

DE 09-009

UNITIL ENERGY SYSTEMS, INC.

**Petition for Approval of Default Service Solicitation
And Proposed Default Service Tariffs**

Order Approving Petition

ORDER NO. 24,949

March 20, 2009

APPEARANCES: Gary M. Epler, Esq. on behalf of Unitil Energy Systems, Inc.; James Rodier, Esq. on behalf of Freedom Logistics, LLC and Halifax-American Energy Company, LLC; Meredith A. Hatfield of the Office of Consumer Advocate on behalf of residential ratepayers; and Suzanne G. Amidon, Esq. on behalf of the Staff of the Public Utilities Commission.

I. PROCEDURAL HISTORY

On February 4, 2009, Unitil Energy Systems, Inc. (UES) filed a redlined copy of a Request for Proposals (RFP) to solicit default service supply for its large commercial and industrial (G1) customers and its small commercial and residential (Non-G1) customers for the period beginning May 1, 2009. The filing was made pursuant to the terms of a settlement agreement which set forth the procedures for UES to procure default service power supply for both its G1 and Non-G1 customer groups, and was approved by the Commission in *Unitil Energy Systems, Inc.*, Order No. 24,511, 90 NH PUC 378 (2005).

The Commission issued an Order of Notice on February 13, 2009 scheduling a hearing for March 18, 2009. On February 20, 2009, the Office of Consumer Advocate (OCA) filed a letter indicating that it would participate in the docket on behalf of residential customers pursuant to RSA 363:28 and on March 9, 2009, Freedom Logistics, LLC, and Halifax-American Energy Company, LLC (Freedom) filed a petition for intervention.

On March 13, 2009, UES filed a petition requesting approval of its solicitation and procurement of three contracts for default service. UES solicited 100% of its G1 customer default service requirements for the period May 1, 2009 to July 30, 2009, and two 25% blocks of its Non-G1 customer default service requirements, one for a one-year period beginning May 1, 2009 and one for a two-year period also beginning on May 1, 2009. In addition, UES requested approval of proposed tariff pages incorporating the new rates resulting from its solicitation. In support of the petition, UES filed the testimony and related exhibits of Robert S. Furino and Linda S. McNamara. UES also filed its 2008 lead/lag study with supporting testimony of Robin Tafoya. Finally, UES filed a customer migration report which shows monthly retail sales and customer counts for competitive suppliers.

UES selected TransCanada Power Marketing (TCPM) as the supplier of both the one-year and two-year blocks of Non-G1 supply requirements and FPL Energy Power Marketing, Inc. (FPL Energy) as the supplier for the three-month G1 supply requirement.

With its petition, UES filed a motion for confidentiality and protective order (Motion) for certain information, which it asserts is consistent with RSA 91-A:5, IV and prior Commission orders. The information for which UES seeks confidential treatment is contained in Tab A of Schedule RSF-1 attached to the testimony of Mr. Furino and includes UES' bid evaluation report. In addition to requesting confidential treatment for the material contained in Tab A, UES also requests confidential treatment for the "Total G1 Class DS Supplier Charges," "Working Capital Requirement," "Supply Related Working Capital" and "Provision for Uncollected Accounts" found on columns (a),(d), (f) and (i) of page 3 and columns (a), (e), (g) and (h) of page 5 of Schedule LSM-3 attached to the testimony of Ms. McNamara. UES is requesting confidential treatment of this information for a limited period of time. The Company also

requested confidential treatment for the “Payment Date,” the “Lead Period” and the “Weighted Days” from each page of Schedule RT-2 of Ms. Tafoya’s testimony as the information could lead to disclosure of payment terms of the underlying supplier contracts. Finally, UES seeks protection from public disclosure of the indicative bid information provided in an e-mail to Commission Staff and OCA on March 10, 2009.

