

**BEFORE THE NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

UNITIL ENERGY SYSTEMS, INC. : DOCKET NO. DE 23-002  
PROPOSED PURCHASE OF RECEIVABLES :  
PROGRAM : JANUARY 12, 2024

**NRG RETAIL COMPANIES’ EXCEPTIONS TO  
EXAMINERS’ REPORT AND RECOMMENDED ORDER**

Direct Energy Services, LLC; Direct Energy Business, LLC d/b/a NRG Business; NRG Business Marketing, LLC f/k/a Direct Energy Business Marketing, LLC; Reliant Energy Northeast LLC; and XOOM Energy New Hampshire, LLC (collectively, the “NRG Retail Companies”) hereby submit these Exceptions to the December 22, 2023 Hearing Examiners’ Report and Recommended Order<sup>1</sup> in the above-captioned proceeding.

**BACKGROUND**

On October 7, 2022, the Public Utilities Commission (“Commission”) filed final rules with the Division of Administrative Rules implementing the provisions of RSA 53-E (“Puc 2200 Rules”).<sup>2</sup> Among other things, the Puc 2200 Rules required each electric distribution utility to propose a purchase of receivables (“POR”) program.<sup>3</sup>

In compliance with this requirement, on January 10, 2023, Unitil Energy Systems, Inc. (“Unitil” or “Company”) filed testimony and supporting materials outlining a proposal for a POR program.<sup>4</sup> Following discovery and technical sessions, the New Hampshire Department of Energy (“DOE”), Community Power Coalition of New Hampshire (“CPCNH”), and the NRG

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<sup>1</sup> Examiners’ Report and Recommended Order (Dec. 22, 2023) (“Report”).

<sup>2</sup> See Docket No. DRM 21-142, *Community Power Coalition of New Hampshire Petition for Rulemaking to Implement RSA 53-E for Community Power Aggregations by Stakeholders*, Notice No. 2022-14 – Adoption of Final Rules (Oct. 7, 2022).

<sup>3</sup> Puc 2205.16(e).

<sup>4</sup> See Exhibit 1.

Retail Companies submitted a technical statement,<sup>5</sup> testimony,<sup>6</sup> and comments,<sup>7</sup> respectively, regarding Unitil's proposed POR program.

On September 6, 2023, Unitil filed a settlement agreement on behalf of all parties ("Settlement Agreement").<sup>8</sup> On September 20, 2023, a hearing was held on the Settlement Agreement.<sup>9</sup>

On December 22, 2023, the Hearing Examiner issued the Report.<sup>10</sup> The NRG Retail Companies now hereby submit these Exceptions pursuant to the Procedural Orders issued by the Commission on September 1, 2023 and December 29, 2023.

### **EXCEPTIONS**

In the Report, the Hearing Examiner recommends that the Commission deny the Settlement Agreement but approve, in part, the proposed POR program framework.<sup>11</sup> The recommended denial of the Settlement Agreement is based on the finding that the costs of administering collection efforts and working capital to be recovered in the proposed Discount Percentage Rate ("DPR") are inconsistent with statutory requirements.<sup>12</sup> In particular, the Report finds that the Settlement Agreement "recast[s] 'pro rata share' to mean incremental costs."<sup>13</sup> However, this finding fails to account for the full text of RSA 53-E:9,II in contravention of the principles of statutory construction. Thus, for the reasons discussed more fully below, the NRG

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<sup>5</sup> Exhibit 2.

<sup>6</sup> Exhibit 4.

<sup>7</sup> Exhibit 3.

<sup>8</sup> Exhibit 5.

<sup>9</sup> *See generally*, Hearing Transcript (Sep. 20, 2023) ("Transcript").

<sup>10</sup> *See* Report.

<sup>11</sup> *Id.* at 12.

<sup>12</sup> *Id.* at 11.

<sup>13</sup> *Id.* at 5.

Retail Companies request that the Commission find that the Settlement Agreement satisfies the requirements of RSA 53-E:9 and approve the Settlement Agreement.

## **I. LEGAL STANDARD**

When interpreting a statute, the language of the statute must be interpreted “in the context of the overall statutory scheme and not in isolation.”<sup>14</sup> To accomplish this, “all parts of a statute [must be construed] together to effectuate its overall purpose and to avoid an absurd or unjust result.”<sup>15</sup> In this way, statutory language can be interpreted “in light of the policy or purpose sought to be advanced by the statutory scheme.”<sup>16</sup> Thus, it is important to “not consider words and phrases in isolation, but rather within the context of the statute as a whole.”<sup>17</sup>

## **II. THE SETTLEMENT AGREEMENT SATISFIES THE REQUIREMENTS OF RSA 53-E:9**

The Report contends that the Settlement Agreement should not be approved because it “recast[s] ‘pro rata share’ to mean incremental costs” and does not include working capital or any existing administrative and collections costs.<sup>18</sup> According to the Report, RSA 53-E:9,II requires the electric distribution utility to allocate a pro rata share of existing, “baseline” collection costs to suppliers<sup>19</sup> participating in the POR program.<sup>20</sup> However, this conclusion is inconsistent with the plain language of the statute and overall statutory scheme.

