STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

DE 23-002

UNITIL ENERGY SYSTEMS, INC.

Proposed Purchase of Receivables Program

Order Approving Settlement Agreement

O R D E R N O. 27,036

July 19, 2024

In this order, the Commission approves the parties' settlement agreement regarding Unitil Energy Systems, Inc.'s (UES or the Company) proposed Purchase of Receivables (POR) Program. This proceeding is continued to a second phase to consider the Company's proposed revisions to its "Competitive Electric Supplier Trading Partner Agreement" (TPA) and "Terms and Conditions for Competitive Suppliers" (T&C) tariff.

I. BACKGROUND AND PROCEDURAL HISTORY

In 2021, HB 315 was enacted, which amended RSA chapter 53-E by, among other things, adding new section RSA 53-E:9, entitled "Billing Arrangements." RSA 53-E:9 required each electric distribution utility to propose a POR program for Commission review and approval in which the utility would pay the amounts due from customers to "suppliers" for electricity supply and related services less a discount percentage rate (DPR). Puc 2205.16(e) of the Commission's Chapter Puc 2200 rules, "Municipal and County Aggregation Rules," required utilities to file their proposed POR programs within 90 days of the rules' October 12, 2022 effective date, or by January 10, 2023.

UES submitted its proposed POR Program (the Program) filing on January 10, 2023. All docket filings, other than any information subject to confidential treatment, are available on the Commission's website at https://www.puc.nh.gov/regulatory/Docketbk/2023/23-002.html.

On February 2, 2023, the Commission issued an order of notice scheduling a prehearing conference on March 21, 2023. During the prehearing conference, the Commission granted petitions to intervene filed by the Community Power Coalition of New Hampshire (CPCNH) and a number of companies collectively referred to as the "NRG Retail Companies" (NRG). Transcript of March 21, 2023 Hearing at 5.

The Commission issued a procedural order on September 1, 2023 assigning a member of Commission staff, Eric Wind, Esq., as a hearing examiner pursuant to RSA 363:17. The hearing examiner was appointed to conduct the hearing regarding the Company's Program, report the facts, and draft a recommended final order. The parties then had 10 calendar days to file comments or exceptions to the hearing examiner's report and recommended order.

The parties filed a settlement agreement on September 6, 2023 (Settlement Agreement), and a hearing was held on September 20, 2023. On December 22, 2023, the hearing examiner issued his report and recommended order (together, the Report), which recommended that the Settlement Agreement be denied in part.

By procedural order dated December 29, 2023, the Commission extended the deadline for filing exceptions or comments to the Report to January 12, 2024. Comments and exceptions were subsequently filed by UES, NRG, and CPCNH. The New Hampshire Department of Energy (DOE) did not file any response to the Report.

II. SETTLEMENT AGREEMENT

The Settlement Agreement explains how the Company's Program would work. All "suppliers" choosing consolidated billing[1] would automatically be enrolled in the Program. Settlement Agreement, Section 2.2. As "participating suppliers," they would be required to sell their accounts receivable for all consolidated billing customers to the Company. *Id.*, Section 2.3. The term "supplier" is defined as including any entity registered with the DOE "to sell electricity to retail Customers in New Hampshire and Community Power Aggregations. . . functioning as loan serving entities," such as competitive electric power suppliers (CEPSs). *Id.*, Section 2.2, n.2.

The Company would pay all participating suppliers the full amounts due for "generation service" minus a DPR, which would be calculated separately for two customer classes: the Residential Service Class; and the General Service Class. *Id.,* Sections 2.4 and 2.5. The Company would pay participating suppliers monthly using the same payment date for both customer classes. *Id.,* Section 2.7. It would submit an annual reconciliation filing with the Commission by March 1 each year for revised DPRs and a revised payment date effective May 1. *Id.,* Sections 2.9 and 2.10.