In support of its request for confidential treatment of information related to wholesale rates, UES states that a wholesale supplier is obligated, pursuant to certain reporting requirements, to report to the Federal Energy Regulatory Commission (FERC) the price and volume of its wholesale contractual sales during each quarter and to identify the party to whom the sale has been made, within 30 days of the end of that quarter. *See* FERC Docket No. RM01-8-000, Order No. 2001, 99 FERC ¶ 61, 107, 18 CFR Parts 2 and 35, issued April 25, 2002. UES attests that FERC makes this information available to the public through electronic quarterly reports. UES, therefore, requests that the “Wholesale Rate” and “Supplier Charges” as well as the contract rate information provided in appendices to the power supply agreements (PSA) be maintained as confidential until the information becomes publicly available at FERC. UES avers that until this pricing information is required by FERC to be made public, the winning suppliers will keep the information confidential so as to avoid disclosing price information that may be used to its disadvantage in other negotiations.

UES states that, with respect to the information consisting of UES’ analysis and evaluation of the bids received, UES considers this confidential and proprietary commercial information and has not publicly disclosed the information in any other forum. UES asserts that disclosure of the information could compromise UES’ bargaining position and ability to achieve the lowest possible price, reasonable credit quality provisions and other material terms in a

competitive solicitation to the detriment of UES and its customers, and that suppliers may refuse to participate in the New Hampshire market if their confidential information is publicly disclosed.

Tab A includes copies of executed transaction confirmations regarding the power supply blocks procured in the instant solicitation. UES maintains that the disclosure of the transaction confirmations would reveal the terms and conditions UES and the winning bidders were willing to agree to in order to achieve final agreement and thereby harm each party's ability to negotiate in the future. UES contends that providing even partial disclosure of the transaction confirmations would reveal information that may be used to the disadvantage of either party to the transaction confirmation by showing what was not changed during the negotiation process and by focusing attention on what was changed. UES insists that disclosure of this information could compromise UES' bargaining position and ability to achieve the lowest possible price, reasonable credit quality provisions and other material terms in a competitive solicitation to the detriment of UES and its customers. Finally, UES asserts that the information contained in Tab A is "confidential, commercial or financial information" which is exempt from public disclosure under the Right-to-Know law, RSA 91-A:5, IV and that disclosure of this information would impair both UES' and the responding bidders' bargaining position with respect to future participation in the energy market.

II. POSITIONS OF THE PARTIES AND STAFF

A. Unitil Energy Systems, Inc.

UES testified that, consistent with Order No. 24,511, the Company conducted an open solicitation process, actively sought interest among potential suppliers and provided access to sufficient information to enable it to assess the risks and obligations associated with providing

the services sought. UES declared that it effected market notification of the RFPs by electronically announcing their availability to all participants in the New England Power Pool (NEPOOL) and to the members of the NEPOOL Markets Committee. UES affirmed that it also announced the issuance of the RFPs to a list of contacts from energy companies who had expressed previous interest in receiving notices of solicitations. In addition, UES issued a media advisory to the power markets trade press announcing the RFPs.

UES attested that, in order to gain the greatest level of market interest, it provided potential bidders with appropriate and accessible information. According to its filing, UES provided bidders with historic hourly load, historic monthly retail sales and customer counts, large customer concentration data and the evaluation loads, which are the estimated monthly volumes that UES would use to weight bids in terms of price. UES testified that it used its website to make this information available to potential suppliers. Consistent with *Unitil Energy Systems, Inc.*, Order No. 24,921 (December 12, 2008) issued in Docket No. DE 08-015, UES solicited only for all-inclusive bids that included both energy and capacity supply.

UES issued the RFPs on February 3, 2009. On February 24, 2009, UES received proposals and indicative bids from several different respondents that included detailed background information on the bidding entity, proposed changes to the contract terms, and indicative pricing. UES stated that it reviewed the proposals and worked with the bidders to establish and evaluate their creditworthiness, their extension of adequate credit to UES to facilitate the transaction, their capability of performing the terms of the power purchase agreement in a reliable manner and their willingness to enter into contractual terms acceptable to UES. UES negotiated with potential suppliers who submitted proposals in order to obtain the most favorable contract terms each supplier was willing to offer. All bidders were invited to

submit final bids. On March 10, 2009, UES received final pricing from bidders and conducted its evaluation which included both the quantitative and qualitative criteria described above. UES selected TCPM as the lowest bid for the Non-G1 customer group and FPL Energy as the lowest bid for the G1 customer group.

