STATE OF NEW HAMPSHIRE

BEFORE THE

PUBLIC UTILITIES COMMISSION

Unitil Energy Systems, Inc.

Rate Case

Docket No. DE 21-030

Closing Statement of the Office of the Consumer Advocate

NOW COMES the Office of the Consumer Advocate ("OCA"), a party to this docket, pursuant to the Commission's directive at the conclusion of the March 3, 2022 hearing in this proceeding, offers the following closing statement in favor of Commission approval of the Settlement Agreement presented to the Commission at that time.

## I. Introduction

The Settlement Agreement pending for approval by the Commission in this rate case is a comprehensive one. Our closing statement focuses specifically on the issues raised by the OCA in its written testimony. In so doing, we stress our support for all of the provisions of the agreement, particularly including those that were raised by other parties.

The OCA made six recommendations via its prefiled testimony: (1) avoid "rate shock" by limiting increases to residential rates to no more than 125 percent of the system average increase, (2) reject of the proposed multi-year rate plan in favor

of consideration of a future "comprehensive performance-based regulation proposal," (3) use the "basic customer" rather than the "minimum system" method in the cost-of-service study, (4) make no increase in the fixed customer charge, (5) modify the decoupling mechanism to include a cap of 2.5 percent of distribution revenues rather than total revenues, and (6) approve grid modernization investments not here but in the context of the Company's next RSA 378:38 Least Cost Integrated Resource Plan." *See* exh. 13 at bates 41. We support the proposed Settlement Agreement (exh. 12) because it adopts the bulk of these recommendations and, as to the remainder, offers a reasonable basis for anticipating progress in the relevant areas in the future. *See, e.g.*, exh. 13 at bates 11 (limiting the revenue deficiency allocated to the residential class to 125 of the overall average revenue increase and adopting no increases to fixed customer charges)

## II. Revenue Decoupling

With respect to decoupling, the Company agreed to rely on distribution revenue as opposed to total revenue in determining the annual revenue adjustment. Exh. 12 at bates 7. In exchange for that concession, we agreed it was appropriate to adjust the cap from 2.5 percent of revenue to 3 percent. This is a reasonable compromise, particularly given that the cap serves as a deferral mechanism that simply smooths the rate path rather than an actual change to the amount of revenue that will ultimately be recovered from customers.

Further, in light of Chairman Goldner's questions about this at hearing, the OCA would like to note that we do not necessarily agree with the proposition that

this particular mechanism, or decoupling in general, provides benefits to shareholders that come at the expense of ratepayers. It is certainly true that shareholders and ratepayers value the results of decoupling differently, but this should not obscure the fundamentally symmetrical nature of decoupling.

It is this quality of symmetry that is the basis for the OCA's historical support of decoupling mechanisms, in contrast to the unfairly asymmetrical nature of the lost-revenue adjustment mechanism (LRAM) that is the alternative with respect to necessary adjustments in light of ratepayer-funded energy efficiency programs. To put it another way, much like the outraged woman in the famous "now we're just haggling about the price" anecdote variously attributed to W.C. Fields, Winston Churchill, and numerous other British notables, for New Hampshire ratepayers decoupling is already a permanent reality and the question, really, is whether such a revenue adjustment mechanism comes in the form of a profoundly unfair LRAM (which Department of Energy witness Larry Blank correctly characterized as a "limited form of decoupling," *see* exh. 18 at bates 7 lines 5-6) or a symmetrical mechanism that offers the prospect of downward adjustments so as not to unfairly enrich shareholders.

In that regard, we note that at hearing Chairman Goldner asked Unitil witness Christopher Goulding to comment on the written testimony from one of the Department of Energy witnesses to the effect that revenue decoupling amounts to both retroactive ratemaking – impermissible in New Hampshire, arguably as a

matter of state constitutional law – and single-issue ratemaking, a practice long disfavored by the Commission.

The OCA respectfully disagrees with these opinions. As the Regulatory Assistance Project noted in its 2016 treatise on decoupling, "[c]ustomers are entitled to know the price of the commodity they are consuming at the time they use it," but a properly designed decoupling mechanism (such as the one proposed here) avoids this problem. Regulatory Assistance Project, *Revenue Regulation and Decoupling: A Guide to Theory and Application* (2016) at CS 50-51 and n. 54. Moreover, as Mr. Blank notes in his testimony on behalf of the Department of Energy, because the decoupling formula is described in the company's tariff, customers are at least arguablyl on notice about the financial effects of their consumption. Exh. 18 at bates 14 at lines 22-23 and bates 15 at line 1.

