

**DE 07-035**

**UNITIL ENERGY SYSTEMS, INC.**

**Annual Reconciliation and Rate Filing**

**Order Regarding Stranded Cost Charges, External Delivery Charges and Reconciliations**

**ORDER NO. 24,746**

**April 30, 2007**

**APPEARANCES:** Scott Mueller, Esq., of LeBoeuf, Lamb, Greene & MacRae for Unitil Energy Systems, Inc.; Kenneth Traum of the Office of Consumer Advocate representing residential ratepayers; and Edward N. Damon, Esq., for the Staff of the New Hampshire Public Utilities Commission.

## **I. PROCEDURAL HISTORY**

On March 16, 2007, Unitil Energy Systems, Inc. (UES or the Company), filed with the New Hampshire Public Utilities Commission (Commission) its annual reconciliation of several adjustable rate mechanisms established pursuant to its tariffs approved in connection with the restructuring of UES in 2002. *See Concord Electric Company*, 87 NH PUC 694 (2002), Docket No. DE 01-247, Order No. 24,072. The adjustable rate mechanisms addressed in this proceeding include the Stranded Cost Charge (SCC), which includes Transition Service Charge (TSC) balances, and the External Delivery Charge (EDC). UES proposes to make the rate changes effective May 1, 2007, on a service rendered basis.

The TSC balances relate to over- or under-recoveries of costs to provide Transition Service which ended on May 1, 2006. The applicable TSC balance is combined with the SCC on UES customer bills, however, the Transition Service costs are tracked and reconciled separately. The SCC recovers over-market power costs authorized following UES's divestiture of its power supply portfolio as part of its restructuring in 2002. The EDC recovers the costs UES incurs

associated with transmission services outside UES's system and other costs for energy and transmission related services. This docket does not address UES distribution charges nor does it address Default Energy service charges.

On March 29, 2007, the Commission issued an Order of Notice establishing a hearing which was held on April 19, 2007. On April 16, 2007, the Office of Consumer Advocate (OCA) filed its intent to participate in this docket on behalf of residential ratepayers pursuant to RSA 363:28, II.

On April 18, 2007, UES filed a motion for protective order regarding attachments to the Company's response to Staff Data Request No. 1 consistent with RSA 91-A:5(IV) and NH Admin. Rule Puc 203.08. Specifically, UES requested confidential treatment of billing rates and invoice totals provided in invoices submitted by outside attorneys for work on behalf of UES.

## **II. PRELIMINARY POSITION OF THE COMPANY**

In its filing, UES proposed changes to its SCC and EDC rates. The net rate impacts of the proposed SCC and EDC were: 0.7 percent increase for the residential class, 0.8 percent increase for the regular general service (G2) class, 1.9 percent decrease for the large general service (G1) class, and 0.4 percent increase for the outdoor lighting class. *See* Exhibit No. 1, UES Petition, page 3. UES attributed the increases to a lower than expected credit in the TSC balances, which were set to expire on May 1, 2007.

UES stated that the stranded cost charges are payment obligations of the Company based on a prior contractual relationship with Unitil Power Corporation (UPC). Effective May 1, 2003, UPC waived certain contractual rights to take action against UES in connection with the power supply agreements in exchange for UES' agreement to make monthly Contract Release Payments (CRP) to UPC equal to the sum of (i) the Portfolio Sales Charge, (ii) the Residual

Contract Obligations, (iii) the Hydro-Quebec Support Payments, and (iv) true-ups from prior periods. The SCC is the mechanism by which UES recovers the CRP amounts from retail customers.

In its filing, UES calculated the energy portion of the stranded cost charge by including estimated unbilled revenue. UES claimed that the adjustment was consistent with the way it included unbilled revenue in its reconciliation of energy costs for its Default Service. *See Joint Report On UES' Calculation of Default Service Related Working Capital Requirements*, filed with the Commission in Docket No. DE 07-013, *UES Petition for Approval of Default Service Solicitation*.

In its filing, UES included the TSC credit balances, among other changes, which affected the SCC for UES customers as follows: the SCC for residential, G2 (kWh-based), and outdoor lighting was increased by \$0.00218 per kWh; the SCC for G2 class (non-kWh based) was increased by \$0.00222 per kWh; and the SCC for the G1 class was decreased by \$0.00157 per kWh. *See Exhibit No. 1, Asbury Testimony*, page 17, lines 1 and 2.

