DR 98-154

UNITIL SERVICE CORPORATION

Restructuring Settlement Agreement

O R D E R N O. 23,507

June 12, 2000

APPEARANCES: Scott Mueller, Esq. of LeBoeuf, Lamb, Green and MacRae for Concord Electric Company, Unitil System companies; F. Anne Ross, Esq. for the Retail Merchants Association of New Hampshire; James Monahan for Cabletron Systems; Michael Holmes, Esq. and Kenneth Traum of the Office of Consumer Advocate on behalf of Residential Ratepayers; Daniel Allegretti, Esq. for Enron Energy Services, Inc.; Carlos Gavilondo, Esq. for Granite State Electric; Pentti Aalto of PJA Energy Systems; Wynn Arnold, Esq. from the Department of Justice, Attorney General's Office; Stephen Judge, Esq. Associate Attorney General; Deborah Schachter, Director of the Governor's Office of Energy and Community Services; Ann Davidson, Esq. for the New Hampshire Electric Cooperative, Inc.; Gary Gilmore from the Campaign for Ratepayers' Rights; Charles Clough of Freedom Partners, LLC; and Robert Frank, Esq. representing New Hampshire Public Utilities Commission staff member George McCluskey, as signatory to the settlement agreement and Eugene Sullivan, III, Esq. for Mr. Cannata and Mr. Naylor of the Staff of the New Hampshire Public Utilities Commission.

I. PROCEDURAL HISTORY

On September 8, 1998, a document entitled the Unitil Restructuring Settlement Agreement ("Settlement Agreement") was executed and filed by the following parties (the "Settling Parties"): the Business and Industry Association of New Hampshire ("BIA"); Cabletron Systems, Inc. ("Cabletron"); Enron Energy Services, Inc. ("Enron"); Freedom Partners, L.L.C. ("Freedom"); the Staff of the New Hampshire Public

Utilities Commission ("Staff"), the Office of Consumer Advocate ("OCA"); the Retail Merchants Association of New Hampshire ("RMA"), and the Unitil Companies: Concord Electric Company ("CECo"), Exeter & Hampton Electric Company ("E&H"), Unitil Service Corp. ("USC"), and Unitil Power Corp. ("UPC") (collectively "Unitil").[1] The Settlement Agreement was intended to resolve most of the contested issues pertaining to Unitil in our restructuring proceeding, DR 96-150, to provide retail access and customer choice for Unitil's customers by March 1, 1999, and to terminate Unitil's involvement in the ongoing Federal litigation.[2]

A duly noticed Prehearing Conference was held on September 18, 1998. Technical sessions were conducted on September 18 and September 24, 1998, and intervenor testimony was filed on October 7, 1998 by the Governor's Office of

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[1]In addition to the above-stated parties, the Commission granted intervention to the Governor's Office of Energy and Community Service ("GOECS"), the Campaign for Ratepayers' Rights ("CRR"), State Representative Jeb E. Bradley, Pentti Aalto of PJA Energy Systems Designs, Granite State Electric Company ("GSEC") and the New Hampshire Electric Cooperative, Inc.

[2]Under the Settlement the parties agreed to disagree on two issues to be presented to the Commission for determination: 1) use of the Unitil name and logo; and 2) the allocation of partial payments between a supplier and the distribution company for consolidated billing under the Trading Partner Agreement.

Energy and Community Services ("GOECS"), Enron, Staff and the OCA (jointly), and Michael D. Cannata, Jr., P.E., Chief Engineer of the Commission. On October 12, 1998, the parties conducted a technical session and settlement conference and on October 16, Unitil filed rebuttal testimony.

As a result of the technical sessions and the settlement conference, Unitil and the other parties conducted further negotiations and agreed to an Amended Settlement on October 20, 1998. The Amended Settlement addressed a number of issues and concerns raised in the testimony of Representative Jeb Bradley, Deborah Schachter of the GOECS, and Mr. Cannata. The parties to the Amended Settlement included all of the original signatories plus Pentti Aalto, Representative Jeb Bradley, CRR, EnerDev, Inc., and Granite State Taxpayers, Inc.

