

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

Unitil Energy Systems, Inc.

Docket No. DE 23-50

**MOTION FOR LEAVE TO REPLY AND REPLY TO OPPOSITION OF THE OFFICE
OF CONSUMER ADVOCATE TO MOTION TO DISMISS**

Unitil Energy Systems, Inc. (“Unitil” or the “Company”) hereby moves for leave to reply to the Opposition to Motion to Dismiss (the “Opposition”) submitted by the Office of Consumer Advocate (the “OCA”) on August 24, 2023. The question of whether Ms. Valentino’s (the “Complainant”) complaint should be dismissed can be resolved immediately, and in the affirmative, based on the existing record. Despite this, the OCA urges the New Hampshire Public Utilities Commission (the “Commission”) to open an adjudicative proceeding to examine issues that have been resolved or go beyond the scope of a RSA 365 complaint proceeding. Furthermore, the OCA asks the Commission to deny Unitil’s motion based on inaccurate representations of Unitil’s actual positions. As a matter of fairness, the Company must have the opportunity to respond to the OCA’s Opposition. In the interest of administrative efficiency, the Company has included that response with this motion.

I. ARGUMENT

The OCA’s Opposition can be sorted into two principle claims. First, the OCA claims Unitil has argued that the Commission’s authority to adjudicate RSA 365 claims has been eviscerated by the transfer of authority to the Department of Energy (the “Department”) to administer and enforce the Puc 1200 rules pursuant to RSA 12-P:14. The OCA proceeds to attack this distorted position (instead of the Company’s actual position) and urges the Commission to

adjudicate a matter that has been resolved by the Department. Second, the OCA claims Unitil is imposing a waiting period on new customers to prevent them from immediately taking competitive supply. The OCA asks the Commission to clarify whether this is legal, without any discussion of the existing rules and tariff provisions that govern this issue. For the reasons discussed below, neither of these claims hold up to scrutiny and they should be disregarded by the Commission.

A. The OCA substitutes Unitil’s actual position with a distorted version and urges the Commission to adjudicate the Puc Rule 1203.02(a) claim, which has been resolved by the Department.

The OCA’s first claim is predicated on attacking a *straw man*—a misrepresentation of Unitil’s position. The OCA claims Unitil asserted that the Commission no longer has the authority to adjudicate RSA 365 complaints because that authority was transferred to the Department by RSA 12-P:14.¹ Unitil never made such an assertion and there is no reasonable reading of the Company’s Motion to Dismiss to suggest even a shadow of that assertion.

Unitil agrees with the OCA that the Department and the Commission have overlapping jurisdiction with regard to RSA 365, and the Company never asserted anything to the contrary. Rather, Unitil asked the Commission to dismiss the complaint because, as a matter of law, there is nothing left to adjudicate.² Unitil did not assert the Commission should dismiss the Complaint because it no longer has the authority to adjudicate RSA 365 claims.

Regarding the adjudication of the Puc 1203.02(a) claim in particular, the Complainant alleged that Unitil violated this provision because it did not provide information as to what might be the most advantageous supply rate available to the Complainant when she initiated service.³

¹ Opposition at 5.

² There is nothing novel about a Motion to Dismiss in the context of a RSA 365 complaint proceeding or the Commission acting on such a motion without a hearing. *See e.g., Town of Hampton*, Order No. 26,263 (June 24, 2019) (dismissing complaint because the complainant did not demonstrate a violation of law, the terms and conditions of the utility’s franchise or charter, or a Commission order).

³ Complaint at 4-5.

The Department investigated this allegation, and based on its interpretation of Puc Rule 1203.02(a), concluded that Unitil did not violate Puc 1203.02(a).⁴ Now, the OCA asks the Commission to adjudicate this issue and countermand the Department's interpretation.

Part 1203 of the Puc Rules concerns "service provisions," and Puc Rule 1202.18 defines "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 Rule 1202.14 defines "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 Rule 1203.02(a) provides that upon 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." This provision must be read and construed together with the definitions summarized above, and in doing so, it is clear that the utility's obligation is to provide customers with information as to what might be the most advantageous rate set forth in the utility's tariff, filed with and approved by the Commission.⁵

Consistent with Puc Rule 1203.02(a), Unitil works with customers requesting new service to determine which rate, as set forth in the Company's approved tariff, might be the most advantageous for that customer. Competitive supply is not a service provided by Unitil, nor are competitive supply rates provided pursuant to a tariff filed with and approved by the Commission.

