STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

DE 22-073

UNITIL ENERGY SYSTEMS, INC.

Petition for Approval of Investment in and Rate Recovery of A Distributed Energy Resource Pursuant to RSA 374-G

Order Approving Investment in a Solar Energy Facility in Kingston and Motions for Confidential Treatment

O R D E R N O. 26,813

May 1, 2023

In this order, the Commission authorizes Unitil Energy Systems, Inc. (UES) to invest, pursuant to the terms of RSA Chapter 374-G, in a solar energy facility located in the Town of Kingston, as being in the public interest. The Commission will assess the prudency of UES's expenditures on this project, after they are made, in a future proceeding. This order also approves UES's motion for confidential treatment of certain data submitted as part of this proceeding, pursuant to the terms of RSA Chapter 91-A.

I. UES's KINGSTON SOLAR FACILITY PROPOSAL

On October 31, 2022, UES filed a petition, with supporting written testimony and data attachments, presenting its proposal to construct, own, and operate a utility-scale solar-photovoltaic (PV) generating facility in Kingston (Kingston Project). Hearing Exhibit 2. UES argued that the Kingston Project qualified for Commission review under the terms of RSA Chapter 374-G. As such, UES requested that the Commission review the Kingston Project proposal under a two-phase review process, where the Commission would first determine whether to approve the Kingston Project. In the second, future phase of the review process, the Commission would determine whether to approve UES's proposed cost recovery for the Kingston Project.

In response to the UES petition, the Commission issued a procedural order on December 21, 2022, commencing the instant review proceeding and scheduling a prehearing conference for January 18, 2023. UES also requested that the Commission extend, pursuant to RSA 374-G:5, V, the review period for the Kingston Project to 6 months, or until May 1, 2023; the Commission granted this request in its December 21 procedural order.

On January 3, 2023, Clean Energy New Hampshire (CENH) filed a motion to intervene in this proceeding. The prehearing conference in this matter was held as scheduled on January 18, 2023. At the prehearing conference, the Commission requested that the parties collaborate to tender a procedural schedule for the Commission's consideration, with the working understanding that the two-stage review process requested by UES for the Kingston Project would be operative, and that the Commission would issue an order regarding the first phase of the review no later than May 1, 2023. In response, on January 25, 2023, UES, the New Hampshire Department of Energy (DOE), the Office of the Consumer Advocate (OCA) (which had filed its letter of participation in this matter on December 2, 2022), and potential intervenor CENH, jointly filed a proposed procedural schedule. By a procedural order on January 30, 2023, the Commission approved the proposed procedural schedule, and granted CENH's motion to intervene under the discretionary intervention standard of RSA 541-A:32, II. The Commission also scheduled a hearing for this matter on April 11, 2023.

During the winter and early spring of 2023, pursuant to the terms of the approved procedural schedule, the parties propounded discovery and engaged in technical sessions regarding the Kingston Project proposal. Following these interactions, UES filed three documents modifying the original terms of the Kingston

Project parameters. On February 21, 2023, UES filed the Joint Supplemental Testimony of Kevin Sprague, Jacob Dusling, Andre Francoeur, Todd Diggins, Christopher Goulding, and Jeffrey Pentz, all personnel employed with UES's service company affiliate, Unitil Service Corp., and involved with the planning process for the Kingston Project. Hearing Exhibit 5. On February 27, 2023, UES filed a correction to Bates Page 33 of the above-referenced Supplemental Testimony. Hearing Exhibit 6. On March 31, 2023, UES filed an updated version of a report on indirect benefits of the Kingston Project prepared by its consultant, Daymark Energy Advisors, Inc., of Worcester, Massachusetts. Hearing Exhibit 9.

