

**THE STATE OF NEW HAMPSHIRE  
BEFORE THE  
PUBLIC UTILITIES COMMISSION**

**DOCKET NO. DE 23-50**

**COMPLAINT OF VALENTINO AGAINST UNITIL ENERGY SYSTEMS, INC.**

**MOTION TO DISMISS**

Unitil Energy Systems, Inc. (“Unitil” or the “Company”) respectfully requests that the New Hampshire Public Utilities Commission (the “Commission”) dismiss the complaint (the “Complaint”) of Vanessa Valentino (“Complainant”) against the Company. For the reasons discussed herein, the Complaint should be dismissed because there are no remaining claims for the Commission to resolve.

**I. PROCEDURAL HISTORY**

On April 17, 2023, the Commission docketed the Complaint as DE 23-50 and issued a letter on April 20, 2023 formally acknowledging the filing.

By letter dated April 27, 2023, the Department of Energy (the “Department”) notified Complainant that it received the Complaint. On May 4, 2023, the Department notified Unitil that it accepted the Complaint and assigned it complaint number CPT 2023-001. The Department requested that Unitil either (1) satisfy the matters complained of; or (2) provide an answer to the charges in writing within ten business days. The Department’s letter further directed Unitil to advise the Department and the Complainant if it disputes the Complaint.

By letter dated May 5, 2023, Unitil advised the Department and the Complainant that it disputes the Complaint and provided a detailed response to the claims set forth in the Complaint.

On July 6, 2023, the Department requested further information from Unitil. By letter dated July 20, 2023, Unitil responded to the Department’s request for further information.

By letter dated August 11, 2023, the Department provided notification that it had

completed its investigation and declines to bring proceedings before the Commission (“Department Findings Letter”).

## **II. SUMMARY OF COMPLAINT**

As summarized in the Department Findings Letter, the Complainant made eight claims against the Company:<sup>1</sup>

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;
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.

The Complainant also seeks compensation for “the wasted money and time” to assert the above claims.<sup>2</sup>

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<sup>1</sup> Department Findings Letter at 1-2.

<sup>2</sup> Complaint at 6; Department Findings Letter at 6.

### III. LEGAL STANDARD

For purposes of ruling on a motion to dismiss, the Commission must assume the petitioner's factual allegations are true and that all reasonable inferences therefrom must be construed in favor of petitioner.<sup>3</sup>

### IV. ARGUMENT

**a. The Department's conclusions on claims one and two are determinative of those issues and they may be challenged only at the New Hampshire Supreme Court.**

The Commission must dismiss claims one and two, alleging violations of Puc 1203.02(a), because the Department's conclusions concerning those claims are determinative and any further deliberation falls within the jurisdiction of the New Hampshire Supreme Court.

Regarding the Complainant's first claim, the Department concluded that Unitil was under no obligation pursuant to Puc 1203.02(a) to inform the Complainant of third-party, competitive supply options when she initiated service.<sup>4</sup> 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 Department determined this language does not require a utility to inform new customers of competitive supply options

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<sup>3</sup> See *Public Service Company of New Hampshire Petition for Approval of Power Purchase Agreement with Laidlaw Berlin BioPower, LLC*, Order No. 25,171 at 9 (November 17, 2010) (citing *Southern New Hampshire Water Company, Inc.*, Order No. 19,826, 75 NH PUC 282, 284 (1990)).

<sup>4</sup> Department Findings Letter at 2. See Puc 1202.18 (defining "utility service," in part, as the provision of electric service in accordance with the terms and conditions of a "tariff" filed with and approved by the Commission); Puc 1202.14 (defining "tariff" as the current schedule of "rates," charges, terms and conditions filed by a utility and either approved by the Commission or effective by operation of law); Puc 2004.10(a) and Puc 2202.12 (providing that customers are placed on a tariffed rate for at least one billing cycle); 374-F:3, II ("Generation services should be subject to market competition and minimal economic regulation and at least functionally separated from transmission and distribution services which should remain regulated for the foreseeable future."); *In re New Hampshire PUC*, 143 N.H. 233, 236 (1998) (The restructuring statute "directed the PUC to devise a restructuring plan in which electric generation services and rates would be extracted from the traditional regulatory scheme, unbundled, and subjected to market competition."); *Re Restructuring New Hampshire's Electric Utility Industry*, Order No. 22,514, 1997 N.H. PUC LEXIS 18, \*183 (Feb. 28, 1997) ("[T]he provisions of Puc Chapter 1200 apply to the administration of default power service.").