⁴ Department Findings Letter at 2.

⁵ See 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."). See also Complaint, Attachment, PDF page 9 (email from DOE to Complainant) (explaining that "there is no requirement that a regulated utility proactively provide information about third party energy supply...").

For these reasons, competitive supply is not within the scope of Puc Rule 1203.02(a) and Unitil is not obligated by the Puc rules to provide information as to what might be the most advantageous competitive supply rate available to customers. In fact, such activity could be construed as anti-competitive and conflicting with customer choice in a competitive market.⁶

The most advantageous competitive supply rate chosen by any particular customer can and should be informed by any number of subjective considerations that go beyond price alone—*e.g.*, opting to pay a premium for green or renewable energy options, preferring a longer or shorter term contract, the existence and amount early termination fees, the supplier’s process for communicating the end of a fixed price period of service, opportunities to refer friends and neighbors for credit against charges, etc. Further, if a utility directed customers to a specific competitive supply option, then it would be improperly influencing and perhaps even interfering with customer choice (*i.e.*, arguably favoring one competitive supplier over another, which is anathema to a fully competitive electricity supply market). Therefore, it is not appropriate for the utility to direct a customer’s choice of competitive supplier and, in any case, there is no reasonable basis for a utility to determine what might be the most advantageous competitive supply option for each, individual customer. It is appropriate, however, and consistent with the principles of restructuring and a competitive market, for Unitil to provide customers with general information about competitive supply options, so the customer can decide what choice is best for them. **Unitil already does this.**

Unitil’s welcome letter directs customers to Unitil’s website, which explains that electric

⁶ See RSA 374-F:3, VII (“The rules that govern market activity should apply to all buyers and sellers in a fair and consistent manner in order to ensure a fully competitive market.”); *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.”).

customers have the option to purchase their electricity from competitive suppliers.⁷ In addition, the Company provides customers with links to the websites of Suppliers registered in New Hampshire, information on renewable energy supply options, and a link to the Department’s “Shop for Electric Rates” tool, which helps customers compare current energy supply providers and offers, as well as a static list of approved energy providers in New Hampshire.⁸

The Department determined that Puc Rule 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.⁹ Specifically, pursuant to Puc Rules 2004.10(a) and 2202.12 and the Company’s Commission-approved tariff,¹⁰ customers must be on a utility’s tariffed rate for at least one billing cycle before they can transfer to competitive supply.¹¹ The Department further explained that Puc Rule 1203.02(a) has never been interpreted or enforced by the Commission (prior to the rules transferring to the Department) or the Department to require notice to customers of specific competitive supply options at the initiation of service.¹²

In its Motion to Dismiss, Unitil asserted that the legislature delegated the authority to interpret Puc Rule 1203.02(a) to the Department. In this case, the Department properly exercised that statutory authority and, as explained above, found Unitil was under no obligation pursuant to

⁷ Unitil, Third-Party Energy Suppliers, <https://www.unitil.com/electric-gas-service/third-party-energy-suppliers>.

⁸ *Id.*

⁹ Department Findings Letter at 2.

¹⁰ Unitil Energy Systems, Inc., NHPUC No. 3 - Electricity Delivery Original Page 32, III.1.A(3).

¹¹ See Department Findings Letter at 2; see also New Hampshire Public Utilities Commission, Choosing an Energy Supplier, <https://www.puc.nh.gov/Consumer/Energy%20Supplier%20FAQs.html> (“Whether you are changing to energy supply service provided by a competitive supplier or changing back to the energy supply service provided by your electric utility, the change will occur at the time of your next meter read provided the request to change is received by your electric utility a few days in advance of your next meter read date. Because your electric bill is for the service provided in the approximately 30 day period before the meter is read, you would not see the change until the following bill.”).

¹² Department Findings Letter at 2.

Puc 1203.02(a) to inform the Complainant of third-party, competitive supply options when she initiated service.¹³ Accordingly, that interpretation should be enforced by the Commission, and it is a reasonable basis upon which to dismiss the complaint as it relates to the question of whether the Company violated Puc Rule 1203.02(a).

