STATE OF NEW HAMPSHIRE
BEFORE THE PUBLIC UTILITIES COMMISSION

Docket No. DE 22-026

UNITIL ENERGY SYSTEMS, INC.

Petition for Approval of Step Adjustment Filing

WRITTEN CLOSING OF UNITIL ENERGY SYSTEMS, INC.

At the close of the Hearing in the above-captioned matter held before the New Hampshire Public Utilities Commission (the "Commission") on June 13, 2022, the parties agreed to provide written closings on or before June 22, 2022. Unitil Energy Systems, Inc. ("Unitil" or the "Company") appreciates the opportunity to provide this written closing statement to the Commission.

I. Introduction

Consistent with the Settlement Agreement in DE 21-030, Unitil submitted its step adjustment filing for 2021 non-growth plant additions on February 28, 2022. The Commission subsequently opened the above-captioned docket for the purposes of adjudicating the step adjustment filing, and the Company provided updated schedules on May 12, 2022, June 6, 2022, and June 10, 2022. On June 9, 2022, the Department of Energy ("DOE") submitted comments on the Company's filing, and the Commission held a Hearing on June 13, 2022.

The Company's filing was fully compliant with the terms of the DE 21-030 Settlement Agreement, and was timely filed. There has been no argument or evidence presented that the Company's 2021 plant additions were unreasonably or imprudently incurred. Rather, the DOE has argued that certain system improvements to increase capacity to meet projected load are not fully used and useful because some anticipated projects have been delayed in taking service from the Company due to, among other things, the Covid-19 pandemic. As explained below, the

DOE's argument is inconsistent with long-stablished ratemaking principles and settled New Hampshire law. The DOE also raises the question of whether the system improvements to increase capacity are "non-growth." As the Company explained at the Hearing, the system improvement project in the Downtown Concord area is designed to address the overall capacity of the area to ensure the delivery of safe and reliable service for all customers, as opposed to new infrastructure designed to serve a specific new load. It is appropriately designated as non-growth in nature.

At the close of the Hearing, the Commission propounded a record request including an alternative calculation for determining Change in Net Plant and the associated revenue requirement. This calculation should not be utilized by the Commission for the purposes of determining the Company's allowed revenue requirement in this case. The calculation is, as an initial matter, inconsistent with the settled expectations of the parties, which worked over many days and made many compromises to reach a balanced and just and reasonable settlement result. The Commission did not, in DE 21-030, find the result of the agreed-upon settlement calculation to be unjust or unreasonable, and imposing a new calculation now, in a subsequent docket, would upset the settled result and significantly prejudice the Company, which agreed to a stay-out provision in exchange for the agreed-upon step adjustments. Moreover, the alternative calculation is inconsistent with utility accounting practices and traditional ratemaking principles, in that it arbitrarily assigns all depreciation expense to a discrete class of assets. The Commission should not adopt this alternative calculation for the purposes of calculating the Company's step adjustment revenue requirement.

II. Calculation of Change in Net Plant

a. *Background*

On February 11, 2022, Unitil, the DOE, and several other settling parties submitted a comprehensive Settlement Agreement to the Commission. In the Settlement Agreement, the Settling Parties agreed that the Company may propose to collect two Step Adjustments for calendar year 2021 and 2022 investments. DE 21-030 Hearing Exhibit 12 (Settlement Agreement and Attachments) at Bates 000003-005.The Settlement Agreement specified that each Step Adjustment would recover the distribution revenue requirement associated with the annual Change in Non-Growth Net Plant for the period January 1 through December 31 of the respective investment years. Id. at 000005, 010. "Change in Net Plant" was defined by the settling parties to be "the change in Ending Net Utility Plant from one Investment Year to the next, which accounts for Plant Additions as well as Accumulated Depreciation," and "Change in Non-Growth Net Plant" was defined as "the Change in Net Plant multiplied by the Percent of Non-Growth Net Plant."[1] Id. at 000008-009. The settling parties further agreed that the Step Adjustment revenue requirement would be calculated by summing, for each investment year, (1) the Pre-Tax Rate of Return applied to the annual Change in Non-Growth Net Plant; (2) Depreciation Expense[2] on the annual Change in Non-growth Net Plant; and (3) State Property Taxes on the annual Change in Non-Growth Net Plant. Id. at 000010. The Settlement Agreement included an illustrative calculation of the Step Adjustment revenue requirement. Id. at 000135-

