

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

DE 11-105

UNITIL ENERGY SYSTEMS, INC.

Petition for Declaratory Ruling and Approval of Adjustments to Certain Account Balances

Order Approving Settlement Agreement

ORDER NO. 25,458

January 25, 2013

APPEARANCES: Gary Epler, Esq., for Unitil Energy Systems, Inc. (with Lawrence M. Edelman, Esq., of Pierce Atwood LLP as pre-hearing co-counsel); Rorie E.P. Hollenberg, Esq. of the Office of the Consumer Advocate, on behalf of residential ratepayers; and Edward N. Damon, Esq. and Alexander F. Speidel, Esq., for the Staff of the Public Utilities Commission.

I. PROCEDURAL HISTORY

On May 13, 2011, Unitil Energy Systems, Inc. (UES) filed a petition for a declaratory ruling and approval of adjustments to certain account balances with the Commission. UES' requested adjustments were related to an overcharge, accumulated over a number of years, of approximately \$1.8 million to UES' customer, The RiverWoods Company at Exeter (RiverWoods), caused by a defective UES-owned current transformer (CT). On May 24, 2011, the Office of the Consumer Advocate (OCA) filed a letter of participation in this docket on behalf of residential ratepayers pursuant to RSA 363:28. On June 7, 2011, the Commission issued an order of notice scheduling a prehearing conference and technical session on UES' petition for June 24, 2011. On June 21, 2011, RiverWoods filed a petition to intervene pursuant to RSA 541-A:32 and N.H. Code Admin. Rules Puc 203.17 on the basis of its economic loss resulting from UES' overcharge.

At the prehearing conference on June 24, 2011, UES, the OCA, Staff, and RiverWoods participated, and the Commission granted RiverWoods' motion to intervene. Following the prehearing conference, the parties participated in a technical session, and then propounded discovery regarding the technical aspects of UES' error impacting RiverWoods. On June 27, 2011, Mr. Daryl Bazydlo of Danville, a UES customer, filed a comment in opposition to UES' petition. Through the summer of 2011, RiverWoods and UES also engaged in a series of procedural motions before the Commission related to the appropriateness of UES' May 13, 2011 petition as a means of securing relief for RiverWoods, in light of RiverWoods having filed a lawsuit against UES in Rockingham County Superior Court on June 20, 2011. These and other filings, other than any information for which confidential treatment is requested of or granted by the Commission, are posted on the Commission's website at <http://www.puc.nh.gov/Regulatory/Docketbk/2011/11-105.html>).

On September 1, 2011, UES filed with the Commission a settlement agreement with RiverWoods, originally filed with the Rockingham County Superior Court, effective as of August 29, 2011 (UES-RiverWoods Settlement). Pursuant to the UES-RiverWoods Settlement, UES paid RiverWoods \$1,459,721 in compensation for UES' overcharge of RiverWoods, in addition to the \$611,699 in UES compensation already paid to RiverWoods as of August 29, 2011. The compensation paid to RiverWoods under the terms of the UES-RiverWoods Settlement totaled \$2,071,420, which incorporated the \$1,801,504 overcharged by UES, plus \$269,916 in interest charges. In light of the execution of the UES-RiverWoods Settlement, RiverWoods withdrew from all proceedings in this docket, by a letter filed on September 7, 2011.

On September 30, 2011, UES filed an amended petition in this docket, with supporting schedules, seeking the application of rate charges to various elements of UES' electric rates, to recover \$1,801,504 of the compensation paid to RiverWoods (i.e., the direct UES overcharge of RiverWoods, excluding interest). According to UES, during the period that RiverWoods was overcharged, other customers' bills were undercharged by the same amount, on an aggregate basis. UES computed the allocation of the \$1,801,504 overcharge figure to be comprised of the UES External Delivery Charge (EDC), in the amount of \$169,055, the UES Stranded Cost Charge (SCC), in the amount of \$119,073, the System Benefits Charge (SBC), in the amount of \$44,738, and the UES Non-G1 Default Service Charge in the amount of \$1,325,169. (Miscellaneous charges accounted for the remaining approximately \$140,000 in overcharges to RiverWoods). As part of its amended petition, UES requested recovery on the EDC, SCC, SBC, and Non-G1 Default Service Charge rate elements, via a surcharge to non-RiverWoods customer bills, and filed the joint testimony of Karen M. Asbury, Justin C. Eisfeller, and Robert S. Furino in support of its request. *See* Hearing Exhibit, for November 8, 2012 Public Hearing, UES Amended Petition and Joint Testimony filed September 30, 2011.