The Commission held evidentiary hearings on October 21, 22, and 23, 1998. During the hearings, the Commission determined that the issue of transmission and distribution classification, addressed in Mr. Cannata's testimony, would be bifurcated and separately noticed. In addition, the Commission agreed to the Settling Parties' recommendation that the two disputed issues - the use of the "Unitil" name and logo, and allocation of partial payments from customers - be

briefed at a later date: November 12, 1998. The parties requested an oral decision of the Commission on the Amended Settlement by November 2, 1998.

On October 30, 1998, the Commission's General Counsel sent a letter to all parties advising that the Commission had sought clarification from the Company of certain language in the Settlement Agreement concerning the Fixed Wind Down Costs, and was providing all parties a copy of the memorandum response received from Unitil. The Commission invited any party seeking to comment upon the memorandum or object to its inclusion in the record as an exhibit to do so by 10:00 a.m. November 2, 1998. No comments or objections were received.

On October 30, 1998, the Commission submitted a record request to Unitil for a schedule of the specific items, by FERC subaccount, to be included in the Fixed Wind Down Costs.

A. November 2, 1998 Deliberations

On November 2, 1998, the Commission deliberated this matter and issued its oral decision concerning transition service, customer education, distribution rates, energy efficiency, low income program, stranded cost recovery, divestiture process, and the finality of the Commission's

approval of the settlement. The Commission stated that on the whole, the Amended Settlement Agreement is consistent with the New Hampshire restructuring statutes codified in RSA 374-F, as amended by the Legislature in Chapter 191 of the statutes of 1998, but announced certain conditions that would have to be met in order for the Settlement Agreement to comport with the public good. The Commission indicated that it was not prepared to decide the issue of the recovery of Fixed Wind Down Costs, and that it was seeking more detail on this from the Company.

1. Transition Service

Under the Amended Settlement Agreement the transition service would be obtained through a competitive bidding process, would last until April 30, 2002, and would have a price escalator of 2.5% per year. In response to concerns raised by the GOECS, the price escalator was moderated from a 5% rate in the original Settlement, and the period of transition service was extended four months beyond the winter holiday season.

The administrative costs related to acquiring and providing the service would be recovered by the two distribution companies from all retail customers, at least for the first $50,000 for each company, through an administrative

service charge. All customers, i.e. all sizes and both new and existing customers, would be eligible for transition service, all customers would be allowed to return to transition service one time prior to March 1, 2000 as long as they requested to do so within 120 days of switching to a competitive supplier, and at the end of transition service, customers remaining on the service would be randomly assigned to the transition service suppliers as long as those suppliers would have registered with the Commission.

The Commission agreed that the period proposed by the parties for transition service, through April 30, 2002, was appropriate and consistent with RSA 374-F:3,V, the statutory section governing transition service, and approved it as proposed in the Amended Settlement. The Commission also approved the proposed 2.5% escalator as being consistent with the legislative directive that the “price of transition service should increase over time to encourage customers to choose a competitive electricity supplier during the transition period.” RSA 374-F:3,V(b). In addition, the Commission believed that including the escalator could make evaluation of the bids more straightforward. The Commission noted that the service contracts which the Company proposed to enter into to implement transition service, under the terms of

the Agreement, would be filed with the Commission for review and acceptance, affording another opportunity for review before they went into effect.

The Commission also stated that, as a matter of general principle, it would be best if there were at least 3 bidders chosen to provide transition service and would ask the companies to keep this in mind when evaluating the bids.

In terms of the administrative expenses of transition service, given that the company stated that estimates of this expense did not exceed $25,000 per company through June of 1999 and the relative size of the companies, the Commission did not see a need to impose a cap. The Commission, therefore, required a modification of this portion of the Agreement to permit recovery of all expenses related to the transition service from all retail customers.

By the terms of the Agreement, at the end of the transition service period the customers who remain on transition service would be randomly assigned to the transition service providers who were registered as competitive suppliers. Because of this, the customer education undertaken during the three months prior to the end of transition service was considered very important, and would need to be reviewed and approved by the Commission before it

commenced.

One other related issue concerned the identification of the providers of transition service to the transition service customers during the transition service period. The Settlement proposed that this be done quarterly; the Commission required that this be done in every monthly bill as a means of helping to educate transition service customers.