A formula for calculating the DPR is contained in Section 2.6 of the Settlement Agreement. This formula would take into account the following factors for each customer class:

(1) total net write-offs for customers "receiving Default Service or Generation Service with Consolidated Billing Service" (used to determine the "Uncollectible Percentage");

(2) an "Administrative Cost Percentage" equal to

> total actual administrative costs, and any forecasted administrative costs to be recovered for the subsequent year, divided by the total amounts

[1] Consolidated billing is explained in the Report at 3 and 3, n.2.

> billed for Generation Service by the Company for the most recent calendar year prior to the annual filing. Administrative costs shall include the recovery of costs directly related to the development and implementation of changes to billing, information and accounting systems directly related to the billing procedures necessary to incorporate a POR Program into Consolidated Billing Service as instituted in accordance with RSA Chapter 53-E:9, and ongoing, incremental administrative costs directly associated with providing such POR Program, to the extent approved by the Commission; and
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> (3) a "Past Period Reconciliation Percentage."

Id., Section 2.6; *see also id.,* Section 2.12.

The parties agreed that the proceeding in this docket would be bifurcated. *Id.,* Section 3.1. Phase I of the proceeding would consist of the Commission's review of the Settlement Agreement. *See id.,* Section 2.10. Assuming the Commission issued a "Phase I Order" approving the Settlement Agreement, the Commission would review the Company's proposed revisions to its TPA and T&C tariff in Phase II. *See id.* If the Commission issued a "Phase II Order" approving the proposed revisions, the Company would implement the Program after it received executed revised TPAs. *See id.,* Section 3.2.

The Company would submit a compliance filing for the initial implementation of the Program 5 months from the date of the Phase I Order or one month from the date of the Phase II Order, whichever was later. *Id.,* Section 2.10. The compliance filing would show how the DPR for each customer class and the payment date were calculated and define the effective date of the Program. *Id.* The DPRs would remain in effect until the Commission approved revised DPRs effective the next May 1. *Id.* Thereafter, the DPRs would be periodically adjusted through annual reconciliation filings. *Id.,* Section 2.9.

III. HEARING EXAMINER'S REPORT AND RECOMMENDED ORDER

The Report determined that the Company's inclusion of CEPSs in the Program met the public good standard under RSA 53-E:9, I, "subject to a second phase in this proceeding . . . to ensure POR program costs will not be borne by [the Company] or non-participating customers." *Id.* at 10. It also found that the Program adequately addressed when the Company would pay participating suppliers and how the Program would be subject to the Commission's oversight, so that it recommended approval of these portions of the Settlement Agreement. *Id.* at 1, 8-12.

The Report did not recommend approval of the Settlement Agreement's proposed calculation of the DPR. *Id.* at 1, 8, 11-12. It found that the Program failed to include a pro rata share of baseline collection efforts costs, which could include "costs of payment collections activities by the utility or its contractors, shut-offs, billing arrangements, and associated reporting," and noted the Company conceded that it had not allocated any existing administrative costs to the Program. *Id.* at 7-8. The Report acknowledged that the Company expected to use its existing technology and personnel to administer the Program, and that both the Company and the DOE agreed the phrase "pro rata share" of costs contained in RSA 53-E:9, II should be interpreted as "incremental costs." *Id.* at 7. The Report defined "incremental cost" as "additional or increased costs." *Id.* at 5, n.4 (citing Black's Law Dictionary 690 (5th ed. 1979)).

Further, the Report stated that the record did not "contain any explicit mention of working capital as required by law." *Id.* at 8. It concluded that, for the Program to comply with RSA 53-E:9, II and the public good standard, the Company must either establish how the Program will account for working capital and a pro rata share of collection efforts costs or demonstrate that these factors were not quantifiable. *Id.* It recommended that the proceeding be continued to a second phase to allow the

Company to do so and for the Commission to consider necessary amendments to the Company's TPA and T&C tariff. *Id.* at 1, 12. The Report included a draft recommended supplemental order of notice.