Despite the Department's clear and unequivocal interpretation of Puc Rule 1203.02(a), over which the legislature has given it authority, the OCA asks the Commission "to clarify that Puc Rule 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."¹⁴ In other words, the OCA invites the Commission to contradict the Department's interpretation and embark on a path that circumvents the legislature's delegation of authority, undermines the reliability of the regulatory paradigm in New Hampshire, and deprives jurisdictional companies of the certainty necessary to conduct their business. The Commission should decline the OCA's invitation.

B. The OCA urges the Commission to adjudicate the Complainant's claim based on what the OCA thinks the law should be and not what the law is.

As its second claim, the OCA contends that Unitil failed to inform the Complainant of her available supply 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."¹⁵ The OCA's use of highly-charged and inflammatory rhetoric does not change the fact that the

¹³ *Id.*

¹⁴ Opposition at 6.

¹⁵ Opposition at 3; The Company notes that the rate charged to the Complainant was the Commission-approved Default Service rate. *Unitil Energy Systems, Inc.*, DE 22-017, Order No. 26,694 (Sept. 30, 2022).

Company's actions were consistent with the terms of its Commission-approved tariff and the Commission's rules—both of which have **the force of law**.¹⁶

As the OCA is well aware, Default Service rates are market-based, reviewed and approved by the Commission, and the Company simply passes-through the associated costs. Unitil does not make any profit from the Default Service procurement and has no reason to steer customers away from competitive supply. Unitil is very supportive of competitive supply and provides customers with information about their options on the Company's website and in the Company's welcome letter.¹⁷

The reasons new electric customers are placed on Default Service are practical ones. In order for a supplier to serve an electric customer, it must be enrolled in the Electronic Data Interchange ("EDI") system so the Company can send the necessary information (*e.g.*, usage and payment) through that system. In addition, a supplier may be offering a rate that is not currently set-up in the utility's CIS at the time the customer initiates service and that rate must be set-up in the EDI system to bill customers. These practical considerations are enshrined in the Company's Commission-approved tariff, which states that "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."¹⁸ These consideration are similarly codified in Puc Rules 2004.10(a) and 2202.12.

The standard of review for a RSA 365 complaint is whether a utility has violated a law, rule, regulation, or order. Needless to say, this review must be based on the laws, rules, regulations,

¹⁶ *Appeal of Pennichuck Water Works*, 120 N.H. 562, 566 (1980) (tariffs required to be filed with the PUC do not simply define the terms of the contractual relationship between a utility and its customers, they have the force and effect of law); *Charter Communications, Inc., Cogeco US Finance, LLC, d/b/a Breezeline, and Comcast Cable Communications, LLC*, DT 22-047, Order No. 26,787 (March 21, 2023) at 3-4 (duly promulgated rules have the force of law).

¹⁷ Department Findings Letter at 2-3;

¹⁸ Unitil Energy Systems, Inc., NHPUC No. 3 - Electricity Delivery Original Page 32, III.1.A(3).

and orders as they exist at the time of the alleged violation—not on what the OCA thinks they *should be*. In this case, the Company complied with the terms of its tariff and a rule that has been duly promulgated by the Commission. That the OCA may not agree with the rules established and approved by the Commission is no basis for sanctioning the Company or asking the Commission to engage in an inquiry to revise its rules in the context of a RSA 365 complaint proceeding. In other words, the OCA cannot simply assume away the existence of Puc Rules 2004.10(a) and 2202.12, and the Company’s tariff because it wishes the law were different.

III. CONCLUSION

WHEREFORE, for the reasons discussed herein Unitil respectfully requests the Commission:

- A. Grant leave to reply and consider this reply; and
- B. Order such further relief as may be just and reasonable.

Respectfully submitted,

UNITIL ENERGY SYSTEMS, INC.

By its attorney,



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Dated: August 29, 2023

CERTIFICATE OF SERVICE

I hereby certify that on August 29th, 2023, I served the foregoing motion to the service list for this docket.

A handwritten signature in black ink that reads "Matthew Campbell". The signature is written in a cursive style with a large initial "M" and a long, sweeping underline.

Matthew C. Campbell