

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 06-103

UNITIL ENERGY SYSTEMS, INC.

Petition for Authority to Issue Securities

Order Granting Motions for Confidential Treatment of Annual Financing Reports

ORDER NO. 25,074

February 19, 2010

Before the Commission are several motions for confidential treatment of annual financing reports filed by Unitil Energy Systems, Inc. (UES or Company), the most recent of which was filed on November 30, 2009. The annual reports, and attendant motions for confidential treatment, have been filed in response to the Commission's order relating to a petition by the Company to issue up to \$15,000,000 in first mortgage bonds. *See Unitil Energy Systems, Inc.*, Order No. 24,658 (Aug. 25, 2006). A condition of the Commission's order granting the petition was that UES "submit an annual financing report, as stated in the Settlement Agreement in DE 03-086, by December 1 every year and it must contain the Company's expected capital structure with supporting data for the next five years." *Id.* at 3.¹ The order also granted confidential treatment to the Company's financial forecast information, as contemplated by the Settlement Agreement. *Id.*

Thereafter, the Company filed its first report under the Settlement Agreement, and the Commission issued an order granting it confidential treatment. *Unitil Energy Systems, Inc.*, Order No. 24,284 (February 20, 2004). The Company filed a base rate case in 2005, which

¹ As summarized in the Commission's order, the Settlement Agreement in DE 03-086 states, among other things, "until the filing of the Company's next base rate case, an annual financing report [is] to be filed on or before December 1 showing the projected sources of capital and capital structure for a five year period . . ." *See Unitil Energy Systems, Inc.*, Order 24,212 (Sept. 25, 2003) at 10-11.

terminated the requirement to file annual reports imposed by Order No. 24,212; as noted above, however, Order No. 24,658 again required annual financing reports.

UES has annually filed the required financing reports and has moved for confidential treatment of that information each time, but orders have not been issued relative to those motions. On November 30, 2009, UES filed its most recent annual report and motion for confidential treatment. In its motion, UES contends, citing RSA 91-A:5, IV, that the report should be protected from public disclosure because “it presents confidential and proprietary projections of UES’ future sources of capital and estimates of its capital structure.” According to UES, public disclosure “could compromise UES’ bargaining position in obtaining new sources of capital to the detriment of UES and its customers.” In response to UES’ filing, on February 5, 2010 Staff submitted a recommendation that supported the termination of the Company’s obligation to file the annual financing report.

In addressing the pending motions, we note that RSA 91-A:5, IV states, in relevant part, that records of “confidential, commercial, or financial information” are exempted from disclosure. *See Unitil Corp. and Northern Utilities, Inc.*, Order No. 25,014 (Sept. 22, 2009) at 2. The exemption for confidential, commercial, or financial information requires an “analysis of both whether the information sought is confidential, commercial, or financial information, and whether disclosure would constitute an invasion of privacy.” *Id.*

In determining whether commercial or financial information should be deemed confidential, we consider whether there is a privacy interest at stake that would be invaded by the disclosure. When commercial or financial information is involved, this step includes a determination of whether an interest in the confidentiality of the information is at stake. *Id.* at 2-

3. Second, when a privacy interest is at stake, the public's interest in disclosure is assessed. *Id.* at 3. Disclosure should inform the public of the conduct and activities of its government; if the information does not serve that purpose, disclosure is not warranted. *Id.* Finally, when there is a public interest in disclosure, that interest is balanced against any privacy interests in non-disclosure. *Id.*

The Commission's rule on requests for confidential treatment, N.H. Code Admin. Rules Puc 203.08, similarly addresses this balancing test by requiring petitioners to: (1) provide the material for which confidential treatment is sought or a detailed description of the types of information for which confidentiality is sought; (2) reference specific statutory or common law authority favoring confidentiality; and (3) provide a detailed statement of the harm that would result from disclosure to be weighed against the benefits of disclosure to the public. N.H. Code Admin. Rules Puc 203.08(b); *see also Unitil Corp. and Northern Utilities, Inc.*, Order No. 25,014 (Sept. 22, 2009) at 3.

As noted, UES contends that the required annual report should be protected from public disclosure because releasing it may injure UES' bargaining position when seeking new sources of capital. Because disclosure could hamper UES' ability to effectively negotiate for new sources of capital, we conclude that UES has an interest in the confidentiality of the information. *See Unitil Corp. and Northern Utilities, Inc.*, Order No. 25,014 (Sept. 22, 2009) at 2-3.