[1] "Accumulated Depreciation" was defined as "the cumulative net credit balance arising from the provision of depreciation expense, cost of removal, salvage, and retirements;" "Ending Net Utility Plant" is, in relevant part, "the 'per books' utility Plant Additions for plant in service after Accumulated Depreciation is deducted;" "Percent of Non-Growth Net Plant" is "the ratio of non-growth capital additions to total capital additions in the Investment Year as determined by the Company; and "Plant Additions" are "the capitalized costs of plant placed in service, after retirements, as recorded on the Company's books during the Investment Year." Id.

[2] Defined as "the return of the Company's investment calculated by multiplying the Change in Non-Growth Additions by the average depreciation rate of 3.35 percent." Id. at 000008.

139. Based upon this calculation, the parties agreed to a revenue requirement cap on 2021 investments of $1,377,331. Id. at 000004-005, 135.

In Order No. 26,623, the Commission approved the Step Adjustment framework agreed to by the Settling Parties, with one modification: the Commission directed the Company to "subtract the actual Growth Net Plant figure from the Total Change in Net Plant figure to calculate the actual Change in Non-Growth Net Plant Figure." Unitil Energy Systems, Inc., Order No. 26,623 at 25 (May 3, 2022) (emphasis added). The Commission explained that this modification resulted from an exchange during the evidentiary hearing in DE 21-030 in which Special Commissioner Ross indicated a desire to see Change in Non-Growth Net Plant calculated by subtraction from total net plant, rather than on a percentage basis. Id; see also DE 21-030 Tr. P.M. at 4:17 – 5:2 (emphasis added) (March 3, 2022).

As stated in Order No. 26,623, the Company understood that the Commission intended to determine the Change in Non-Growth Net Plant by subtracting the Change in Growth Net Plant from the Change in Net Plant rather than by multiplying the Change in Net Plant by the Percent of Non-Growth Net Plant. While different than the percentage-based calculation agreed to by the settling parties, such a calculation, if correctly applied, should yield a similar revenue requirement. Unitil submitted revised schedules reflecting this change in the step calculation on May 12, 2022. On May 25, 2022, Unitil filed a motion pursuant to RSA 541:3[3] requesting that the Commission clarify its intent and correct a footnote indicating that the Change in Non-Growth Net Plant should be calculated by subtracting gross growth plant from Change in Net Plant – a calculation that, as stated, would be inconsistent with the Order and the Settlement

[3] RSA 541:3 governs Motions for Rehearing before the Commission.

Agreement and result in an inaccurate and significantly understated revenue requirement. The Company's motion remains pending.

b. *The Commission's Record Request*

At the June 13, 2022 hearing in this matter, the Company's witnesses explained, on a step-by-step basis, the Step Adjustment revenue requirement calculation set forth in Hearing Exhibit 10 at Bates 000003.[4] As Unitil explained, the Company first calculates a year-end gross utility plant for 2021 by adding total plant additions[5] and retirements for both growth and non-growth projects. Hearing Exhibit 10 at 000003. The Company then calculates ending Accumulated Depreciation by netting Depreciation Expense against Retirements, Cost of Removal, Salvage, and Transfers for both categories of investment. Id. "Depreciation Expense" is the annual depreciation expense booked in 2021 by the Company and includes 2021 vintage year additions as they were placed into service as well as all vintages prior to 2021. As the Company's witnesses explained at hearing, this method of determining depreciation expense for the purposes of calculating revenue requirement is consistent with commonly-applied ratemaking principles. Subtracting Ending Accumulated Depreciation from Ending Utility Plant results in an Ending Net Utility Plant, which is equivalent to the Change in Net Plant for both Growth and Non-Growth plant additions ($2,328,186 and $7,197,936, respectively). Id. Using the Change in Non-Growth Net Plant of $7,197,936, the Company calculated a revenue requirement of $1,303,839. Id.

