



May 18, 2023

By E-Mail¹

Alexandra K. Ladwig
Staff Attorney/Hearings Examiner
Department of Energy
21 S. Fruit Street, Suite 10
Concord, NH 03301-2429

Re: CPT 2023-001, [REDACTED]

Dear Attorney Ladwig,

On May 4, 2023, the DOE notified Unitil Energy Systems, Inc. (“Unitil” or the “Company”) by letter that DOE accepted the formal complaint (the “Complaint”) of [REDACTED] (the “Complainant”) and assigned it complaint number CPT 2023-001. Pursuant to RSA 365:2, the DOE attached a copy of the Complainant’s Complaint and six accompanying attachments.² The DOE requested that Unitil either (1) satisfy the matters complained of; or (2) provide an answer to the charges in writing within ten business days. The DOE’s letter further directed Unitil to advise DOE and the Complainant if it disputes the Complaint.

By this letter, Unitil advises DOE and the Complainant that it disputes the Complaint and provides its response to the charges set forth in the Complaint.

I. SUMMARY OF COMPLAINT

The matters complained of, as posed in the form of questions, and summarized in the words of the Complainant, are as follows:³

- A. Does an electric utility in New Hampshire have an obligation to inform new customers, when they sign up, that they have the right to avoid the utility’s default energy service by purchasing from another supplier, potentially at a more favorable rate?

¹ The Department of Energy (“DOE”) has waived the filing of paper copies in this matter.

² The Complainant’s Complaint is set forth in an April 15, 2023 letter addressed to the DOE.

³ Complaint at 1.

- B. Why are new customers forced into an extremely high bill with a third party (that is commercial and unreachable) before they have any options, assuming they are even aware of them?
- C. Is New Hampshire’s “two party consent” requirement, regarding the recording of telephone calls, met via a warning from a utility that your call may be recorded for training purposes, when you have no real opportunity to withhold consent?
- D. Why is there such a low bar for customer service with both Unitil and Consumer Services? Why is the dispute process so difficult?

Unitil addresses each one of these questions in the subsections that follow, as well as the arguments proffered by the Complainant on these matters.

II. RESPONSE TO COMPLAINT

A. *Obligation to Inform New Customers about Competitive Supply Options*

The Complainant states that she initially signed-up for electricity service on January 23, 2023 and claims “there [were] no options for Unitil or any third-party to lower [her] bill.”⁴ The Complainant asserts that Unitil did not inform her about available competitive supply rates when she signed up for service as required by Puc 1203.02.⁵

The Complainant states that when she later called Unitil to inquire about her utility charges, a Unitil representative informed her that she was on the “Unitil plan” (i.e., Default Service) and that competitive supply options were available to her.⁶ According to the Complainant, this was the first time any competitive supply options were “offered” to her.⁷ Complainant states that she subsequently contacted a competitive supplier and that she is currently taking supply service from a third-party supplier.⁸

For the reasons discussed below, Unitil has acted in accordance with its obligations and legal duties in this case.

Part 1203 of the Puc Rules concerns “service provisions,” and Puc 1202.18 defines “utility service,” in part, as the provision of electric service **in accordance with the terms and conditions of a “tariff” filed with and approved by the New Hampshire Public Utilities Commission** (the “Commission”). Puc 1202.14 defines “tariff” as the current schedule of “rates,” charges, terms and conditions **filed by a utility and either approved by the Commission or effective by operation of law.**

⁴ Complaint at 2.

⁵ See Complaint at 4-5, 6. *But see* CPT 2023-001 Attachment 3, at 1 (summarizing the call between Complainant and Unitil’s customer service representative and stating that “[a]t no time during this call did [Complainant] request information about rates for electric service or competitive suppliers and their rates.”).

⁶ Complaint at 2-3.

⁷ *Id.*

⁸ *Id.*

Puc Rule 1203.02(a) provides that upon receiving a request for new service, the utility shall provide information as to what might be the most advantageous rate or rates available to that customer.” This provision must be read and construed together with the definitions, and in doing so, it is clear that the utility’s obligation is to provide customers with information as to what might be the most advantageous rate set forth in the utility’s tariff, filed with and approved by the Commission.⁹

Consistent with Puc Rule 1203.02(a), Unitil works with customers requesting new service to determine which rate, as set forth in the Company’s approved tariff, might be the most advantageous for that customer.¹⁰ Competitive Supply is not a service provided by Unitil, nor are competitive supply rates provided pursuant to a tariff filed with and approved by the Commission. For these reasons, Competitive Supply is not within the scope of Puc 1203.02(a) and Unitil is not obligated by the Puc rules to provide information as to what might be the most advantageous Competitive Supply rate available to customers. In fact, such activity could be construed as anti-competitive and conflicting with customer choice and a fully competitive market.¹¹

The ability to exercise customer choice is a fundamental tenet of electricity restructuring and “[c]ustomers should expect to be responsible for the consequences of their choices.”¹² Regarding Competitive Supply, the most advantageous rate chosen by any particular customer may be informed by a number of subjective considerations—e.g., opting to pay a premium for green or renewable energy options or preferring a longer or shorter term contract. Further, if a utility directed customers to a specific competitive supply option, then it would be interfering with customer choice, and arguably would be favoring one competitive supplier over another, which is anathema to a fully competitive market. For these reasons, it is not appropriate for the utility to direct a customer’s choice of supplier and, in any case, there is no reasonable basis for a utility to determine what might be the most advantageous competitive supply option for each, individual customer. It is appropriate, however, and consistent with the principles of restructuring and a competitive market, for Unitil to provide customers with *information* about competitive supply options, so the customer can decide what choice is best for them.