because competitive supply rates are not available to new customers at the time they sign up for service.<sup>5</sup>

Regarding the second claim, the Department concluded that Unitil appropriately directed Complainant to its Schedule D residential rate and was not required to discuss its Schedule TOU-D rate at the time Complainant initiated service.<sup>6</sup> The Company was not required to discuss Schedule TOU-D because delivery of service and billing under that schedule is contingent upon the presence of TOU metering equipment, which must be installed by the Company before delivery under Schedule TOU-D can occur.<sup>7</sup> In addition, Unitil does not have customer-specific usage data when a new customer signs up for service, and therefore there is no “reasonable basis” to advise the new customer that Schedule TOU-D might be the most advantageous rate available to them.<sup>8</sup>

It is well established that state agencies are endowed with only the powers and authority which are expressly granted or fairly implied by statute.<sup>9</sup> The Department was established effective July 1, 2021 pursuant to RSA 12-P. Pursuant to RSA 12-P:11 and RSA 12-P:14, the Department administers and enforces the Commission rules that are associated with functions, powers, and duties transferred to the Department from the Commission until the Commission’s rules expire or are repealed or amended, or for a period of 5 years, whichever occurs first. The authority to interpret and enforce the Puc 1200 rules was transferred from the Commission to the Department pursuant to RSA 12-P:11. Under the authority granted to it by

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<sup>5</sup> Department Findings Letter at 2. Although the Department determined that Puc 1203.02(a) does not require a utility to inform new customers of competitive supply options, it noted that Unitil provides competitive supply information on its website, and has volunteered to provide additional information regarding competitive supply in its welcome letter to new customers. *Id.* at 2-3.

<sup>6</sup> Department Findings Letter at 3.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

statute, the Department has interpreted Puc 1203.02(a) and concluded that the Company did not violate that rule with respect to the Complainant's first two claims.

The review of an agency's interpretation of administrative rules is an issue of law, which the New Hampshire Supreme Court reviews de novo.<sup>10</sup> Accordingly, if the Complainant wishes to appeal the Department's interpretation of Puc 1203.02(a), then the New Hampshire Supreme Court is the appropriate venue for that appeal.<sup>11</sup> Accordingly, the Commission should dismiss this claim because any further interpretation of Puc 1203.02(a) is beyond the scope of its authority.

**b. Because claim three is a corollary of one and two, and the Department's conclusions on those first two claims are determinative, the Commission must dismiss the third claim.**

The Complainant's third claim is that she was "forced into an extremely high bill with a third party (that is commercial and unreachable) before [she had] any options . . ."<sup>12</sup> The Department found this charge was a corollary of claims one and two and concluded that the Complainant was not forced onto a high bill. Rather, the Complainant was placed on the appropriate rate schedule for a new residential customer at the time she initiated service.<sup>13</sup>

As explained by the Department, new customers must be on a utility's tariffed rate for at least one billing cycle before they can transfer to competitive supply.<sup>14</sup> This provision is set forth in the Company's Terms and Conditions for Competitive Suppliers and in the Puc 1200

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<sup>9</sup> *Appeal of Public Service Co. of New Hampshire*, 122 N.H. 1062, 1066 (1982).

<sup>10</sup> *Appeal of N.H. Dep't of Envtl. Servs.*, 173 N.H. 282, 292; RSA 541:13.

<sup>11</sup> RSA 541:1 ("The word 'commission' as here used means the public utilities commission, the milk sanitation board, or **any state department** or official concerning whose decision a rehearing or appeal is sought in accordance with the provisions of this chapter.")(emphasis added); RSA 541:13.

<sup>12</sup> Complaint at 1.

<sup>13</sup> Department Findings Letter at 3.

<sup>14</sup> Department Findings Letter at 2.

rules.<sup>15</sup> Accordingly, the Complainant was initially placed on the Default Service rate. After the Complainant signed-up with a third-party, competitive supplier, the Company implemented that change in the next monthly billing cycle.