Towards the close of the Hearing, the Commissioners requested that the Company calculate revenue requirement associated with the annual Change in Non-Growth Net Plant using an alternative calculation, which the Company understood to be as follows:

[4] As of this writing, no Transcript of the June 13, 2022 Hearing has been issued for the parties' reference.
[5] Excluding additions related to the Company's Exeter Distribution Operations Center.

Reference Hearing Exhibit 10, Second Revised CGKS-5. Assume that the $407,914,123 at Line 1, Column (b) includes no growth component.

(a) (1) Calculate the revenue requirement assuming no additions were made in 2021; (2) Calculate the revenue requirement for non-growth assets added in 2021; (3) Sum 1 and 2 to determine the revenue requirement.

(b) Subtract 2021 Growth Plant Additions from the total change in net plant and calculate the revenue requirement

The Company is providing its response to this Record Request concurrently with this Written Closing as Hearing Exhibit 11. As that response demonstrates, the calculated revenue requirement under the Commission's alternative approach is $937,015 – a negative difference of $366,824 from, or more than 28% less than, the revenue requirement under the method agreed upon by the settling parties in DE 21-030 ($1,303,839).

As an initial matter, the calculation proposed by the Commission in its record request does not result in an accurate calculation of the Company's Change in Non-growth Net Plant in 2021, and, therefore, does not yield an accurate revenue requirement for the purposes of this Step Adjustment. Rather, because it assigns all depreciation expense in 2021 to the Company's non-growth plant additions and none of the depreciation expense to growth plant additions, it reduces the Step Adjustment revenue requirement in a manner inconsistent with the Settlement Agreement. Of equal concern, the arbitrary assignment of all depreciation expense to one discrete class of investment is unreasonable and inconsistent with utility accounting practices and traditional ratemaking principles. See DE 22-026, Hearing Exhibit 11 (Commission Record Request 1-1, submitted June 22, 2022).It also appears to assume, incorrectly, that revenues from growth-related investments will be sufficient in the first year of service to completely cover the cost of the investment. Id. The result is an artificially depressed and significantly understated revenue requirement that is inconsistent with the intent of the settling parties in DE 21-030.

The Settlement Agreement in DE 21-030 was the product of many days of extensive negotiations among the settling parties. A significant portion of that time was dedicated to the Company's test year revenue requirement and subsequent step adjustments for 2021 and 2022 investments.[6] As with any compromise, the various components of the Settlement Agreement were carefully calibrated to strike a balance between the interests of the Company's customers and investors. If the Commission were to now require an alternative calculation that materially alters a key component of the Settlement Agreement, it would upend the settled expectations of Unitil and the settling parties and substantially prejudice the Company.

The Commission did not, in Order 26,623, make a determination that the illustrative step adjustment revenue requirement calculation appended to the Settlement Agreement was not just and reasonable or inconsistent with the public interest. It did not determine that the calculation would yield a revenue requirement that was overstated, that it incorporated an improper amount of depreciation expense, or that it improperly allocated depreciation expense among growth and non-growth plant additions. Nonetheless, by applying the calculation set forth in the record request, the Commission would reduce the amount of revenues that the Company expected to recover in its first step adjustment by almost one third, irrespective of any finding of imprudence. The impact to the Company is significant - $366,824 in both 2022 and 2023, plus the revenue requirement associated with 2022 investments to be included in rates in 2023. Cumulatively, the Commission's alternative calculation will likely negatively impact the Company's expected revenues by more than $1 million in 2022 and 2023.

The relevance is obvious: the Company agreed to a rate case stay out through the beginning of 2024 because it anticipated recovering a revenue requirement related to non-growth

[6] The Company initially proposed three step adjustments but settled on two.

plant additions based upon the calculation agreed to by the settling parties. Unitil may not have agreed to the stay out provision or other concessions in the Settlement Agreement if the Change in Non-Growth Net Plant calculation was to be based upon the alternative calculation proposed by the Commission, which reduces potential allowed revenues significantly. If the Commission requires the application of its alternative calculation, Order No. 26,623 will still preclude the Company from filing a base rate case until 2024, notwithstanding the possibility that the Company's revenue deficiency would necessitate such a case. This raises the potential for an unconstitutional taking.