The final general parameters of the Kingston Project proposal are as follows, incorporating the updates described above. UES has contracted, pursuant to a Request for Proposals (RFP) bidding process, for the construction of the Kingston Project with ReVision Energy of Brentwood, New Hampshire. The electrical output of the proposed PV installation, on an Alternating Current (AC) basis, is to be 4.88 Megawatts (MW).[1] The premises where the Kingston Project is to be built would be a 62-acre vacant parcel of land located off of Mill Road in Kingston, adjacent to a UES electrical substation, to which the Kingston Project would be interconnected. The expected overall service life of the Kingston Project installation would be 40 years, with certain subcomponents of the installation with shorter service lives, to be replaced under an ongoing maintenance schedule by UES. UES estimates that the maintenance costs for the Kingston Project over the life of the installation would total approximately $2 million. Hearing Exhibit 5 at Bates Page 11. The present value of the estimated

[1] *See* Hearing Exhibit 5, Bates Page 3, Footnote 1. The collective output of the PV cells in the Kingston Project installation, on a Direct Current (DC) basis, is to be 6.50 MW. These, and other technical details regarding the engineering and financing of the Kingston Project, may be reviewed within Hearing Exhibit 5.

costs of the Kingston Project is assessed by UES to total $16.7 million, as compared with the present value of the expected direct benefits of the Kingston Project to UES customers, which would total approximately $19.3 million, for an estimated net benefit figure of $2.5 million, for an overall Benefit-Cost ratio figure of 1.15. Hearing Exhibit 5 at Bates Page 22.

The engineering concept undergirding the Kingston Project benefit assumptions by UES would be that, by generating PV electricity, especially during mid-day hours, the Kingston Project could provide ancillary load support for UES's distribution network in the southern Rockingham County area, and thereby reduce transmission and distribution costs assessed to UES, and, by extension, UES's distribution customers. UES also calculated that federal PV subsidies and the New Hampshire Renewable Portfolio Standard (RPS) would provide additional direct financial benefits associated with the Kingston Project. Hearing Exhibit 5 at Bates Pages 17-25.

The petition and subsequent docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are posted on the Commission's website at

https://www.puc.nh.gov/Regulatory/Docketbk/2022/22-073.html

II. UES's MOTIONS FOR CONFIDENTIAL TREATMENT

During the pendency of this proceeding, UES filed three motions for confidential treatment (on October 31, 2022, February 20, 2023, and April 4, 2023, respectively). UES's motions pertain to: certain cost estimates for the Kingston Project; billing rates; pricing information; proposed contract terms; proprietary business analysis; Renewable Energy Certificate (REC) price quotations; UES's bid evaluation process, including scoring and ranking; and related data request responses provided by UES.

The specific positions of UES and the other parties to these proceedings regarding these motions is summarized below.

III. POSITIONS

A. UES

On March 23, 2023, UES filed a "Joint Letter Supporting Approval of the Petition" regarding its Kingston project proposal in this proceeding (Joint Support Letter). The Joint Support Letter indicated that after meeting on March 15, 2023, all of the parties to this proceeding (including UES), agreed to support Commission approval of the Kingston Project proposal, as meeting the statutory requirements of RSA 374-G, including those set forth in RSA 374-G:5, and supported the proposition that the Kingston Project was in the public interest under that relevant standards. Joint Support Letter, Hearing Exhibit 8, at Page 1. Furthermore, UES indicated that it, and all of the other parties signing the Joint Support Letter (DOE, OCA, CENH) requested that the Commission follow the two-step approval process contemplated in the original UES Kingston Project petition. *Id.*

UES provided voluminous technical detail and legal arguments in support of its Kingston Project petition in advance of the April 11, 2023 hearing in this matter, and oral testimony at the hearing as well. Of particular interest, UES's supplemental testimony (Hearing Exhibit 5, *with correction* at Hearing Exhibit 6), and its Daymark report on indirect benefits, Hearing Exhibit 9, were pointed to by UES at hearing to bolster its assertion that Commission approval of the Kingston Project as being in the public interest in the first instance was appropriate. At hearing, UES made available Messrs. Sprague, Dusling, Francoeur, Diggins, Goulding, and Pentz for oral testimony, and also offered the oral testimony of Mr. Kevin R. Pierce, a Senior Consultant at Daymark Energy Advisors. These witnesses provided considerable detail regarding the

expected benefits, and various technical aspects, of the Kingston Project proposal. *See* Transcript of April 11, 2023 Public Hearing (Tr.), *passim*. One aspect of the UES quantitative analysis effort that was touched upon by the UES witness Mr. Francoeur, among others, was the use of Monte Carlo analysis methods to assign statistical properties and distributions for variables used in the UES projections. Tr. at 54-56.

