its authority under Puc 511. Staff's ability to resolve violations continues despite a request for a hearing. N.H. Code Admin. Rules Puc 511 delegates specific authority to the Safety Division to

enforce gas pipeline safety standards. The purpose of Puc 511 is to allow Staff to resolve violations of pipeline safety regulations expediently, without adjudication. The rules contain a number of steps for resolution with Staff, which conclude with a notice of violation and the signing of a consent agreement or a request for hearing. We find nothing in our rules that would prevent Staff from continuing to refine consent agreements in a manner that would eliminate or limit issues for hearing, if Staff so chooses. When the process permitted by Puc 511 does not conclude with resolution of all issues by consent agreement, the Commission may hear the remaining matters for purposes of making independent determinations on whether violations occurred and deciding the appropriate penalties and conditions. Staff bears the burden of proving the violations and appropriate remedies. The effort that Staff must make to meet its burden is substantially reduced where, as here, a utility company does not produce evidence at hearing to contest the facts or violations alleged by Staff. Our decisions below are based on Northern's concession and on the facts demonstrated by Staff.

1. Operation in Excess of MAOP

The Commission finds that Northern violated 49 CFR §192.619 on August 13, 2014, by operating at a pressure in excess of MAOP. It is undisputed that, for 50 minutes on that date, the pressure of the entire Dover low pressure system rose to approximately 32 inches w.c., which is in excess of the established MAOP for that system of 13.8 inches w.c.

2. Inadequate Design of Pipeline Components

The Commission also finds that Northern violated 49 CFR §192.195 by failing to properly design the Rutland Street district gas pressure regulators. When explaining its decision not to contest the NOV in its opening statement, Northern asserted a belief that its designs were reasonable based upon a 26-year operating history before an incident occurred and that it "did

not accept a guilty plea” with regard to design. 8/19/15 Tr. at 19. Northern reiterated this belief in its post hearing brief, made justifying arguments, and presented information on past rain events. The fact remains, however, that Northern introduced no testimony or documentary evidence at hearing to persuade us that the facts put forward by Staff are inaccurate or insufficient to meet Staff’s burden to prove inadequate design of the Rutland Street regulator station.

3. Civil Penalties

The NOV proposed a fine of \$10,000 for Northern’s violation of the Code’s MAOP requirements. Staff also recommended a fine of \$7,500 for Northern’s violation of §192.195 with regard to Northern’s design of the Rutland Street district regulator station. Northern agrees to pay those fines, and we find that Staff demonstrated ample reason to impose them.⁵

4. Conditions In Addition to Civil Penalties

Staff recommended that we require Northern to amend Section 2-L, subsection 6, of its Operating and Maintenance Manual regarding the set points for monitor regulators. That condition has no bearing on the submersion of pilot vents at the Rutland Street district regulator station. Accordingly, we will not impose such a condition as a result of the violations detailed in the Dover NOV.

B. Portsmouth NOV

Resolution of the Portsmouth NOV requires us to construe 49 CFR §§192.619, 192.201 and 192.195. The principles of construction require us to interpret rules not in isolation, but in the context of the overall statutory scheme. *See Appeal of Ashland Elec. Dept.*, 141 N.H. 336, 340 (1996) (describing rules of statutory construction). We begin by considering the plain meaning of the relevant rules and by construing them, where reasonably possible, to effectuate

⁵ For a discussion of fines recommended for alleged violations based upon similar designs, see Section IV. C.

their underlying policies. *See Nashua School Dist. v. State*, 140 N.H. 457, 458 (1995) (same). Insofar as reasonably possible, we will construe the various statutory provisions harmoniously. *See Appeal of Pennichuck Water Works, Inc.*, 160 N.H. 18, 27 (2010) (same). Because we have adopted federal rules, we will interpret them in accordance with federal policy and precedent. *See Dube v. NHHS*, 168 N.H. 358, 364 (2014).

