

DE 03-086

UNITIL ENERGY SYSTEMS, INC.

Annual Financing Report

Order Approving Motion for Confidentiality

O R D E R N O. 24,284

February 20, 2004

On December 1, 2003, Unitil Energy Systems, Inc. ("UES" or "Unitil") submitted its 2003 Annual Financing Report (the "Report") to the New Hampshire Public Utilities Commission ("Commission"), together with a Motion for Confidentiality (Motion) regarding the Report. The Report, which summarizes UES' projected sources of capital and capital structure for a five-year period, is required to be filed with the Commission pursuant to section 3.2 of the Stipulation and Agreement Regarding UES' Request for Approval of a Capital Contribution and Increase in Short Term Debt (Agreement), approved by the Commission on September 25, 2003. *Unitil Energy Systems, Inc.*, Order No. 24,212 in DE 03-086.

Unitil's Motion cites section 3.2 of the Agreement, which states that the parties agreed that the annual financing

reports should be treated as confidential.¹ Unitil asserts that the information in the Report presents confidential and proprietary projections of Unitil's future sources of capital and estimates of its capital structure for the next five years, which Unitil has not disclosed in any other forum. Unitil further states that public disclosure of this information could compromise UES' bargaining position in obtaining new sources of capital to the detriment of UES and its customers.

The New Hampshire Right-to-Know Law provides each citizen with the right to inspect all public records in the possession of the Commission. See RSA 91-A:4, I. The statute contains an exception for "confidential, commercial or financial information." RSA 91-A:5, IV. The case law interpreting whether information is considered confidential requires an objective test; it is not based on the subjective expectations of the party generating the information. See *Union Leader Corp. v. New Hampshire Housing Finance Authority*, 142 N.H. 540 (1997).

¹ Regarding this section, the Commission noted in Order 24,212:

"Section 3.2 of the revised Agreement similarly provides for the confidentiality of UES' annual financial report. We expect that these reports will contain commercially sensitive forecast information. We do not assume this provision to be a requirement of absolute confidentiality; rather, we understand that this provision is subject to our customary caveat, included in our rulings granting motions for protective order, that the Commission, on its own motion or on the motion of Staff, any party or any other member of the public, to reconsider confidential treatment in light of RSA 91-A, should circumstances so warrant." See footnote 13, slip op. at 26.

We have reviewed UES' Motion and find that UES has provided credible arguments as to the strategic and commercial sensitivity of the information for which protection is sought. Confidential, protective treatment of the Report is also consistent with Order 24,212 and the parties' Agreement.

In balancing the interests for and against public disclosure of the information, we are persuaded, based on the information before us, that the interest of Unitil and Unitil ratepayers in non-disclosure outweighs the public's interest in obtaining access to the information. We, therefore, will grant the Motion at this time. Consistent with our practice, our ruling is subject to the on-going authority of the Commission, on its own motion or on the motion of Staff, any party or any other member of the public, to reconsider the protective treatment in light of RSA 91-A, should circumstances so warrant.

Based upon the foregoing, it is hereby

ORDERED, that UES' Motion for Confidentiality filed on December 1, 2003 is granted, subject to the on-going authority of the Commission, on its own motion or on the motion of Staff, any party or any other member of the public, to reconsider the protective treatment in light of RSA 91-A, should circumstances so warrant.

By order of the Public Utilities Commission of New
Hampshire this twentieth day of February, 2004.

Thomas B. Getz
Chairman

Susan S. Geiger
Commissioner

Graham J. Morrison
Commissioner

Attested by:

Lori A. Legerstee
Assistant Secretary