2. Customer Education

The Settlement contained language that the companies "should only be required to support the costs of the statewide Consumer Education plans and programs at a fair and appropriate level as determined by the Commission." While the Commission had no intention of charging any utility a disproportionate share of the customer education program, the Commission wanted to make clear that any costs incurred as a result of Unitil offering customer choice earlier than some other utilities would not be an offset to Unitil's liability for its portion of the Commission's customer education program.

In addition, the Commission determined that it would review the company's customer education program to make sure that it coordinated with the general program implemented in conjunction with the public education working group and the

consultant hired by the Commission to carry out the program.

3. Distribution Rates

Under the terms of the Agreement, Unitil agreed that Concord Electric Company (CECo) and Exeter & Hampton Electric Company (E&H) would not file for an increase in retail distribution base rates prior to July 1, 1999, and that they would not seek to increase rates for any billing period prior to January 1, 2000, except under certain limited circumstances. Based on how this provision was described at the hearing, the Commission believed this was in the nature of a cap on rates for the time periods specified. There was nothing in the Agreement, however, that would preclude the Commission from calling in the companies to consider a rate decrease during this period. Given the fact that competition was scheduled to be implemented on March 1, 1999, the Commission required an amendment to section 2.2.1 of the Agreement such that the companies would agree to not make a filing or seek an increase in base rates until one year after the implementation of competition.

4. Energy Efficiency

The GOECS expressed concern that the Settlement as originally filed made no provision for energy efficiency programs, beyond Unitil’s existing low-income residential

energy efficiency program, until such time as the Energy Efficiency Working Group (EEWG) recommends and the Commission approves additional programs (Exh. 18 at 10). In response to these concerns, and as proposed by Unitil at the time of the hearing, the Companies agreed to work with the GOECS, the PUC Staff, and other interested parties to develop, apart from the approval of the Settlement, proposals for increasing the Companies' demand-side management or energy efficiency efforts, for the Commission's review (Exh. 5 at 2). This approach was generally acceptable to the GOECS (Tr. Day II, Oct. 22, 1998, p. 228, lines 8-24 through p. 229, line 1).

The Commission was satisfied with this proposal and encouraged the Companies and interested parties to proceed as outlined, and discuss the possibility of identifying for Commission consideration specific programs or improvements in historic program design that would enable the Companies to offer energy efficiency programs that meet the statutory guidelines and the Commission's precedents during the transition to competition. In conjunction with this, the Commission required the parties to file a status report by December 1, 1998, providing an update on their discussions.

The Commission called the parties' attention to a number of issues in this regard: (a) the need to use the EEWG

as a touchstone for program design to the extent possible given the timing of the parties' discussions; (b) the need to avoid a ramp-up and then sudden ramp-down of programs determined inappropriate once the Commission has received and considered EEWG recommendations for cost-effectiveness and program design, among other considerations; (c) the previous decisions of the Commission, including the Order Providing for Limited Expansion of PSNH 1998 Conservation and Load Management Program, Order No. 22,999 (August 17, 1998); and (d) the need to ensure that scarce personnel resources are appropriately allocated, so that the EEWG's work is not delayed.

5. Low Income Program

The Settlement proposed to impose a systems benefit charge as of Choice Date and to use the funds collected to implement a transitional low income assistance program until the statewide program is in place. The Settlement provided that this would be done within 90 days of Choice Date. At the hearing the Companies agreed to try to implement this program sooner than 90 days. The Commission accepted this offer.

6. Fixed Wind Down Costs

The Settlement, at section 4.3.2, provided for recovery of fixed wind down costs. Under this section Unitil

Service Corporation would recover from Unitil Power Corporation fixed wind down costs of $1.4 million in 1999, $1.2 million in 2000, $1 million in 2001, $0.8 million in 2002, $0.6 million in 2003, $0.4 million in 2004 and $0.2 million in 2005. The Commission determined that insufficient detail had been provided to justify these costs. The Commission was concerned about the size of these costs, whether attempts had been made or were planned to mitigate them, whether revenues realized as a result of recovery of these costs could be used to assist an affiliate competitive supplier, and the lengthy period allowed for their recovery. The Commission issued a post-hearing record request to the Company seeking more detail on this matter. After receipt of the response, an additional record request was issued. The Commission determined to withhold judgment on this issue until it had a chance to review the additional information submitted.