UES proposed an EDC of \$0.00697 per kWh applicable to all classes, a decrease of \$0.00099 per kWh compared to the current rates. *See Exhibit No. 1, Asbury Testimony*, page 18, lines 9 and 21. The decrease is primarily due to the inclusion of a large over-collection in the rate from the prior period.

### **III. POSITIONS OF PARTIES AND STAFF AT HEARING**

#### **A. UES**

At hearing on April 19, 2007, UES offered a panel consisting of Karen M. Asbury, Directory of Regulatory Services for Unifil Service Corp. (USC) and Francis X. Wells, Senior Energy Trader for USC.

#### **1. Unbilled Revenues**

Ms. Asbury suggested that when the treatment of unbilled revenue in the default service reconciliation is resolved in *UES Petition for Approval of Default Service Solicitation*, Docket No. DE 07-013, the Commission should apply the same methodology to the stranded cost and external delivery charges. That way the Company will have a consistent and correct method for calculating unbilled revenue. UES agreed to include unbilled revenues for both stranded costs and external delivery charges going back to May 2006 rather than to May 2007 as proposed in its filing. Ms. Asbury stated that as a result of going back one year to May 2006, customers will receive, through the SCC, an added benefit of approximately \$24,000. Ms. Asbury pointed out that the issue of cash working capital and its interrelationship with the reconciliation of over- and under-recoveries was examined in detail in Docket No. DE 07-013. In that docket the parties agreed, in order to remedy the double recovery of costs associated with the timing difference between costs and revenues, that unbilled revenue or accrued revenue would be recorded in the reconciliation mechanism.

#### **2. Status of Mirant Agreement**

Mr. Wells testified regarding UES's agreement with Mirant for divestiture of the UPC portfolio and provided updates on UPC's efforts to mitigate Hydro-Quebec's costs. Mirant notified UES that it intends to buy out and terminate, effective May 1, 2007, the Ocean State

power agreement between UPC and New England Power. Mr. Wells confirmed that such a buyout is contemplated by the Mirant Agreement and stated that the buy out would potentially reduce the risk to UES of Mirant's non-performance and thus benefit UES and its customers. Mr. Wells stated that he was not able to quantify the effect of the buyout, if any, on future rates.

Mr. Wells explained that Mirant is in the process of selling its Caribbean generating assets, thus providing cash that should improve Mirant's ability to perform the UES agreement. In addition, Mr. Wells indicated that Mirant may be pursuing a sale of the corporation, and if this turns out to be the case, UPC would assert its rights under the agreement to require the surviving entity to continue performance under the agreement.

### **3. UES Legal Expenses**

Both Ms. Asbury and Mr. Wells testified about legal costs incurred to benefit both UES and UES's Massachusetts affiliate, Fitchburg Gas and Electric Light Company (Fitchburg). Mr. Wells confirmed that the Company would be providing additional information responsive to a record request for information on the allocation of legal costs between UES and Fitchburg and the Commission reserved Exhibit 6 for that response.

Ms. Asbury and Mr. Wells confirmed that legal costs relating to the Commission's Energy Policy Act of 2005 (EPAct) proceeding Docket No. DE 06-061, were included in the EDC and not in base distribution rates. Ms. Asbury explained why a portion of the legal costs were not attributed to distribution costs. She discussed the Company's understanding of EPAct, and the docket the Commission opened to investigate five of the federal standards that are part of the EPAct. *See* DE 06-061. Ms. Asbury noted that in the Company's restructuring docket, *Concord Electric Company*, 87 NH PUC 694 (2002), the parties agreed that its energy and transmission obligations were to be recovered through its EDC. Ms. Asbury stated that the

Company believes that since the EAct was broadly directed at energy use and use of energy resources, and its legal costs were related to energy and transmission obligations, such legal costs should therefore be recovered under the EDC. UES also argued that the Commission's EAct docket concerned a federal statute regarding the wholesale sale of energy and interstate transmission and thus it is appropriate to include legal costs incurred in connection with the docket in the EDC.

