

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 21-030

UNITIL ENERGY SYSTEMS, INC.

Request for Change in Rates

Order on Rate Case Expenses

ORDER NO. 26,714

October 28, 2022

In this order, the Commission approves Unitil's rate case expenses of \$659,531 for inclusion in the External Delivery Charge, on a provisional basis and subject to audit and subsequent reconciliation.

I. PROCEDURAL HISTORY

On April 2, 2021, Unitil Energy Systems, Inc. (Unitil) petitioned the Commission for authority to implement new permanent rates for electric distribution service. On February 11, 2022, Unitil, the Office of Consumer Advocate (OCA), Staff of the Department of Energy (DOE), the Department of Environmental Services, Clean Energy New Hampshire and ChargePoint filed a settlement on permanent rates (Settlement). The Commission approved the Settlement by Order No. 26,623 (May 3, 2022). The Settlement included a provision allowing Unitil to recover its rate case expenses through its reconciling rate mechanism, the External Delivery Charge (EDC).

II. POSITIONS OF THE PARTIES

A. Unitil

Rate Case Expenses

Section 10.2 of the Settlement provides that the Company may recover just and reasonable rate case expenses incurred by the Company in the preparation and

presentation of its filing, and the regulatory proceeding expenses incurred by the Commission, the DOE, and the OCA, and charged to the Company in this docket. The Settlement provided that these expenses shall be recovered over one year within the EDC at a uniform per kWh rate. Pursuant to the Settlement, the rate case expenses were to be included in the Company's next scheduled EDC rate change effective August 1, 2022. On April 29, 2022, Unitil filed its request for recovery of rate case expenses totaling \$582,636. The total amount was supported by invoices from third-party consultants and outside providers. In its filing, Unitil also provided documents stating that its request for proposals process was designed to obtain the lowest cost for the services provided.

The Company made its annual EDC filing on June 20, 2022, in Docket No. DG 22-038, in which it included \$621,531 of rate case expenses to be recovered through the EDC over a one-year period. See McNamara testimony Bates Page 7. This amount \$621,531, exceeded the amount of rate case expenses reported on April 29, 2022, by \$38,895. On September 8, 2022, Unitil filed an updated request for recovery of rate case expenses in this docket in the amount of \$659,531.

This updated rate case expense amount exceeds the amount currently being recovered through the EDC approved in DG 22-038 by \$38,000. According to the Company, the additional \$38,000 reflects an invoice received on September 7, 2022, for services provided by DOE witness Woolridge in this rate case. The Company proposes to charge those additional \$38,000 in costs to the EDC as part of the over/under collection in the Company's next EDC filing (for 2023).

Motion for Confidential Treatment

With its April 29, 2022, rate case expense filing, Unitil filed a motion requesting confidential treatment of the rate and billing information for consultants who

performed work for UES, and certain information about other clients of those consultants, included on select pages between Bates Pages 6 through 100, and between Bates Pages 155 through 356, of the documents filed with the Company's request for recovery of rate case expenses in this docket.

B. OCA

The OCA supported the Settlement but did not specifically address Unitil's request to recover rate case expenses.

C. DOE

The DOE supported the Settlement but took no position on Unitil's request to recover rate case expenses and did not provide an audit of those expenses.

D. Department of Environmental Services

The Department of Environmental Services supported the Settlement but took no position on Unitil's request to recover rate case expenses.

E. ChargePoint and Clean Energy NH

ChargePoint and Clean Energy New Hampshire supported the Settlement but took no position on Unitil's request to recover rate case expenses.

III. COMMISSION ANALYSIS

Rate Case Expenses

We review rate case expenses in order to determine that the expenses are just and reasonable and were prudently incurred. RSA 378:7. *See also* N.H. Code of Admin. R. Puc 1904. Unitil's rate case expense filing states that the expenses were incurred consistent with Puc 1905, and on their face, the summary and supporting documents appear reasonable. These expenses have not been subject to a thorough review and audit by the DOE. As a result, we approve the expenses on a provisional basis and approve inclusion, after-the-fact, of \$621,531 in the External Delivery

Charge effective August 1, 2022, as proposed in the testimony of Unitil witness, Linda McNamara, Bates Page 7, filed on June 20, 2022, in Docket DE 22-038.