At the conclusion of the April 11 hearing, UES provided a statement wherein it argued that the Kingston Project proposal met all "nine comprehensive factors" governing the Commission's public-interest inquiry under RSA Chapter 374-G, with UES providing evidence in support of each. Tr. at 137. Also, as part of this hearing statement, UES argued that the Kingston Project proposal would offer economic benefits to UES customers, ancillary economic benefits to the New Hampshire economy, and environmental benefits related to avoided emissions. Tr. at 137-144. On this basis, UES requested Commission approval of the Kingston Project proposal as being in the public interest, and Commission approval of the two-stage review process. *Id.*

B. DOE

During the pendency of this proceeding, the DOE filed the testimony of Ms. Elizabeth Nixon, Electric Director, and Mr. Mark Toscano, Utility Analyst, providing technical analysis in support of UES's Kingston Project proposal. Hearing Exhibit 7. The DOE also signed the Joint Support Letter and offered the oral testimony of Ms. Nixon and Mr. Toscano at the hearing. In these testimonial presentations, the DOE personnel stated that UES, in the DOE's opinion, met the statutory requirements of RSA 374-G, and that approval of the Kingston Project proposal would be in the public interest. Hearing Exhibit 7 at Bates Page 21-22; Tr. at 108-130. DOE witness Mr. Toscano also endorsed the UES approach to economic analyses regarding the potential

benefits of the Kingston Project, including the use of the Monte Carlo analysis approach. Tr. at 117. The DOE indicated that after this first phase of the Commission's review proceeding was concluded, UES could file for rate recovery for the Kingston Project's actual costs. This would involve a determination of whether the investment is prudent and used and useful, and whether the resulting rates are just and reasonable, and in which the DOE could recommend disallowance of imprudent costs in the Kingston Project, if necessary. Hearing Exhibit 7 at Bates Page 22; Tr. at 134-135. The DOE also indicated that it did not object to the UES motions for confidential treatment. Tr. at 136.

C. OCA

The OCA signed the Joint Support Letter, Hearing Exhibit 8, and provided a closing statement at the April 11 hearing in which it supported a Commission approval of the UES-requested two-stage approval process. Tr. at 134. The OCA also stated that it had no objection to the UES motions for confidentiality. Tr. at 136.

D. CENH

CENH signed the Joint Support Letter and stated at hearing that it fully supported UES's Kingston Project proposal. Tr. at 132-133. CENH also indicated at the April 11 hearing that it had no objection to the UES motions for confidentiality. Tr. at 136.

IV. COMMISSION ANALYSIS: PETITION FOR RSA 374-G AUTHORIZATION

As a threshold matter, we address the UES request for a final endorsement of a two-stage review process for the Kingston Project, wherein an initial approval would be provided here, after our six-month initial review process, regarding whether construction of the Kingston Project by UES would be in the public interest as meeting the statutory requirements of RSA Chapter 374-G. This two-stage review process was

also followed in UES's Docket No. DE 09-137 requests, *see* Order No. 25,111 (June 11, 2010), Page 39, and we find it appropriate here, as indicated on an interim basis in our order of notice issued on December 21, 2022. This staging of review is contemplated by the terms of RSA 374-G:5, which states, in Part II, "[p]rior to authorizing a utility's recovery of investments made in distributed energy resources, the [C]ommission shall determine that the utility's investment and its recovery in rates, as proposed, are in the public interest." RSA 374-G:5, II. Likewise, RSA 374-G:5, Part III, states, "[a]uthorized and prudently incurred investments shall be recovered under this section in a utility's base distribution rates as a component of rate base…" RSA 374-G:5, III. In this instance, we grant UES's request to consider approval of the Kingston Project proposal first under the RSA 374-G standards here, and to examine questions of rate recovery of the Kingston Project's construction costs in the next UES base distribution rate case. Furthermore, we grant UES's petition request to recover its reasonable filing-related costs associated with this instant Kingston Project proposal review under its Schedule EDC. (The full, actual construction costs of the Kingston Project will be dealt with as described below).