Based on its selected bids and existing Non-G1 power supply contracts, UES developed Non-G1 rates by dividing the total costs for each month during the May through October 2009 period, including estimated renewable portfolio standards (RPS) costs and an appropriate allocation of the Non-G1 reconciliation account balance at January 31, 2009, by the estimated Non-G1 kWh purchases for the month. UES then applied an estimated loss factor of 6.40% to each monthly unit cost and, finally, averaged the monthly unit costs to arrive at the proposed fixed retail charge. Using this methodology, UES calculated a fixed default service charge for Non-G1 customers of \$0.08618 per kWh for the period May through October 2009, which is 23.3% less than the current fixed default service charge of \$0.11239 per kWh.

For G1 customers, UES used a similar process, dividing the total costs for each month of the May through July period, including estimated RPS costs and an appropriate allocation of the G1 reconciliation account balance at January 31, 2009, by the estimated G1 kWh purchases for the month, adjusted by a loss factor of 4.591%. This process produced the following monthly default service charges for the G1 customer group:

Month	May	June	July
\$/ kWh	\$0.06988	\$0.07213	\$0.07982

The simple average of these monthly rates is \$0.07394 per kWh, which is 25.49% less than the current simple average of \$0.09923 per kWh. UES attributed the reduced default service rates for both the G1 and Non-G1 groups to the decrease in market rates.

Based on UES' calculations, the change in the default service component of retail rates will result in the following average monthly customer bill impacts:

Customer Class:	Decrease:
Residential 500 kWh	14.8%
General Service 3000 kWh	15.8%
Large Commercial and Industrial 200,000 kWh	17.7%
Outdoor lighting	9.6%

UES testified that the mean use for its residential customers is 662 kWh per month and the median use is 553 kWh per month, and for those customers, monthly bills would decrease by 15.1%, from \$114.96 to \$97.61 and by 14.9% from \$97.21 to \$82.71, respectively.

In response to questions at hearing, UES agreed that the Company has had an obligation to comply with the Electric Renewable Portfolio Standard law (RSA 362-F) beginning with its first delivery of electric service in January 2008. UES' obligation requires the Company to obtain and retire renewable energy certificates (RECs) from various renewable energy sources in amounts representing certain percentages of each supplier's total megawatt-hours of electricity provided to its customers in a given year.

UES testified that the estimated and actual costs of RPS compliance will be reconciled as part of its annual default service reconciliation, with G1 and Non-G1 costs addressed separately. UES acknowledged that the Commission has directed the Company to meet with Staff to develop a formal process for complying with the requirements of the RPS law and noted that discussions have begun.

For 2009, UES testified that it needs to provide Class I RECs for 0.5% of sales, Class III RECs of 4.5% of sales and Class IV RECs of 1.0 % of sales.¹ UES indicated that it intends to fulfill these requirements by purchasing actual RECs to the extent qualifying RECs are available; otherwise UES would make alternative compliance payments (ACPs).

UES stated that it currently estimates the cost of Class I RECs to be at \$60.92, the ACP level. UES said that the Company had purchased approximately 14% of its 2008 Class III REC requirements and 27% of its Class IV REC requirements through third party transactions and, based on these purchases, used an estimated price of \$25.25 for Class III RECs and \$24.00 for Class IV RECs in its calculation of the RPS component of the default service charge. Based on this blend of ACP and market prices, UES calculated the retail cost of RPS compliance for Non-G1 customers to be \$0.00179 per kWh for the period May through November 2009. For G1 customers, the retail cost of RPS compliance for the period May through July 2009 is \$0.00176 per kWh. The difference is attributable to the different loss factors for G1 and Non-G1 customers.

With respect to the 2008 lead/lag study filed with the petition, UES stated that it used the results of the study to calculate the working capital component of the default service rates, but it recognized that Staff had insufficient time to review its details. Accordingly, UES said that, if the study was subsequently revised, any cost differences attributable to that revision would be addressed in its annual reconciliation calculation.

