

**DE 05-178**

**UNITIL ENERGY SYSTEMS, INC.**

**Petition for Rate Increase**

**Order Approving Temporary Rates**

**ORDER NO. 24,585**

**February 3, 2006**

**APPEARANCES:** Scott Mueller, Esq., of LeBoeuf, Lamb, Greene & MacRae, and Gary Epler, Esq. for Unitil Energy Systems, Inc.; F. Anne Ross, Esq. of the New Hampshire Office of Consumer Advocate, on behalf of New Hampshire ratepayers; and Edward N. Damon, Esq. for the Staff of the New Hampshire Public Utilities Commission.

## **I. PROCEDURAL HISTORY**

On November 4, 2005, Unitil Energy Systems, Inc. (UES) filed with the New Hampshire Public Utilities Commission (Commission) a petition for a distribution rate increase which included, among other things, a request for imposition of temporary rates effective December 4, 2005, at current rate levels. The Commission held a hearing on the matter of temporary rates on January 24, 2006, pursuant to *Unitil Energy Systems, Inc.*, Order No. 24,572 (December 30, 2005).

## **II. POSITIONS OF THE PARTIES AND STAFF**

### **A. UES**

UES stated that although the Commission need not find that UES is under-earning by a particular amount, there is no disagreement that it is not earning its authorized rate of return. UES contended the Commission should allow temporary rates at current levels. With the concurrence of the Office of Consumer Advocate (OCA) and Commission Staff (Staff), UES agreed that temporary rates should commence January 1, 2006, on a service rendered basis. In

support, UES introduced evidence that the revenue deficiency amounts to approximately \$1.7 million, taking into account certain adjustments to the per books test year ended June 30, 2005, in order to better reflect historical net operating income. According to UES, it is currently earning 7.52 percent based on adjusted per books test year (five quarter average rate base) figures and 8.03 percent without the adjustments, compared to the current authorized return on rate base of 8.59 percent.

### **B. Office of Consumer Advocate**

OCA concurred with UES that it was under-earning on a per books basis and thus did not object to the temporary rates requested by UES. OCA stated that the notice to customers of temporary rates was adequate.

### **C. Staff**

Staff stated that on a per books basis, there appears to be some level of under-earnings. Staff remarked that it is not in a position to agree with all the figures presented by UES, particularly the adjustments to the per books amounts proposed by UES and the resulting bottom line under-earnings figure. Staff also noted that discovery is still in the early stages. However, regardless of the validity of those adjustments, Staff agreed that over-earnings on a per books basis are not demonstrated. Under these circumstances, and in light of the statutory standard for temporary rates set forth in RSA 378:27, Staff did not oppose temporary rates at current rates commencing January 1, 2006. Staff concluded it is understood that temporary rates will be reconciled to permanent rates, whether a permanent rate increase or decrease is ultimately found to be warranted, and that Staff's position on temporary rates is without prejudice to any position it may take with respect to permanent rates.

### III. COMMISSION ANALYSIS

For our analysis, we turn first to the governing statute in these circumstances, RSA 378:27, which requires the Commission to set “reasonable” temporary rates, and which the New Hampshire Supreme Court has determined must be

“sufficient to yield not less than a reasonable return on the cost of the property of the utility used and useful in the public service less accrued depreciation, as shown by the reports of the utility filed with the [C]ommission, unless there appears to be reasonable ground for questioning the figures in such reports.” *See Appeal of the Office of Consumer Advocate*, 134 N.H. 651, 661 (1991).

The Court has further held that “[t]his standard is ‘less stringent’ than the standard for permanent rates, in that temporary rates shall be determined expeditiously, ‘without such investigation as might be deemed necessary to a determination of permanent rates.’” *Id.* at 660 (citation omitted). We also note that the effect of establishing current rates as temporary rates ensures that the utility eventually receives the “just and reasonable” rates which are ultimately fixed as permanent rates, consistent with the Court’s holding in *Public Service Company of New Hampshire*, 102 N.H. 66, 70 (1959).

In addition, in order to address the issue of the appropriate timing of the proposed request, we note that temporary rates may not take effect before the date on which the utility files its request for a change in permanent rates; in any event, temporary rates may not be made effective as to services rendered before the date on which the permanent rate request is filed. *See, Appeal of Pennichuck Water Works*, 120 N.H. 562, 567 (1980). As the Court observed in that case, the effective date of temporary rates “fixes and determines the period during which the rates allowed in the underlying permanent rate proceeding may apply.” *Id.* at 564.

Based on the record in this case, the applicable statutory standard, and the case law outlined above, we find that UES has demonstrated that its request for temporary rates is

warranted. In addition, we find that the effective date for temporary rates proposed by UES, January 1, 2006, is reasonable. Finally, it is noted that temporary rates are subject to reconciliation pursuant to RSA 378:29 after the final determination of permanent rates.

**Based upon the foregoing, it is hereby**

**ORDERED**, that temporary rates be allowed at current levels, commencing on January 1, 2006 on a service rendered basis.

By order of the Public Utilities Commission of New Hampshire this third day of February, 2006.

---

Thomas B. Getz  
Chairman

---

Graham J. Morrison  
Commissioner

---

Clifton C. Below  
Commissioner

Attested by:

---

ChristiAne G. Mason  
Assistant Executive Director & Secretary