STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

Docket No. DE 23-002

UNITIL ENERGY SYSTEMS, INC.

Proposed Purchase of Receivables Program

COMMENTS AND EXCEPTIONS TO HEARINGS EXAMINER'S REPORT AND RECOMMENDED ORDER

Pursuant to the Procedural Orders issued by the New Hampshire Public Utilities Commission ("Commission") on September 1, 2023 and December 29, 2023, Unitil Energy Systems, Inc. ("Unitil" or the "Company"), respectfully submits these Comments and Exceptions to the Hearings Examiner's Report and Recommended Order filed on December 22, 2023 (the "Report").

The Report recommends that the Commission deny the Settlement Agreement while approving—in part—the proposed purchase of receivables ("POR") program framework presented in the Settlement Agreement. Report at 12.

According to the Report, RSA 53-E:9, II requires electric distribution utilities to allocate a pro rata share of existing, "baseline" collection costs and working capital to suppliers participating in the POR Program. *Id*. at 4-5, 8. Based on this interpretation of the statute, the Report contends the Settlement Agreement does not comply because it "recast[s] 'pro rata share' to mean incremental costs [of administration and collection]," and does not include any existing administrative and collections costs or working capital. *Id*. at 5, 8.

The Hearing Examiner recommends that during the second phase of this proceeding, the Company be required to "quantify and apportion a pro rata share of collection efforts and working

capital in the [Discount Percentage Rate ("DPR")], or demonstrate that these factors are not quantifiable." *Id.* at 12-13.

For the reasons discussed below, RSA 53-E:9 does not require the pro rata allocation of "baseline" utility costs for collection activities. Accordingly, the Settlement Agreement should be approved as filed and in full.

In support of these Comments and Exceptions, Unitil states as follows:

1. On January 10, 2023, the Company filed a proposal for its POR program, consistent with RSA 53-E:9 and N.H. Admin. Rules Puc 2205.16(e). The supporting testimony of Christopher J. Goulding and S. Elena Demeris included with that filing states that the Company "will regularly evaluate and track (as necessary) any **incremental** costs directly associated with the ongoing administration of the POR Program and to the extent it starts to incur such costs on a recurring basis, it may seek approval from the Commission to adjust the [administrative cost percentage ("ACP")] component of the DPR to recover those costs." Hearing Exhibit 1, at Bates Page 12 (emphasis added).

2. Following two sets of discovery and one technical session, the Department of Energy (the "Department), the Community Power Coalition of New Hampshire ("CPCNH") and the NRG Retail Companies[1] (together with Unitil, the "Settling Parties") filed written technical statements, testimony, and comments, respectively, on June 9, 2023. Hearing Exhibits 2, 3, 4. In its Technical Statement, the DOE states:

> The Department supports Unitil's view that the pro rata share of the costs of administering collection efforts referenced in RSA 53-E:9, II **should be interpreted as the incremental costs incurred by Unitil**. In the Department's view, this approach is consistent with the requirement in RSA 53-E:9, II that a utility and its customers not participating in the POR Program should not bear costs

[1] The "NRG Retail Companies" are Direct Energy Services, LLC, Direct Energy Business, LLC, Direct Energy Business Marketing, LLC, Reliant Energy Northeast LLC, and XOOM Energy New Hampshire, LLC.

associated with its use.

Hearing Exhibit 2, at Bates Page 7 (emphasis added).

3. The Settling Parties engaged in settlement discussions on June 15, 2023, July 12, 2023, July 18, 2023, July 26, 2023, and August 30, 2023, which ultimately led to the Settlement Agreement filed with the Commission on September 6, 2023 (later marked as Hearing Exhibit 5).[2] The Settlement Agreement provides that the DPR formula includes an ACP component, which is defined as:

> [T]otal actual administrative costs, and any forecasted administrative costs to be recovered for the subsequent year, divided by the total amounts billed for Generation Service by the Company for the most recent calendar year prior to the annual filing. Administrative costs shall include the recovery of 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.

Hearing Exhibit 5, at Bates Pages 4-5 (emphasis added).

4. On September 20, 2023, the Hearing Examiner held a hearing on the Settlement Agreement reached by the Settling Parties. There were no questions concerning the inclusion of a pro rata share of existing baseline costs to administer the POR Program. Nor were there any questions about working capital.

5. The Hearing Examiner interprets RSA 53-E:9, II as requiring each electric distribution utility to allocate a portion of "baseline collection efforts costs" and working capital to suppliers participating in the POR Program. Report at 8. According to the Report, because the DPR set forth

[2] The settlement discussions held on July 18 and July 26 included representatives of Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty and Public Service Company of New Hampshire d/b/a Eversource Energy. The purpose of those joint settlement discussions was to achieve consistency, where possible, among the POR programs to be implemented by the three electric distribution companies.

in Settlement Agreement will not recover both the cost of implementation and a pro rata share of existing, baseline administration costs, it does not comply with RSA 53-E:9, II. *Id.* at 8.

