

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 23-065

UNITIL ENERGY SYSTEMS, INC.

**Petition for Waiver of Puc 307.05 and Authority to Change Short-Term Debt
Limit Formula**

Order Approving Financing

ORDER NO. 26,936

January 22, 2024

This order approves a request by Unitil Energy Systems, Inc. to increase its short-term debt limit from 10 to 20 percent of Net Utility Plant and removes a fixed adder of \$10 million.

The petition and subsequent docket filings, other than information for which confidential treatment is requested of or granted by the Commission, are posted to the Commission's website at <https://www.puc.nh.gov/Regulatory/Docketbk/2023/23-065.html>.

I. BACKGROUND AND PROCEDURAL HISTORY

Unitil Energy Systems, Inc., (UES or the Company), is a public utility that supplies electric service to approximately 77,000 customers in the capital district and seacoast region of New Hampshire. The Company filed a petition on June 22, 2023, pursuant to RSA 369 and N.H. Admin R. Puc 307.05 seeking Commission approval to change its current short-term debt limit which was established in 2009 by Order No. 25,027 (October 22, 2009).¹ UES' proposed change would increase the short-term debt limit to 20 percent of net utility plant as stated in UES's FERC 1 filing. With its

¹ Docket DE 08-085, Order No. 25,027 established a short-term debt limit for UES of 10 percent of net fixed plant, as stated in UES's FERC 1 filing, plus \$10,000,000.

petition, UES filed the supporting testimony of Andre Francoeur (Financial Planning and Analysis Manager for Unitil Service Corp) and Christopher Goulding (Vice President of Finance and Regulatory for Unitil Service Corp).

On June 30, 2023, the New Hampshire Department of Energy (DOE) filed a notice of appearance in this matter. On July 10, 2023, the Commission issued a procedural schedule that was subsequently amended on August 22, 2023, September 13, 2023, October 5, 2023 and November 9, 2023. On October 13, 2023, the DOE filed the testimony of Utility Analyst Jay Dudley. UES filed rebuttal testimony on November 17, 2023. A duly noticed hearing was held on the petition on December 7, 2023.

II. POSITIONS OF THE PARTIES

A. UES

UES proposes to increase its short-term debt limit formula to 20 percent of its Net Utility Plant. UES's current short-term debt limit was established in 2009. *See* Docket DE 08-085, Order No. 25,027 (October 22, 2009). Since 2009, UES has abided by a short-term debt limit of 10 percent of Net Utility Plant plus a fixed adder of \$10 million, as established by Order No. 25,027. On June 1, 2010, the year in which the formula took effect, this number equated to \$24.3 million. The current short-term debt limit is \$40 million based roughly on a \$300 million FERC 1 schedule of 2022 net plant asset plus \$10 million.

UES asserts that the waiver of PUC 307.05 is in the best interest of the public and its rate payers. *See* Tr. Dec. 7 at 18. Since the last waiver of PUC 307.05 in 2009, UES has been making sinking fund payments. Mr. Francoeur explained that sinking fund payments have staggered maturity dates for UES current long-term debt. The benefit of the sinking fund payments is to allow UES flexibility to access the financial markets at times that are opportune to ensure a low cost of debt. *See Id.* at 20.

However, immediate payment of sinking funds is with short-term debt until they are refinanced into long-term debt. *See Id.* at 31. Payment of the sinking funds and higher capital investment increase the draw on UES's short-term borrowing and necessitate the increase in short-term debt limits. *See Id.* at 19.

UES notes that the current short-term debt limit, as a percentage of net plant, was 17 percent in 2010 and has now fallen to 13 percent due to higher capital investments and net plant growth. This decrease is increasingly restrictive on UES and UES is not able to maintain a permanent capital financing interval of three years which negatively impacts its ratepayers. *See Id.* UES further argues that every time UES issues debt, it costs the Company \$150,000 in fixed legal costs, implying that if financing occurs every two years instead of three, the increased legal expenses will become a burden to rate payers. *See Id.* at 20. Finally, UES notes that flexibility in the Company's short-term debt limit allows it to pair its financings with that of its other utility affiliates, allowing them to market securities in parallel to attract additional investors and create more demand for the transactions, resulting in in lower cost of debt. *See Id.* at 21.

B. DOE

DOE recommends that the Commission approve on a temporary basis an increase of the short-term debt limit to 15 percent instead of 20 percent of net plant, but recommended retention of the \$10 million adder. The DOE's proposal equates to a 55-million-dollar short-term debt limit in 2023. The issue of a permanent waiver of Puc 307.05 for UES would be revisited during UES's next rate case. *See Id.* at 152.