IV. POSITIONS OF THE PARTIES

A. UES

In its comments and exceptions to the Report (UES Comments), the Company contended that the Report misinterpreted RSA 53-E:9, II to require that utility POR programs allocate a pro rata share of baseline collection costs and working capital costs to participating suppliers. UES Comments at 1, 4-10. Instead, the Company maintained that the intent of the statute was to ensure that any *incremental* administrative costs caused by POR programs were not recovered from the utility or its customers who were not participating in the POR program, an interpretation of RSA 53-E:9, II it stated was shared by the DOE.[2] *Id.* at 2-9. The Company added that it included its existing baseline collection and working capital costs in base distribution rates. *Id.* at 9. It did not allocate them to different customer groups, because customers were free to migrate to and from default service and its alternatives. *Id.* Furthermore, the Company's systems did not track existing collection costs by specific charge categories on customers' bills. *Id.*

The Company stated that it had not identified any incremental working capital costs that should be included in its initial DPR calculation. *Id.* at 6-7. Yet it would continue to monitor and track any such impacts of the Program and, if they were quantifiable and incremental, it would propose a working capital component in future DPR calculations. *Id.* The Company requested that the Commission approve the

[2] *See* June 8, 2023 DOE Technical Statement of Amanda O. Noonan, Elizabeth R. Nixon, and Scott T. Balise at 3.

Settlement Agreement in full as in compliance with both RSA 53-E:9, II and the public interest. *Id.* at 9-10.

B. NRG

NRG, in its exceptions to the Report (NRG Exceptions), also requested the Commission to approve the Settlement Agreement as consistent with the requirements of RSA 53-E:9, II. NRG Exceptions at 5. It argued that none of the Company's baseline administrative and collection costs could be attributed to the Program when it had not been implemented. *Id.* at 4-5.

C. CPCNH

CPCNH joined in the Company's comments and exceptions. It included suggestions for amendments to both the Report and the recommended supplemental order of notice.

V. STANDARD OF REVIEW

The Commission is not bound by the recommendations of a hearing examiner appointed pursuant to RSA 363:17 in matters of fact or law. *N. New England Tel. Operations, LLC,* Order No. 25,538 at 5 (June 27, 2013). It can consider additional material, such as exceptions or comments to a hearing examiner's report, in deciding the issues before it. *See id.* at 6-7. Therefore, the Commission will consider the Report, as well as the comments and exceptions filed by the Company, NRG, and CPCNH.

The Commission must decide whether the result of the parties' Settlement Agreement "is just and reasonable and serves the public interest." N.H. Admin. R., Puc 203.20(b). Even when all parties have agreed to a settlement, the Commission must independently determine whether the result complies with applicable standards. *Abenaki Water Co., Inc.,* Order No. 26,549 at 9 (November 12, 2021).

This proceeding involves the interpretation of RSA 53-E:9, so that principles of statutory construction apply. The words of a statute should be interpreted according to their plain and ordinary meaning and in the context of the statute as a whole. *Hardy v. Chester Arms, LLC,* 2024 N.H. LEXIS 5, 11 (2024). Statutory provisions involving the same subject matter should be construed together, "so that they lead to a logical result reflective of the legislative purpose of the statutes." *Petition of State,* 172 N.H. 493, 496 (2019). A statute also should be interpreted to avoid an absurd or unjust result. *Hardy,* 2024 N.H. LEXIS at 11.

VI. COMMISSION ANALYSIS

RSA chapter 53-E allows the aggregation of electric customers while preventing the costs of electric aggregation programs from being passed on to non-participating customers. RSA 53-E:1 ("Statement of Purpose"); RSA 53-E:5 ("Financial Responsibility"). In enacting RSA 53-E:9, the Legislature permitted the recovery of costs related to POR programs from program participants and ensured that such costs would not be assumed by utilities or, consistent with RSA 53-E:5, their non-participating customers.