During the October 2011-September 2012 period, UES, the OCA, and Staff engaged in analysis and discussion of UES' amended petition, and propounded additional discovery. On October 5, 2012, UES filed a settlement agreement signed by UES, OCA and Staff. *See* Hearing Exhibit 1, for November 8, 2012 Public Hearing, Settlement Agreement Filed October 5, 2012. On October 11, 2012, the Commission, by secretarial letter, scheduled a hearing regarding the settlement agreement, , which was held as scheduled on November 8, 2012.

II. TERMS OF THE SETTLEMENT AGREEMENT

The settling parties, UES, the OCA, and Staff, recommended that the Commission approve the settlement agreement as a just and reasonable resolution of the matters examined in this docket, in light of UES having paid compensation to the overcharged customer RiverWoods. The settlement agreement outlined a methodology for the recovery of a portion of the amount paid to RiverWoods by UES pursuant to the terms of the UES-RiverWoods Settlement, on the basis of other UES customers having been undercharged, while requiring that UES shareholders absorb the remainder of the payment to RiverWoods.

Specifically, the parties to the settlement agreement propose that UES be allowed to recover, as adjustments to UES' delivery charge reconciliation mechanisms, over a period of three years, \$1,152,493 as an adjustment to UES' Non-G1 Default Service recovery mechanism, plus interest; \$137,970 for its EDC recovery mechanism, plus interest; and \$103,557 for its SCC recovery mechanism, plus interest. The rate of interest applicable to the adjustments to these reconciliation balances would be the rate for Customer Deposits pursuant to N.H. Code Admin. Rules Puc 1203.03, *i.e.*, the prime rate, as adjusted from time to time by the Commission. (The parties confirmed at hearing that the assessment of interest was for the purposes of accounting simplicity, in that all reconciliation-related balances had such interest applied). *See* Transcript of November 8, 2012 Public Hearing (Tr.) at 57-58. This interest rate would be applied to each of these adjustment amounts beginning June 1, 2012, through and until final recovery. The settlement agreement, as written, contemplated recovery of these amounts over a period beginning the first day of the month immediately following Commission approval of the settlement agreement and ending on November 30, 2015, for Non-G1 Default Service recovery,

and on July 31, 2015, for EDC and SCC recovery. The parties indicated at hearing that these agreed end points for recovery, were not necessarily made invalid by the terms of the settlement agreement's Section 2.1, which made reference to a recovery period of three years. Tr. at 57-66.

UES, as part of the settlement agreement, agreed to forego recovery from UES ratepayers for the following elements of its compensation to RiverWoods paid as part of the UES-

RiverWoods Settlement:

| | |
|---|------------------|
| Distribution Revenue | \$185,663 |
| Supply Adjustment Revenue | 163,597 |
| Interest Paid to RiverWoods | 269,916 |
| System Benefits Account–Energy Efficiency | 23,253 |
| System Benefits Account-Low Income | 18,001 |
| Restructuring Surcharge | 592 |
| Rate Case Surcharge | 4,696 |
| Fuel Purchased Power Adjustment Charge | <u>4,380</u> |
| <u>Total:</u> | <u>\$670,098</u> |

In particular, UES agreed to exclude all distribution revenue and interest paid to RiverWoods from the proposed recovery from ratepayers, which would be absorbed by the investors of UES as losses. Also, the settling parties recognized that as a result of the recoveries provided for through the reconciliation mechanisms, UES will credit its Consumption Tax payment to the State of New Hampshire in an amount to be determined by UES.

UES and Staff agreed, as a condition of the settlement agreement, that UES would pursue such remedies as it may have from the vendor and the manufacturer of the defective CT installed at RiverWoods. UES agreed to advise Staff as to the status of its efforts to obtain such financial remedies and the form of such remedies, and further agreed that, if six months after the date of an approval of the settlement agreement by the Commission, UES was not successful in securing

such remedies, UES would not engage in further purchases from the vendor or manufacturer. The OCA took no position on this term of the Settlement Agreement.

UES also confirmed at the hearing that UES engaged in a system-wide review of its distribution system after uncovering the RiverWoods CT errors, and that UES uncovered no additional CT billing errors of the type that had involved RiverWoods. Tr. at 13-14.

III. COMMISSION ANALYSIS

Pursuant to RSA 541-A:31, V(a), informal disposition may be made of any contested case at any time prior to the entry of a final decision or order, by stipulation, agreed settlement, consent order or default. N.H. Code Admin. Rules Puc 203.20(b) requires the Commission to determine, prior to approving disposition of a case by settlement, that the settlement results are just and reasonable and in the public interest.