Unitil explains on its website that electric customers have the option to purchase

⁹ See 374-F:3, II (“Generation services should be subject to market competition and minimal economic regulation and at least functionally separated from transmission and distribution services which should remain regulated for the foreseeable future.”). See also CPT 2023-001 Attachment 1 (email from DOE to Complainant) (explaining that “there is no requirement that a regulated utility proactively provide information about third party energy supply…”).

¹⁰ Unitil further notes that Puc 1203.02(a) requires the utility to provide information as to what regulated, filed rate “**might**” be the most advantageous for a customer. The word “might” typically is used to express that something is possible, but it is not certain.

¹¹ See RSA 374-F:3, VII (“The rules that govern market activity should apply to all buyers and sellers in a fair and consistent manner in order to ensure a fully competitive market.”); *In re New Hampshire PUC*, 143 N.H. 233, 236 (1998) (The restructuring statute “directed the PUC to devise a restructuring plan in which electric generation services and rates would be extracted from the traditional regulatory scheme, unbundled, and subjected to market competition.”).

¹² RSA 374-F:3, II.

their electricity from competitive suppliers.¹³ In addition, the Company provides customers with links to the websites of Suppliers registered in New Hampshire, information on renewable energy supply options, and a link to the DOE’s “Shop for Electric Rates” tool, which helps customers compare current energy supply providers and offers, as well as a static list of approved energy providers in New Hampshire.¹⁴

In summary, the Complainant’s assertion that the Company did not comply with Puc 1203.02(a) is incorrect.

B. Default Service/Bill Amount

The Complainant states that she initially signed-up for electricity service on January 23, 2023 and, as discussed above, asserts that Unitil did not inform her about competitive supply rates at that time. Complainant acknowledges that on a subsequent call, Unitil’s customer service representative informed her that she was on Default Service and that third-party supply options were available.¹⁵ The Complainant claims that she was “forced” onto Default Service, without any options.¹⁶

Complainant further states that upon receiving her first bill in March 2023, in the amount of \$624.50 and for 1,764 kilowatt-hours (“kWh”), she contacted the Company to inquire about the magnitude of the charges.¹⁷ Complainant states that she was surprised by the size of the bill because the premises are “brand new construction and no one was living [there] or doing work inside . . .”¹⁸

Complainant requested a meter test and a meter test was performed by Unitil.¹⁹ The Complainant asserts that after the meter test was performed, Unitil charged her account \$20 and it has not removed this charge.²⁰

Complainant states that her April bill was in the amount of \$321.82 and for 967 kWh, and that there is no explanation for the dramatic reduction in usage from the March bill.²¹ According to the Complainant, “[she has] done absolutely nothing different to account for this change . . .”²²

In the sections that follow, the Company addresses the Complainant’s issues concerning (1) being placed on Default Service; and (2) the change in her electricity usage.

¹³ Unitil, Third-Party Energy Suppliers, <https://www.unitil.com/electric-gas-service/third-party-energy-suppliers>.

¹⁴ *Id.*

¹⁵ Complaint at 2-3.

¹⁶ *Id.* at 1.

¹⁷ *Id.* at 2.

¹⁸ *Id.* at 3.

¹⁹ Complaint at 4; CPT 2023-001 Attachment 3, at 1.

²⁰ Complaint at 5.

²¹ *Id.*

²² *Id.*

1. Default Service

As explained by the DOE in e-mail correspondence with Complainant, “[c]ommencement of service with a competitive supplier occurs with the meter read following the utility’s receipt of an enrollment request from the supplier.”²³ This provision is set forth in the Company’s Terms and Conditions for Competitive Suppliers and in the Commission’s rules.²⁴ Accordingly, new customers are initially placed on Default Service and if they sign-up with a third-party supplier, the change is implemented in the next monthly billing cycle.

In this case, the Company placed the Complainant on Default Service when she initiated service, which complies with the applicable rules in New Hampshire and the terms of Unitil’s Tariff.

2. Bill Amount

Pursuant to Puc 305.04(a), when a customer requests that a utility test the customer’s meter, the utility must test the accuracy of the meter within 15 calendar days and it must report the results to the customer within 15 calendar days of the test. According to the Company’s records, the Complainant requested the meter test on March 29, 2023 and the Company sent the results of the meter test to Complainant on April 3, 2023 (attached hereto as CPT 2023-001 Unitil-Attachment 1). This was well within the 15 days required by the rule. As shown in CPT 2023-001 Unitil-Attachment 1, Unitil found the meter to be registering accurately and within the 2 percent variance allowed by Puc 305.04.

