

**STATE OF NEW HAMPSHIRE
BEFORE THE PUBLIC UTILITIES COMMISSION**

F-4 PETITION FOR AUTHORITY TO ISSUE SECURITIES)	
UNITIL ENERGY SYSTEMS, INC.)	DOCKET NO. De 20-076
Petitioner)	

**MOTION FOR CONFIDENTIAL TREATMENT
AND PROTECTIVE ORDER**

NOW COMES Unitil Energy Systems, Inc. ("UES" or "the Company") and, pursuant to RSA 91-A:5, IV and N.H. Admin. Rule Puc 203.08, respectfully moves the New Hampshire Public Utilities Commission (the "Commission") to issue a protective order according confidential treatment to certain information described below and submitted herewith. Specifically, UES requests that the Commission issue an order according confidential treatment for (1) Staff 1-1 Confidential Attachments 1 and 2, which are proprietary copies of ratings reports from ratings agencies S&P Global and Moody's, and (2) Staff 2-1 Confidential Attachment 1, which is a copy of the engagement letter of the Placement Agent selected to participate in the securities offering. In support of this Motion, UES states as follows:

I. Staff 1-4 Confidential Attachments 1 and 2

1. In response to discovery request 1-1 from Commission Staff, UES provided confidential information subject to its right to seek a protective order from the Commission pursuant to Puc 203.08(d). This confidential information is protected from public disclosure under RSA 91-A, as it constitutes proprietary and copyrighted information and analyses prepared and provided by ratings agencies that have value to

such agencies in that they are provided only on a paid subscription basis and are not otherwise made publicly available.

2. UES's request for a protective order is consistent with the public disclosure requirements of New Hampshire's Right to Know law. RSA 91-A. RSA 91-A:5(IV) expressly exempts from the public disclosure requirements any records pertaining to "confidential, commercial or financial information." RSA 91-A:5, IV; *Union Leader Corp. v. New Hampshire Housing Finance Authority*, 142 N.H. 540 (1997). Application of this exemption requires "analysis of both whether the information sought is confidential, commercial, or financial information, and whether disclosure would constitute an invasion of privacy." *Unitil Corp. and Unitil Energy Systems, Inc.*, DG 08-048, Order No. 25,014 (Sept. 22, 2009) at 2. The Commission's rule on confidential treatment of public records, Puc 203.08, also recognizes that confidential commercial or financial information may be appropriately protected from public disclosure pursuant to an order of the Commission. The determination of whether to disclose confidential information involves a balancing of the public's interest in full disclosure with the countervailing commercial or private interests for non-disclosure.

3. The ratings reports prepared and issued by Moody's and S&P constitute proprietary and confidential commercial and financial information, the value of which will be impaired if released publicly. While the overall credit ratings for the Unitil companies may be public, the underlying analyses supporting the ratings are not. These reports are made available to subscribers who pay a fee to access the reports and other information; they are not made publicly available. As such, the reports are proprietary and have significant value to the ratings agencies. Were the Commission to disclose the

reports publicly, parties that would otherwise have to pay a fee to the ratings agencies to receive the reports would instead have free and unrestricted access to them. Such disclosure would render the reports essentially valueless to the agencies. The ratings agencies have a clear privacy interest in these reports that warrants confidential protection.

4. The Moody's and S&P ratings reports are provided to UES and its parent and affiliate companies with the expectation that they will not be shared publicly. UES does not have the permission or discretion to disclose or disseminate them publicly, and unrestricted disclosure of the reports would constitute an unnecessary infringement upon the ratings agencies' privacy interest. There is no countervailing public interest in disclosure of the reports, as the Company's credit rating is publicly available information and provides the information relevant to this proceeding. Even assuming, for the sake of argument, that the Commission did determine that is a public interest in disclosure of the information, the commercial harm to the ratings agencies would significantly outweigh any such interest. Disclosure of the reports would not provide the public with information about the conduct or activities of the Commission or other parts of the New Hampshire State or local government. Accordingly, disclosure is not warranted. Moreover, UES has provided this information directly to Commission Staff as well as the Office of Consumer Advocate, affording these entities opportunity to investigate and consider the substance of the reports.

