

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DE 23-002**

**UNITIL ENERGY SYSTEMS, INC.**

**Proposed Purchase of Receivables Program**

**Examiners' Report and Recommended Order**

NOTICE: This report and recommendation constitute the findings and recommendation of the assigned examiner. Although it is in the form of an order, it does not constitute Commission action. Exceptions to or comments on this report and recommendation may be filed by January 2, 2024, for the Commission's consideration. In order for any further replies to be considered, a notice of intent must be filed by January 4, 2024, and replies must be filed by January 12, 2024.

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This order addresses Unitil Energy Systems, Inc.'s (Unitil) proposed purchase of receivables (POR) program framework under RSA 53-E:9 and N.H. Code Admin. R. Puc chapter 2200. The proposed Discount Percentage Rate (DPR) calculation is not fully consistent with statutory requirements related to the cost of collection efforts and working capital. This order approves other parts of the proposed POR program, including the timing of payments, the treatment of competitive suppliers, and expanding the scope of this proceeding to consider changes to Unitil's tariffs and supplier agreements necessary to implement the proposed POR program. This matter is continued to a second phase to establish or clarify determinants in the DPR calculation framework and to consider necessary amendments to Unitil's Competitive Electric Supplier Trading Partner Agreement and Terms and Conditions for Competitive Suppliers tariff.

**I. PROCEDURAL HISTORY**

On January 10, 2023, Unitil filed a proposed POR program (Exh. 1). On February 2, the Commission commenced and publicly noticed (Notice) an adjudicative

proceeding to consider Unitil's proposed POR program under RSA 53-E:9 and Puc chapter 2200.

The parties to this matter are Unitil, the New Hampshire Department of Energy (DOE); the Community Power Coalition of New Hampshire (CPCNH); and Direct Energy Services, LLC, Direct Energy Business, LLC, Direct Energy Business Marketing, LLC, Reliant Energy Northeast LLC, and XOOM Energy New Hampshire, LLC (together, the NRG Retail Companies).

On June 8, the DOE pre-filed a technical statement (Exh. 2), On June 9, CPCNH and the NRG Retail Companies, respectively, pre-filed testimony (Exh. 3), and comments (Exh. 4). On September 6, Unitil filed a settlement agreement (Settlement Agreement or Exh. 5) on behalf of all parties. On September 20, there was a hearing on the Settlement Agreement.

Unitil's initial proposal and subsequent docket entries, other than information for which confidential treatment is requested of or granted by the Commission, are posted to the Commission's website at

<https://www.puc.nh.gov/Regulatory/Docketbk/2023/23-002.html>.

## **II. BACKGROUND**

RSA chapter 53-E authorizes municipalities and counties in New Hampshire to establish and operate aggregation programs for retail electric customers within their boundaries, providing access to competitive markets for electric energy supply and related energy services. RSA 53-E:1. In 2021, RSA chapter 53-E was amended to authorize municipalities and counties to enroll customers on an "opt-out" basis<sup>1</sup> and to require utilities to offer POR programs. RSA 53-E:7 and :9.

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<sup>1</sup> "Opt-out" means that any retail customer currently receiving default energy service from their utility would be automatically enrolled in a municipal or county aggregation program. RSA 53-E:7, II(V).

A POR program is a billing arrangement where the utility purchases an aggregation program's accounts receivable, subject to a Commission-approved DPR. RSA 53-E:9, II. A POR program applies if an aggregation program utilizes a utility's consolidated billing service.<sup>2</sup> If an aggregation program elects to use consolidated billing, the retail customer receives one bill from their distribution utility containing both the energy service charge from the aggregation program and the distribution utility's other service charges. Under a POR program, the utility purchases the accounts receivable of the aggregation program. Aggregation programs are thereby guaranteed payments from the utility for energy service charges on a regular basis without managing or pursuing collections for unpaid balances. *See* Exh. 2 at Bates page 2.

### **III. DISCUSSION**

#### **a. Standard of Review**

Unitil's POR program proposal must be consistent with both the parameters in RSA 53-E:9, II and the public good. Pursuant to RSA 53-E:9, I, POR programs must be available to aggregation programs and competitive electric power suppliers (CEPS) serving aggregation programs. If proposed and assented to by the utility, a POR program may also apply to CEPS generally if the Commission determines that it is for the public good. *Id.* Because Unitil's proposed POR program is applicable to any entity registered with the DOE to sell electricity to retail Customers in New Hampshire and Community Power Aggregations, as defined in Puc 2202.05, functioning as load

