

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

DE 23-002

Unitil Energy Systems, Inc.

Proposed Purchase of Receivables Program

Community Power Coalition of New Hampshire

Testimony of Clifton C. Below

June 9, 2023

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Attachments:

Att. Coalition-1 – CPCNH 1-3 Data response

Att. Coalition-2 – CPCNH 1-7 Data response, including CPCNH 1-7 Attachment 1

Att. Coalition-3 – DOE 1-8 Data response

I. Introduction

1 **Q. Please state your name, business address and position with regard to the docket.**

2 A. My name is Clifton C. Below and my office address is 1 Court Street, Suite 300,
3 Lebanon, NH 03766. I serve as Chair of the Community Power Coalition of New Hampshire
4 (CPCNH or the “Coalition”), a non-profit corporation operating as a governmental
5 instrumentality of 34 subdivisions of the State of New Hampshire¹ pursuant to RSA 53-A and
6 RSA 53-E. I am also Assistant Mayor of the City of Lebanon and represent the City on the Board
7 of Directors of CPCNH, all of which I do on a volunteer basis.

8 **Q. Please describe your educational and related professional experience.**

9 A. A detailed statement of my background can be found on pp. 1-3 and in my direct
10 testimony in DE 16-576 and Attachment A thereto.² I will only highlight a few keys elements
11 here. I earned my B.A. from Dartmouth College in 1980 where I graduated with distinction in
12 my Geography and Environmental Studies major. During my tenure as a State Representative
13 from 1992-1998 I served on the House Science, Technology, and Energy Committee where I
14 was heavily involved in energy and regulatory legislation. For example, as Chair of the Policy
15 Principles, Social and Environmental Issues Subcommittee of the Retail Wheeling and
16 Restructuring Study Committee in 1995 I facilitated a consensus building legislative and
17 stakeholder process that resulted in recommended “Restructuring Policy Principles” that

¹ City of Lebanon, Town of Hanover, City of Nashua, Cheshire County, Town of Harrisville, Town of Exeter, Town of Rye, City of Dover, Town of Warner, Town of Walpole, Town of Plainfield, Town of Newmarket, Town of Enfield, Town of Durham, Town of Pembroke, Town of Hudson, Town of Webster, Town of New London, City of Portsmouth, Town of Peterborough, Town of Canterbury, Town of Wilmot, Town of Sugar Hill, Town of Hancock, Town of Westmoreland, Town of Shelburne, Town of Brentwood, Town of Boscawen, City of Berlin, Town of Randolph, Town of Lyme, Town of Rollinsford, Town of Stratham and Town of Newport.

² Found at: https://www.puc.nh.gov/Regulatory/Docketbk/2016/16-576/TESTIMONY/16-576_2016-10-24_LEBANON_DTESTIMONY_C_BELOW.PDF and https://www.puc.nh.gov/Regulatory/Docketbk/2016/16-576/TESTIMONY/16-576_2016-10-24_LEBANON_ATT_DTESTIMONY_C_BELOW.PDF.

1 became the core of NH's Electric Utility Restructuring statute, RSA 374-F. I also was involved
2 in the original passage of legislation creating RSA 53-E in 1996. In 1998 I was elected to the
3 NH Senate and from 1997-2004 I served on the Advisory Council on Energy of the National
4 Conference of State Legislatures (NCSL), including 3 years as Chair, which advised NCSL on
5 emerging energy issues. I also served as a member of the National Council on Electricity
6 Policy Steering Committee from 2001-2004, which was a policy collaborative with NARUC,
7 NGA, and NASEO.

8 In late 2005 I was appointed to serve as a NH PUC Commissioner with my tenure
9 ending in February 2012. I served in a variety of capacities during that time, including a year
10 as President of New England Conference of Public Utility Commissioners.

11 More recently I also fully participated in the PUC's Grid Modernization Working
12 Group in IR 15-295 and in DE 16-576 on behalf of the City of Lebanon when work began on
13 the development of Lebanon Community Power (LCP) pursuant to RSA 53-E. Subsequently I
14 was involved with the drafting and passage of Chapter 316, NH Laws of 2019³ and the
15 compromise on 2021 HB 315 that became Chapter 229, NH Laws of 2021⁴. I also helped
16 develop the administrative rules proposed in DRM 21-142 that became the basis for the Puc
17 2200 rules.