II. Staff 2-1 Confidential Attachment 1

5. In response to discovery request 2-1 from Commission Staff, UES provided confidential information subject to its right to seek a protective order from the

Commission pursuant to Puc 203.08(d). This confidential information is protected from public disclosure under RSA 91-A, as it provides the details of the terms under which the Placement Agent will provide various functions to ensure the issuance and sale of securities pursuant to Section 4(a)(2) of the Securities Act of 1933 (as amended).

6. UES's request for a protective order is consistent with the public disclosure requirements of New Hampshire's Right to Know law. RSA 91-A. RSA 91-A:5(IV) expressly exempts from the public disclosure requirements any records pertaining to "confidential, commercial or financial information." RSA 91-A:5, IV; *Union Leader Corp. v. New Hampshire Housing Finance Authority*, 142 N.H. 540 (1997). Application of this exemption requires "analysis of both whether the information sought is confidential, commercial, or financial information, and whether disclosure would constitute an invasion of privacy." *Unitil Corp. and Unitil Energy Systems, Inc.*, DG 08-048, Order No. 25,014 (Sept. 22, 2009) at 2. The Commission's rule on confidential treatment of public records, Puc 203.08, also recognizes that confidential commercial or financial information may be appropriately protected from public disclosure pursuant to an order of the Commission. The determination of whether to disclose confidential information involves a balancing of the public's interest in full disclosure with the countervailing commercial or private interests for non-disclosure.

7. With respect to the commercial or private interests, UES's placement agent for the above-captioned docket was selected via a competitive process. Disclosure of the agent's engagement letter would put it at a competitive disadvantage by divulging the terms and conditions for the work it was awarded. It would also adversely affect the Company because placement agents would be discouraged from working with the Company in

future financings if doing so would result in release of confidential business information. The disclosure of the redacted information would, if disclosed, similarly discourage placement agents from participating in the response to future solicitations, thereby harming the Company and, ultimately its customers. *See Northern Utilities, Inc.*, DG 17-019, Order No. 26,003 at 5-6 (April 10, 2017) (granting confidential treatment to the placement agent’s engagement letter); *see also EnergyNorth Natural Gas, Inc.*, DG 08-009, Order No. 25,064 (Jan. 15, 2010) at 11 (finding similar contentions to be “credible,” and concluding that National Grid “and its service providers have an interest in the confidentiality of the information”). The Commission has previously granted confidential treatment to the same material in a prior docket. *Northern Utilities, Inc.*, DG 17-019, Order No. 26,003 at 5-6 (April 10, 2017)

8. To the extent that the public has any interest in the terms under which UES engages its securities Placement Agents, that interest is balanced by the public interest in the Company’s ability to work with the best and most cost-efficient agents, and to require public disclosure of the engagement letter would contradict this interest. The information in the letter agreement with the Company’s placement agents, contains highly sensitive compensation information among and between the placement agents and the Company. *Id.* at 6. Moreover, the document “does nothing to provide the public with information about the conduct or activities of its government for it describes the payment relationships between purely private parties to the transaction.” *Id.* Accordingly, disclosure is not warranted. *Id.* Moreover, UES has provided this information directly to Commission Staff as well as the Office of Consumer Advocate, affording these entities opportunity to investigate and consider the terms and scope of the Placement Agents

engagement, and compare them to UES's and its affiliates' previous securities placement engagement agreements.

WHEREFORE, UES respectfully requests that the Commission issue an order protecting the confidential information specified herein from public disclosure.

Respectfully submitted,

Unitil Energy Systems, Inc.

A handwritten signature in black ink, appearing to read "Gary Epler". The signature is fluid and cursive, with the first name "Gary" and the last name "Epler" clearly distinguishable.

Gary Epler
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Dated: June 30, 2020