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DEPARTMENT OF ENERGY
21 S. Fruit St., Suite 10
Concord, N.H. 03301-2429

August 11, 2023

Dr. Vanessa Valentino



Re: CPT 2023-001, Complaint of Vanessa Valentino against Unitil Energy Systems, Inc.; Letter Regarding Completion of DOE Investigation of Complaint

Dear Dr. Valentino:

This letter serves as notification that the Department of Energy (DOE or Department) has completed its investigation of the Complaint in the above-captioned matter, pursuant to RSA 365:1-4, and that the Department declines to bring proceedings before the Public Utilities Commission.

RSA 365:4 requires the DOE to initiate an investigation if a utility does not satisfy the charges made in the Complaint as provided in RSA 365:3. In this case, the Company chose to dispute the charges rather than attempt to satisfy them without dispute. After reviewing the charges in the Complaint and the Company's response, the DOE found a reasonable basis to investigate the first and second charge (and by association the third charge) pursuant to RSA 365:4. During its investigation, the DOE requested further information from the Company.

After investigation, the DOE determined that Unitil Energy Systems, Inc. (Unitil or Company) did not violate Puc 1203.02(a) or the terms of its tariff when it signed the Complainant up for service with the Company. In addition, the Complainant seeks remedies which neither the DOE nor the Commission have authority to grant. Therefore, the DOE will take no further action on the Complaint in the above-captioned matter.

Please see below for further information regarding the DOE's investigation and disposition of the Complaint.

The Complaint makes eight charges against Unitil:

- (1) Unitil violated Puc 1203.02 by not informing Complainant of the possibility of purchasing energy from a competitive supplier when Complainant signed up for service from Unitil on January 23, 2023;

- (2) Unitil violated Puc 1203.02 by not providing information about pricing and plan options when Complainant called the Company on January 24, 2023, to confirm initiation of service;
- (3) Unitil forced new customers into an extremely high bill with a commercial and unreachable third party before they have any other options;
- (4) Unitil violated New Hampshire's "two party consent" requirement under RSA 570-A:2 when they recorded Complainant's call to customer service, as the Complainant alleged they did not have an option to decline or withdraw consent to recording if they wished to speak with a customer service representative;¹
- (5) Unitil declined to provide a copy of Complainant's call(s) with Unitil's customer service;
- (6) Unitil charged Complainant for a meter read and did not provide requested information on how Complainant's meter was read;
- (7) Unitil has not provided an explanation for a dramatic difference in Complainant's March 10, 2023, bill and April 10, 2023, bill; and
- (8) Unitil has a low bar for customer service as well as having a difficult dispute process.

First, Unitil was under no obligation to inform Complainant of third-party supply options on January 23 or 24, 2023. Puc 1203.02(a) states that, "[u]pon receiving a request for new service, the utility shall provide information as to what might be the most advantageous rate or rates available to that customer." The Company stated in its response that they did not have to provide information as to what might be the most advantageous competitive supply rate upon the Complainant's initiation of new service. Unitil argued that a utility's obligation to inform customers of rates under Puc 1203.02(a) extends only to informing new customers of what might be the most advantageous rate within the utility's rates, as set forth in the utility's tariff on file with the Commission.

The DOE determined that Puc 1203.02(a) does not require a utility to inform new customers of competitive supply options because competitive supply rates are not available to new customers at the time they sign up for service. As a practical matter, customers must be on a utility's tariffed rate for at least one billing cycle before they can transfer to competitive supply. Consequently, Puc 1203.02(a) has never been interpreted or enforced by the Commission (prior to the rules transferring to the Department). Nor has the Department interpreted or enforced the rule to require such a notice. The Department will take no further action with regard to the first charge. The Department notes that Unitil provides competitive supply information on its website, and has

¹ Complaint p. 3

volunteered to provide additional information regarding competitive supply in its welcome letter to new customers.²

Second, Unitil accurately directed Complainant to its Schedule D residential rate and was not required to discuss its Schedule TOU-D rate on January 23 or 24, 2023. Although Unitil stated in its initial response that it complies with Puc 1203.02(a) by working with customers requesting new service to determine which rate in the Company's tariff might be most advantageous for that customer, Unitil did not discuss Schedule TOU-D residential time of use rates with Complainant. In response to the DOE's investigation, Unitil noted that delivery of service and billing under Schedule TOU-D is contingent upon the presence of TOU metering equipment, which must be installed by the Company before delivery under Schedule TOU-D can occur.³ Unitil also noted that because the Company does not have customer-specific usage data when a new customer signs up for service, the Company does not have a "reasonable basis" to advise the new customer that Schedule TOU-D might be the most advantageous rate available to them.⁴

The DOE determined that Schedule TOU-D rates were not available to Complainant upon sign-up because Complainant lacked the proper metering equipment at that time, and that, without usage history, the Company had insufficient information upon which to direct Complainant affirmatively to that rate when Complainant first requested service. As a result, the Department will take no further action with regard to the second charge.