7. Stranded Cost Recovery

The Settlement stated that the “objective of the divestiture process is to eliminate and recover all power supply obligations within 12 years of the Choice Date” (section 4.2) and allowed for a longer period of time for contract release payments. The Companies’ testified that they

anticipated being able to complete the recovery within 10 years from the completion of divestiture. The Commission also believed that the stranded costs should be recovered within 10 years, but allowed a cap of 12 years from the date of divestiture for such recovery and required that the Settlement and the Amended System Agreement be so amended. The Commission noted that in agreeing to this period for recovery it was providing for a recovery period well beyond the seven and one-half year notice of termination provision contained in the all-requirements wholesale power sales contract that UPC has with CECo and E&H.

8. Divestiture Process

The Settlement provided that the Commission would have an opportunity to review and decide whether to approve the transaction agreements signed by the bidder or bidders. (Attachment A, p. 4). This provision was satisfactory to the Commission, given the uncertainty of what the bidding process would produce. The GOECS contended that the Commission should consider requiring that the divestiture offering mandate bids that produce a series of flat or declining stranded cost payments. The Commission noted that the Companies testified that the divestiture offering would state a preference for flat or declining payments and would indicate an interest in

bid structures that would mitigate stranded cost rate impacts, particularly in the early years. (Gantz testimony in Exh. 4 at p. 13). The Commission was satisfied by this commitment and the fact that it had approval authority over the transaction agreements, as noted above.

9. Miscellaneous

Under section 6.3 of the Settlement the parties agreed to support consideration by the Commission, in a separate proceeding, of requests by intervenors in this proceeding for recovery of expenses of participation. Upon receipt of any such request, the Commission would first consider whether it has the jurisdiction to award recovery of such intervenor funding.

In terms of the finality of the Commission's approval of this Settlement, an issue raised by language in the Settlement and discussed at some length during the hearings, the Commission stated that it would grant only such finality as it has authority to grant under current law.

November 18, 1998 Deliberations

As a result of its November 2 deliberations, on November 3, 1998, the Commission issued notice to all parties that it continued to have several outstanding concerns

regarding the recovery of Fixed Wind Down Costs provided for in the Settlement Agreement and determined that a continuation of the hearings would be required. Pursuant to this notice, a fourth day of hearings was held on November 6, 1998.

Subsequent to this hearing, briefs on the issues of future use of the Unitil name and logo and the disposition of partial payments were filed by the Unitil Companies, the OCA, the GOECS, and collectively by the NH Retail Merchants Association, Cabletron, the OCA, Enron, and the Commission Staff. Unitil also submitted a Post Hearing Legal Memorandum regarding recovery of Fixed Wind Down Costs as stranded costs, the consistency of the settlement with the mitigation requirements of RSA 374-F:3, and the jurisdiction of the Securities and Exchange Commission regarding allocation of service agreement costs among affiliated subsidiary companies of a utility holding company.

On November 18, 1998, the Commission deliberated this matter and issued its oral decision concerning the recovery of Fixed Wind Down Costs, use of the Unitil name and logo, and disposition of partial payments.

As an initial matter, the Commission noted that on November 5, 1998, the settling parties filed a letter asking for clarification of certain parts of the Commission’s

deliberation of November 2. Specifically, the parties requested that the Commission clarify whether the conditions for approval of the Settlement set out in its deliberations were suggestions to the settling parties, or rather were pre-conditions for the Commission's approval. The Commission confirmed that they were pre-conditions for the Commission's approval.

10. Recovery of Fixed Wind Down Costs

Paragraph 4.3 of the Settlement Agreement provided for the recovery of certain Wind Down Costs - defined as the variable and fixed costs incurred by Unitil Services Company ("USC") and allocated to Unitil Power Corporation ("UPC"). These charges were for the operation, management and administration of the power supply portfolio under the System Agreement between Concord Electric Company (CECo) and Exeter and Hampton Electric Company (E&H) on the one hand, and UPC on the other. These costs were proposed to be recovered by UPC from CECo and E&H under the Amended System Agreement, and recovered by CECo and E&H from customers through the Stranded Cost Recovery Charge ("SCRC").