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<sup>2</sup> Billing services may be "consolidated" whereby the utility issues a single bill which includes charges for electric power supply and energy services as well as the utility's charges for electric service, or "separate" whereby an aggregation program issues customer bills for the electric power supply and energy services. Puc 2205.16(a).

serving entities, *see* Exh. 5 at Bates page 2 n. 2, the public good standard explicitly applies.<sup>3</sup>

Under RSA 53-E:9, II, a proposed POR program must address three key issues: what the utility will discount aggregation programs' accounts receivable by (the DPR), when the utility will pay aggregation programs, and how the POR program will be subject to ongoing Commission oversight. Each POR program's DPR must equal the utility's uncollectible rate. RSA 53-E:9, II. The utility's uncollectible rate must include two types of costs: "capitalized and operating costs specific to the implementation and operation of the purchase of receivables program, including working capital" and "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." *Id.* Pro rata costs must include, but not be limited to, increases to the utility's bad debt write-offs from POR program participants. *Id.* Costs arising from different rate components and determination of the uncollectible rate shall be allocated equitably. *Id.*

The public good standard has not been evaluated in the context of RSA chapter 53-E, however, the New Hampshire Supreme Court has interpreted the public good standard broadly to include the needs of particular persons directly affected, the needs of the public at large, and the general welfare of the utility involved. *See, e.g., Boston Maine R.R. v. State*, 102 N.H. 9, 10, (1959). Moreover, for something to be in the public good, it cannot be otherwise forbidden by law. *Id.* In the context of asset transfers, the

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<sup>3</sup> The Commission's Notice also identifies Puc chapter 2200 as a standard of review, although there are no rules that prescribe requirements specific to any POR program proposal other than a filing deadline at Puc 2205.16(e), the Commission's rulemaking authority also supports that the public good standard applies to this proceeding. RSA 53-E:7, X ("...to the extent authorities granted to municipalities and counties by this chapter materially affect the interests of electric distribution utilities and their customers, to reasonably balance such interests with those of municipalities and counties for the public good, which may also be done through adjudicative proceedings to the extent specified or not addressed in rules.")

Commission has interpreted the public good to include a determination that the transaction will not harm ratepayers. Order No. 23,044 (October 26, 1998).

Finally, the POR program presented to the Commission for approval is in the form of a settlement, N.H. Code Admin. R. Puc 203.20(b) also applies, requiring that settlement be approved if the result is just and reasonable and serves the public interest. This report addresses the specific statutory parameters, the public good standard, and concludes by addressing the Settlement Agreement overall.

### **1. The DPR Calculation**

The proposed DPR calculation focuses on incremental costs to implement and operate the POR program, but does not address all statutory requirements and appears to recast “pro rata share” to mean incremental costs.<sup>4</sup> The record also demonstrates that existing systems and personnel will support the POR program without quantifying and allocating (or demonstrating that no allocation is equitable) a portion of administrative costs or costs related to collection efforts. Therefore, RSA 53-E:9, II’s parameters and the public good standard require that the proposed DPR calculation be refined or further substantiated in a subsequent phase of this proceeding.

As drawn from the Settlement Agreement, the proposed DPR calculation applies to accounts receivable for Generation Service. Exh. 5 at Bates page 2. The DPR framework will be calculated for two different customer classifications, the residential service class and the general service class. *Id* at Bates page 3. The DPR consists of the following three inputs:

- 1) Uncollectible Percentage. The total net write-offs for accounts in the Customer class receiving Default Service or Generation Service with

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<sup>4</sup> “Incremental cost” is defined as additional or increased costs. Black’s Law Dictionary page 690 (5th ed. 1979). Whereas “pro rata” is defined as proportionately; according to a certain rate, percentage, or proportion. *Id.* at page 1098.

Consolidated Billing Service. This percentage is based on net write-off amounts for the Customer class for the most recent calendar year prior to the annual filing, divided by the total amounts billed for Default Service and Generation Service for the Customer class for the same period, including late payment fees if included in net write-offs.

- 2) Administrative Cost Percentage. Total 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.
- 3) Past Period Reconciliation Percentage. The sum of five listed components divided by the total amounts billed to Customers in the Customer class for Generation Service under Consolidated Billing Service for the same calendar year period.

Exh. 5. at Bates pages 3–4.<sup>5</sup>

The proposed calculation of the uncollectable rate, the Uncollectable Percentage, is the quotient of net write-off amounts divided by total amounts billed for both default service and Generation Service using consolidated billing service, by customer class, for the prior year. This formula allows Unitil to recover estimated write-offs due to program participants. The uncollectable rate is then reconciled through the Past Period Reconciliation Percentage, by customer class, based on the difference between the net write-off amounts actually experienced and the total amounts actually billed to customers for Generation Service only multiplied by the applicable Uncollectible Percentage. In performing this reconciliation, Unitil's DPR can be expected track and respond to any increases in bad debt write-offs attributable to POR program participants.