As to the question of single-issue ratemaking, Mr. Blank criticizes the mechanism for its obliviousness to other changes (to rate base, cost of capital, expenses, and class cost of service) that might offset the effects of sales fluctuations on revenue. *See* id. at bates 15, lines 8-14. This, of course, is true, but, as Mr. Blank also notes, that would make an LRAM an "even more egregious example" of this phenomenon. *Id.* at lines 14-15.

On the question of whether, and to what extent, revenue decoupling should have on a utility's allowed cost of capital, the OCA respectfully directs the Commission's attention to the live testimony of Mr. Hevert on behalf of Unitil. He stressed the importance of the effect of decoupling on the Company's credit rating.

This is consistent with the perspective of the OCA, influenced by the Regulatory Assistance Project treatise referenced supra, that the principal effect of decoupling from a cost-of-capital perspective is not to make the company less risky from an investor perspective but, rather, to justify a more leveraged capital structure and perhaps a lower cost of debt.

More generally, if the questions from the bench suggests that the Commission is fundamentally reexamining the question of whether decoupling mechanisms, whether via an LRAM or otherwise, are appropriate in New Hampshire, the OCA respectfully requests that the Commission so indicate in its order in this docket without rejecting the Settlement Agreement. We make that suggestion in light of section 12.1 of the Settlement Agreement, which notes that non-acceptance of the agreement in its entirety would trigger its withdrawal. It is unlikely that the OCA would agree to such a modification such as to supersede the withdrawal mechanism.

## III. Cost of Service Study

The Company agreed to employ the Basic Customer method in the cost-of-service study conducted in connection with its next rate case, as opposed to the Minimum System method it employed in the instant proceeding. Our witnesses were highly critical of the Minimum System method, a position which we maintain and do not believe we compromised here. Section 6.4 of the Settlement Agreement, exh. 12 at bates 12, contemplates a scenario in which the utility will give the Commission an opportunity to compare the contrasting methods on a side-by-side

basis. We regard this as a more helpful scenario than attempting to litigate this question to the death in the instant proceeding.

## IV. Multi-Year Rate Plan

The most difficult concession for the Office of the Consumer Advocate concerns the multi-year rate plan. Unitil originally proposed a base rate increase that relied on a 2020 test year, followed by three annual "step adjustments" accounting for certain capital investments in calendar years 2021, 2022, and 2023. Our witnesses observed that the utility's proposal "essentially removes regulatory lag from the traditional ratemaking process without introducing new cost containment incentives to encourage the utility to operate efficiently." Exh. 23 at bates 11, lines 12-14. The Settlement reflects a compromise of this issue; there are only two step adjustments and, as to the second, Unitil agreed to a non-growth investment level of no more than $26,738,22. Exh. 12 at bates 5. There are strict reporting requirements and a cap of 2.5 percent when it comes to increasing the total revenue in a given investment year. *See id.* at 8-11 We consider this compromise reasonable, in light of all of the issues raised by this rate case, but we encourage the Commission to use this proceeding as an opportunity to signal an interest in alternative approaches to rate setting such as performance-based ratemaking.

## V. Cost of Capital

Finally, although the Office of the Consumer Advocate did not (as would ordinarily be the case) present testimony from a cost-of-capital witness, we are

keenly aware that Unitil agreed to a 9.2 percent cost of common equity in the Settlement Agreement. Exh. 12 at bates 6. This is below the 10.2 percent the Company's expert recommended, the 10.0 percent the Company actually requested, and the 9.5 percent allowed in the Company's previous rate proceeding. Exhibit 6 at 107. The Department's respected expert on cost of capital recommended 8.75 percent. The agreed upon cost of capital is appropriate given the current state of the U.S. economy and the relatively risk-free nature of what this utility does to earn its money.

## VI. Conclusion

In conclusion, the Office of the Consumer Advocate is grateful to the Company for the thoroughness and clarity of its initial filing, its cooperation during the discovery process, and its willingness to compromise on key issues. We likewise commend the Department for its thorough investigation of prudence issues and its rigorous analysis. We urge the Commission to approve the Settlement Agreement because the rates reflected therein are just and reasonable.

Sincerely,

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Certificate of Service

I hereby certify that a copy of this pleading was provided via electronic mail to the individuals included on the Commission's service list for this docket.

Donald M. Kreis