It has long been the policy of the Commission to encourage settlement among the parties to rate cases and other matters.

> Informal disposition is encouraged and may be made of any case at any time prior to the entry of a final decision or order. . . . The Commission encourages parties to attempt to reach a settlement of issues through negotiation and compromise, as it is an opportunity for creative problem solving, allows the parties to reach a result more in line with their expectations, and is often a more expedient alternative to litigation.

Order No. 26,623 at 20 (*citing* RSA 541-A:31, V(a), :38; *Pub. Serv. Co. of NH d/b/a Eversource Energy*, Order No. 26,433 at 18 (December 15, 2020); *and EnergyNorth Natural Gas, Inc. d/b/a National Grid N.H.*, Order No. 25,202 at 18 (March 10, 2011).[7] While the Commission must determine that the results of a Settlement Agreement comports with applicable standards, including the requirement that rates be just and reasonable, the Commission made no such finding with respect to the settling parties' calculation of Change in Non-Growth Net Plant. If the Commission were to materially and arbitrarily alter the terms of a settlement agreement, either in

[7] In its recent Order No. 26,603 on Liberty Utilities (EnergyNorth Natural Gas) Corp d/b/a Liberty's step adjustment request, the Commission accepted the settled-upon step adjustment calculation, noting that to do otherwise would "overrul[e] a singular term within a settlement agreement and potentially upset[], at a late juncture, what all parties agreed was a just and reasonable outcome." *Liberty Utilities (EnergyNorth Natural Gas) Corp d/b/a Liberty*, Order No. 26,603 at 8 (April 5, 2022).

the docket to which the agreement pertains or, as in this case, a separate and subsequent docket, it would cast doubt upon the stability of any settlement agreement brought before it in the future. This will chill the long-established practice of settling matters before the Commission and lead to inefficiency and unnecessary, costly litigation.

III. The Downtown Concord Conversion Project is Used and Useful

In its June 9, 2022 Letter to the Commission regarding Unitil's Step Adjustment, the DOE noted that the Company's request included approximately $424,000 of expenditures related to the Downtown Concord Conversion project. The DOE asserted that "approximately 70% of the projected new load still has not materialized" and argued that recovery of the costs should be postponed until the Company's next rate case. At hearing, the DOE explained that it did not provide pre-filed testimony in this matter, but that it did submit Hearing Exhibit 9, which comprises an excerpt of witness Jay E. Dudley's prefiled testimony on behalf of the DOE from DE 21-030 and certain associated attachments. In the excerpt of testimony relative to the Downtown Concord conversion project, the DOE stated that "the initial justification for the project [was] reasonable in terms of the upgrades and additions that were driven by increasing development in the Concord Downtown area and the insufficient capacity of existing substations and conductors." Hearing Exhibit 9 at 000004-005. The DOE's conclusion that the project is "reasonable" may be fairly taken to mean that the DOE understands the decision to undertake the project was prudent in light of the information available to Unitil at the time the decision was made. *See Appeal of Conservation Law Foundation*, 126 N.H. 606, 638 (1986) ("prudence judges an investment or expenditure in the light of what due care required at the time an investment or expenditure was planned and made") and *Public Service Company of New Hampshire*, Order No. 20,503, 77 NH PUC 268, 269 (1992) ("The test of due care asks what a

reasonable person would do under the circumstances existing at the time of a decision." (citing *Fitzpatrick v. Public Service Co. of N.H.*, 101 N.H. 35 (1957)).