RSA 53-E:9 provides, in pertinent part:

Each electric distribution utility shall propose to the commission for review and approval a program for the purchase of receivables of the supplier in

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<sup>14</sup> *Rye Beach Country Club v. Town of Rye*, 143 N.H. 122, 125 (1998).

<sup>15</sup> *Petition of State of New Hampshire*, 175 N.H. 547, 550 (2022) (citation omitted).

<sup>16</sup> *Id.* at 550-51 (citation omitted).

<sup>17</sup> *Appeal of Algonquin Gas Transmission*, 170 N.H. 763, 770 (2018) (citation omitted).

<sup>18</sup> Report, at 5, 8, 9.

<sup>19</sup> Suppliers include community power aggregations serving as load-serving entities and competitive electric power suppliers.

<sup>20</sup> Report, at 5, 8.

which the utility shall pay in a timely manner the amounts due such suppliers from customers for electricity supply and related services less a discount percentage rate equal to the utility's actual uncollectible rate, adjusted to recover capitalized and operating costs *specific to* the implementation and operation of the purchase of receivables program, including working capital. Additionally, such discount rate adjustments shall include a *pro rata share* of the cost of administering collection efforts *such that* the utility's participation in the purchase of receivables program shall *not require* the utility or non-participating consumers to assume any costs *arising from its use*. Such pro rata costs must include, but not be limited to, any increases in the utility's bad debt write-offs attributable to participants in the purchase of receivables program, as approved by the commission. However, the allocation of costs arising from different rate components and determination of the uncollectible rate shall be equitably allocated between such suppliers, utility provided default service, and other utility charges that are a part of consolidated billing by the utility as approved by the commission. The discount percentage rate shall be subject to periodic adjustment as approved by the commission.<sup>21</sup>

The emphasized text shows that the legislature intended suppliers to pay for all costs “specific to” and “arising from” the POR program “such that the utility’s participation in the purchase of receivables program shall not require the utility or non-participating consumers to assume any [such] costs . . . .”<sup>22</sup> The Settlement Agreement does just that.<sup>23</sup>

Because Unitil does not currently have a POR program,<sup>24</sup> none of its “baseline” administrative and collections costs can, by their nature, be “specific to” or “arise from” the POR

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<sup>21</sup> RSA 53:E-9,II (emphasis added).

<sup>22</sup> *Id.*

<sup>23</sup> See, e.g., Transcript, at 14 (testifying that “the Company will recover its program implementation costs through the Administrative Cost Percentage component of the DPR rate, and it will not include such costs in the Company’s base distribution rates”).

<sup>24</sup> See Exhibit 5, at 000005 (“The Settling Parties agree that the Company will begin the testing and process modifications necessary to *implement* the POR Program following a final order by the Commission approving this Agreement . . . .”) (emphasis added).

program. Moreover, all implementation and ongoing costs “specific to” or “arising from” the POR program will be paid by suppliers.<sup>25</sup>

As the foregoing demonstrates, when the phrase “pro rata share” is considered within the context of the statute as whole (rather than in isolation),<sup>26</sup> suppliers will pay all costs “specific to” and “arising from” the POR program “such that the utility’s participation in the purchase of receivables program shall not require the utility or non-participating consumers to assume any [such] costs . . . .”<sup>27</sup> Thus, the Commission should find that the Settlement Agreement satisfies the requirements of RSA 53-E:9.

### CONCLUSION

For all of the foregoing reasons, NRG Retail Companies respectfully request that the Commission approve the Settlement Agreement as filed.

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<sup>25</sup> See Transcript, at 14 (testifying that “the Company will recover its program implementation costs through the Administrative Cost Percentage component of the DPR rate, and it will not include such costs in the Company’s base distribution rates”); Exhibit 5, at 000003-000004 (defining the administrative cost percentage of the DPR as “*total* actual administrative costs,” including “costs directly related to the development and implementation of changes to billing, information and accounting systems directly related to the billing procedures necessary to incorporate a POR Program into Consolidated Billing Service as instituted in accordance with RSA Chapter 53-E:9, and ongoing, incremental administrative costs directly associated with providing such POR Program, to the extent approved by the Commission.”) (emphasis added).

<sup>26</sup> *Algonquin Gas Transmission*, 170 N.H. at 770 (citation omitted).

<sup>27</sup> RSA 53-E:9,II.

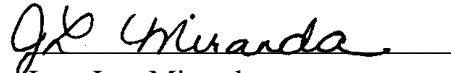
Respectfully submitted,  
DIRECT ENERGY SERVICES, LLC; DIRECT  
ENERGY BUSINESS, LLC D/B/A NRG  
BUSINESS; NRG BUSINESS MARKETING, LLC  
F/K/A DIRECT ENERGY BUSINESS  
MARKETING, LLC; RELIANT ENERGY  
NORTHEAST LLC; XOOM ENERGY NEW  
HAMPSHIRE, LLC

By   
Joey Lee Miranda  
Robinson & Cole LLP  
280 Trumbull Street  
Hartford, CT 06103  
Tel. No.: (860) 275-8200  
Fax No.: (860) 275-8299  
E-mail: [jmiranda@rc.com](mailto:jmiranda@rc.com)

Dated: January 12, 2024

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of these Exceptions has this day been sent via electronic mail or first-class mail to all persons on the service list.

  
Joey Lee Miranda

Dated: January 12, 2024