We have reviewed the settlement agreement, in light of testimony provided by the parties at the hearing, and the supporting accounting schedules presented by UES as part of its amended petition of September 30, 2011. On the basis of this review, we are satisfied that this settlement agreement fairly compensates UES for the restitution made to RiverWoods as part of the UES-RiverWoods Settlement, while not entirely sparing UES shareholders from the consequences of the overbilling. We do note that, based upon the testimony presented, UES shareholders do not profit from this error, and UES has confirmed, after review, that no other CT errors of the type involving RiverWoods currently exist on the UES system. We also note favorably the settlement agreement's exclusion of the \$269,916 in interest paid by UES to RiverWoods from recovery by UES from ratepayers, together with \$185,663 in distribution revenue, \$18,001 in low-income assistance funds, and \$23,253 in energy-efficiency funds. In total, UES shareholders are

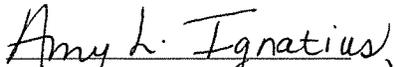
absorbing \$670,098 as a consequence of the \$1.8 million overcharge of RiverWoods, which represents an exclusion from recovery of more than one-third of the overcharge. We also strongly support the settlement agreement's stipulation between UES and Staff that UES will seek remedies from the manufacturer and vendor of the defective CT used at RiverWoods, and we will monitor UES' compliance with this provision.

Having reviewed the record, including the settlement and the evidence presented at hearing, we find that the resolution of this matter through the terms of the settlement agreement is just and reasonable and in the public interest. We find that the terms of the settlement represent an appropriate balancing of the interests of UES' investors and ratepayers, and are consistent with the public interest. *See* RSA 363:17-a. We will adopt and approve the terms of the settlement agreement, with the understanding that recovery of the reconciliation adjustment amounts will begin on the first day of the month immediately following Commission approval of the settlement agreement, *i.e.*, February 1, 2013, and end on November 30, 2015 for Non-G1 Default Service recovery, and on July 31, 2015 for EDC and SCC recovery. We note that our approval of this settlement agreement does not limit our discretion in the disposition of similar matters in the future.

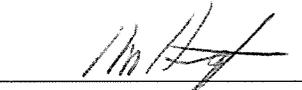
Based upon the foregoing, it is hereby

ORDERED, that the terms of the settlement agreement presented by the parties are hereby adopted and approved as discussed herein.

By order of the Public Utilities Commission of New Hampshire this twenty-fifth day of
January, 2013.



Amy L. Ignatius (KWS)
Chairman

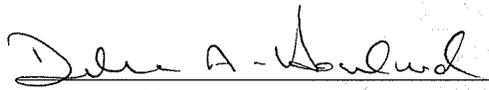


Michael D. Harrington
Commissioner

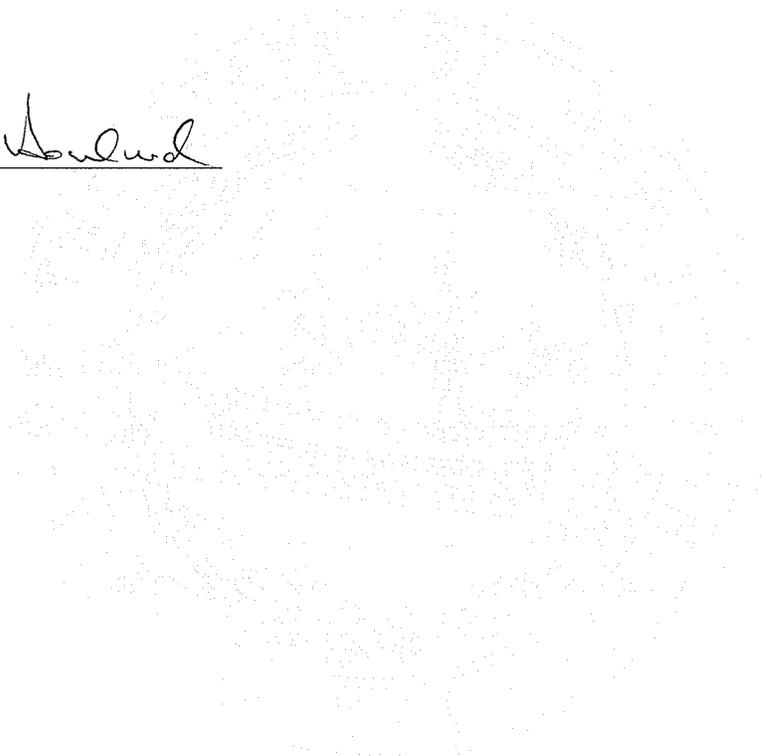


Robert R. Scott
Commissioner

Attested by:



Debra A. Howland
Executive Director



SERVICE LIST - EMAIL ADDRESSES - DOCKET RELATED

Pursuant to N.H. Admin Rule Puc 203.11 (a) (1): Serve an electronic copy on each person identified on the service list.

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