18 **Q. Have you previously testified before this Commission?**

19 A. Yes, I provided written and sometimes live testimony in DE 16-576, DE 17-189, DE 19-
20 064, DE 19-197, and DE 20-170, all on behalf of the City of Lebanon.

³ https://gencourt.state.nh.us/bill_status/legacy/bs2016/

⁴ https://gencourt.state.nh.us/bill_status/legacy/bs2016/

1 **II. CPCNH Position on Unitil Proposal as Presented in their Testimony.**

2 **Q. What has been your involvement in this proceeding?**

3 A. I have read all of the testimony and comment filed to date, as well as all of the data
4 responses, submitted one set of data requests, and participated in the one technical session to
5 date.

6 **Q. What is CPCNH's position on the proposal?**

7 A. CPCNH generally supports the overall proposal as presented in Unitil's prefiled
8 testimony and finds that the proposal is consistent with RSA 53-E:9 and Puc 2205.16(e). We
9 do take issue with one particular aspect of the proposal, which is the proposed payment date to
10 suppliers of the last business day of the month following the month following the month in
11 which retail customers are invoiced for generation supply services. We also have serious
12 concerns about potential tariff and supplier agreement language that Unitil has provided on an
13 initial basis in response to a data request, but which has not appeared in testimony yet. These
14 concerns are addressed below.

15 **Q. What is the concern with Unitil's proposed payment to suppliers of Accounts**
16 **Receivable Purchase Price on the last day of month following billing to retail customer?**

17 A. The first concern is that Unitil, together with other utilities if this was applied to all
18 Purchase of Receivables (POR) programs, would have use of millions of dollars beyond their
19 average lag in receipt of funds and the supplier would have to carry that additional cost of
20 working capital beyond the average lag in customer payments. This could financially
21 advantage utility default service supply compared with supply by CEPS or Community Power
22 alternative default service, because this proposed date extends beyond the average lag in

1 customer payments by close to 5 days on average. Unutil has indicated that their average lag in
2 receipt of customer payments from the date the customer is billed is 40.7 days. See CPCNH 1-
3 3, Attachment Coalition-1. The last business day of the month following invoice represents
4 close to 5 additional days that payment to the supplier would lag beyond Unutil's average
5 receipt of payments from customer. For CPCNH that cost across all 3 utilities could be on the
6 order of \$500,000 to \$700,000/year.

7 **Q. How do figure this potential cost of such an additional lag between utility receipt**
8 **of payment and payment of the AR Purchase Price to CPCNH?**

9 A. Across the three investor-owned electric utilities in NH, CPCNH will have about
10 76,000 retail customers with a total annual load currently estimated at about 622,500 MWh.
11 For illustration sake assume either a retail rate of \$0.10/kWh or \$0.15/kWh. That would result
12 in gross revenue (before the POR discount) of about \$62,2250,000 to \$93,374,000/year.
13 Assuming a 5% prime rate as a proxy for the cost of working capital, which is 0.5% lower than
14 the current prime rate that is used for customer deposits and past due amounts and other
15 purposes pursuant to Puc 1202.13 and as seen in CPCNH 1-7, Attachment Coalition-2, then the
16 total value of use or delay in receipt of those receivables is approximately \$8,527 to \$12,791
17 per day at the retail supply rates indicated. The number of days that payment of the AR
18 Purchase Price would be delayed compared to utility receipt of customer payments would be
19 about 54.76 days/year, resulting in a total cost of \$467,000 to \$700,000/year.

20 **Q. How do you figure the lag in payment to the supplier being about 54.76 days/year?**

21 A. On average there are 365.23 days/year, so an average of 30.44 days/month. Assuming
22 that customers invoices for the prior month are evenly distributed between the first and last
23 halves of the prior month then the average invoice date is 15.22 days before the end of the

1 average month, so when added to average length of a month of 30.44 days, then the average
2 lag between the customer billing and payment of the AR Purchase Price would be 45.68 days.
3 Subtracting the average customer payment lag from billing of 40.70 days for Unitil, assuming
4 comparable lags and payment delays for other utilities, results in an additional lag between
5 customer payments and supplier payments of 4.98 days/month. That times 12 months/year
6 results in a total of 59.76 days of lagging payments to the supplier. However, that is not quite
7 accurate because Unitil is proposing payments to suppliers on the last business day of the
8 month, which, on average will be earlier because about 2/7 of the time the last business day of
9 the month will be 1 or 2 days earlier than the last day of the month due to weekends. Taking
10 2023 as an illustrative year -- the last business day of the month was 2 days earlier in April and
11 will be 1 day earlier in September and 2 days earlier in December, so a total of 5 days earlier,
12 resulting in about 54.76 days/year of additional lag between utility receipt of customer
13 payments and utility payment to the supplier for the accounts receivable purchase price.