Staff and Northern proceeded on a stipulated set of facts with regard to the Portsmouth NOV. Those facts are detailed in Section III. B. 1, above. Based on the evidence submitted at hearing, we make the following additional findings of fact. Staff requested that Northern simulate failure of the worker regulators to demonstrate the monitor regulators would prevent overpressurization. 8/19/15 Tr. at 59-60, 65. Staff did not instruct Northern's employees as to how to conduct the simulated failure, and Northern's employees did not ask for guidance from Staff as to how the test should be conducted. 8/19/15 Tr. at 61-62, 65, 8/26/15 Tr. at 15-16. Northern's employees knew that the pressure during the second test would exceed 56 psig. 8/26/15 Tr. at 20. Northern's employees also knew that its regulators were not designed to be isolated from the downstream system and would remain connected to the downstream system during the tests. 8/19/15 at 166-167. Simulating the failure of a worker regulator to demonstrate a monitor regulator set point and pressure build-up without isolating the regulators from the system is common; as testified to by Northern's expert, this method of testing is an industry standard. 8/26/15 Tr. at 145-46. Such testing constitutes normal, but inappropriate, operation of a gas distribution system. Exh. 1 at 75. Such testing does not constitute an actual failure or emergency condition. *Id.* To properly simulate failure and demonstrate set points and pressure build-up, an operator must be able to isolate its pressure regulators from its downstream system if such pressure regulators are designed to exceed MAOP during an emergency. *Id.*

1. Operation in Excess of MAOP

Northern violated 49 CFR §192.619 on June 25, 2014, by operating at a pressure in excess of the set MAOP of 56 psig during the normal operation of its New Hampshire Avenue district regulator station. We find that 49 CFR §192.619 governs MAOP during normal operations. This regulation provides that:

No person may operate a segment of steel or plastic pipeline at a pressure that exceeds a maximum allowable operating pressure ...

There is no dispute that, for approximately 2 minutes, the pressure of Run B in the regulator station rose to 57.2 psig. This is in excess of the established MAOP of 56 psig for the Portsmouth IP system.

We are not persuaded by Northern's argument that the inspection testing conducted by its employees constituted an emergency situation that would have allowed operation up to an operating pressure of 62 psig under 49 CFR §192.201. Northern's inspection testing, which was meant to demonstrate the monitor regulator would prevent overpressurization, constituted normal operation of its system. In making this determination, we find persuasive the advice that Northern requested from PHMSA regarding this incident. See Exh. 1 at 73-75. PHMSA provided guidance on three issues: (1) An operator violates 49 CFR §192.621(a)⁶ if MAOP is exceeded during normal operations, (2) an operator does not violate 49 CFR §192.201(a) as long as the [1.1x]⁷ MAOP limits are met during a system emergency and the pipeline meets the Subpart D – Design of Pipeline Components requirements, and (3) “conducting a simulated test on a pressure limiting or regulator station that is not isolated from the system does not constitute

⁶ For our purposes here, 49 CFR §192.619 is the equivalent of §192.621(a). See 8/19/15 Tr. at 142 (§192.619 applies to transmission and distribution lines while §192.621(a) applies to distribution only) and 8/26/15 Tr. at 143 (§§192.619 and 192.621(a) are equivalent for all practical purposes).

⁷ PHMSA's insertion of 1.1 x here refers to the design standard that requires Northern to design its pressure regulators to maintain pressure at 62 psig or below during an emergency.

a system emergency [but instead] is a normal operation” and that “[t]he pressure limiting or regulator station should be isolated from the system prior to any testing of buildup and set points.” Exh.1 at 74-75. We also find persuasive the testimony of Northern’s expert, Philip Sher, that the PHMSA interpretation requested by Northern leads to the conclusion that the company violated MAOP during the inspection of June 25, 2014. 8/26/15 Tr. at 144-45. Here, Northern exceeded MAOP while demonstrating buildup and set points without isolating the regulator station from the system. That is to say, Northern exceeded MAOP during normal operations in violation of 49 CFR §192.621(a) and §192.619.