As UPC would cease to exist once the divestiture of the power supply portfolio occurred, Variable Wind Down Costs were only eligible for recovery, with certain limited

exceptions, through the date of divestiture which was expected to be July 1, 1999.

Fixed Wind Down Costs were defined in Paragraph 4.3.2 of the Settlement as “the fixed costs of USC normally allocated to UPC as indirect overheads on labor hours billed to UPC” and “reflect the annual amortization and lease expenses associated with fixed assets used in and necessary to the conduct of UPC’s business, including office facilities and computer software and equipment.” Fixed Wind Down Costs were a negotiated amount and it was proposed that they be recovered at a level of $1.4 million in 1999, declining by $0.2 million each year thereafter for seven years.

The Company provided exhibits and testimony that demonstrated a reallocation to each of its subsidiaries of a portion of the charges formerly allocated to UPC. This “reallocation” was only the Company’s proposal, and was not part of the Settlement Agreement. The parties reserved their rights to argue in favor of or in opposition to any reallocation of these amounts to either CECo or E&H in any future proceedings. Thus, the exhibits which demonstrated these reallocations were for illustrative purposes only. They did, however, appear to indicate the Company’s intention to seek to reallocate these costs to its subsidiaries to the

extent that they could not be mitigated through cost reductions or increased revenues.

The Commission did not agree that the recovery of the Fixed Wind Down Costs as proposed in the Settlement Agreement and as provided for in the proposed Amended System Agreement was appropriate and in the public interest. The Commission was particularly concerned that the proposed recovery was based upon an allocation methodology that was inconsistent with the “normal” labor-based methodology by which the USC costs have been allocated among the various affiliates under the current System Agreement.

The allocator used to arrive at the amount of Fixed Cost Recovery, 43%, represented, as the Company candidly testified, “a figure that was used in the economic analysis to come to terms in the Settlement Agreement.” During the supplemental hearing on this issue held on November 6, however, the Company testified that the 21% allocation factor “drives the accounting process for these types of items.” The Commission determined that the appropriate allocator for the Fixed Cost portion of UPC’s share of USC’s charges is 21%, the current specific accounting process figure.

Thus, if recovery of these costs were allowed based upon the 43% allocator, it would - contrary to the language of

the Settlement Agreement itself - provide a greater opportunity for recovery of such costs than would be allowed under the existing System Agreement. This would occur even after considering that recovery of the fixed costs is ramped down over 7 years by $0.2 million per year. This, arguably, would be in violation of the provision of RSA 374-F:3,XII(a) that utilities may not recover more through stranded cost charges in restructuring than the amounts which they would have recovered under regulation. In addition, the Companies testified to their intention to try to mitigate such costs. Attempts to mitigate stranded costs are required by RSA 374-F:3,XII(c). Mitigation should, if successful, result in fixed costs less than those that would have been incurred and recovered under regulation.

In order to prevent a potential over-recovery of Unitil’s stranded costs, the Commission required that the recovery schedule in both the Settlement Agreement and Proposed Amended System Agreement be modified as follows: recovery would be allowed in year 1 for $1.4 million as proposed; in year 2 for $1.2 million as proposed; in year 3 for $1.0 million as proposed; and in year 4 for $0.8 million as proposed. No recovery would be pre-approved for the period beyond year 4.

This schedule of fixed cost recovery under the SCRC would provide the Companies with approximately the same dollar level of fixed cost recovery that would have been recovered under regulation. The Commission would afford the Company an opportunity to petition the Commission for recovery of such costs beyond this amount at the end of this period. The burden would be on the Company at that time to demonstrate that it was unable to mitigate such costs during the intervening period, to verify such costs under RSA 374-F:3,XII(d), and to demonstrate that it is appropriate to continue to collect additional such costs from CECo's and E&H's customers.

This modification to the Settlement Agreement comports with RSA 374-F:3,XII(d) which requires that stranded costs be verifiable and reconciled to market conditions from time to time. Since transition service would have terminated by the time the Companies would be allowed to petition the Commission for additional Fixed Wind Down Costs, the market would have undoubtedly changed so as to warrant a reconciliation or further examination of those particular costs.