The Department views Complainant's third charge, that Unitil forced her into an extremely high bill with a commercial and unreachable third party before she had any other options, as a corollary of Complainant's first and second charges. This charge is rooted in a telephone conversation that Complainant had with a Unitil customer service representative when Complainant called to complain about the pricing on her bill. Complainant was told by the customer service representative that NextEra was the energy provider under her plan, and that NextEra would not speak with her. As determined by the DOE above, Complainant was not forced into a high bill; she was placed on the appropriate Unitil rate schedule for a new residential customer at the time she sought service. Whether Unitil's supplier of default service would speak with the Complainant personally about its wholesale contract price with Unitil, which was converted to a residential rate approved by the Commission, is not actionable. The Department will take no further action with regard to the Complainant's third charge.

Fourth, the Complaint charged Unitil with violating New Hampshire's "two party consent" requirement under RSA 570-A:2 when the Company recorded her call to customer service, as the Complainant alleged she did not have an option to decline or withdraw consent to recording if she wished to speak with a customer service

² Unitil Response to the Department's Request for Further Information p. 4

³ Id; see also NHPUC No. 3 - Electricity Delivery, Domestic Delivery Service, Schedule TOU-D, Original Page 50-A, 50-D

⁴ Unitil Response to the Department's Request for Further Information, p. 4

representative.⁵ Unitil disputed this charge. In its response, the Company cited certain provisions of RSA 570-A and referenced several New Hampshire Supreme Court cases regarding call recording,⁶ arguing that their recording of Complainant's call to customer service did not violate RSA 570-A:2.

RSA 570-A:2, I states that a person who violates this section is guilty of a class B felony. RSA 570-A:2, I-a states that a person who violates this section is guilty of a misdemeanor. RSA 570-A:2, II lists conduct which is not considered unlawful under RSA 570-A:2. The only penalties listed for violations of RSA 570-A:2 are criminal penalties. RSA 625:9, I, which pertains to the classification of crimes, states that, "[t]he provisions of this section govern the classification of every offense, whether defined within this code or by any other statute." RSA 625:9, II further states that, "[e]very offense is either a felony, misdemeanor or violation" and that, "[f]elonies and misdemeanors are crimes." RSA 592-A:1 provides that New Hampshire superior courts have jurisdiction of all criminal cases and proceedings.

As violations of RSA 570-A:2 are either felonies or misdemeanors, alleged violations of that statute are crimes and are therefore under the jurisdiction of the superior court. Neither the Department nor the Commission has jurisdiction over criminal proceedings. Therefore, the Department did not investigate this charge, and will take no further action regarding it.

Fifth, the Complaint charged Unitil with declining to provide a copy of Complainant's call(s) with Unitil's customer service.⁷ Unitil stated in an email to Complainant dated March 29, 2023, that they would only release their call recordings via a subpoena.⁸ Unitil is a private company, and calls with the company are not public records subject to RSA 91-A. Therefore, even though Complainant was part of the call recordings, Unitil is not legally required to release the recordings to the Complainant. The DOE listened to the initial call between Complainant and Unitil and provided the Complainant with a summary of the call, but noted that it was not in possession of the call.⁹ Unitil informed the DOE that if it would like copies of the call recordings, it would be a lengthy process involving scrubbing the call recordings of sensitive and private PII information.¹⁰ Although it was unclear from Unitil's statement whether they were also offering to give the Complainant scrubbed copies of the call recordings, the Complainant indicated she would not be interested in such an offer and requested full recordings without scrubbing.¹¹ Therefore, the DOE did not investigate this charge, and will take no further action regarding it.