We also find PHMSA’s guidance instructive with regard to Staff’s “bright line” interpretation 49 CFR §192.619 that MAOP may never be exceeded, and Northern’s statutory interpretation arguments in response. We do not, as does Northern, construe PHMSA’s guidance to mean that the design standards of §192.201 create an exception to the operational requirements of §192.619. Rather, §192.201 defines a design range that a system may not exceed once an emergency or accidental overpressure event occurs. Pressure regulators are expected to, and are therefore “allowed” to operate within the design standards of §192.201 during an emergency. This design expectation, however, does not provide forgiveness for an initial failure to maintain pressures during normal operation within the MAOP as required by §192.619. If the design parameters of §192.201 were not met during an emergency or accidental overpressure event, there would be two violations – one for exceeding MAOP, and one for failure to properly design a system. For these same reasons, we are not convinced by Northern’s argument that the maintenance and testing requirements of §192.739(a)(3), which require the Company to ensure that its regulators are “set to control or relieve at the correct pressure consistent with the pressure limits of §192.201(a),” creates an exception to the operational limits

stated in §192.619. In any event, the test conducted by Northern was not conducted to set the pressure limits of its valves; rather, this type of testing was required to demonstrate that Northern's monitor valve was "in good mechanical condition" and "adequate from the standpoint of capacity and reliability of operation for the service in which it is employed." 49 CFR 192.739(a)(1) and (2). The only possible exception to §192.619 identified by Northern is §192.605(b)(5), which might be construed to allow Northern to temporarily operate within the overpressure design range required by §192.201 during system start-up and shut-down without incurring a violation. Construing the rules as a whole, we do not believe that an exception that might allow operation above MAOP during a unique circumstance such as start-up invalidates the general rule found in §192.619 requiring operation within an established MAOP.

2. Inadequate Design of Pipeline Components

The Commission also finds that Northern violated 49 CFR §192.195 by failing to properly design its regulator station in Portsmouth. 49 CFR 192.195 requires distribution systems to be designed to "have pressure regulation devices capable of meeting the pressure, load, and other service conditions that will be experienced in normal operation of the system, and that could be activated in the event of failure of some portion of the system." 49 CFR 192.195(b)(1). As noted above, another section of the Code, §195.739(a)(1) and (2), requires Northern to conduct tests and inspections to determine that the pressure regulation devices are in good mechanical condition and reliable. A system designed to make this demonstration during normal operations, as was observed on June 25, 2014, fails to meet this standard if the system exceeds MAOP.

A number of different designs were discussed. Staff suggested that Northern could have designed its system differently by using lower set points, so that the monitor regulator would

have taken control of the system at or below MAOP. Northern argued that lower set points would be problematic. According to Northern, lowering set points would reduce the capacity of its system, thereby limiting the Company's growth opportunities. Exh. 1 at 24. Lowering set points might also require that other modifications be made to assure system reliability during colder months. *Id.* at 25. We agree with Northern that relying solely on lower set points might be problematic, but it is up to Northern to determine how it will comply with all requirements of the Code. Staff also suggested that Northern could isolate monitor regulators from the system before conducting testing. Northern claimed that isolating its system is not possible with its current design of its regulator station, and that design modifications would have to be made. 8/19/15 Tr. at 164-67. Last, Staff suggested that Northern could use monitor regulators with tighter response capabilities, but there is no evidence in the record demonstrating that such monitors are in production.

Neither the design requirements in 49 CFR §192.195 nor the Commission requires any particular solution, so long as Northern's system meets the broad design criteria set forth in that section. Consequently, it is sufficient that Staff demonstrated that the Company's current design of the New Hampshire Avenue regulator station allows overpressurization during normal operations. Staff is not required to prove that some alternate feasible design exists. It is Northern's responsibility under 49 CFR §192.195 to engineer and design a system with regulation devices capable of serving the load, avoiding accidental overpressurization and meeting other service conditions experienced in normal operation of its system. The system must also be capable of conducting tests and inspections to verify from time to time that the pressure regulation devices are in good mechanical condition and reliable. If the system is designed to conduct such testing during normal operations, then the MAOP established by

192.619 applies. If the system is designed to exceed MAOP consistent with the limits established in 192.201(a) for a system emergency, then such testing must be isolated.