Despite explicitly finding the justification for the project reasonable, the DOE advanced the argument that some portion of the assets involved in that project may not be "fully" used and useful at this time due to delays in the anticipated load materializing – load the DOE characterizes as "highly speculative". Hearing Exhibit 9 at 000005. In other words, while the DOE found the Company's actions in justifying and undertaking the project to be prudent, because certain other projects over which the Company has no control had not materialized on the previously expected schedule, it argued that the Company's investment is, at least in part, not "used and useful" for purposes of cost recovery. Building from this problematic premise, the DOE then applied a "needs based test" to conclude that "only 25% of the installed plant is used and useful as of the 2020 test year and that the remaining 75% constitutes excess capacity at this time." *Id*. Accordingly, the DOE contends that the Commission should disallow 75% of the investment, but that the disallowed amounts could be revisited in a future rate case "to see if the load has materialized and the remaining plant has become used and useful." *Id*.[8] The DOE's argument is factually inaccurate, legally unsound, and should be rejected.

As an initial matter, Unitil addresses several issues relating to the framing around the DOE's review of this project. First, the DOE incorrectly argues that the Downtown Concord Conversion Project, which increases capacity within the downtown area of the City, "was installed to serve customers that had not yet opted to take service." DOE Letter at 2 (June 9, 2022). As Unitil explained at the Hearing, the City is experiencing changes in its downtown area,

[8] At hearing, the DOE clarified that it applied this argument only to the Downtown Concord Conversion Project costs that are at issue in this proceeding; that the DOE was not seeking a permanent "disallowance" but rather a temporary deferral for future review; and that the amount of plant additions that it deemed to be "used and useful" for this particular Project had increased to 37%.

and in 2018 the Company completed an evaluation of five alternatives to increase capacity in that area. The Company ultimately decided to upgrade and expand its Gulf Street Substation and convert the downtown area from 4kV to 13.8kV. The Company's 2018 load forecast was based on historical load as well as expected new customer loads. The Company had been concerned about limited capacity in the Downtown Concord area for some time, and the forecast identified that the system could not support the load under the Company's planning criteria. Thus, a system improvement was required to serve the forecasted load. It was not "installed" solely to serve expected new load, as the DOE asserts.

Second, the DOE questions the Downtown Concord Conversion Project as being based upon what it characterizes as "highly speculative" projections of the loads to be served. The loads included in Unitil's project justifications, Exhibit 6 & Exhibit 9 at 6-7 and 35-37, were and are based upon actual customer requests for service to projects those customers had planned or were constructing, as well as information that become known to the Company through other channels (e.g., public announcements of projects). Had those customers developed their proposed projects as they had anticipated, the Company would have been obligated to serve them, along with its existing customers in a safe and adequate manner. *See* RSA 374:1. Thus, the Company's projections were not "highly speculative," and stating otherwise is an after-the-fact mischaracterization of the need for the Company's investment. Arguing that the Company's projections are based on speculation ignores their empirical bases, and fails to acknowledge what New Hampshire law has recognized:

> a forecast, by its very nature, can only be a guide to, and not a perfectly accurate predictor of, future demand. In other words, fallibility is inherent in the forecasting process because of the huge number of variables involved and the interactions among them.

Appeal of Conservation Law Foundation, 127 N.H. 606, 628 (1986). To suggest that a utility must be at risk for any investment that does not exactly match forecasted load on a specific timeline is unrealistic, unreasonable, and contrary to the law.

The intervening effects of the COVID-19 pandemic, which could not have been predicted, and which were beyond any control of the Company, affected customers' plans as it pertained to those projects, and, in particular, the timelines on which those projects would be developed. The Company had no means of foreseeing, when it made its investments to continue providing safe and reliable service to current and prospective customers in the Downtown Concord area, that the projected load would not develop on the originally anticipated timeline due to a *force majeure* event, and the DOE does not contend that the Company had any means of foreseeing how the development would proceed. *Appeal of Conservation Law Foundation*, 127 N.H. at 637 ("While the scope of the prudence principle is by no means clear…it at least requires the exclusion from rate base of costs that ***should have been foreseen*** as wasteful." (ellipsis and emphasis added)); *Public Service Co of N.H.*, Order No. 25,546 (July 15, 2013) at 9 (The utility's prudent costs "must be judged in accordance with the management options available to it at the times it made its decisions to proceed with and to continue installation" and the Commission "will therefore not address current market or regulatory conditions but rather those conditions in place at the time of the decision-making under review"). Further, so far as Unitil is aware, none of the projects have been cancelled or materially reduced in scale. In fact, the DOE's Hearing Exhibit 6 shows that many of the projects, with their associated loads, anticipate taking service or beginning construction in 2022 or 2023. Hearing Exhibit 6 at 000002. To provide safe and reliable service to these customers and existing customers, the Company's system must have the requisite capacity. The projects and loads in issue were not "highly

speculative" but were based upon known and reasonably anticipated load growth in the area and the DOE's indications otherwise are incorrect.

