

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DG 08-048

**UNITIL CORPORATION and
NORTHERN UTILITIES, INC.**

Acquisition of Northern Utilities, Inc.

Order Following Prehearing Conference

ORDER NO. 24,860

June 3, 2008

APPEARANCES: Gary Epler, Esq. and Dewey & LeBoeuf LLP by Scott J. Mueller, Esq., for Unitil Energy Systems, Inc., Patricia M. French, Esq. for Northern Utilities, Inc.; Rebecca S. Bachelder for Hess Corporation; Cook & Molan, P.A. by Shawn J. Sullivan, Esq., for United Steel Workers of America Local 12012; Kenneth E. Traum of the Office of Consumer Advocate on behalf of residential ratepayers; and Edward N. Damon, Esq. and Lynn H. Fabrizio, Esq. for the Staff of the New Hampshire Public Utilities Commission.

I. PROCEDURAL HISTORY

On March 31, 2008, Unitil Corporation (Unitil) and Northern Utilities, Inc. (Northern) filed a joint petition for approval, pursuant to RSA 374:33 and RSA 369:8, II (b), of Unitil's acquisition of Northern by way of Unitil's purchase of all the common stock of Northern. Testimony of representatives of Unitil accompanied the filing.

Unitil's principal business is the retail distribution of electricity through its subsidiary, Unitil Energy Systems, Inc. (UES), in the seacoast and capital regions of New Hampshire and electricity and natural gas through its subsidiary, Fitchburg Gas and Electric Light Company, in the greater Fitchburg area of Massachusetts. Northern provides natural gas distribution services to customers in 44 New Hampshire and southern Maine communities, from Atkinson in the south, to the Lewiston-Auburn area of Maine, in the north. Northern's immediate parent is Bay State Gas Company (Bay State). Nisource, Inc. owns all the common stock of Bay State and Granite State Gas Transmission, Inc. (Granite). Granite owns and operates an interstate pipeline

serving Maine, New Hampshire and Massachusetts, including Northern's distribution system in Maine and New Hampshire. According to the petition, Bay State will sell its shares of Northern, and NiSource will sell its shares of Granite, to Unitil for an aggregate purchase price of \$160 million, plus a net working capital adjustment, with the purchase to be financed by newly issued Unitil common stock and debt securities issued by Northern.

On April 8, 2008, the Office of Consumer Advocate (OCA) notified the Commission that it would be participating in the docket on behalf of residential ratepayers pursuant to RSA 363:28. On April 23, 2008, Unitil filed a revised schedule to the testimony of Laurence M. Brock, one of the Unitil witnesses.

On April 24, the Commission issued its order of notice scheduling a prehearing conference for May 14, 2008 with a technical session to follow. The order of notice also specified that parties should be prepared at the prehearing conference to discuss the possible consolidated or coordinated resolution of other matters involving Northern, such as, for example, the operating and maintenance agreement between Northern and Granite regarding measurement and pressure regulation facilities (Docket No. DA 07-026), the purchase and sale agreement between Northern and Granite regarding pressure regulation facilities (Docket No. DA 08-058), and the question of whether Granite's New Hampshire facilities should be merged into Northern to operate as one state-regulated entity or alternatively whether it is appropriate to request a *Hinshaw* exemption (covering gas to be consumed wholly within the state) from certain regulation under the Natural Gas Act by the Federal Energy Regulatory Commission.

On May 5, 2008, United Steel Workers of America Local 12012-6 filed a motion to intervene in the current proceeding and, on May 9, 2008, Granite State Electric Company d/b/a National Grid and EnergyNorth Natural Gas, Inc. (collectively, National Grid) and Hess

Corporation also filed motions to intervene. The prehearing conference took place as scheduled. On May 16, 2008, Mary Polcheis, a low-income residential heating customer of Northern, through her attorneys, New Hampshire Legal Assistance (NHLA), filed a motion for late-filed intervention. On May 22, 2008, Commission Staff (Staff) filed a report of the technical session held on May 14, 2008, including the proposed procedural schedule which is set forth below. On May 28, 2008, Unitil filed a motion for protective order regarding its responses to certain Staff data requests.

II. POSITIONS OF THE PARTIES AND STAFF

A. Joint Petitioners

The Joint Petitioners requested that the Commission authorize Unitil's proposed acquisition of Northern by independently verifying their assertions that the transaction will have no adverse affects on rates, terms, or service and therefore meets the approval criteria as set forth in RSA 369:8 and RSA 374:33. Unitil asserted that the transaction will create benefits for Northern's customers in the areas of customer service, field operations, construction and gas procurement and planning, and will generate benefits from shared services, local management, job creation and rate stabilization. In support of the petition, Northern added that its acquisition by Unitil's regional management is in the public interest. Northern indicated that it was prepared to discuss the dockets mentioned in the order of notice although it views the issues in those proceedings as independent of the public interest evaluation that the Commission must make here and can be resolved outside this proceeding.