After reviewing UES's petition and engaging in discovery, the DOE argues that UES's short-term debt limit has been impacted by wholesale power prices and recent geopolitical developments. This factor alone can justify an increase in the short-term

debt limit. *See* Direct Testimony of Jay E. Dudley, October 13, 2023 at 6. The DOE disagrees that the pressure of sinking fund payments and capital investments justify an increase in the short-term debt limit. *See Id.*

Having examined UES financial records, the DOE notes that UES began paying the sinking fund payments in 2015 and that the Company was aware *ex-ante* that sinking fund payments would need to be made in the future. *See Id.* at 9. Therefore, the DOE argues, that the sinking fund payments do not constitute a major factor justifying the requested increase in short-term credit since the payments were known, expected and incurred in the normal course of business. *See Id.* at 11. Furthermore, DOE denies that rate base growth and capital expenditures justify an increase in UES's short-term debt limit, noting that for at least 5 years, the credit cycle under the current short-term debt limit formula was sufficient to meet UES's capital expenditure needs. *See Id.* at 15.

Mr. Dudley acknowledges that a review of UES 2022 and 2023 data responses support that the price spikes in the wholesale power markets that UES experienced in the winter of 2022-2023 support the decrease in the remaining credit shown available in the UES records. *See Id.* at 12. The DOE identifies this phenomenon as the primary driver of the need for an increase of the short-term debt limit. The DOE also expressed willingness to give UES the "benefit of the doubt" for "potential unknowns", for example, geopolitical issues, that support the increase of short-term debt. *See Tr. Dec. 7* at 141-142. The DOE recommends a temporary waiver at a compromise of 15 percent net plant plus the \$10 million adder until UES's next rate case when the DOE can perform an in-depth review of capital budgets and capital expenditures. *See Id.* at 152.

III. COMMISSION ANALYSIS

RSA 369:1 states that a utility may, “with the approval of the commission but not otherwise, issue and sell ... notes and other evidences of indebtedness payable more than 12 months after the date thereof for lawful corporate purposes.” The Commission shall authorize the financing “if in its judgment the issue of such securities upon the terms proposed is consistent with the public good.” RSA 369:4. The Commission reviews the amount to be financed, the reasonableness of the terms and conditions, the proposed use of proceeds, and the effect on rates. *Appeal of Easton*, 125 NH 205, 211 (1984) (*Easton*).

The Commission has reviewed the record, including testimony filed in this matter. We note that both the DOE and the Company agree fundamentally that an increase in the short-term spending limit is necessary for successful operation of UES. We appreciate the diligence of the DOE in reviewing this matter and in proposing a solution to increase the short-term debt limit on a temporary basis to be reviewed at UES’s next rate case. However, after reviewing the evidence and testimony, the Commission finds that UES has met its burden of proof to demonstrate that a permanent waiver of N.H. Admin R. Puc 307.05 is in the best interest of ratepayers because it provides the company flexibility to manage its financing requirements and assess the capital markets when most advantageous. Furthermore, a permanent waiver verses a temporary waiver is consistent with Commission past practices. See Dockets DE 08-085 and DE 10-122.

In making this determination, the Commission relies on the examination of the Company’s daily cash position and the explanation by the Company witnesses regarding the effect on the Company of decreasing available capacity remaining under the regulatory limit. Specifically, additional liquidity through short-term debt capacity

allows the Company freedom to access long-term debt only when the interest rates are most favorable; thus, ensuring the best terms and conditions of long-term financing. UES should be able to shift its short-term debt into long-term debt under favorable market conditions. The Commission finds the Company assertion that refinancing should be paired with the needs of its parent companies compelling. This creates the opportunity for better rates and is in the best interest of ratepayers. However, low capacity in available short-term debt availability will create a situation where the Company is seeking to refinance its short-term debt more frequently than it currently does, which is more costly for the Company and thus the rate payers. *See* Tr. Dec. 7 at 20.

The existing limit has become increasingly restrictive due to the Company's growth, thereby limiting financing flexibility. These factors are collectively contributing to the Company approaching the borrowing limit faster, which in turn necessitates more frequent long-term debt or equity financing. Simply put, more frequent permanent financing results in less efficient issuance sizes and higher issuance costs which are ultimately borne by customers. *See* Tr. Dec. 7 at 104.

The Commission understands that the practice of a fixed adder to the percentage of short-term debt limit has disadvantages. When the original permanent waiver of Puc 307.05 was established, it resulted in a short-term debt limit of 17 percent of the Company's net plant. Over the course of time, as net plant has grown and the adder has remained constant, short-term debt as a percentage of net plant has decreased.

Finally, when determining which formula to approve, a straight percentage or a percentage plus adder, the Commission relies on both the testimony of UES's witnesses and the DOE witness that a straight percentage approach is preferable.