3. Civil Penalties

Staff recommended a fine of \$5,000 for Northern's violation of the Code's MAOP requirements. Staff also recommended a fine of \$7,500 for Northern's violation of §192.195 with regard to Northern's design of the New Hampshire Avenue district regulator station. We find ample evidence to impose a fine, and ample evidence that the fine should be set at the level recommended by Staff. Staff's recommended fine is appropriate given that (1) the violations did not create an emergency condition (Exh. 1 at 75), and (2) industry practice to demonstrate set points and build up was to do so while in normal operations, that is without isolating regulators from the system, prior to Northern's request for an interpretation from PHMSA. 8/26/15 Tr. at 145-46. Subsequent violations of the same type may justify more significant fines.

4. Conditions In Addition to Civil Penalties

Staff recommended that we order Northern to amend Section 2-L, subsection 6, of its Operating and Maintenance Manual regarding the set points for monitor regulators. We decline to do so. Northern must evaluate all options to ensure it is able to provide safe and adequate service to its customers while meeting all requirements of the Code. Based on our decision today we direct Northern to assess all options it has to ensure MAOP is not exceeded during normal operations and that its system is designed with the capability to demonstrate its monitor regulators are in good mechanical condition and adequate from the standpoint of capacity and reliability of operation for the service in which they are employed. Northern shall provide the Safety Division with a detailed report no later than June 1, 2016, of the assessment results and actions planned, to be in full compliance with the Code.

C. Dover and Portsmouth NOVs: Alleged Violations Based on Similar Design

At hearing and in its post-hearing memorandum, Staff recommended that we impose monetary fines in the amount of \$135,000 for Northern's design of other regulator stations that are similar to the Rutland Street and the New Hampshire Avenue regulator stations. We permitted Staff and Northern to proceed on offers of proof while we determined whether to allow the litigation of the alleged violations in this proceeding. We find that Staff did not pursue these violations pursuant to our Part 511 rules because these alleged violations were not specified in the Dover NOV or Portsmouth NOV. Neither were they contemplated by our Order of Notice in this docket. We therefore hold that Northern had inadequate notice that these additional alleged violations might be the subject of our hearings. Accordingly, we decline to consider the alleged violations at this time. Our decision is without prejudice to further enforcement action by Staff.


Based upon the foregoing, it is hereby

ORDERED, that in the matter of NOV PS1501NU Northern is liable for the penalty of \$17,500 and such penalty shall be payable to the State of New Hampshire within 30 days from the date of this Order; and it is


FURTHER ORDERED, that in the matter of NOV PS1502NU Northern is liable for the penalty of \$12,500 and such penalty shall be payable to the State of New Hampshire within 30 days from the date of this Order; and it is

FURTHER ORDERED, that Northern shall file a detailed report no later than June 1, 2016, with the Commission's Safety Division regarding the assessment results and actions planned, to ensure overpressurization does not occur during normal operations, and is otherwise in full compliance with design provisions in the Natural Gas Pipeline Safety Code.

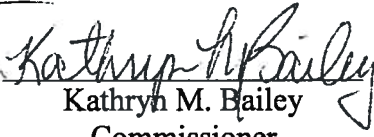
By order of the Public Utilities Commission of New Hampshire this twelfth day of
February, 2016.



Martin P. Honigberg
Chairman

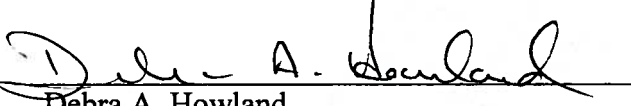


Robert R. Scott
Commissioner



Kathryn M. Bailey
Commissioner

Attested by:



Debra A. Howland
Executive Director

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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Docket #: 15-121-1 Printed: February 12, 2016

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
EXEC 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.