As with claims one and two, claim three turns on the question of whether Unitil complied with Puc 1203.02(a). As discussed above, the Department concluded the Company complied with Puc 1203.02(a) and an appeal of that interpretation must be brought before the New Hampshire Supreme Court. Therefore, this claim must be dismissed by the Commission.

**c. The Commission must dismiss claim four because it has no basis in law and the Commission lacks jurisdiction over this claim.**

The Complainant argues in claim four that New Hampshire is a “two-party consent” state for purposes of recording telephone calls and Unitil’s disclosure that calls will be recorded for “quality and training” purposes is not sufficient to establish the customer’s consent to be recorded.<sup>16</sup> The Department concluded that neither it nor the Commission has jurisdiction over this claim and therefore the Department did not investigate this charge.<sup>17</sup>

Under New Hampshire law, it is unlawful for a person to knowingly intercept a telecommunication or oral communication without the consent of all parties to the communication.<sup>18</sup> The definition of “intercept” includes recording any telecommunication or oral communication.<sup>19</sup> The definition of an oral communication “is any verbal communication uttered by a person who has a reasonable expectation that the communication is not subject to

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<sup>15</sup> Unitil Energy Systems, Inc., NHPUC No. 3 - Electricity Delivery, Original Page 32, III.1.A(3) (“Generation Service shall commence on the date of the Customer’s next scheduled meter read, provided that the Supplier has submitted the enrollment transaction to the Distribution Company no fewer than two (2) business days prior to the meter read dates.”); Puc 2004.10(a), Puc 2202.12.

<sup>16</sup> Department Findings Letter at 2, 3-4; Complaint at 3.

<sup>17</sup> See *Nelson v. Public Serv. Co.*, 119 N.H. 327, 329 (“[T]he commission does not have exclusive jurisdiction over all matters concerning public utilities.”).

<sup>18</sup> RSA 570-A:2, I-a.

interception, under circumstances justifying such expectation.”<sup>20</sup>

It is not unlawful to record a telephone conversation if all parties consent to the recording. The New Hampshire Supreme Judicial Court has explained that the recording of a call may be authorized where the recipient of the telephone call informs the caller that the call is being monitored by a third person or recorded.<sup>21</sup> In addition, the Court has found that a person impliedly consents to the recording of communications when those communications are sent with the expectation that the other party may save them.<sup>22</sup>

As the Complainant acknowledges, Unitil’s customer service line has an automated message that notifies customers that the call will be recorded “for quality or training purposes.”<sup>23</sup> Thus, under applicable New Hampshire law, if a customer continues a conversation after Unitil’s disclaimer that the call is being recorded, that customer consents to the recording by continuing the conversation. Moreover, the customer has no reasonable expectation that the communication is not subject to recording after receiving a clear, unambiguous notification to the contrary. Thus, as a matter of law, because the Complainant consented to Unitil’s recording of the call by continuing the conversation after Unitil’s disclaimer that the call is being recorded, Unitil’s conduct is not unlawful within the meaning of RSA 570-A:2. Consequently, Complainant’s claim has no basis in law because New Hampshire precedent clearly establishes that the recording of calls at issue here is permissible under New Hampshire law.

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<sup>19</sup> RSA 570-A:1, III.

<sup>20</sup> RSA 570-A:2, II.

<sup>21</sup> See *State v. Lamontagne*, 136 N.H. 575, 579 (1992); see also *State v. Locke*, 144 N.H. 348, 355 (1999) (holding that consent to recording of a communication may be inferred when the surrounding circumstances demonstrate that the consenting party knew the conversation was being intercepted).

<sup>22</sup> *State v. Lott*, 152 N.H. 436, 441-442 (2005); cf. *Peerless Ins. Co. v. Traveler’s Ins. Co.*, 104 N.H. 411, 416 (1963) (finding implied consent based on the conduct of the parties and surrounding circumstances).

In addition to there being no basis in law for the Complainant's claim, the Commission does not have jurisdiction over this claim. As the Department correctly notes, violations of RSA 570-A:2 are either felonies or misdemeanors.<sup>24</sup> It is beyond question that the Commission is without jurisdiction to adjudicate criminal cases. Rather, the New Hampshire Superior Court has jurisdiction over all criminal cases and proceedings.<sup>25</sup> Accordingly, the Commission must dismiss this claim for lack of subject matter jurisdiction.