11. Disposition of Partial Payments

Section 5.2 of the Amended Unitil Restructuring

Agreement addressed the relationship between the distribution companies and competitive suppliers. One aspect of Section 5.2, the Trading Partner Agreement, specified that partial payments made by a customer under consolidated billing would be first credited to any outstanding charges of the customer for distribution related billings and any remainder, if available, would be used to pay the competitive supplier. Some of the parties to the Settlement disagreed with this section of the Amended Settlement and argued their position on the record.

The Commission determined, on an interim basis, to allow Unitil to credit any partial payments first to the distribution company before dispersing in a timely manner any remainder of the funds to the competitive supplier. The Commission agreed with Enron that this practice would increase costs of competitive suppliers to some degree; however, it did not find persuasive the argument that this would keep competitive suppliers out of the market. Because it uniformly affects all competitive suppliers, adoption of partial payments to first pay the distribution company should not protect or inhibit any one competitive supplier at the expense of another competitive supplier, especially after the transition period ends. The benefits of applying partial

payments first to the costs of distribution accrue to all customers as a reduction in arrearages and may provide some additional customer protection measure. This method should be administratively simpler to operate, and was to remain in place until adoption of final rule concerning partial payments. The Commission reserved the right to reconsider its decision here when it determines this issue on a statewide basis. In any event, it appeared that partial payments account for a very small portion of overall payments.

12. Use of the Unitil Tradename and Logo

Several parties, as well as the Commission's Staff, argued that CECo and E&H should be prohibited from communicating their affiliation with any retail marketing company unless they do so in a manner not misleading to customers. These parties argue that CECo's & E&H's current use of the Unitil tradename and logo is inherently misleading and, therefore, the Commission should direct the retail distribution companies to ensure that all communications with their customers include only the name of the distribution company providing service, in a prominent, unambiguous format. They further argued that the retail distribution companies should not use their monopoly status to promote the competitive activities of their affiliates, and that

distribution companies should be barred from any activity that promotes and advertises their affiliation with any other retail marketing affiliate (such as URI).

The GOECS argued that the distribution companies should not be banned from using the Unitil name, but that there should be limitations on the manner and use of the name as necessary to mitigate customer confusion and to prevent unfair competitive advantage.

Unitil, on the other hand, argued that a ban on a utility's or its affiliate's use of a name or logo violates a utility's right to free speech as protected by the First Amendment to the United States Constitution.

The Commission agreed with the concerns expressed by several parties that the manner in which the two Unitil retail companies communicate their corporate identities to the public may be misleading. The Commission, however, was not compelled to take any action to require a modification of those communications at that time, based on Unitil's representations at the hearing that it had not made the decision to engage in a competitive activity through an affiliate such as URI and, if so, what the name of that competitive affiliate will be.

Unitil was directed to file with the Commission, by January 15, 1999, a statement confirming that it would not

establish a retail affiliate bearing the Unitil name for the purpose of engaging in any competitive function or activity. If Unitil was unable or unwilling to make such written confirmation, then Unitil was ordered to file with the Commission on or before January 15, 1999 a proposal for limiting the use of the Unitil name and logo in all advertisements, correspondence, signage on equipment, customer communications, etc., used by or in connection with the distribution companies. The Commission indicated a willingness to consider a plan for phased changes in the use of the Unitil name and logo.

B. Termination of Settlement Agreement

On November 24, 1998, Unitil issued a press release indicating that it would not agree to amend the Settlement Agreement to comply with the conditions for approval imposed by the Commission. Subsequently, on December 21, 1998, Unitil filed a letter dated December 17, 1998, notifying the Commission that it was terminating the Settlement Agreement and that it should be considered withdrawn and not constitute a part of the record in or used in any future proceeding.

II. COMMISSION ANALYSIS

As a result of Unitil's decision to terminate and withdraw the proposed Settlement Agreement, and the lack of

any further activity by the parties in this matter, the Commission determines that this docket should be closed.

Based upon the foregoing, it is hereby

ORDERED, that this docket is hereby closed.

By order of the Public Utilities Commission of New Hampshire this twelfth day of June, 2000.

Douglas L. Patch Chairman	Susan S. Geiger Commissioner	Nancy Brockway Commissioner

Attested by:

Thomas B. Getz
Executive Director and Secretary