B. United Steel Workers of America, Local 12012-6

In support of its petition to intervene, Local 12012-6 stated that it represents certain individuals employed by Northern who live and work in New Hampshire. Local 12012-6

maintained that the union and its 28 members are able to address issues of safety and efficiency as they relate to the natural gas industry, and its members have a substantial financial interest in the evolution of the industry as well as an interest as consumers.

B. Hess Corporation

Hess Corporation is a natural gas supplier to customers in New Hampshire, Maine and Massachusetts, and is also a shipper on the Granite State pipeline. Hess is also a party in DG 06-098, which is one of the potential dockets to be consolidated with this docket. Hess indicated that it plans to participate in this proceeding only if it is consolidated with DG 06-098.

C. National Grid

National Grid did not appear at the prehearing conference. According to National Grid, because it is a utility providing both electric and gas distribution service, the issues in this docket may be applicable to National Grid, and ultimately its customers, in a future proceeding. National Grid stated that these interests are substantial and not adequately represented by any other party. National Grid requested full intervenor status subject to what it characterized as certain voluntary limitations, namely, that it be entitled to receive copies of all pleadings and other documents, all discovery that is not confidential, and all e-mails and other correspondence among the parties and staff, with the exception of materials relating to settlement negotiations and/or confidential matters; and that it be allowed to attend and participate in technical sessions, without attending settlement conferences or negotiations. National Grid indicated it did not intend to present or cross-examine witnesses or file closing briefs. National Grid reserved the right to withdraw or modify these voluntary limitations upon petition to the Commission.

D. OCA

OCA indicated it would be focusing closely on the “standard” issues involved in a change in utility ownership, including impacts on ratepayers, employees, future company finances, pensions and OPEBs (i.e., other post-employment benefits, as distinct from pensions), transaction costs, safety issues, and customer services. In addition, OCA expects to look into the matter of what it characterized as “most favored nation” issues, given that parallel proceedings are necessary in Maine, the length of the transition services agreement, Unitil’s expertise to run an interstate pipeline, and the termination of the affiliation between Granite and NiSource and Northern.

D. Mary Polcheis

Mary Polcheis, through NHLA, stated in her filing subsequent to the prehearing conference that, as a low-income residential heating customer of Northern, she has an interest in this proceeding, including the impact of the acquisition transaction on Northern’s low-income bill discount program, low-income energy efficiency program and low-income residential rates. She requested full intervenor status despite having missed the deadline in the order of notice.

E. Staff

Staff stated that its positions had yet to be developed. However, Staff asserted that the petition itself falls well short of demonstrating that the proposed merger will not have an adverse impact on rates, terms, service, or operation of the utilities involved in the transaction. Thus, according to Staff, further proceedings are appropriate pursuant to RSA 369:8, II (b). Staff noted that the Joint Petitioners themselves have agreed to waive any right to a preliminary determination of “no adverse effects” and “no net harm” standards, but do request a final order by October 1, 2008, which falls roughly within the 180-day period referenced in RSA 369:8, II

(b). Staff requested that the issue of adverse impact within the meaning of RSA 369:8, II (b) should be deferred pending the Commission's ultimate resolution of all issues in the docket, notwithstanding the tight statutory deadlines. However, Staff did not agree that October 1, 2008 should be binding on the Commission as the deadline for a final order.

Staff expressed concern about Unitil's proposed refinancing of Northern, which involves elimination of the current cost structure and weighted cost of capital in favor of yet-to-be-determined parameters. According to Staff, refinancing could have a profound impact on rates and without knowing the terms and conditions of the financing, it is impossible to determine what the impact will be. Staff stated that the Commission is entitled to know the circumstances surrounding the financing and to be able to evaluate the effects of the proposed acquisition as a whole. Without that information, Staff does not believe that Unitil has made a sufficiently detailed representation that the proposed transaction will not have an adverse affect as required by RSA 369:8, II(b).

Staff expressed concern regarding whether staffing changes at Unitil are likely to have an adverse impact on rates, services or operations within New Hampshire, and whether Unitil's claim of synergy savings arising out of the merger has any substance. Staff also alluded to several open dockets involving Northern, both here and before the Maine Public Utilities Commission (PUC), as well as other pending issues, the resolution of which may become relevant to the question of whether the petitions should be granted. Of particular concern is the special capacity contract between Northern and Granite due to expire on October 31, 2008. Granite's revenue requirements are met almost entirely by Northern and Bay State, both Granite affiliates, Staff reported, adding that Northern's physical pipeline interconnections require all of its interstate pipeline supply to pass through the Granite system. According to Staff, Bay State

does not have similar constraints and is expected to stop contracting for capacity on Granite, leaving the possibility of stranded costs. Staff is concerned about who will bear these costs and to what extent this issue was a consideration in the Granite purchase price. Staff mentioned that, in conjunction with the Maine PUC, Staff expected to retain a consultant to provide advice on the costs of service for Granite under federal jurisdiction versus state jurisdiction and the relative advantages and disadvantages of each. Staff also discussed the question of Unitil's ability to meet customer service standards and safety concerns, and in particular the affiliate agreements between Granite and Northern regarding operations and maintenance responsibilities for, and purchase of, metering and regulator equipment.