Mr. Wells explained the difference between the estimated forecast of approximately \$52,000 for legal fees in the last EDC filing and the revised estimate of \$103,000 in legal expense. *See* Hearing Transcript, page 44, lines 16 to 20. Mr. Wells asserted that the increased legal expenses were caused, in large part, by higher levels of regulatory activity than projected, particularly at the Federal Energy Regulatory Commission, and from the EAct proceeding in New Hampshire.

#### **4. Rate Impacts due to Adjustments**

As a result of including unbilled revenue as of May 2006, instead of May 2007, in the over- or under-recoveries, there were certain impacts to the rates which UES had originally filed. According to UES, an increase in the amount of interest owed to ratepayers in the EDC calculation was offset by a higher unbilled revenue amount than had been used in the original filing. UES stated that these offsetting adjustments should result in no change to the overall EDC rate.

According to UES, the SCC rate was affected by several changes. First, unbilled revenue was included beginning in May 2006, instead of May 2007. As a result of the unbilled revenue adjustment, UES estimated that the Non-G1 class, which includes the G2 class, will have an under-collection of \$126,762 and the G1 class will have an under-collection of \$446,246 in the

TSC ending balances as of April 30, 2007. *See* Exhibit No. 3, Response to Staff Data Request No. 2, Attachment 2-2, page 4 of 5, lines 13. Second, UES lowered the estimate for charges relating to the Hydro Quebec Phase II transmission agreement by \$27,500 as a result of increasing estimated payments to be received. *See* Exhibit No. 3 Response to Staff Data Request No. 2. Lastly, UES discovered an error in the calculation of the TSC balances, i.e., the entry of two numbers as negative amounts instead of positive amounts, which increased the balance due.

As a result of these adjustments, the SCC and TSC changed for the various rate classes as shown in the table below:

Rate class	SCC change per kWh	TSC change per kWh	Net SCC per kWh
Residential., gen. service kWh, outdoor lighting, gen. service G2	(\$0.00004)	\$0.00019	\$0.00015
Large gen. service G1	(\$0.00004)	\$0.00002	(\$0.00002)

*See* Exhibit No. 3, Response to Staff Data Request 2, Attachment 2-3.

The resulting SCC and TSC charges for the various rate classes are shown in the table below:

Rate Class	EDC Rate	SCC Rate
Residential, general service classes and outdoor lighting	\$0.00697 per kWh	\$0.00864 per kWh
Regular general service G2*	\$0.00697 per kWh	\$0.00287 per kWh
Large general service G1*	\$0.00697 per kWh	\$0.00119 per kWh

*See* Exhibit No. 8, Record Request No. 3.

\* Stranded cost charges for G2 and G1 classes also include demand components not shown here. Those demand components have not changed in this proceeding and remain \$1.55 per kW for G2 and \$2.25 per kVA for G1.

These changes, along with those being made to the Company's Default Service rates and the step adjustment resulting from the last rate case, would cause the bill of a residential

customer using 500 kilowatt-hours per month to decrease from \$85.00 to \$76.56, a decrease of \$8.44 or 9.9 percent.<sup>1</sup>

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

Recognizing that the reconciliations in the UES filing are contingent upon a Staff audit, the OCA did not object to UES' filing, with two caveats: (1) that the response from the Company regarding the allocation of legal fees between UES and Fitchburg does not raise any new issues; and (2) that a portion of the approximately \$40,000 legal costs should have been charged to distribution costs rather than to the EDC. The OCA suggested that ten percent of the \$40,000 should be removed from the instant filing and charged to distribution rates. *See* Hearing Transcript, page 54, lines 1 and 2.

### **C. Staff**

Staff stated that it had reviewed UES' filing and participated in discovery. Staff stated that the reconciliations should be made subject to and contingent upon the results of Staff's audit, including the audit of the legal costs included in UES's EDC. In addition, Staff supported the inclusion of unbilled revenue amounts beginning May 2006 as a reasonable correction to an accounting problem dealing with timing differences, but stated that its view is contingent on the results of Staff's on-going review of the Company's corrections to the default service charges and the adoption of a consistent approach regarding the SCC and EDC. Staff recommends that the Commission allow the adjusted rates requested by UES to go into effect May 1, 2007.