Q. I want to characterize the question better. I understand that there is a rule that begins with 10 percent, plus \$10 million, and all of that. So, sometimes we get the -- you know, it's the precedential reality does matter, and we sort of base -- don't necessarily think beyond that, because that's a rule. So, please feel free to think about all the factors, and then provide your thoughts on whether you have any opinion on which one of them is a better approach?

A. Again, as I mentioned to Commissioner Simpson, I'm not quite aware of the circumstances that brought about the adder. In terms of -- if you're asking for my own personal preference, I actually prefer the straight percentage approach that Unitil has in their request. We're just not in favor of the amount.

See Id. at 144-145

In increasing UES' short-term debt borrowing limit, we note that, while the increase will allow UES to meet its forecasted peak borrowing needs, we do not expect UES to continually have outstanding short-term debt balances at that limit. UES still remains responsible for managing its capital structure and borrowing requirements in a prudent manner. In addition, we find that a waiver at 20 percent net plant will continuously grow with the Company. This will avoid the shrinking percentage that has occurred in the current formula that was approved in 2010 and will eliminate the need for UES to seek Commission approval for annual increases to its short-term debt borrowing limit that would otherwise fall within the parameters of the approved waiver.

Our approval of UES's petition to waive Puc 307.05 and increase the Short-Term Debt limit does not preclude the Commission from revisiting this order in the future, should concerns of UES's spending be brought forward. Unlike some other agencies, the Commission has authority under RSA 365:28 to exercise continuing jurisdiction over its decisions. *See Appeal of Office of Consumer Advocate*, 134 N.H. 651, 657 (1991); *see also Appeal of N.H. Div. of State Police*, 175 N.H. 229, 238 (2022) (contrasting limited authority of Personnel Appeals Board to modify its orders with Commission's authority pursuant to RSA 365:28). RSA 365:28 permits the

Commission to modify its orders “[a]t any time after the making and entry thereof,” providing it complies with due process and the modification is legally correct. *See Appeal of Office of Consumer Advocate*, 134 N.H. at 657-58.

The Commission’s authority to modify its orders is not limited by the 30-day period contained in RSA 541:3. As the New Hampshire Supreme Court explained in *Meserve v. State*, 119 N.H. 149 (1979), RSA 541:3, which sets a 30-day deadline for a party to file a motion for rehearing of “any matter determined in the action or proceeding, or covered or included in the order,” is a procedural statute. *Id.* at 152. RSA chapter 541’s purpose is to provide uniform procedures to be followed in order to perfect an appeal. *Id.* The Court rejected the argument that the Commission was precluded from modifying its order because its review was prompted by a motion filed by a party past the deadline contained in RSA 541:3. *See id.* at 150, 152.

The permanent waiver of PUC 307.05 that is being granted does not limit or preclude the Commission from reviewing in a future case, directly or indirectly, the prudence, use, and usefulness of any specific project financed by the borrowed funds pursuant to RSA 378:28. The Commission retains its authority under RSA 374:4 to be kept informed of UES’s use of the financing and any efforts to refinance under more favorable interest rates, separate and apart from any future review under RSA 378:28.

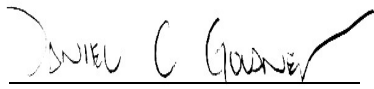
Based upon the foregoing, it is hereby

ORDERED, that subject to the effective date below, the request of Unitil Energy Systems, Inc. for waiver of N.H. Admin Puc 307.05 is **GRANTED**; and it is

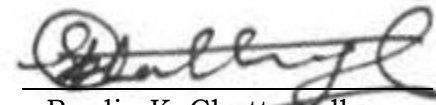
FURTHER ORDERED, that Unitil Energy Systems, Inc. short-term debt limit is increased from 10 percent of net plant, as stated in its annual FERC 1 filing, plus \$10 million to 20 percent of net plant, as stated in its annual FERC 1 filing effective the date of this order; and it is

FURTHER ORDERED, that Unitil Energy Systems, Inc. shall cause a copy of this order to be published on its website by no later than the close of business on January 24, 2024; noticed through billing in the next billing cycle after the issuance of this order; and to be documented by affidavit filed with this office on or before January 29, 2024; and it is

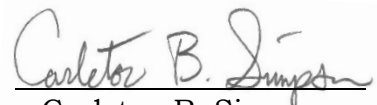
By order of the Public Utilities Commission of New Hampshire this twenty-second day of January, 2024.



Daniel C. Goldner
Chairman



Pradip K. Chattopadhyay
Commissioner



Carleton B. Simpson
Commissioner

Service List - Docket Related

Docket#: 23-065

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