**d. The Department must dismiss claim five because the Complainant did not cite a provision of law, the terms and conditions of Unitil's franchise or charter, Unitil's tariff, or an order of the Commission that Unitil is alleged to have violated.**

The Complainant asserts in claim five that Unitil declined her request for a copy of her calls with the Company's customer service representative.<sup>26</sup> The Company does not dispute this fact.

Any person filing a complaint under RSA 365 must identify a provision of law, or a term or condition of the utility's franchises or charter, or an order of the Commission that has been violated.<sup>27</sup> The Complainant has not complied with this requirement, and therefore this claim must be dismissed.

As the Department correctly explains, Unitil's records are not subject to the public records law and the Company is not obligated to release the recordings of customer service

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<sup>23</sup> Complaint at 1, 3.

<sup>24</sup> Department Findings Letter at 4.

<sup>25</sup> RSA 592-A:1.

<sup>26</sup> Complaint at 3; Department Findings Letter at 4.

<sup>27</sup> RSA 365:1.



phone calls without a legally valid order from a court or governmental or regulatory authority with jurisdiction over the Company.<sup>28</sup>

**e. The Department must dismiss claim 6 because it has been resolved.**

In claim six, the Complainant alleges that Unitil inappropriately charged her for a meter read and was obligated to remove the \$20 charge for that read.<sup>29</sup> Although Unitil had the right to retain the \$20 deposit for the meter test, the Company waived this right and credited the \$20 back to the Complainant's account. Therefore, this claim has been settled and it should be dismissed.

Pursuant to Puc 305.04(a), when a customer requests that a utility test a customer's meter, the utility must test the accuracy of the meter within 15 calendar days and it must report the results to the customer within 15 calendar days of the test. According to the Company's records, the Complainant requested the meter test on March 29, 2023 and the Company sent the results of the meter test to Complainant on April 3, 2023.<sup>30</sup> This was well within the 15 days required by the rule. Unitil found the meter to be registering accurately and within the 2 percent variance allowed by Puc 305.04.

A utility may require a deposit of \$20 for a meter test and if, on testing, the meter is not found to have an average error greater than 2 percent, the utility may retain the amount deposited for the test.<sup>31</sup> Therefore, Unitil had the right to retain the \$20 deposit. Nevertheless, the Company waived this right and credited the \$20 back to the Complainant's account.

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<sup>28</sup> See Department Findings Letter at 4.

<sup>29</sup> Complaint at 5.

<sup>30</sup> Department Findings at 5.

<sup>31</sup> Puc 305.04(e); Unitil Energy Systems, Inc., NHPUC No. 3 - Electricity Delivery, Second Revised Page 23, II.8.D.

Because the Company credited the \$20 deposit back to Complainant (even though it has the right to retain it) and sent a letter with the results of the meter test to the Complainant, this claim has been resolved.<sup>32</sup> Accordingly, it should be dismissed by the Commission.

**f. The Commission must dismiss claim seven because the Complainant 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.**

In claim seven, the Complainant alleges that Unitil did not provide an explanation for the dramatic difference between her March 10, 2023, bill and April 10, 2023, bill.<sup>33</sup>

The Company cannot speak to what may have occurred on the Complainant's side of the meter between March and April to account for the change in usage. However, as discussed above, the Company tested its meter consistent with the Puc rules and its tariff, found it to be registering accurately, and provided the results to the Complainant.<sup>34</sup> Therefore, the Company has provided the Claimant with the only objective measure of usage that is available to the Company.<sup>35</sup> Furthermore, the Company charged the Complainant for service in compliance with the terms of its Commission-approved tariff and, for the month of March 2023, charged the Commission-approved Default Service rate.<sup>36</sup>

As required by RSA 365, the Complainant has not identified any law, term or condition of the utility's franchises or charter, or order of the Commission that has been violated by

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<sup>32</sup> Department Findings Letter at 5.

<sup>33</sup> Department Finding Letter at 2, 5; Complaint at 5.

<sup>34</sup> Department Findings Letter at 5; Puc 305.04(e); Unitil Energy Systems, Inc., NHPUC No. 3 - Electricity Delivery, Second Revised Page 23, II.8.D.

