

STATE OF NEW HAMPSHIRE  
BEFORE THE  
PUBLIC UTILITIES COMMISSION

DOCKET NO. DE 23-050

Unitil Energy Systems, Inc.

Complaint of Vanessa Valentino

**OPPOSITION TO MOTION TO DISMISS**

NOW COMES the Office of the Consumer Advocate (“OCA”), a party to this docket, and respectfully requests that the Commission deny the pending motion of Unitil Energy Systems, Inc. (“Unitil”) to dismiss the complaint of Unitil customer Vanessa Valentino filed in this docket. As explained below, the Commission should move forward with an adjudicative proceeding to address two of the issues raised by Ms. Valentino’s complaint.

**I. Introduction**

Ms. Valentino seeks resolution of a dispute arising out of her customer complaint, made against Unitil, in a letter dated April 15, 2023 and filed in this docket (tab 1). *Pro se*, she made the following charges against Unitil outlined as follows:

- 1) Unitil failed its obligation per the 1200 rules to inform a new customer, when first contacted by that customer, of the existence of all available rate options – both from within the utility’s offerings (i.e., here, default energy service and the TOD rate) – and from without (i.e., competitive supply rates and, if

applicable, the local RSA 53-E Community Power Aggregation program).

- 2) Unitil improperly (i.e., not consistent with the statute and the rules) imposed a waiting period upon Ms. Valentino which delayed her right, as a new retail electric customer, to retail choice from the minute she became a retail electric customer.
- 3) Unitil failed to inform Ms. Valentino of available options which resulted in her having to accept unreasonably high charges instead of being allowed to take service from a competitive supplier immediately.
- 4) Unitil violated New Hampshire's "two party consent" requirement under RSA 570-A:2 when it recorded Ms. Valentino without offering her the opportunity to withdraw or deny consent.
- 5) Unitil declined to provide Ms. Valentino a copy of any of its recorded calls with her but offered the Department a scrubbed copy, devoid of sensitive and private information, of the transcripts — it is unclear if this offer was made to Ms. Valentino.
- 6) Unitil has a low bar for customer service, and the dispute process is onerous.

The Commission docketed Ms. Valentino's complaint as DE 23-050 in an acknowledgement letter dated April 20, 2023. The Department of Energy assigned complaint number CPT 2023-001 via a letter directed to Unitil dated May 4, 2023. Consistent with RSA 365:4, the Department began its CPT 2023-001 investigation, and the Commission stayed DE 23-050 pending the results of said investigation. Unitil disputed the charges via letter dated May 5, 2023. The Commission requested a status update on July 12, 2023 to which the Department responded on July 17, 2023 that the Department was still conducting its investigation. The Department finished its investigations resulting in a letter ("Department Findings Letter") dated August 11, 2023 stating that the Department is declining to bring

this proceeding before the Commission. Unitil moved to dismiss Ms. Valentino's complaint in DE 23-050 on August 16, 2023 (tab 14), later revised slightly (tab 15).

The Commission should investigate and resolve Ms. Valentino's complaints about Unitil's failure to inform her of available options which resulted in the company having forced her to accept unreasonably high charges by not allowing her to take service from a competitive supplier immediately. The Commission has the authority here to clarify when and how a new electric customer is entitled to exercise the right of retail choice as consistent with RSA 365:4, the Puc 1200 rules, and the principles of the Electric Utility Restructuring Act.

## **II. RSA 365:4**

Unitil contends that key provisions of Ms. Valentino's complaint, including those claiming the Company failed to inform her adequately of the options available to her at the time she requested service, are beyond the Commission's reach because the Department has already resolved them with finality (subject to possible appellate proceedings at the New Hampshire Supreme Court). This argument is patently inconsistent with the plain language of RSA 365.

Specifically, RSA 365:4 authorizes the Department, in after investigating a customer complaint, to "bring proceedings on its own motion before the public utilities commission, with respect to any complaint or violation of any provision of law, rule, terms and conditions of its franchises or charter, or any order of the commission." Section 4 further provides that "[i]f the party bringing the complaint

is unsatisfied with the disposition of the complaint by the department of energy, then they may petition the public utilities commission to resolve the matter through an adjudicative proceeding.”

In other words, the General Court has explicitly vested in the Commission jurisdiction to pursue a matter the Department has declined to pursue. Unitil’s argument to the contrary relies on the Department’s enabling statute, RSA Chapter 12-P. Specifically, Unitil contends that RSA 12-P:11 and :14 give the Department the exclusive authority to interpret the Puc 1200 rules, including the provision of those rules Unitil is alleged to have violated by failing to apprise a new customer of available options.

This argument turns on its head the longstanding principle that when statutes are *in pari materia*, the statutes must be read so as to harmonize rather than to contradict one another. *See* New Hampshire Ctr. for Pub. Interest Journalism v. Department of Justice, 173 N.H. 648, 653 (2020). The Commission’s enabling statutes and those of the Department are clearly *in pari materia* – indeed, the very purpose of the cited sections of RSA 12-P was to assure a harmonious transition as of July 1, 2021 to a new regulatory paradigm in which functions previously associated with the staff of the Commission were transferred to the newly created Department but without divesting the PUC of any adjudicative authority.