In response to questions from Staff, UES acknowledged that the Company and Staff had discussed Staff's analysis of the 2006 lead/lag studies conducted by UES and National Grid and that Staff had made a proposal to UES to address Staff's concern over the significantly shorter

¹ Class I RECs represent "new" renewable generation, Class III RECs represent eligible biomass generation, and Class IV RECs represent qualifying small hydro generation.

expense lead claimed by UES compared to National Grid. UES stated that Staff's proposal is under review.

UES concluded by requesting that the Commission approve its petition and find that UES has followed the solicitation process approved by the Commission, that its analysis of the bids is reasonable, that it has demonstrated that the resulting power supply costs are reasonable, and that the resulting rates are reasonable.

B. Freedom Logistics, LLC and Halifax-American Energy Company, LLC

Freedom inquired whether UES received quote sheets from brokers. The Company responded that UES receives quote sheets for RECs but not for blocks of power. Freedom observed that suppliers who provide bids to UES for requirements service must include a price premium to account for various risk factors associated with that service. The Company agreed that a supplier would include in its bid a premium to cover the risk that the market would move against the supplier if the supplier was required to hold its price. In addition, the Company agreed that supplier bids would need to reflect the risk of customers returning to or exiting UES' default service load in response to changing market conditions.

Freedom also inquired about how UES acquired RECs. UES stated that the market for RECs is separate from energy and that the small quantities purchased to date have been acquired through broker transactions. UES said it had no formal process in place for the acquisition of RECs though it is currently working with Staff to develop such a solicitation process. Freedom concluded by stating that it had no opposition to UES' petition.

On March 19, 2009, Freedom filed a memorandum of law arguing that, as an intervenor, it should be entitled to receive copies of the confidential information filed by UES.

C. Office of Consumer Advocate

The OCA noted that rates for residential customers would experience a decrease of 15% in typical monthly residential bills. The OCA concluded by saying that it did not object to UES' petition and was pleased to see residential customers benefit from the low market prices through lower monthly electric bills.

D. Staff

Staff inquired about the reconciliation component of the Company's proposed Non-G1 default service rate for the period May 2009 through October 2009. Specifically, Staff was concerned that the total costs included in the reconciliation calculation for the period February 2008 through January 2009 did not reflect a reduction in cash working capital associated with the payment of RPS expenses. In response, the Company stated that the reconciliation calculation for 2008 does not include a working capital credit because RPS expenses have yet to be incurred. The Company agreed to revise its 2008 reconciliation calculation after those expenses have been incurred.

Staff also inquired whether UES had considered including a separate reconciliation mechanism in its default service filings to track RPS costs and revenues. UES responded that it briefly considered this change but concluded that it would make the filing overly complex. Staff suggested that the use of a separate reconciliation mechanism for RPS costs and revenues would make RPS compliance more transparent and simplify Staff review.

Staff inquired whether the Company had taken into account the large expense lead associated with RPS payments when conducting its 2008 lead/lag study. UES responded that it had and that the effect was to lower the amount of working capital included in the proposed default service rates.

Staff concluded by saying that it had reviewed the filing and UES had followed the solicitation and bid evaluation process approved by the Commission in Order No. 24,511. Staff recommended that the Commission approve the petition.

III. COMMISSION ANALYSIS

A. Motion for Confidentiality

First, we address UES' motion for confidential treatment. We note that UES has filed similar motions with its default service filings in the past and that we have granted motions for confidential treatment in such cases. *See Unitil Energy Systems, Inc.*, Order No. 24,716, 91 NH PUC 617 (December 15, 2006), *Unitil Energy Systems, Inc.*, Order No. 24,766 (June 22, 2007) and *Unitil Energy Systems, Inc.*, Order No. 24,861 (June 20, 2008). We have conducted an *in camera* review of Tab A and the other materials for which UES seeks confidential treatment. We agree that the information concerning the "Total G1 Class DS Supplier Charges," "Working Capital Requirement," "Supply Related Working Capital," and "Provision for Uncollected Accounts" found on columns (a),(d), (f) and (i) of page 3 and columns (a), (e), (g) and (h) of page 5 of Schedule LSM-3, taken in combination would reveal the wholesale cost of power from the winning bidders and, therefore, constitutes confidential, commercial, or financial information of the sort contemplated by RSA 91-A:5, IV.