6. For the reasons discussed herein, RSA 53-E:9, II does not require the electric distribution companies to recover a pro rata allocation of "baseline collection efforts costs" but instead requires the electric distribution companies to recover only the incremental costs of program administration. This conclusion is supported by a logical construction of the statute using long-standing principles of statutory interpretation.

7. When interpreting a statute, the language of the statute must be examined first, considered as a whole, and given its plain and ordinary meaning, in order to determine the intent of the legislature. *Appeal of Mullen,* 169 N.H. 392, 402 (2016). Statutory language must be interpreted "in the context of the overall statutory scheme and not in isolation . . . [and it is necessary to] construe all parts of a statute together to effectuate its overall purpose and to avoid an absurd or unjust result. This review enables [the adjudicator] to interpret statutory language in light of the policy or purpose sought to be advanced by the statutory scheme." *Petition of State of New Hampshire,* 175 N.H. 547, 550-551 (2022) (citation omitted). It is necessary to "not consider words and phrases in isolation, but rather within the context of the statute as a whole." *Appeal of Algonquin Gas Transmission,* 170 N.H. 763, 770 (2018) (citation omitted). Legislative history need not be considered unless the language of the statute is ambiguous. *Appeal of Mullen,* 169 N.H. at 402. And if statutory language is ambiguous and reliance on legislative history is necessary, the Supreme Court has held that "[w]here that history plainly supports a particular construction of the statute, we will adopt that construction, since our task in interpreting statutes is to determine legislative intent." *Union Leader Corp. v. New Hampshire Ret. Sys.,* 162 N.H. 673, 678 (2011) (internal quotations and citation omitted).

8. Application of those principles of statutory construction to RSA 53-E:9, II demonstrates that the Report's conclusion is inconsistent with the plain language and overall statutory scheme of RSA 53-E:9, II. The starting point for this analysis is the full text of RSA 53-E:9, II, which reads as follows (emphasis added):

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

When the statute is read as a whole, with particular attention to the language in bold, the intent is plain: Customers not enrolled in community power aggregations and customers remaining on utility default service should not be required to bear the *incremental* administration costs caused by the POR Program. This conclusion is reached by giving the terms "arising from," "increases," and "attributable to participants" their plain and ordinary meaning. These terms limit cost recovery to the *incremental* costs associated with administering the POR program.

The phrase "**arising from**" means causally connected to. The phrase "arising from its **use**" refers to the "use" of the POR program by participating suppliers, meaning that the purpose of the

sentence is to ensure that no new, incremental costs related to POR program administration will be borne by non-participating customers or the utility.

As the Report acknowledges, the term "incremental costs" is defined as additional or **increased** costs. Report at 5 n 4. *citing* BLACK'S LAW DICTIONARY 690 (5th ed. 1979). Thus, the use of the word "**increases**" in the statute further reinforces the interpretation that the DPR should recover only the *incremental* costs that would not exist *but for* the POR Program.

The phrase "**attributable to participants**" means caused or brought about by. This phrase, like the term "increases" and the phrase "arising from its use," further reinforces the interpretation that there must be a causal link between the cost and the new POR Program. Specifically, this phrase demonstrates that the legislative intent is for the electric distribution utilities to recover only the *incremental* costs of administration *caused by suppliers* (i.e., participants) enrolled in the POR Program.

By reading these terms in context and construing them together, it is plain that they are intended to ensure that the utility and its ratepayers are held harmless from any *incremental* costs associated with administering the POR program.

9. Regarding working capital, the Report asserts that "the record [does not] contain any explicit mention of working capital as required by law." Report at 8. Although the Settlement Agreement does not specifically mention the term "working capital," the Settling Parties considered working capital in the calculation of the payment date to participating suppliers. Specifically, the timing of the payments remitted to suppliers is equal to the Company's revenue lag for the prior year. *See* Hearing Exhibit 5, at Bates Page 4 (§ 2.7). By calculating the payment

timing in this manner, the expense lag is equal to the revenue lag and therefore there is no working capital[3] component associated with the monthly remittances to participating suppliers.

10. Similar to the administrative cost discussion above, the statute provides that only *incremental* working capital costs should be recovered through the DPR mechanism. This conclusion is reached by reading the phrase "**specific to** the implementation and operation of the [POR] program" in the context of the first sentence of RSA 53-E:9, II and the statute as a whole. Like the terms "arising from," attributable to," and "increases," this phrase indicates that the recoverable capitalized and operating costs are those that would not exist *but for* the POR Program, i.e., those costs that are *specific to* the POR Program. Unitil has not identified any incremental working capital costs that should be included in the initial DPR calculation. The Company will, however, monitor and track any such impacts once the POR program has been implemented and will propose a working capital component in future DPR calculations if the impacts are quantifiable and incremental.