Turning to the application of the provisions of RSA Chapter 374-G, we first hold that based on the technical details presented by UES, the Kingston Project proposal qualifies as a "distributed energy resource" under the terms of RSA 374-G:2, which falls under the terms of this chapter. Under RSA 374-G:2, I(b), "Distributed energy resources" includes "…energy storage, electric generation equipment including clean and renewable generation, energy efficiency, demand response, load reduction or control programs, or technologies or devices located on or interconnected to the local electric distribution system for purposes including but not limited to reducing line losses, supporting voltage regulation, or peak load shaving, as part of a strategy for

minimizing transmission and distribution costs as provided in RSA 374-F:3, III." RSA 374-G:2, I(b). Also, under RSA 374-G:2, II(a), to qualify for RSA 374-G authority, such installations may not exceed 5 MW in capacity. We find that the solar PV installation contemplated by UES for its Kingston Project proposal, based on the technical detail on the record, qualifies under these parameters.

With this qualification met, we must apply the standards delineated in RSA 374-G:5, Parts I and II, in making our decision for public-interest standard, first-stage approval for the Kingston Project proposal. The statutory language states as follows:

> RSA 374-G:5, I. A New Hampshire electric public utility may seek rate recovery for its portion of investments in distributed energy resources from the commission by making an appropriate rate filing. At a minimum, such filing shall include the following:
> (a) A detailed description and economic and environmental evaluation of the proposed investment.
> (b) A discussion of the costs, benefits, and risks of the proposal with specific reference to the factors listed in paragraph II, including an analysis of the costs, benefits, and rate implications to the participating customers, to the company's default service customers, and to the utility's distribution customers.
> (c) A description of any equipment or installation specifications, solicitations, and procurements it has or intends to implement.
> (d) A showing that the utility has used a competitive bidding process to reasonably minimize the costs of the project to its customers.
> (e) A showing that it has made reasonable efforts to involve local businesses in its program.
> (f) Evidence of compliance with any applicable emission limitations.
> (g) A copy of any customer contracts or agreements to be executed as part of the program.
> RSA 374-G:5, II. Prior to authorizing a utility's recovery of investments made in distributed energy resources, the commission shall determine that the utility's investment and its recovery in rates, as proposed, are in the public interest. Determination of the public interest under this section shall include giving a

balanced consideration and proportional weight to each of the following factors:
(a) The effect on the reliability, safety, and efficiency of electric service.
(b) The efficient and cost-effective realization of the purposes of the renewable portfolio standards of RSA 362-F and the restructuring policy principles of RSA 374-F:3.
(c) The energy security benefits of the investment to the state of New Hampshire.
(d) The environmental benefits of the investment to the state of New Hampshire.
(e) The economic development benefits and liabilities of the investment to the state of New Hampshire.
(f) The effect on competition within the region's electricity markets and the state's energy services market.
(g) The costs and benefits to the utility's customers, including but not limited to a demonstration that the company has exercised competitive processes to reasonably minimize costs of the project to ratepayers and to maximize private investment in the project.
(h) Whether the expected value of the economic benefits of the investment to the utility's ratepayers over the life of the investment outweigh the economic costs to the utility's ratepayers.
(i) The costs and benefits to any participating customer or customers.

Having reviewed the record before us, we find that UES has met each of the criteria set out in RSA 374-G:5, Parts I and II. We concur with the various parties in this proceeding, including the DOE, in this regard. In summary, we find that UES, as to the requirements of Part I, provided: a detailed description of the economic and environmental evaluation of the proposed Kingston Project; full cost, benefit, and risk analyses pertaining to the factors required by Part II of the statute; full technical details of the Kingston Project proposal, as refined through the RFP process; and all other elements of the Part I informational requirements. Furthermore, UES has proven, through its Kingston Project proposal presentation materials and other

evidence on the record, that approval of the Kingston Project by the Commission is in the public interest, insofar as all of the factors delineated in Part II of the statute are met, with robust analyses indicating the likelihood of substantial engineering, economic, environmental, and other benefits to the customers of UES, and the state of New Hampshire in general, which are strongly expected to outweigh costs to UES's customers. We note with approval UES's use of analytical tools such as Monte Carlo analysis in developing its case presentation, and its direct answers to the questions of the Commission and the other parties during the pendency of this proceeding. We will therefore grant UES's request for the first-stage approval, under the public-interest standards of RSA 374-G:5, I and II, for the Kingston Project Proposal.

