

**THE STATE OF NEW HAMPSHIRE  
BEFORE THE  
PUBLIC UTILITIES COMMISSION**

**DE 21-030**

**UNITIL ENERGY SYSTEMS, INC.**

**MOTION TO APPOINT SPECIAL COMMISSIONERS**

Unitil Energy Systems, Inc. (“UES” or the “Company”) hereby respectfully moves the Commission, pursuant to Puc 203.07, RSA 363:17, and RSA 363:20 to (1) conduct evidentiary hearings in the above-captioned docket before a full three-member commission and (2) apply to the Governor and Executive Council to appoint a special commissioner or special commissioners, as necessary, to comprise a full three-member commission. In support of this motion, UES states:

1. The Company submitting its filing in support of its request for a rate increase pursuant to N.H. Admin Rules Puc 1600 *et seq* on April 2, 2021. At the time that the Company made its initial filing, the Commission included two members, Chairwoman Dianne Martin and Commissioner Kathryn Bailey.

2. Commissioner (now Chair) Goldner joined the Commission in mid-May, briefly bringing the number of sitting Commissioners to three. However, Commissioner Bailey resigned effective June 30, and the Commission once again comprised two members. Chairwoman Martin resigned effective November 12, 2021, reducing the Commission to a single member.

3. Five days of evidentiary hearings are scheduled for this matter on February 7, 8, 11, 15, and 16, 2022. Issues to be tried before the Commission are numerous and complex, and include, but are not limited to: the Company’s cost of capital, including allowed return on

equity and capital structure; calculation of the Company's revenue requirement; the appropriate method of calculating depreciation; novel electric vehicle time of use rate and charging infrastructure proposals; and a newly proposed decoupling mechanism.

4. Upon information and belief, incoming Commissioner Carleton Simpson will be obliged to recuse himself from hearing or issuing orders in this case. The Governor has nominated Dr. Pradip Chattopadhyay to be the third Commissioner; as of this writing, the Executive Council has not yet held a vote on Dr. Chattopadhyay's nomination. UES does not know whether Dr. Chattopadhyay, if confirmed, would be compelled to recuse himself from this case due to his prior employment at the Commission and the Office of the Consumer Advocate.<sup>1</sup>

5. Pursuant to statute, the Commission is to be composed of three Commissioners. RSA 363:1. At least one Commissioner must be an attorney licensed to practice law in New Hampshire, and at least one Commissioner shall have either background or experience or both in one or more of the following: engineering, economics, accounting or finance. Id.

6. A majority of the Commission shall constitute a quorum to issue orders, and any hearing may be held or conducted by two Commissioners or by a single Commissioner. RSA 363:16. However, no hearing shall be held or conducted by a single Commissioner if party whose interests may be affected requests<sup>2</sup> that the hearing be conducted by the full Commission or a majority thereof. RSA 363:17.

7. Furthermore, if at any time a Commissioner shall be disqualified or unable to perform the duties of his or her office, the Governor, upon application of the Commission, may, with the consent of the Executive Council, appoint a special commissioner to act in his or her

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<sup>1</sup> The Company takes no position in this motion on whether Dr. Chattopadhyay should or should not recuse himself from this case.

<sup>2</sup> Such request must be made at least five days in advance of the hearing. Id.

place during the period of the Commissioner's disqualification or inability to act. RSA 363:20.

8. The Company respectfully requests, pursuant to RSA 363:17, that the hearings in this case be held or conducted by a full Commission.

9. If Dr. Chattopadhyay is confirmed as a Commissioner and it is thereafter determined that he must recuse himself from presiding over this matter, then the Commission must seek the appointment of at least one special commissioner by the Governor, with the consent of the Executive Council. As the Company – unquestionably, a party whose interests shall be affected – has requested that the hearing be held or conducted by a full Commission, it cannot be held or conducted by a single justice. RSA 363:17. Moreover, a single Commissioner cannot issue orders. RSA 363:16. Thus, the Commission must have at least a majority to conduct hearings and issue an order.

10. Even if it is determined that Dr. Chattopadhyay need not recuse himself from this case, the Commission should still request the appointment of a special commissioner to ensure that the hearing is conducted by a full three-member Commission. The Commission has previously found that the appointment of a special commissioner pursuant to RSA 363:20 to ensure a full three-member Commission is justified when important and complex matters are at issue. DE 11-250, *In re Pub. Serv. Of N.H.*, Order No. 25,622 at 3 (January 23, 2014). In that docket, the Commission recognized that the risks of proceeding with two Commissioners included a possible deadlock or an unforeseen event that disqualified one of the two Commissioners. *Id.*<sup>3</sup> As explained above, the Commission will hear testimony from numerous parties and witnesses on a range of complex technical and financial issues over as

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<sup>3</sup> The Commission noted: “Were we to proceed to a final hearing with only two commissioners and were something to happen to cause one to become unavailable for some reason, the hearing would have to be conducted again.” *Id.*

many as five days. The outcome of this case will have a significant effect on UES and its ratepayers, and potentially the citizens of New Hampshire in that important policy matters are at issue.

11. The circumstances of this case justify a request for at least one and potentially two special commissioners to ensure that the hearing is conducted by a full three-member Commission.

WHEREFORE, UES respectfully requests that the Commission:

- A. The hearing in this matter be held or conducted by a full Commission pursuant to RSA 363:17;
- B. Apply to the Governor pursuant to RSA 363:20 to appoint, with the consent of the Executive Council, as many special commissioners as are required to comprise a full three-member Commission to hear and issue and order in this case; and
- C. Grant such further relief as may be just and appropriate.

Respectfully submitted

UNITIL ENERGY SYSTEMS, INC.

By its Attorney:



Dated: December 3, 2021

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Certificate of Service

I hereby certify that on December 3, 2021, a copy of the foregoing Motion was electronically served upon the Service List.

A handwritten signature in black ink, appearing to read 'Patrick H. Taylor', written over a horizontal line.

Patrick H. Taylor