14 **Q. What other concerns does CPCNH have with using the last business day of the**
15 **month for supplier payments?**

16 A. There are two concerns: 1) there is no leeway for errors to be corrected before the close
17 of the month; and 2) there is no leeway for the supplier to use those funds for payments that are
18 due or that supplier desires to make before the end of month and potentially the end of a
19 calendar or fiscal year. There could be an error in the amount of the payment or the account
20 that it is sent to, that an extra business day or two in a month may allow resolution for. Also,
21 sometimes if an amount is transferred out late in a day it may not be recorded in the receiving
22 account until the next business day. If that occurred on the last business day of a fiscal year it
23 could create unnecessary accounting, financial reporting, and audit issues.

1 **Q. What alternatives does CPCNH propose?**

2 A. There are at least 3 alternative that could resolves these concerns, individually or
3 together:

4 1) Payments could be required on the 2nd or 3rd to last business day of the month,
5 which would more closely align with Unitil’s current customer payment lag.

6 2) Interest could be credited (or charged) to the POR reconciliation account at the Puc
7 1202.13 prime interest rate for the difference between customer payment lag and supplier
8 payment lag (or lead).

9 3) AR Purchase Price payments could be made to suppliers on the same average lag
10 time as customer payments, as Eversource has proposed and as their POR tariffs provide for in
11 Massachusetts which state under “Timing of Payment to Competitive Supplier”:

12 “Unless otherwise ordered by the MDPU, the average payment period shall be based on
13 actual historical data for the most recent 12-month period for which data is available in the
14 relevant classification, or other appropriate period, as approved by the MDPU.”⁵

15 **III. Concerns about potential tariff and supplier agreement language.**

16 **Q. What are CPCNH’s concerns about Unitil’s proposed tariff and supplier**
17 **agreement edits to enable POR**

18 A. There are 3 concerns. First, in general, the proposed text of changes to their tariff and
19 supplier agreement were not proposed in their testimony but were provided in response to DOE
20 1-8. Second, the proposed edits, while ostensibly only for the purpose of “showing changes to

⁵ From this webpage: <https://www.eversource.com/content/business/account-billing/manage-bill/about-your-bill/rates-tariffs/electric-tariffs-and-rules> , for WMA “Terms & Conditions for Competitive Suppliers” at p. 15 and for EMA at p. 15.

1 the current agreement exclusively to implement the POR program”⁶ actually include a number
2 of “housekeeping” edits, other material changes not related to POR, and create broad
3 inconsistencies between these documents and requirements and authorities that apply to
4 community power aggregations pursuant to RSA 53-E and Puc 2200 rules, as explained in
5 more detail below. The third concern and objection by CPCNH is to the inclusion of new
6 requirements for a creditworthiness test, security, and potential collateral requirements,
7 ostensibly due to increased financial risk to the utility from administering POR, but which
8 create substantial barriers to new entry for CPA and CEPS market participants, favoring
9 established large competitive suppliers. There is no testimony in support of these proposals.

10 **Q. Before elaborating on your objections, how might these concerns best be**
11 **addressed procedurally?**

12 A. Although some progress might be made in settlement discussions, CPCNH
13 recommends that resolution of tariff and supplier agreement text largely occur after the basic
14 structure and parameters of the POR program are approved by the Commission. This would be
15 broadly consistent with approach suggested by Eversource in the testimony of Brendan
16 O’Brien in DE 23-004 at 8 which states: “the Company anticipates an eight-month
17 implementation timeline for its POR Program once approved; the Company proposes
18 submission of the revised tariff and supplier agreements for Commission review during that
19 eight-month implementation period.” However, they suggest that be done as part of a
20 compliance filing, which creates another problem related to lack of notice as to the scope of
21 this proceeding. Eversource and Liberty have both made good faith efforts in their first draft

⁶ DOE 1-8, Attachment Coalition-3

1 of supplier agreement language and in Eversource’s case, tariff language, to address the
2 numerous ways in which existing text for CEPS does not conform to the requirements and
3 authorities pursuant to RSA 53-E and Puc 2200 rules. In fact, Liberty indicated that a separate
4 supplier agreement for CPAs and CEPS when not serving CPAs might be appropriate and just
5 offered an agreement for CPA suppliers incorporating POR. However, these draft proposals
6 only came in the second round of discovery, so there will be no opportunity for data requests
7 or a technical session before filing of DOE and intervenor testimony or comments.