Third, the DOE states that it is applying a "needs based test" to support its contention that a portion of the project costs should be disallowed. Notably, however, the DOE cites no New Hampshire law, rule, or order supporting its contention or conclusions. Rather, the DOE claims to be applying a "needs based test" that is not based on any known New Hampshire precedent and which the DOE neither explains nor describes.[9]

Further, in its application of this "needs based test" the DOE concludes that only a small percentage of the project is "needed" despite the fact that the project does not consist of severable portions intended only to serve particular customers. The DOE's approach would require that a utility wait to provide capacity additions until customer projects are complete to be entirely certain that the whole of any particular investment will be used and useful upon installation. As Mr. Sprague testified at the hearing, however, electric utilities cannot finely tune their capacity additions to specific loads because, at least in part, they are limited by equipment manufacturer ratings, standardized equipment, and material lead times. Moreover, as Mr. Sprague stated, the Company adds incremental capacity every year in a "lumpy" fashion because a year-by-year approach of implementing just enough capacity to cover only the known changes in load will lead to the premature replacement of undersized equipment, and would leave the Company unprepared for any shifts in use by existing customers (such as adding an electric vehicles or electric heating equipment) or increases coming from any new customers. The DOE

[9] In a closing statement submitted on June 21, 2022, the DOE suggests that there is precedent for its proposed approach in DE 17-048, Order No. 26,122 (April 27, 2018). The facts and analyses in that case are completely inapposite in relation to this case. In DE 17-048, the Commission considered a situation in which a utility sought to include in rate base costs that exceeded those presented to the Commission in a prior docket. It was not a situation in which the Commission was asked to determine that an investment, acknowledged to be reasonable at the time it was made, would somehow be considered only partially used and useful due to the existence of excess capacity.

may believe that a "needs based test" is in some way self-evident, but this unsupported belief provides no basis for any conclusions the Commission may reach in this case. The Commission should decline the DOE's invitation to rely on its undefined test.

Beyond the above concerns that the DOE is asking the Commission to rely upon inaccurate facts and an undefined test to disallow recovery of demonstrably prudent investments, the Commission must also acknowledge that the concept advanced by the DOE is not only impractical and unsound as a regulatory policy, it runs contrary to New Hampshire law and precedent and has already been rejected by the Commission as inconsistent with New Hampshire law. *See Public Service Co. of N.H.*, Order No. 25,647 at 20 (April 8, 2014) ("[T]he concept of a partially used and useful status is contrary to rate setting principles of the New Hampshire Supreme Court."). The Commission should likewise reject the DOE's contentions in this case.

In the PSNH case, the utility had made a prior investment in generating facilities that had been expected to operate at certain levels, but those levels had fallen over time and the OCA contended that this reduction in operation meant the facilities were no longer "fully" used and useful and a portion of the return on those facilities should be disallowed. Order No. 25,647 at 8-10. Here, as in that case, the contention to disallow costs was based on some perceived shortfall in the level of use of a particular investment over some supposed appropriate amount. As in that case, the Commission should reject the contention.

RSA 378:28, which determines what the Commission is to include or exclude from its review of a utility's rate base for rate setting purposes, provides that the Commission may not include any investments that have not "first been found by the commission to be prudent, used, and useful." Similarly, RSA 378:27 pertaining to temporary rates states that such rates are to be "sufficient to yield not less than a reasonable return on the cost of the property of the utility used

and useful in the public service". Neither statute refers to investments that are "partially" or "fully" used and useful, and neither sets or defines any minimum level of use that makes an investment "useful". To conclude that there is some requirement is to read into the law words that are not there. *See Lambert v. Belknap County Convention*, 157 N.H. 375, 381 (2008) ("We will not insert words that the legislature did not see fit to include."). Accordingly, applying the DOE's proposed "needs based test" to disallow some portion of an investment is to reach a conclusion not supported by the law in New Hampshire.