Sixth, the Complaint charged Unitil with charging the Complainant for a meter read and failing to provide the Complainant with her requested explanations on how the

⁵ Complaint p. 3

⁶ Unitil Response p. 6

⁷ Complaint p. 4

⁸ See Attachments to Complaint, Email from Benjamin Beato dated March 29, 2023 at 4:50 PM EDT

⁹ See Attachments to Complaint, Email from Michael Sisto dated April 6, 2023, at 11:59 AM

¹⁰ See Attachments to Complaint, Email from Michael Sisto dated March 29, 2023, at 3:10 PM

¹¹ See Attachments to Complaint, Email from Complainant dated March 30, 2023, at 1:00 PM

meter was read.¹² The Company performed a read of the meter on March 31, 2023,¹³ and concluded that the meter was registering accurately and within the 2% variance allowed by Puc 305.04.¹⁴ According to Puc 305.04(b), a utility may require a deposit no more than \$20 for a customer-requested meter read, and may retain the deposited amount if the meter is within the allowed 2% variance, pursuant to Puc 305.04(e). However, the Company agreed to waive the \$20 meter read charge,¹⁵ which appears to be reflected as a credit on the Complainant's bill dated April 10, 2023.¹⁶ The Company sent the Complainant a copy of the results of the meter read dated April 3, 2023, including some specifics and statements regarding the test, and a statement that the Complainant may appeal to the Commission if they still considered their bill to be inaccurate or had other concerns.¹⁷ As the Company credited the \$20 deposit back to the Complainant and sent a letter with information and results from the meter test, it appears the matters complained of in this charge have been satisfied. Therefore the DOE did not investigate this charge and will take no further action regarding this charge.

Seventh, the Complaint charged Unitil with not providing an explanation for a dramatic difference in Complainant's March 10, 2023, bill and April 10, 2023, bill.¹⁸ This charge is closely related to the request for a meter read, as the meter check was done in response to Complainant's concerns about the difference in her bills. The Complaint noted a significant difference in kWh usage listed between the March 10, 2023, bill and the April 10, 2023, bill, and the Complainant noted there was no change in usage patterns that would account for this difference. As stated above, the Company checked the Complainant's meter and found it to be registering accurately, and thus the difference in kWh usage reflected on the Complainant's bills was not due to issues with the meter's accuracy. The Company noted that the usage at the Complainant's property is high in the winter, partially due to having electric heating.¹⁹ The Company also noted that the meter is the only objective evidence of the Complainant's usage.²⁰

As explained above regarding the sixth charge, a customer can request that a utility check their meter to ensure it is registering accurately. Here, the Company checked the Complainant's meter as requested and consistent with the Puc rules and with the terms of its tariff. There is no other direct legal authority that requires a utility to explain a customer's usage patterns, and the Company stated that they have no other method of objectively determining and explaining a customer's usage patterns. Therefore the DOE did not investigate this charge and will take no further action regarding this charge.

¹² Complaint pp. 4, 5

¹³ See Attachments to Complaint

¹⁴ See Attachment to Unitil Response to Complaint

¹⁵ See Attachments to Complaint, Email from Michael Sisto dated April 6, 2023, at 11:59 AM

¹⁶ See Attachments to Complaint, Unitil bill dated April 10, 2023

¹⁷ See Attachment to Unitil Response to Complaint

¹⁸ Complaint p. 5

¹⁹ See Attachments to Complaint, Email from Michael Sisto dated March 29, 2023, at 3:10 PM, quoting a representative from Unitil, and Email from Complainant dated March 31, 2023, at 4:20 PM

²⁰ Unitil Response to Complaint p. 5

Eighth, the Complaint charged Unitil with having a low bar for customer service as well as having a difficult dispute process. This charge did not cite a provision of law, the terms and conditions of Unitil's franchise or charter, Unitil's tariff, or order of the Commission that Unitil is alleged to have violated; rather, it appears to be a general statement expressing the Complainant's dissatisfaction with Unitil's customer service. The specific charges alleged by the Complainant resulting from her experience with Unitil and Unitil's customer service are addressed above. Therefore, the Department did not investigate Complainant's eighth charge, and will take no further action regarding it.

The DOE notes that the Complaint included the DOE's Consumer Services Division in the eighth charge, alleging the Division also has a low bar for customer service. As the Consumer Services Division is not a utility subject to review under RSA 365:1-4, and its practices are not subject to the Commission's jurisdiction, the DOE excluded charges against the Consumer Services Division from its review of the Complaint.

Lastly, the DOE also notes that the Complainant asked for relief in the form of, among other things, compensation for the Complainant's wasted money and time in arguing her points. Neither DOE nor the Commission has the authority to award damages. *See Public Service Co. of N.H.*, 86 NH PUC 407, 411 (2001).

The DOE's investigation of your Complaint pursuant to RSA 365:1-4 is complete. The DOE will take no further action on the Complaint. If you are not satisfied with the Department's disposition of your complaint, then you may petition the Public Utilities Commission to resolve the matter through an adjudicative proceeding pursuant to RSA 365:4.

Sincerely,

/s/ Alexandra K. Ladwig

Alexandra K. Ladwig
Staff Attorney/Hearings Examiner
Department of Energy

Cc: Unitil Energy Services Corp., Office of Consumer Advocate (redacted copy)