Regarding the public's interest in disclosure, the reports were initially to be filed for the stated purpose of allowing the Commission "to monitor the Company's annual financing reports and thus satisfy ourselves that the Company's management of its balance sheet is being conducted in an appropriate fashion." *Unitil Energy Systems, Inc.*, Order 24,212 (Sept. 25, 2003)

at 25. Upon renewing the requirement that these reports be filed, the Commission stated that the purpose was to allow the Commission to monitor the debt-equity ratio of the Company's capital structure. *Unitil Energy Systems, Inc.*, Order No. 24,658 at 2-3. As this information bears directly upon issues of concern to, and subject to the on-going monitoring of, the Commission, disclosing it would inform the public about the actions of the Commission. Accordingly, there is a public interest in disclosure.

Balancing the above-identified interests, we conclude that the privacy interests of the Company and its customers outweigh the public interest in disclosure. First, we note that we have concluded that this precise information should be held as confidential in each prior instance where we have ruled upon its treatment. *See Unitil Energy Systems, Inc.*, Order No. 24,658 at 3; *Unitil Energy Systems, Inc.*, Order 24,212 at 25-27; *Unitil Energy Systems, Inc.*, Order No. 24,284 (Feb. 20, 2004) at 3. Moreover, as noted by UES, disclosing the information may place it at a disadvantage with respect to those with whom it would negotiate. Such a disadvantage could be injurious to the Company's management of its balance sheet as well as its debt-equity ratio.

Further, we find that disclosure of this information would shed little light on the activities of the Commission. The reports reveal only UES' projections of its finances based upon numerous assumptions within the knowledge only of the Company. They reveal no analysis by the Commission of this information, nor any course of action contemplated by the Commission as a result of the information. Thus, the value of the information as an engine for discovery of the Commission's practices is slight. Accordingly, we grant UES' motion.

For administrative efficiency, we also by this order grant, for the same reasons set out above, UES' prior motions for confidential treatment in this matter. Specifically, we grant the motions for confidential treatment filed in this docket on December 28, 2006, December 5, 2007, and December 2, 2008 regarding UES' annual report.

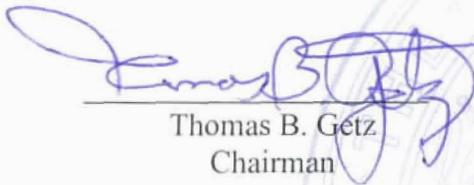
Finally, Staff has recommended that UES no longer be required to file the financing reports and has explained that the original intent of the requirement was to allow the Commission to monitor UES' debt-equity ratio because there was a concern the Company would become too reliant upon debt capital. Recently, UES completed a financing, *see Unitil Energy Systems, Inc.*, Order No. 25,069 (January 22, 2010), and in the course of that financing Staff evaluated UES' debt-equity ratio and its financial forecasts. Neither Staff nor any other party raised any concerns relative to the debt in UES' capital structure. Moreover, unlike the prior financing requests, the order did not contain a requirement that UES file annual forecasts. Staff's recommendation also notes that UES files quarterly financial reports with the Commission, giving the Commission the opportunity to monitor UES' use of debt capital. We agree with Staff that the concerns underlying the original requirement to file annual reports do not justify continuing that requirement. Further, we are persuaded that since the Company continues to file other financial reports, the Commission will have sufficient oversight of the Company's finances. Therefore these additional reports are not necessary. Accordingly, UES shall no longer be required to file annual financial reports as contemplated by Orders 24,212 and 24,658.

Based upon the foregoing, it is hereby

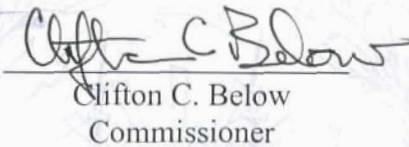
ORDERED that the motions for confidential treatment of the Company's annual financing reports are granted as set forth above; and it is

FURTHER ORDERED, that the Company shall not be required to file annual financing reports as required by Order No. 24,658.

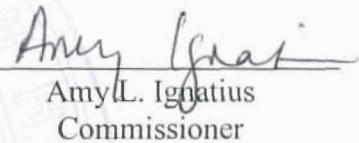
By order of the Public Utilities Commission of New Hampshire this nineteenth day of February, 2010.



Thomas B. Getz
Chairman

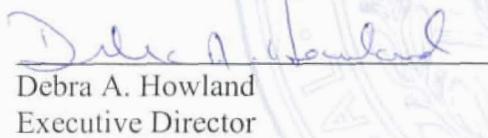


Clifton C. Below
Commissioner



Amy L. Ignatius
Commissioner

Attested by:



Debra A. Howland
Executive Director