Additionally, following briefing in the PSNH case and with respect to RSA 378:27, the Commission rejected the argument that the law required assets to be "fully" useful, stating clearly "The statute does not require property to be "fully" used and useful." *PSNH Order* at 20. Going further, and citing *Appeal of Conservation Law Foundation* at 638, the Commission clarified that "[u]nder the 'used and useful' principle, the commission is not asked to second-guess what was reasonable at some time in the past, but rather to determine what can reasonably be done now with the fruits of the investment." *PSNH Order* at 21. By recommending application of a "needs based test, the Department advocates for an impermissible hindsight review in which in the Company's investment decision, which was reasonable at the time, is subject to second-guessing and penalization for the intervention of *force majeure* circumstances beyond its control. Such an approach is plainly inconsistent with the prudence standard applied by the Commission and the Supreme Court, which rejects the application of hindsight and focuses instead on management decisions in light of the information and circumstances known or reasonably knowable at the time decisions are made. Here, the investments in the Concord project are reasonable, in use, and useful to customers. The degree of usage will rise and fall

over time due to factors beyond the Company's control or influence, but that change in the degree does not create some threshold under which costs are disallowed.

Additionally, in the PSNH case, the Commission noted that changing the manner of its "evaluation of the 'used and usefulness' of utility assets would likely create market uncertainty and affect utilities' earnings and financial stability, and increase borrowing rates." *Id*. This imbalance would run contrary to the Commission's duty to balance the interests of utilities and their customers. *See* RSA 363:17-a. Moreover, the DOE's proposal to disallow costs now but leave open the possibility that some portion of those costs might be recovered following some unspecified review in a future period would mean that the risk is open-ended for the Company and that it could never be assured that it would fully recover the costs of prudent investments such as the investments here. Being subject to ongoing and changing risk of disallowances would make the Company less able to borrow money at attractive or competitive rates and less able to service its debt. The perception of risk of potential disallowances in the future would also drive investors to demand a higher return on equity to account for that possibility. Beyond being inequitable and restricting the Company's already-constrained ability to raise capital, the DOE's proposal and would increase costs to customers in the long-term.

The DOE's proposal, if accepted would sever the well-established regulatory compact: a utility takes on the obligation to serve customers, and in exchange expects a fair opportunity to earn the return of, and a return on, prudently incurred investments. If that compact is broken, and utility investments that are prudent and reasonable when made may nevertheless be disallowed at some future point due to circumstances beyond the utility's control, the utility would be denied the opportunity to earn a reasonable return, as the bedrock *Hope* and *Bluefield* cases require.

As Mr. Sprague testified at Hearing, the primary objectives in the Company's electric distribution engineering and system planning efforts are safety, reliability, and affordability. Unitil is obliged not only to provide safe and reliable service to its existing customers, but also to new customers, when they need it. Thus, the purpose of distribution engineering is to identify when system load growth is likely to cause main elements of the distribution system to reach their operating limits, and to prepare plans for the most cost-effective system improvements. This process begins with a reasonable load forecast designed to meet the Company's planning guidelines, taking into consideration historical load growth combined with present customer information. The Downtown Concord Conversion Project is a prudent outcome of the Company's careful engineering and planning process, and is critical for the purposes of providing safe, reliable, and affordable service to customers. The Commission should allow full recovery of the costs associated with the Downtown Concord Conversion Project.

IV. The Downtown Concord Conversion Project is a Non-Growth Investment

In its June 9, 2022 Letter, the DOE questioned, albeit briefly and without any developed argument, whether recovery of costs associated with the Downtown Concord Conversion Project in the Step Adjustment is appropriate because the Project "appears to be growth related." Unitil notes at the outset that this project was expressly designated as "non-growth" in Settlement Attachment 03 to the Settlement Agreement that the DOE signed, and that was approved in relevant part by the Commission. DE 21-030, Hearing Exhibit 12 at 000140; see also DE 22-026, Hearing Exhibit 2 at 000001. Beyond that, the DOE misconstrues the distinction between "growth" and "non-growth" projects.