On the electric side, Staff said the main issues deal with costs and potential savings related to the transaction, including how they were determined and how they will impact Northern's rates in the future. Additionally, according to Staff, planned debt and equity issuances must be reviewed to determine potential impacts at the parent and subsidiary levels.

III. PROCEDURAL SCHEDULE

Staff filed a report of the technical session and a proposed procedural schedule. According to the report, Unitil has agreed to make a financing filing on May 30, 2008, with updates provided as appropriate. The parties and Staff recommended that the filing be docketed separately and immediately consolidated with Docket No. DG 08-048 for purposes of discovery, testimony and hearing, although separate orders regarding the acquisition and the financing should be issued.

The parties and Staff did not recommend that other pending Northern dockets be consolidated with Docket No. DG 08-048, namely, DA 07-026 (Northern affiliate agreement), DA 08-058 (Northern affiliate agreement), and DG 06-098 (Northern integrated resource plan).

However, the joint petitioners agreed to cooperate with the expeditious processing of those dockets, notwithstanding the pending acquisition request. In addition, there was a general recognition that the question of relevance and materiality for purposes of discovery and testimony in Docket No. DG 08-048 would not be affected by the non-consolidation of these dockets or the existence of other relevant issues outside pending administrative proceedings.

The proposed procedural schedule is as follows:

Rolling discovery to joint petitioners – Responses due in 7 days	May 14, 2008 through July 3, 2008
Financing filing	May 30, 2008
Technical session/settlement conference	June 2, 2008
Technical session/settlement conference	June 18, 2008
Staff/intervenor testimony	July 11, 2008
Rolling discovery to staff and intervenors – Responses due in 7 days	July 11, 2008 through July 20, 2008
Technical session/settlement conference	July 16, 2008
Rebuttal testimony or settlement filed	July 29, 2008
Settlement conference	August 8, 2008
Settlement filed, if any	August 12, 2008
Hearings	August 19, 2008 through August 20, 2008
Briefs	September 10, 2008

We accept the parties' and Staff's recommendations regarding the handling of this docket, the financing filing and the pending dockets and undocketed matters. We note that the proposed procedural schedule is inconsistent with certain deadlines established in RSA 369:8, II, (b). In addition, the Joint Petitioners' have expressly waived any right to a preliminary determination of "no adverse effects" and "no net harm" standards. Accordingly, we treat the proposed procedural schedule as a proposed waiver of certain provisions of the statute. See

Public Service Co. of New Hampshire, 85 NH PUC 125, 126-127 (2000); *National Grid plc*, Order No. 24,690 (October 27, 2006), slip op. at 5; *Iberdrola, S.A.*, Order No. 24,788 (September 21, 2007). We have reviewed the proposed procedural schedule and we find it, and the proposed statutory waiver, to be reasonable and in the public interest. At the same time, we recognize that it is possible that the procedural schedule may have to be modified as future circumstances dictate. See *National Grid plc, supra*.

IV. INTERVENTION PETITIONS AND MOTION FOR PROTECTIVE ORDER

As we noted at the prehearing conference, Local 12012-6 of the United Steel Workers of America, Hess Corporation, and National Grid have demonstrated rights, duties, privileges, immunities or other interests that may be affected by this proceeding and there were no objections to the intervention petitions. Accordingly, their intervention petitions are granted. National Grid's intervention is subject to the limitations described in its petition to intervene.

Subsequent to the prehearing conference, Mary Polcheis, through her attorneys, NHLA, requested full party intervention status and agreed to be bound by the procedural schedule established in this proceeding. As with the other intervention petitions, she has demonstrated rights, duties, privileges, immunities or other interests that may be affected by this proceeding and there were no objections to her intervention petition. We will therefore grant her petition.

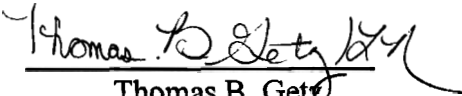
We do not rule on Northern's motion for confidential treatment at this time since the time period for filing objections pursuant to N.H. Code Admin. Rules Puc 203.07 (e) has not yet expired.

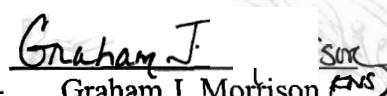
Based upon the foregoing, it is hereby

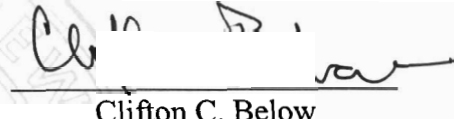
ORDERED, that the procedural schedule as set forth herein is hereby approved; and it is

FURTHER ORDERED, that the intervention petitions of the United Steel Workers of America Local 12012-6, Hess Corporation, National Grid, and Mary Polcheis, are granted.


By order of the Public Utilities Commission of New Hampshire this third day of June, 2008.


Thomas B. Getz
Chairman


Graham J. Morrison
Commissioner


Clifton C. Below
Commissioner

Attested by:


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Docket #: 08-048 Printed: June 03, 2008

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PURSUANT TO N.H. ADMIN RULE 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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