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<sup>5</sup> Each input summarized above is further defined in the Settlement Agreement.

According to Unitil, testing will need to take place in order to integrate POR data into its Electronic Data Interchange transactions process. Exh. 1 at Bates page 10. This testing will include validating file naming conventions and ensuring the data fields are correct. *Id.* Unitil estimates this testing will cost \$5,250. *Id.* at Bates page 11. The implementation costs presented by Unitil are insignificant and the record supports finding that these estimated costs are necessary to implement the POR program. Furthermore, the actual implementation costs can be reviewed in a subsequent proceeding by the Commission and interested parties. *See* September 20, 2023 Hearing Transcript (Tr. Sept. 20) at 19–20.

These operating costs related to the implementation of the POR program are treated as incremental costs of the POR program that will be recovered from POR program participants through the Administrative Cost Percentage.

With respect to costs of administering collection efforts, Unitil initially stated that it expects to leverage existing technology and currently employed personnel to administer the POR program, had not quantified an estimated cost for ongoing administration, but may seek approval to recover such costs in the future. Exh. 1 at Bates pages 9–10. The DOE agreed that pro rata share of costs should be interpreted as incremental costs. Exh. 2 at Bates page 7. The Settlement Agreement appears to maintain this interpretation, including implementation costs and “ongoing, incremental administrative costs directly associated with providing such POR Program” in the administrative cost percentage. Exh 5 at Bates pages 4–5.

RSA 53-E:9, II requires that a pro rata share of administering collection efforts include increases in the utility's bad debt write-offs attributable to participants in the purchase of receivables program, however bad debt write-offs is not the exclusive or exhaustive definition of collection efforts cost. As discussed above bad debt write-offs

of POR program participants will be addressed through the Past Period Reconciliation Percentage. Nonetheless, a POR program must include a proportional share of baseline collection efforts costs, which could also encompass costs of payment collections activities by the utility or its contractors, shut-offs, billing arrangements, and associated reporting. Unitil conceded that it did not allocate any exiting administrative costs to the POR program. The 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 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. Nor does the record contain any explicit mention of working capital as required by law.

Although costs may be equitably allocated, they cannot be ignored under RSA 53-E:9, II's express requirements or the public good standard. *See also*, RSA 53-E:5. Aggregation programs and CEPS utilizing the POR program must pay both the full incremental share of implementation and operations costs necessary to administer the POR program, and not less than their fair share of base administration costs, including collection efforts costs. The public good standard similarly requires that the interests of the utility and its ratepayers be considered, and that the POR program cause no harm to either. Therefore, Unitil must establish how it its proposed POR program will quantify and account for a pro rata share of collection efforts and working capital, or demonstrate that these factors are not quantifiable, in order for the proposed POR program to be consistent with RSA 53-E:9, II and the public good.

## **2. Timely Payment**

RSA 53-E:9, II requires payment from a utility to an aggregation program or CEPS for Generation Service occur in a timely manner. The proposed POR program



framework establishes a method to determine when Unitil will pay third party suppliers for accounts receivable for Generation Service, and provides for annual updates of the payment date. The payment period will be the combined average payment period for all customers on Default Service and Consolidated Billing Service. Exh. 5 at Bates page 5. The payment date shall be calculated using actual historical data for the most recent calendar year, be on the closest business day approximately equal to the mid-point of the billing month plus the average payment period from billing to Unitil's receipt of customer payments for the most recent calendar year. *Id.* at Bates pages 5–6. The payment date shall be calculated based on the methodology most recently approved by the Commission. *Id.* The “methodology most recently approved by the Commission” refers to the most recent lead-lag study, which may be directly from a rate case or as adjusted in an energy service proceeding. Tr. Sep. 20 at 13.

The timing of payment directly impacts the operations and cashflow of Unitil, aggregation programs, and CEPS. The terms of payment were assessed over the course of this proceeding to maximize consistency between the state's utilities at the request of the intervenors. *See* Exh 5 at Bates page 3 n. 1. The record supports that the proposed methodology of determining when payment will occur that is consistent with the requirement that payment occur in a timely manner and balances the interests of suppliers with the utility and its customers.