11. In contrast to the holistic reading of the statute discussed above, the Report isolates the single phrase "pro rata share" and concludes that the proposed DPR calculation recasts "pro rata share" to mean incremental costs. Report at 5. However, a key maxim of statutory construction is that statutory provisions are not to be read in isolation. *See Rye Beach Country Club v. Town of Rye*, 143 N.H. 122, 125 ("[W]e interpret statutes in the context of the overall statutory scheme and

[3] The standard calculation for utility working capital is "(Revenue Lag minus Expense Lag/(Lead)) / 365 x Utility Expenses x Utilities Approved Cost of Capital, where the Revenue Lag is equal to the number of days between delivery of service to the Company's customers and subsequent receipt by the Company of payment for the service and Expense Lag is the number of days between the receipt of goods or services provided to the Company by vendors and payment for such goods or services by the Company.

not in isolation.")(citations omitted). Accordingly, the "pro rata share" language must be read in the context of the entire sentence in which it appears and in the context of the statute as a whole.

First, we begin with the definition of *pro rata,* which means "proportionately." BLACK'S LAW DICTIONARY 1340 (9th ed. 2009). Next, the following questions must be answered: What cost is a proportional share being applied to? The latter half of the second sentence answers that question. A pro rata share is being applied to "**costs arising from**" the POR program, i.e., to incremental costs. Similarly, the latter half of the third sentence in which the "pro rata share" language appears makes clear that the proration applies to cost "**increases** . . . **attributable to participants**" in the POR program, i.e., to incremental costs.

12. The foregoing discussion demonstrates that the Report has misinterpreted RSA 53-E:9, II, in contravention of well-established principles of statutory construction. It is important also to recognize the practical implications of that misinterpretation, in order to "avoid an absurd or unjust result." *See Petition of State of New Hampshire,* 175 N.H. at 550 (citation omitted).

The Report implies that it would be necessary for a utility POR program to include, as a proportional share of baseline collection efforts, the costs of existing payment collections activities by the utility or its contractors, shut-offs, billing arrangements, and associated reporting. The Report further notes that "[t]he record does not establish whether Unitil does or does not have other collection efforts costs, whether those costs are collected from default service customers or through distribution rates, nor [does it] address a variety of variables that potentially could shift such costs from one customer group to another including the demographics of participating aggregation programs and CEPS customers." Report at 8.[4]

[4] The reference to "demographics" in this context is unclear; and, as noted above, there were no questions regarding this issue during the hearing held on September 20, 2023.

Unitil's existing, "baseline" collection and working capital costs are included in base distribution rates and not allocated to competitive electric power suppliers, community power aggregations serving as load-serving entities, or utility default service customers. It would be difficult to directly assign existing, "baseline" collection and working capital costs to POR Program participants, default service customers, and utility distribution customers because customers are free to migrate to and from default service to competitive supply alternatives or to community power aggregation programs, where available. Any pro rata allocation methodology would have to account for those "moving target" impacts. In addition, the Company's systems do not currently track existing collections costs by specific categories of charges on the customers' bills, whether it be customer charges, distribution and transmission service, utility default service supply charges, or third-party supply charges included in consolidated billing.

13. As noted above, the Report recommends that the Commission deny the Settlement Agreement and examine the Company's "baseline" collection and working capital costs in Phase II of this proceeding. This approach will delay the testing and modifications necessary to implement the POR program because those activities are contingent upon Commission approval of the Settlement Agreement. Hearing Exhibit 5, at Bates Pages 5-6 (§ 2.10). Such a result would not be in the public interest.

14. The Report asserts that the POR program framework presented in the Settlement Agreement is largely consistent with both RSA 53-E:9, II and the public good standard, with the exception of the statutory requirement that a pro rata share of existing collection costs be recovered through the DPR. For the reasons discussed herein, RSA 53-E-9, II should be read as requiring each electric distribution utility to recover only the incremental cost of administration and not a pro rata share of existing, "baseline" costs. Therefore, the Settlement Agreement complies with

both RSA 53-E:9, II, and the public interest standard in its entirety, and should be approved in its entirety, by the Commission.

WHEREFORE, Unitil respectfully requests that the Commission approve the Settlement Agreement, as filed and in full, and grant such other or further relief as may be just and reasonable.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on the date written below, I caused the attached to be served pursuant to N.H. Code Admin. Rule Puc 203.11.

Date: January 12, 2024

Matthew C. Campbell