With this determination, we await the UES final accounting of the Kingston Project costs in its next general distribution rate case. We do not foreclose any aspect of our future prudency review for actual project costs in this second phase through our first-phase determination here, and we have an expectation that UES will use careful cost-control and engineering oversight measures in its implementation of the Kingston Project construction task.

V. COMMISSION ANALYSIS: MOTION FOR CONFIDENTIAL TREATMENT

RSA Chapter 91-A ensures public access to information relative to the conduct and activities of governmental agencies or "public bodies" such as the Commission. Disclosure of records may be required unless the information is exempt from disclosure under RSA 91-A:5. RSA 91-A:5, IV exempts several categories of information, including records pertaining to confidential, commercial, or financial information, and personnel files of which disclosure would constitute an invasion of privacy. A party seeking protection of information under RSA 91-A:5, IV must show that a privacy interest exists, and that its interest in confidentiality outweighs the

public's interest in disclosure. *Union Leader Corp. v. Town of Salem*, 173 N.H. 345, 355 (2020) (citing *Prof'l Firefighters of N.H. v. Local Gov't Ctr.*, 159 N.H. 699, 707 (2010)).

The New Hampshire Supreme Court has instituted a three-step balancing test to determine whether a document, or the information contained within it, falls within the scope of RSA 91-A:5, IV and is exempt from disclosure. *Lambert v. Belknap County Convention*, 157 N.H. 375, 382-383 (2008). Under this test, the first step is to determine whether the information involves a privacy interest. *Id.* The second step is to determine whether there is a public interest in disclosure. *Id.* Finally, one must balance the competing interests and decide whether disclosure is appropriate. *Id.* When the information involves a privacy interest, 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.*

The Commission routinely protects sensitive financial information, including bidder-related information, of the type delineated by UES in its motions for confidential treatment. *See, e.g.,* N.H. Code Admin. Rules Puc 201.06(a), *passim*; *see also Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty*, Order No. 26,744 (December 12, 2022). We find that the information provided by UES for which it seeks confidential treatment constitutes confidential, commercial, and/or financial information pursuant to RSA 91-A:5, IV. Weighing potential harm to UES or to third parties against the benefits of disclosure of the information to the public, we find that, on balance, protective treatment is warranted.

We therefore grant UES's motions. Consistent with past practice, the protective treatment provisions of this order are subject to the ongoing authority of the Commission, on its own motion or on the motion of any party or member of the public,

to reconsider this protective order pursuant to RSA Chapter 91-A, should circumstances so warrant.

Based upon the foregoing, it is hereby

ORDERED, that the UES petition for the approval of the Kingston Project proposal as being in the public interest pursuant to the terms of RSA Chapter 374-G, as updated by UES during the pendency of this proceeding, is APPROVED; and it is

FURTHER ORDERED, that the motions filed by UES for a protective order and confidential treatment of certain information submitted in Docket No. DE 22-073 are GRANTED, as set forth herein above; and it is

FURTHER ORDERED, that the two-stage review process requested by UES for the Kingston Project, including a future prudency/rate recovery review within the next UES base distribution rate case, is APPROVED; and it is

FURTHER ORDERED, that UES may recover its filing-related, reasonable costs associated with its Kingston Project proposal review through the UES Schedule EDC as delineated in this order.

By order of the Public Utilities Commission of New Hampshire this first day of May, 2023.

Daniel C. Goldner	Pradip K. Chattopadhyay	Carleton B. Simpson
Chairman	Commissioner	Commissioner

Service List - Docket Related

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