### **3. Ongoing Oversight**

The POR program meets the ongoing oversight requirement through an annual filing and update obligation. Exh. 5 at Bates page 6. This filing would be made on March 1 of each year to update the DPR for effect as of the May 1 for the forthcoming year. *Id.* The annual filing would update DPR calculations, reconcile the prior period,

update the payment date to be in effect for the forthcoming 12-month period, and include documentation supporting all relevant calculations. *Id.* This annual filing and level of detail reasonably and adequately provides the Commission and the parties the opportunity to oversee the POR program and update the DPR rate on a routine, prospective basis.

#### **4. Treatment of Competitive Suppliers**

The proposed POR program treats CEPS utilizing consolidated billing service the same as aggregation programs and CEPS serving aggregation programs, requiring all CEPS utilizing consolidated billing to participate in the proposed POR program for all rate classes. Exh. 5 at Bates page 3. CEPS may also elect to use separate billing service. According to Unitil, treating all CEPS the same as aggregation programs and CEPS serving aggregation programs reduces costs and administrative burdens on Unitil and promotes retail choice. Exh. 1 at Bates page 9.

The record supports that the public good standard is met, subject to a second phase in this proceeding as discussed above to ensure POR program costs will not be borne by Unitil or non-participating customers. Specifically, extending the POR program to CEPS will likely reduce administrative burdens on Unitil because Unitil will not need to maintain and administer separate billing processes and systems for CEPS utilizing consolidated billing. Additionally, the participation of CEPS in the POR program generally may benefit all POR program participants and their customers by spreading capitalized and operational costs associated with the POR program to a broader group of participating retail customers.

#### **5. Tariff and Supplier Partner Agreements**

The Settlement Agreement also requests that this proceeding be continued into a separately noticed phase to consider amendments to Unitil's Competitive Electric

Supplier Trading Partner Agreement and Terms and Conditions for Competitive Suppliers tariff necessary to implement the POR program. Exh. 5 at Bates page 1. The parties agree that changes to Unitil's Competitive Electric Supplier Trading Partner Agreement and Terms and Conditions for Competitive Suppliers tariff are necessary to implement the POR program and that additional public notice would be advisable due to the scope of the Commission's Notice. The Commission's Notice was limited to whether Unitil's proposed POR program was consistent with the requirements of RSA 53-E and Puc chapter 2200. Notice at 2. It is reasonable to separately notice an additional phase of this proceeding to consider changes to Unitil's Competitive Electric Supplier Trading Partner Agreement and Terms and Conditions for Competitive Suppliers tariff.

#### **IV. CONCLUSION**

RSA 53-E:9, II contains strict parameters for any proposed POR program. These parameters, superimposed with the public good standard, create a high bar for any proposed POR program to meet because the program must effectively indemnify both the utility and non-participating customers from bearing implementation or operation costs. This expressly includes a pro rata share of base costs associated with collection efforts and working capital. The proposed POR program framework presented through the Settlement Agreement is largely consistent with both RSA 53-E-9, II and the public good standard, with the exception of showing that a pro rata share of costs of administering collection efforts and working capital will be recovered through the DPR calculation. Due to those inconsistent components in the DPR calculation, the Settlement Agreement cannot be approved in full because it is not just, reasonable, or serving the public interest if not fully consistent with applicable statutory requirements and the intent that the utility and non-participating consumers not

assume any costs arising from a POR program's use. The same analysis applies under the public good standard.

Accordingly, although the request for approval of the Settlement Agreement is denied, the proposed POR program is approved in part, and this proceeding is continued to a second phase to establish how Unitil will either quantify and apportion a pro rata share of collection efforts and working capital in the DPR, or demonstrate that these factors are not quantifiable. Consistent with the parties' request in Settlement Agreement, the second phase shall also consider changes to Unitil's Competitive Electric Supplier Trading Partner Agreement and Terms and Conditions for Competitive Suppliers tariff necessary to implement the POR program. A recommended supplemental order of notice is filed with this report and order.

**Based upon the foregoing, it is hereby**

**ORDERED**, that, Pursuant to RSA 53-E:9 and N.H. Code Admin. R. chapter 2200, the Settlement Agreement is **DENIED**, however Unitil's proposed POR program framework presented in the Settlement Agreement is **APPROVED IN PART** as discussed herein, effective upon the Commission's adoption of this order; and it is

**FURTHER ORDERED**, that this matter is **CONTINUED** to a second phase to establish how Unitil will either quantify and apportion a pro rata share of collection efforts and working capital in the DPR, or demonstrate that these factors are not quantifiable, and to consider necessary amendments to Unitil's Competitive Electric Supplier Trading Partner Agreement and Terms and Conditions for Competitive Suppliers tariff.

DATED:  
December 22, 2023



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Eric Wind  
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