Thus, RSA 12-P:11 provides that “[a]ll of the functions, powers, duties, records, personnel, and property of the public utilities commission incorporated in

the statutes establishing the department of energy and which replace the authority of the commission with the authority of the department of energy, are hereby transferred, as of July 1, 2021, to the department of energy.” The authority to adjudicate RSA 365 complaints, finally, was not among the “functions, powers, [or] duties” transferred to the Department because RSA 365:4, whose current version was adopted in the same legislation that created RSA 12-P, is clearly to the contrary.

RSA 12-P:14 provides:

Existing rules, orders, and approvals of the public utilities commission which are associated with any functions, powers, and duties, transferred to the department of energy pursuant to RSA 12-P:11 or any other statutory provision, shall continue in effect notwithstanding any provision of RSA 541-A:17, II to the contrary, and be enforced by the commissioner of the department of energy or the commission, as applicable, until they otherwise expire or are repealed or amended in accordance with applicable law, or for a period of 5 years, whichever occurs first. To the extent the department acts pursuant to an existing rule, order, or approval, the department shall not be subject to RSA 541-A:29 or RSA 541-A:29-a.

Unitil appears to believe that this provision transferred to the Commissioner of the Department the exclusive right, for five years, to enforce all previously existing “rules, orders, and approvals” of the Commission. That is an absurd gloss on section 14 because, if applied in such fashion, it would render the Commission largely irrelevant and impotent. Again, via the same legislation that created RSA 12-P:14, the General Court amended RSA 365 so as to provide the Commission with explicit authority to adjudicate customer complaints the Department declines to pursue itself before the Commission.

### **III. Unitil's Duty to Inform New Customers of "The Most Advantageous Rate or Rates or Rates Available"**

When Ms. Valentino called Unitil to establish service, Unitil was obligated pursuant to Puc 1203.02(a) to tell her she had options from both Unitil's rates as set forth in Unitil's tariff as well as from elsewhere (i.e., competitive wholesale supply or community power aggregation local to the customer). Given that the Commission has the authority to redress Ms. Valentino's complaints, it should take this opportunity to clarify that Rule Puc 1203.02(a) requires electric distribution companies to inform new customers, at the time they become new customers, that they have the right to pursue energy supply options other than the utility's default energy service.

#### **a. Charge One**

Unitil misconstrues Puc 1203.02(a) to narrow to the point of elimination its obligation to inform new customers of what might be the most advantageous rate or rates available to that customer. This is contrary to the plain language of Puc 1203.02(a). 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." Puc 1203.02(a) does not refer to what *regulated, filed* (emphasis added) rate as set forth in Unitil's tariff might be most advantageous — Unitil is obliged to advise Ms. Valentino of rates Unitil offers or from elsewhere that might be most advantageous. However, while Puc 1203.02(a) does not oblige Unitil to tell Ms. Valentino which option to choose, it would be

simple enough for Unitil to explain to her where she could find the relevant information.

**b. Charges Two and Three**

The Office of the Consumer Advocate contests the interpretation that a utility may impose a waiting period on new customers before those customers can migrate away from default energy service. New Hampshire retail electric customers have retail choice from the minute they become electric customers and not after some arbitrary waiting period. RSA 374-F:3, II. (“Customer Choice. Allowing customers to choose among electricity suppliers will help ensure fully competitive and innovative markets. Customers should be able to choose among options such as levels of service reliability, real time pricing, and generation sources, including interconnected self generation.”) Given that the General Court has explicitly vested in the Commission jurisdiction to pursue a matter the Department has declined to pursue, the Commission “is authorized to require the implementation of retail choice of electric suppliers for all customer classes of utilities providing retail electric service under its jurisdiction.” RSA 374-F:4, I; *see* RSA 365:4 (stating that the Commission has the jurisdiction to pursue this matter). Therefore, Ms. Valentino appropriately requests the Commission to clarify whether it is legal (i.e., consistent with the statute and the rules) for a utility to impose a waiting period on new customers before those customers can exercise the right of retail choice.

The Office of the Consumer Advocate does not take a position with respect to the remaining charges.

#### IV. Conclusion


In these circumstances, the Commission must deny the pending Unitil motion to dismiss because Unitil fails to cite an applicable authority for granting its requested relief. For the reasons discussed above, the Commission has the authority here to clarify when and how a new electric customer is entitled to exercise the right of retail choice as consistent with RSA 365:4, the Puc 1200 rules, and the principles of the Electric Utility Restructuring Act.

WHEREFORE, the OCA respectfully requests that this honorable Commission:

- A. Deny Unitil's Motion to Dismiss because it cites to no applicable authority, and RSA 365:4 gives Ms. Valentino the right to petition the Commission for resolution of this matter in an adjudicative proceeding; and
- B. Grant such further relief as shall be necessary and proper in the circumstances.

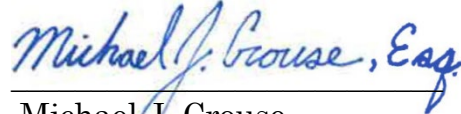
Respectfully submitted,

Dated: August 24, 2023

  
\_\_\_\_\_  
Michael J. Crouse  
OCA Staff Attorney  
Office of the Consumer Advocate  
21 South Fruit Street, Suite 18  
Concord, NH 03301-2429  
(603) 271-1173

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of this pleading was provided via electronic mail to the individuals included on the Commission's service list for this docket.

  
Michael J. Crouse