RSA 53-E:9 requires utility POR programs to: (1) make timely payment of amounts due to "suppliers" for electricity supply and related services less a DPR; (2) calculate the DPR to recover costs related to the POR program; and (3) periodically adjust the DPR, subject to the Commission's approval. Pursuant to RSA 53-E:9, I, "suppliers" may include competitive electric power suppliers, such as CEPSs, if proposed by the utility and found by the Commission, after notice and hearing, to be for the public good.

After reviewing the Report, the Commission adopts the Hearing Examiner's recommendation to bifurcate this proceeding and to approve those portions of the

parties' Settlement Agreement concerning when the Company would pay participating suppliers and how the Program would be subject to the Commission's oversight, with the exception of the proposed May 1 effective date.[3] Additionally, the Commission adopts the Report's determination that the Program's inclusion of CEPSs as "participating suppliers" meets the public good standard contained in RSA 53-E:9, I. The remaining issue is whether the Company's proposed DPR calculation contained in Section 2 of the Settlement Agreement complies with RSA 53-E:9, II.

RSA 53-E:9, II provides that the DPR will be equal to a utility's actual uncollectible rate with adjustments to recover certain types of costs that may arise from the POR program. The Report determined that the parties' proposed DPR calculation did not comply with RSA 53-A:9, II because it did not expressly refer to working capital or a pro rata share of collection efforts costs, cost components specified in the statute. Report at 1, 5, 7-8. It stated that a POR program must include a proportional share of baseline collection efforts costs, not just incremental costs. *Id.* at 8. As interpreted in the Report, RSA 53-E:9, II would require all POR programs to provide for the recovery of these costs, including existing costs, unless they are shown to be unquantifiable.

Such an interpretation of the statute, however, could lead to an absurd or unjust result, in that it would require the recovery of working capital and a pro rata share of collection efforts costs from POR program participants, even if these costs do not arise from a particular utility's POR program, unless the utility can demonstrate that these costs cannot be quantified. We find that the Company has adequately explained why the proposed DPR calculation does not presently include these cost

[3] Given the March 1 annual reconciliation filing date contained in Section 2.9 of the Settlement Agreement, a May 1 effective date does not provide sufficient time for notice, input from the DOE and interested parties, any necessary proceedings, and issuance of the Commission's order.

components. Accordingly, RSA 53-E:9, II does not require the DPR to account for working capital unless it is required to implement and operate the utility's POR program or require the DPR to account for collection efforts costs that cannot be attributed to a utility's POR program.

We determine that the parties' proposed DPR calculation contained in Section 2 of the Settlement Agreement complies with RSA 53-E:9, II because it provides for the recovery of the costs arising from the Program, including a working capital component if one is later identified. We find that the result of the Settlement Agreement is just and reasonable and serves the public interest, because the Settlement Agreement establishes a POR program that will facilitate electric aggregation programs while recovering the Program's costs from those using it. Other than the May 1 effective date, we approve the Settlement Agreement in its entirety. Unless the Commission provides otherwise in a subsequent order, the effective date for DPR reconciliation filings is extended to August 1.

This proceeding is continued to a second phase in which the Commission will review the Company's proposed revisions to its TPA and T&C tariff. The Commission will commence this phase of the proceeding by issuing a supplemental order of notice.

Based upon the foregoing, it is hereby

ORDERED, the Report is ADOPTED in part, as discussed in the foregoing order; and it is

FURTHER ORDERED, that the Settlement Agreement is APPROVED, with the exception of the May 1 effective date; and it is

FURTHER ORDERED, that the effective date for the Company's annual reconciliation is extended to August 1; and it is

FURTHER ORDERED, that this proceeding is continued to a second phase to review the Company's proposed revisions to its TPA and T&C tariff.

By order of the Public Utilities Commission of New Hampshire this nineteenth day of July, 2024.

Daniel C. Goldner Chairman	Pradip K. Chattopadhyay Commissioner	Carleton B. Simpson Commissioner

Service List - Docket Related

Docket#: 23-002

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