As Mr. Sprague testified at Hearing, "Growth" projects are those specifically designed and added to the Company's system to reach new customer additions. Typical growth projects

would include, new services, new customer meters, new customer transformers as well as overhead and underground line extensions into area that is not already served. Such projects are tied to specific customer additions. "Non-growth" projects include, among other things, system improvement projects to address area loading or voltage constraints, reliability projects, and condition replacement projects.

The Downtown Concord Conversion Project is not a "growth" project because it does not involve the building of new infrastructure to reach new customer additions (e.g., a new development). Rather, as the Company explained on the stand, the Downtown concord area load was forecasted to exceed existing capacity. To ensure that the Company could meet its obligation to provide safe and reliable service in the area, the Company increased capacity by upgrading and expanding its Gulf Street Substation. This is a system improvement project that addresses the overall capacity of the area, as opposed to new infrastructure designed to serve a specific new load. To be clear, any of the infrastructure associated with hooking up new customers in the Downtown Concord area – e.g., new services, new customer meters, new customer transformers – would be classified as "growth" and is not included in connection with this project.

V. The Company is Not Experiencing "Excessive" Carryforwards on T&D Blanket Projects

In its June 9, 2022 Letter, the DOE notes that the Transmission and Distribution blanket projects presented in Unitil's step adjustment filing involve carryover expenses from prior years. As the Company explained at the Hearing, it is common for projects in a blanket authorization that span multiple years; in this case, the associated total dollars were less than $40,000. While the DOE is not recommending any disallowance in connection with these blanket projects, the Company notes that the carryovers are neither uncommon nor excessive.

The DOE also "raises concerns about reviewability" in connection with the blanket projects and hopes for future presentations "that are easier to review." As explained below, Unitil's filing is consistent with the Settlement Agreement, and included the materials requested by the DOE. However, the Company endeavors to provide transparent filings and is open to working with the DOE in advance of the next step adjustment filing.

VI. The Company Made a Timely and Complete Filing of the Step Adjustment Filing Consistent With the Terms of the Settlement

The Settlement Agreement in DE 21-030 specifies the filing requirements for Unitil's step adjustment filings:

> The Step Adjustment filings shall include, at a minimum, a list of all capital projects completed in each Investment Year, which shall include a project description, the initial budget, any revised budget, final cost, and the date each project was booked to plant in service. In addition, each step adjustment filing shall include, for each project, all project documents, including but not limited to, Capital Budget Form, Construction Authorizations (including any applicable change orders), and Work orders.

DE 21-030, Hearing Exhibit 12 at 000010. These requirements reflect the information requested by the DOE, among others. Consistent with these requirements, the Company's initial filing contained the listed information and documentation. The parties also agreed that the Company would submit is first step adjustment filing on February 28, 2022 for rates effective June 1, 2022. The Company complied with this requirement.

At Hearing, the DOE expressed a concern that the Company had submitted a large volume of information and that the DOE had little time to review it. Respectfully, the Company provided exactly what was required by the terms of the Settlement Agreement, at the time prescribed by the Settlement Agreement. It is unreasonable to suggest that the Company, by meeting these requirements, acted unreasonably or unduly burdened the Department.

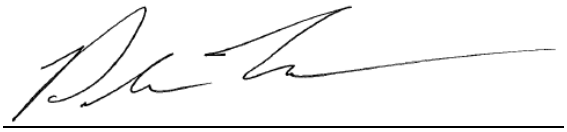
VII. Conclusion

Unitil's step adjustment filing is consistent with the terms of the DE 21-030 Settlement Agreement and comprises prudent, used and useful non-growth plant additions that were placed into service in 2021. For the reasons stated above, at Hearing, and in the Company's pre-filed testimony, the Commission should approve the Company's filing as filed and updated during the course of this proceeding.

Respectfully submitted

UNITIL ENERGY SYSTEMS, INC.

By its Attorney:



Dated: June 22, 2022

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