We note that subsequent to the approval of the EDC rate by Order No. 26,655 (July 28, 2022), on September 8, 2022, Unitil filed updated rate case expenses in this docket in the amount of \$659,531. Those updated expenses included the \$38,000 invoice from DOE witness Woolridge. In the event a subsequent review and audit by DOE shows any errors or discrepancies in any of the rate case expenses, those corrections to the final expense amount, will be handled through the reconciling EDC process with adjustments, if needed, effective on August 1, 2023.

Motion for Confidential Treatment

The New Hampshire Supreme Court has interpreted the exemption for confidential, commercial, or financial information to require an "analysis of both whether the information sought is confidential, commercial, or financial information, and whether disclosure would constitute an invasion of privacy." *Union Leader Corp. v. NH Housing Fin. Auth.*, 142 N.H. 540, 552 (1997) (quotations omitted). "Furthermore, 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 (citation omitted). The burden of proving that the information is confidential and private rests with the party seeking non-disclosure. *See Goode v. NH Legislative Budget Assistant*, 148 N.H. 551, 555 (2002).

RSA 91-A:5(1V) expressly exempts from public disclosure requirements any "records pertaining to ... confidential, commercial or financial information ... "

In furtherance of the Right-to-Know law, the Commission's rule on requests for confidential treatment, Puc 203.08, is designed to facilitate the balancing test required by the relevant case law. The rule requires petitioners to: (1) provide the material for which confidential treatment is sought or a detailed description of the types of information for which confidentiality is sought; (2) reference specific statutory or common law authority favoring confidentiality; and (3) provide a detailed statement of the harm that would result from disclosure to be weighed against the benefits of disclosure to the public. Puc 203.08(b).

The Supreme Court has stated that the determination of whether information is confidential or private must be made "objectively, and not based on the subjective expectations of the party generating it." *Union Leader Corp. v. NH. Housing Fin. Auth.*, 142 N.H. at 553. Moreover, the Court has found instructive the federal test for confidential information under which "the party resisting disclosure must prove that disclosure is likely to: (1) impair the State's ability to obtain necessary information in the future; or (2) cause substantial harm to the competitive position of the person from whom the information was obtained." *Id.* at 554 (quotation and brackets omitted).

In this case Unitil seeks protection for information about the contract, billing arrangements and rates of Unitil's consultants for the provision of testimony and support for cost of equity, revenue decoupling, and the accounting and marginal cost studies and rate design in this case. Additionally, as part of their RFP responses, certain of the consultants provided information about other clients for whom they had performed work. According to Unitil, disclosure of the consultants' contract and billing information would put them at a competitive disadvantage by divulging the rates they charged for work. Unitil claims this would adversely affect the Company because in

future dockets consultants would be discouraged from participating in RFPs if doing so would result in release of confidential business information.

We find that both contract billing arrangements and the identity of other clients for whom consultants have worked is confidential commercial or financial information and is protected by RSA 91-A:5(1V). We also find that the basis of the costs that Unitil seeks to recover from rate payers is of interest to the public. When the public's right to know in this case is balanced against the privacy interest at stake the balance favors protection of these internal billing details and client identities. The public does, however, have access to the total billed amounts for each of the services. We therefore grant Unitil's motion for confidential treatment of this information.

Based upon the foregoing, it is hereby

ORDERED, that Unitil may retain \$621,531 as rate case expenses in its EDC effective on August 1, 2022, on a provisional basis subject to further adjustment and reconciliation following DOE review and audit of these expenses; and it is

FURTHER ORDERED, that Unitil may include \$38,000 as rate case expenses in its EDC effective on August 1, 2023, for recovery as part of the reconciliation process on a provisional basis subject to further adjustment and reconciliation following DOE review and audit of these expenses; and it is

FURTHER ORDERED, that Unitil's motion for confidential treatment is GRANTED.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of October, 2022.



Daniel C. Goldner
Chairman



F. Anne Ross
Special Commissioner

Service List - Docket Related

Docket#: 21-030

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