8 Unitil correctly points out that these additional issues, not directly related to POR, are
9 beyond the scope of what this proceeding was noticed for. We agree, and thus propose that the
10 Commission notice a separate adjudicated proceeding to address the integration of Community
11 Power Aggregators (CPAs) and CEPS when serving CPAs into the tariffs and supplier
12 agreements of these 3 utilities, along with conforming POR language. As Unitil has the
13 shortest anticipated time to implement POR following Commission approval of 4 months,
14 which would likely take us into 2024 for the first start of POR, that would seem to allow
15 sufficient time over the course of the fall to undertake such a proceeding.

16 **Q. What are some examples of specific conflicts that Unitil’s proposed incorporation**
17 **of POR into their tariff and supplier agreement create?**

18 A. Unitil has proposed that CPAs simply be added to their definition of “Competitive
19 Supplier” in the tariff and supplier agreement, so that all existing (and modified) terms apply
20 equally to both. One issue with this approach is that Unitil’s draft tariff would then require
21 CPAs or CEPS when serving CPAs to obtain prior written consent from each customer before

1 enrolling and when requesting load history for each customer. This requirement obviously
2 conflicts with RSA 53-E and Puc 2200 rules.

3 **Q. Could you elaborate on your objections to the proposed creditworthiness test and**
4 **potential collateral requirements, besides the fact that there is no testimony in support of**
5 **them?**

6 A. Yes, Unitil has proposed amending their Competitive Electric Supplier Trading Partner
7 Agreement to (i) impose utility-administered creditworthiness tests upon CPAs and CEPS that
8 intend to elect consolidated billing, as a precondition for entering into the agreement, (ii)
9 require CPAs and CEPS that are not “creditworthy” thereunder to post additional collateral for
10 the utility’s benefit, such as a letter of credit, parent guaranty from a creditworthy entity, et
11 cetera, and (iii) require CPAs and CEPS to grant Unitil a “first priority perfected security
12 interest” over all of their billed and unbilled accounts receivables.

13 Unitil has acknowledged that there is no statutory basis for imposing these sweeping
14 financial security obligations, which impose additional costs on the customers served by CPAs
15 and CEPS and create barriers to market entry for all but the established market incumbents,
16 and which Unitil has “based, in large part, on the terms and conditions and supplier service
17 agreement applicable to and approved for the POR Program of Unitil’s Massachusetts affiliate,
18 Fitchburg Gas and Electric Light Company (“FG&E”)” in their response to CPCNH 1-7.

19 Unitil argues that this is necessary to avoid cost shifting to other ratepayers in the event
20 that a supplier goes bankrupt on the theory that the Court or trustee might have a claim against
21 Unitil’s accounts receivable. However, once Unitil purchases the receivable, they own them,
22 and although a bankruptcy court has the power to claw-back certain transactions, there is no

1 reason to believe that such a court or trustee would want to do so and assume the responsibility
2 for collecting from thousands of individual retail customer instead of receiving the AR
3 Purchase Price that would reflect only a small PUC approved discount from the sold
4 receivables. Furthermore, there is little if anything that would be owed to Unitil by the
5 supplier in such a circumstance and nothing that would be different than under current supplier
6 access to consolidated billing.

7 CPCNH alternatively proposes that the utility's tariff be amended to require that the
8 ownership of a CPA or CEPS receivables be transferred, irrevocably and entirely to Unitil at the
9 moment the utility creates the invoice or bill to the customer, which then becomes their property
10 and asset, and to which the supplier cannot offer a security interest because it, from the moment
11 of quantifiable creation, is no longer an asset of supplier and thus cannot be used as collateral.
12 This assumes that simultaneously Unitil would create a corresponding liability to the supplier of
13 the AR Purchase Price reflecting the PUC approved discount. Then no additional
14 creditworthiness testing or requirements need be imposed beyond the extant Financial Security
15 Requirements for Competitive Suppliers set forth at Puc 2003.01 and 2003.03.

16 **Q. Does that conclude your testimony?**

17 A. Yes it does.