

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

DE 21-030

UNITIL ENERGY SYSTEMS, INC.

**MOTION FOR PROTECTIVE ORDER
AND CONFIDENTIAL TREATMENT**

NOW COMES Unitil Energy Systems, Inc. (“UES” or the “Company”) and, pursuant to NH RSA 91-A:5, IV and N.H. Code of Administrative Rules (“N.H. Admin. Rules”) Puc 203.08, respectfully moves the New Hampshire Public Utilities Commission (“Commission”) to issue a protective order which accords confidential treatment to the following information contained in documents filed with the Company’s Petition for Rate Adjustments: (a) Confidential Schedules TRD-9 and TRD-10 to the Direct Testimony of Todd Diggins, Confidential for the most recent credit reports for Unitil Corporation and its subsidiaries (including UES) published by S&P and Moody’s; and (b) Certain Company Officers’ Compensation contained in the Volume of Supplemental Filing Requirements pursuant to N.H. Code of Administrative Rules Puc 1604.01(a)(14). UES has filed this information with the Commission and submitted it to the Office of Consumer Advocate with the understanding it will be maintained as confidential until the Commission rules on the within Motion.

In support of this Motion, UES states as follows:

I. Standard of Review

1. In determining whether confidential, commercial or financial information within the meaning of RSA 91-A:5, IV is exempt from public disclosure, the Commission applies a

three-step balancing test to determine whether a document, or the information contained within it, falls within the scope of RSA 91-A:5, IV. *Northern Utilities, Inc.*, DG 17-070, Order No. 26,129 at 15 (May 2, 2018) (citing *Liberty Utilities (EnergyNorth) Natural Gas Corp.*, Order No. 26,109 at 23 (March 5, 2018)). First, the Commission inquires whether the information involves a privacy interest and then asks if there is a public interest in disclosure. *Id.* Then the Commission balances those competing interests and decides whether disclosure is appropriate. *Id.* When the information involves a privacy interest, disclosure should inform the public of the conduct and activities of its government; if the information does not serve that purpose, disclosure is not warranted. *Id.*

II. Confidential Schedules TRD-9 and TRD-10

2. Confidential Schedules TRD-9 and TRD-10 are exempt from public disclosure under RSA 91-A, as they constitute 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.

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 rating for Unitil Corporation and UES 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.

5. In evaluating an identical request for confidential treatment by the Company's affiliate, Northern Utilities, Inc. ("Northern"), the Commission determined that while the public had an interest in the content of the credit reports, that interest was not as weighty as Northern's interest in nondisclosure. *Northern Utilities, Inc.*, DG 20-078, Order No. 26,385 at 11 (July 28, 2020). The Commission explained:

We are cognizant that the analyses and related documents are copyright protected and were provided to the Company without authority to share the information publicly. Consequently, public release of the analyses could harm the Company's ability to obtain this type of information in the future, because it could violate the terms of its agreement with the publishers and would harm the competitive interests of the publishers of the copyrighted materials if such information were provided to the public for free. Those factors make the interest in nondisclosure more substantial.

Id. The Commission should reach the same conclusion in this case. 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.

6. The Commission did conclude that the credit ratings contained in the S&P and Moody's reports are not entitled to confidential treatment. The Company does not dispute this conclusion. UES has an issuer rating of BBB+ from S&P and an issuer rating of Baa1

from Moody's. The S&P credit rating is determined based on Unitil Corporation's entire suite of subsidiaries, whereas the Moody's credit rating is specific to UES.

III. Company Officers' Compensation

7. In accordance with Puc 1604.01(a)(14), UES has submitted documents containing officer compensation and benefit information. The compensation of UES's officers (the Company's President and Senior Vice Presidents) who are or were also officers of UES's parent, Unitil Corporation, is public information which is annually disclosed in the Unitil Corporation's Proxy Statement filed with the federal Securities and Exchange Commission. The Company does not seek to protect this information from disclosure. The compensation of the remaining officers (the Company's Controller, Treasurer, three Vice-Presidents and Secretary), however, who are not officers of the parent, has not been previously disclosed or made publicly available. Public disclosure of the compensation and benefit information for these employees could harm UES's ability to negotiate the terms of employment for its current and future employees. Moreover, allowing the Company's competitors access to such information could allow competitors an unfair advantage in competing to retain similar management and executive employees.

8. The above-described information meets the Commission's three-part test. The compensation information is clearly confidential, commercial or financial, and disclosure of it would pose harm and constitute an invasion of privacy. The Commission protected substantively similar information provided in accordance with Puc 1604.01(a)(14) in Northern's most recent rate case, DG 17-070. In that case, the Commission "protect[ed] the information regarding the compensation of Northern's officers, who are not officers of Unitil, from public disclosure, because disclosure could harm Northern's ability to attract qualified

personnel.” *Northern Utilities, Inc.*, DG 17-070, Order No. 26,129 at 15-16 (May 2, 2018).

The Commission also noted that the information was not previously disclosed or publicly available. Though the Commission noted that the public has “some” interest in disclosure of this information, it found that the privacy interests in non-disclosure outweighed the public’s interest in disclosure. *Id.* at 16. The Commission should reach the same conclusion in this case.

IV. Conclusion

9. UES is providing the confidential information described herein directly to the Office of Consumer Advocate (“OCA”), as required by RSA 363:28, VI. Provision of these materials to the OCA offers assurance to the public that this information will be subject to investigation, discovery and analysis by that office, as well as by the Staff of the Commission, and that the results of such review will be provided to the Commission for its consideration.

10. UES requests that the Commission issue an order protecting the above-described information from public disclosure and prohibiting copying, duplication, dissemination or disclosure of it in any form. UES requests that the protective order also extend to any discovery, testimony, argument or briefing relative to the confidential information.

WHEREFORE, UES respectfully requests that the Commission:

A. Issue an appropriate order that exempts from public disclosure and otherwise protects as requested above the confidentiality of the above-described information designated confidential submitted herewith; and

B. Grant such further relief as may be just and appropriate.

Respectfully submitted

UNITIL ENERGY SYSTEMS, INC.

By its Attorney:



Dated: April 2, 2021

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Certificate of Service

I hereby certify that on April 2, 2020, a copy of the foregoing Motion was electronically served upon the Office of Consumer Advocate.



Patrick H. Taylor