<sup>35</sup> Department Findings Letter at 5.

<sup>36</sup> *Unitil Energy Systems, Inc.*, Order No. 26,694 (Sept. 30, 2022); Unitil Energy Systems, Inc., NHPUC No. 3 - Electricity Delivery, Default Service, Schedule DS, at Seventh Revised Page 70 to First Revised Page 73; Unitil Energy Systems, Inc., NHPUC No. 3 - Electricity Delivery Domestic Delivery Service, Schedule D.

Unitil. On the contrary, the facts plainly show that Unitil complied with the Puc rules and its tariff when it performed the meter test requested by the Complainant. As explained by the Department, there is no other direct legal authority requiring the Company to explain the Complainant's usage patterns.<sup>37</sup> Accordingly, this claim should be dismissed.

**g. The Commission must dismiss claim 8 because the Complainant 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.**

The Complainant asserts in claim eight that Unitil has a low bar for customer service and a difficult dispute process.<sup>38</sup>

Under RSA 365:1, any person may file a complaint with the Department by petition setting forth in writing any act or omission by any public utility in violation of any provision of law, or the terms and conditions of its franchises or charter, or any order of the Commission. As the Department correctly concludes, the Complainant did not allege that Unitil violated any law, rule, regulation, or order related to customer service or the dispute process.<sup>39</sup> On the contrary, the facts in this case show that Unitil has been responsive to the issues raised by Complainant and acted in accordance with its legal and regulatory obligations. The facts also show that the customer dispute process is working as it should. The Complainant contacted the Department concerning her issues and the Department listened to the recording of the initial call between Unitil and the Complainant. The Department provided the Complainant with an assessment of the Complainant's claims regarding two-party consent to recording, Default Service, and Unitil's obligation to provide competitive supplier

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<sup>37</sup> *Id.*

<sup>38</sup> Department Findings Letter at 6; Complaint at 1.

information. The Complainant requested a meter test, and the Company performed that test. The Complainant filed a formal complaint with the Commission and the Department conducted an investigation and issued its findings.

As summarized by the Department, the Complainant's claim concerning Unitil's customer service "appears to be a general statement expressing . . . dissatisfaction" and does not cite to any law, rule, regulation or order that Unitil is alleged to have violated. Accordingly, this claim must be dismissed.

**h. Neither the Department nor the Commission has authority to award the compensation sought by Complainant.**

The Complainant requests "compensation for both the wasted money and time in arguing [her] points."<sup>40</sup> However, as the Department correctly concludes, neither the Department nor the Commission has the authority to award such damages.<sup>41</sup>

Although the Commission has the authority "to investigate matters related to New Hampshire utilities, Chapter 365, which governs complaints to, and proceedings before, the Commission, provides the Commission with less than plenary authority to redress customer complaints."<sup>42</sup> The scope of that plenary authority does not extend to the award of the civil damages sought by the Complainant.<sup>43</sup>

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<sup>39</sup> Department Findings Letter at 6.

<sup>40</sup> Complaint at 6.

<sup>41</sup> Department Findings Letter at 6.

<sup>42</sup> *Public Service Company of New Hampshire*, DE 01-023, Order No. 23,734 at 11 (June 28, 2001).

<sup>43</sup> *Id.* at 12-13.

**V. CONCLUSION**

For the above reasons, Unitil requests that the Commission issue an order dismissing the Complaint.

**WHEREFORE**, Unitil respectfully requests that the Commission:

- A. Grant this motion and dismiss the Complaint; and
- B. Grant such further relief as may be just and appropriate.

Respectfully Submitted,

UNITIL ENERGY SYSTEMS, INC.

By:

A handwritten signature in black ink that reads "Matthew Campbell". The signature is written in a cursive, flowing style.

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Matthew C. Campbell  
Unitil Service Corp  
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603-773-6543  
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Dated: August 16, 2023.

**CERTIFICATE OF SERVICE**

I hereby certify that on this 16th day of August 2023, a copy of the foregoing Motion was electronically delivered to the service list in this docket.

A handwritten signature in black ink, reading "Matthew Campbell", written in a cursive style. The signature is positioned above a horizontal line.

Matthew C. Campbell