A utility may require a deposit of \$20 for a meter test and if, on testing, the meter is not found to have an average error greater than 2 percent, the utility may retain the amount deposited for the test. Puc 305.04(e). Although Unitil had the right to retain the \$20 deposit pursuant to the Puc rule, the Company waived this right and credited the \$20 back to the Complainant’s account.

Regarding the Complainant’s assertion about the decrease in usage between March and April, the Company cannot speak to what may have occurred on the Complainant’s side of the meter. However, as discussed above, the Company has tested its meter, and found it to be registering accurately. Therefore, because the Company’s meter is the only objective evidence of the Complainant’s usage, and that meter was tested as accurate, there are no reasonable grounds to dispute the March bill.

²³ CPT 2023-001 Attachment 3, at 1.

²⁴ Unitil Energy Systems, Inc., NHPUC No. 3 - Electricity Delivery Original Page 32, III.1.A(3) (“Generation Service shall commence on the date of the Customer’s next scheduled meter read, provided that the Supplier has submitted the enrollment transaction to the Distribution Company no fewer than two (2) business days prior to the meter read dates.”); Puc 2004.10(a), Puc 2202.12.

C. Two-Party Consent Requirement

The Complainant asserts that New Hampshire is a two-party consent state for purposes of recording telephone calls and Unitil's disclosure that the call will be recorded for "quality and training" purposes is not sufficient to establish the customer's consent to be recorded.²⁵

Under New Hampshire law, it is unlawful for a person to knowingly intercept a telecommunication or oral communication **without the consent of all parties** to the communication.²⁶ The definition of "intercept" includes recording any telecommunication or oral communication.²⁷ The definition of an oral communication "is any verbal communication uttered by a person who has a reasonable expectation that the communication is not subject to interception, under circumstances justifying such expectation."²⁸

It is not unlawful to record a telephone conversation if all parties consent to the recording. The New Hampshire Supreme Judicial Court (the "Court") has explained that the recording of a call may be authorized where the recipient of the telephone call informs the caller that the call is being monitored by a third person or recorded. *See State v. Lamontagne*, 136 N.H. 575, 579 (1992); *see also State v. Locke*, 144 N.H. 348, 355 (1999) (holding that consent to recording of a communication may be inferred when the surrounding circumstances demonstrate that the consenting party knew the conversation was being intercepted). In addition, the Court has found that a person impliedly consents to the recording of communications when those communications are sent with the expectation that the other party may save them. *State v. Lott*, 152 N.H. 436, 441-442 (2005); *cf. Peerless Ins. Co. v. Traveler's Ins. Co.*, 104 N.H. 411, 416 (1963) (finding implied consent based on the conduct of the parties and surrounding circumstances).

As the Complainant correctly notes, Unitil's customer service line has an automated message that notifies customers that the call will be recorded "for quality or training purposes." Thus, according to applicable New Hampshire law, if a customer continues a conversation after Unitil's disclaimer that the call is being recorded, that customer consents to the recording by continuing the conversation. Moreover, the customer has no reasonable expectation that the communication is not subject to recording after receiving a clear, unambiguous notification to the contrary. Therefore, as a matter of law, because the Complainant consented to Unitil's recording of the call by continuing the conversation after Unitil's disclaimer that the call is being recorded, Unitil's conduct is not unlawful within the meaning of RSA 570-A:2.

²⁵ Complaint at 3.

²⁶ RSA 570-A:2, I-a.

²⁷ RSA 570-A:1, III.

²⁸ RSA 570-A:2, II.

The Company further notes that if a customer objects to being recorded, Unitil's customer service representatives can transfer the customer to a Supervisor and the customer can speak to the Supervisor on an unrecorded line.

D. Customer Service and Dispute Process

The Complainant asserts that there is a low bar for customer service and that the dispute process is difficult. Unitil does not agree with either of these assertions.

Unitil prides itself on providing high-quality customer service and the facts in this case show that Unitil has been responsive to the issues raised by Complainant and the Company has acted in accordance with its legal and regulatory obligations.

The facts in this case also show that the customer dispute process is working as it should. The Complainant contacted DOE concerning her issues, DOE listened to the recording of the initial call with Unitil, and DOE provided a summary of that call.²⁹ DOE provided its assessment of the Complainant's issues regarding two-party consent to recording, Default Service, and Unitil's obligation to provide competitive supplier information.³⁰ Complainant requested a meter test, and the Company performed that test as requested. In addition, the Complainant filed a formal complaint with the Commission (Docket No. DE 23-50) and the DOE has opened an investigation into this matter. The Complainant's issues have received the appropriate attention and she is being afforded a full and fair opportunity for her concerns to be heard and addressed.

III. CONCLUSION

For the reasons stated herein, there are no reasonable grounds for the charges set forth in the Complaint and, accordingly, they should be dismissed by the DOE.

Thank you for your attention to this matter.

Sincerely,



Matthew C. Campbell

Enclosure

cc: proceedings@energy.nh.gov

[REDACTED]
Amanda Noonan, Director of Consumer Services, DOE
Office of the Consumer Advocate

²⁹ See CPT 2023-001 Attachment 3.

³⁰ *Id.*