UES is requesting protective treatment of this information for a limited period of time. Pursuant to requirements of the Federal Energy Regulatory Commission (FERC), each wholesale supplier is obligated to report to the FERC the price and volume of its wholesale contractual sales during each quarter and to identify the party to whom the sale has been made, within 30 days of the end of that quarter. *See Revised Public Utility Filing Requirements*, 99 FERC ¶ 61,107 (April 25, 2002) and 18 CFR Parts 2, 35. FERC makes this information available to the

public through electronic quarterly reports. Therefore, insofar as confidential treatment is requested for wholesale contractual sales, we grant such information confidential treatment until such time as the information is published by the FERC.

The Company also requested confidential treatment for the “Payment Date,” the “Lead Period,” and the “Weighted Days” from each page of Schedule RT-2. We do not find the public's interest in review of the financial, commercially sensitive information sufficient to outweigh the benefit derived from maintaining the confidentiality of such information, given that the benefits of confidentiality accrue to UES’s customers, whose rates will likely be lower as a result. *See Union Leader Corp. v. New Hampshire Housing Fin. Auth.*, 142 N.H. 540 (1997) (requiring application of balancing test to RSA 91-A:5, IV determinations, weighing public’s interest in disclosure against privacy interest). We therefore grant the motion for confidential treatment. In addition, we agree the information shared with Staff by e-mail on March 10, 2009 should be accorded protective treatment.

Consistent with our applicable rule, N.H. Code Admin. Rules Puc 203.08(k), the confidential treatment provisions of this Order are subject to the on-going authority of the Commission, on its own motion or on the motion of Staff, any party or other member of the public, to reconsider the determination. We will not address Freedom’s post-hearing memorandum of law in this order as Freedom represented that it is not requesting access to confidential information in this proceeding.

B. Default Service

At the outset, we note that Staff and UES have begun discussing a formal process for complying with the requirements of the RPS law. We expect to have a report detailing that process before UES’ next default service filing.

Regarding UES' analysis of the bids and its selection of the winning bidders, we find that it substantially complied with the procedures approved in Order No. 24,511 for the G1 default service solicitation for the three months May 2009 through July 2009. We also find that UES substantially complied with the bid procedures regarding its selection of a supplier for two 25% blocks of default service requirements for Non-G1 default service customers for the 12-month block and the 24-month block beginning May 2009. We are satisfied that UES met all procedural requirements set forth in prior orders and the result is consistent with the requirement of RSA 374-F:3, V(c) that default service "be procured through the competitive market." We also find that UES' evaluation of the bids and its selection of FPL Energy as supplier for G1 supply, and TCPM as supplier for Non-G1 DS supply, is reasonable. We approve UES' request to include the wholesale power costs reflected in the winning bids in default service retail rates beginning May 1, 2009.

The proposed retail rates, however, will be approved subject to Staff's review of the Company's 2008 lead/lag study. We expect Staff to file a report detailing its conclusions and recommendations before UES' next default service filing. That report should also include Staff's conclusions regarding its analysis of the differences between the 2006 lead/lag studies conducted by UES and National Grid.

Finally, we direct UES to include in its next default service filing a separate reconciliation mechanism that tracks RPS costs and revenues. The separation of RPS costs and revenues from power supply costs and revenues will simplify the regulatory review process without adding greatly to the Company's administrative burden.

Based upon the foregoing, it is hereby

ORDERED, that the amendment to the power supply agreement between FPL Energy Marketing, Inc. and Unitil Energy Systems, Inc. to provide 100% of the three month default service power supply to G1 customers for the period May 1, 2009 through July 31, 2009 is hereby APPROVED; and it is

FURTHER ORDERED, that the 12-month and 24-month power supply agreements between TransCanada Power Marketing and Unitil Energy Systems, Inc. to provide two 25% blocks of default service power supply to Non-G1 customers are hereby APPROVED; and it is

FURTHER ORDERED, that UES shall file conforming tariffs within 30 days of this order consistent with N.H. Admin. Rules Puc 1606.02.

By order of the Public Utilities Commission of New Hampshire this twentieth day of March, 2009.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Clifton C. Below
Commissioner

Attested by:

Debra A. Howland
Executive Director