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<sup>1</sup> Exhibit No. 8, Record Request No. 3., Attachment RR-3, page 1 of 3, states that the total bill impact for a residential customer using 500 kWh per month has decreased from \$84.72 to \$76.28. The difference in the bill impacts stated here and those listed above is due to that fact that the Company did not include the Electricity Consumption Tax of 0.00055 per kWh in its calculations.



#### IV. COMMISSION ANALYSIS

##### A. Motion for Confidential Treatment

First, we address UES' Motion for Protective Order. UES seeks to protect attorneys' hourly billing rates and invoice totals provided in invoices submitted to UES by outside attorneys. UES states that the information for which it is seeking confidential treatment must be protected from public disclosure because disclosure of the information may detrimentally impact the Company's outside attorneys and their competitive position in negotiating with other parties. UES states that the information it seeks to exempt from public disclosure qualifies as "confidential, commercial, or financial information," and that such request is consistent with both the New Hampshire Right-to-Know law, RSA 91-A:5, IV and prior Commission orders.

The New Hampshire Right-to-Know law provides each citizen the right to inspect public records in the possession of the Commission. *See*, RSA 91-A:4, I. The statute contains an exception, invoked here, for "confidential, commercial, or financial information." RSA 91-A:5, IV. In *Union Leader Corp. v. New Hampshire Housing Finance Authority*, 142 N.H. 540 (1997), the New Hampshire Supreme Court provided a framework for analyzing requests to employ this exception to shield from public disclosure documents that would otherwise be deemed public records. There must be a determination of whether the information is confidential, commercial or financial information "and whether disclosure would constitute an invasion of privacy." *Id.* at 552 (emphasis in original, citations omitted). The "asserted private confidential, commercial, or financial interest must be balanced against the public's interest in disclosure, . . . since these categorical exemptions mean not that the information is *per se* exempt, but rather that it is sufficiently private that it must be balanced against the public's interest in disclosure." *Id.* at 553.

The Commission's rule on requests for confidential treatment, N.H. Code Admin. Rules Puc 203.08, is designed to facilitate the employment of this balancing test.

With regard to attorney billing rates, we do not find the public's interest in review of this financial, commercially sensitive information sufficient to outweigh the benefit derived from maintaining the confidentiality of such information. On the other hand, total invoice amounts for legal services during certain billing periods do not appear to us to be so commercially sensitive that public disclosure should be denied. We will, therefore, grant protective treatment of the information regarding billing rates and allow disclosure of the invoice totals provided in copies of invoices submitted by outside attorneys. In making this ruling we direct the Company to redact only those portions of legal invoices needed to protect attorney billing rates from disclosure.

Consistent with past practice, the protective treatment provisions of this Order are subject to the on-going authority of the Commission, on its own motion or on the motion of Staff, any party, or other member of the public, to reconsider this protective order in light of RSA 91-A, should circumstances so warrant.

#### **B. Stranded Cost and External Delivery Charges**

Through its filing and testimony, UES has fairly and accurately calculated appropriate changes to the adjustable rate mechanisms that are the subject of this proceeding. Accordingly, we find UES's stranded cost and external delivery charges, with the adjustments proposed at hearing, to be just and reasonable and in the public interest and therefore approve those charges for effect May 1, 2007, pursuant to RSA 378:7. These charges shall be subject to adjustment and reconciliation depending on the Staff audit and Staff's on-going review with regard to the method for calculating unbilled revenues. We will not implement the ten percent reduction in

legal fees recommended by OCA at this time, but may reconsider the issue in light of the Staff audit to be conducted. With regard to UES's relationship with Mirant and any proposed contract buy-outs or sales of Mirant, we direct the Company to keep Staff informed of any further developments and their potential rate impact.

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

**ORDERED**, that the adjusted rates proposed by UES at hearing shall go into effect on May 1, 2007, subject to further adjustment as discussed in this Order; and it is

**FURTHER ORDERED**, that the pending motion for protective treatment is granted in part and denied in part.

**FURTHER ORDERED**, that UES file compliance tariffs by May 25, 2007.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of April, 2007.

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Thomas B. Getz  
Chairman

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Graham J. Morrison  
Commissioner

Attested by:

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Debra A. Howland  
Executive Director & Secretary