

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

**PETITION FOR APPROVAL OF DEFAULT
SERVICE SOLICITATION**

**UNITIL ENERGY SYSTEMS, INC.
Petitioner**

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) **DOCKET NO. DE 10-028**
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**MOTION FOR CONFIDENTIAL TREATMENT
AND PROTECTIVE ORDER**

Unitil Energy Systems, Inc. (“UES” or the “Company”) respectfully requests that the New Hampshire Public Utilities Commission (the “Commission”) grant a protective order for certain confidential information contained in the Company’s “Petition for Approval of Default Service Solicitation and Proposed Default Service Tariff” (“Petition”), consistent with R.S.A. 91-A:5(IV) and N.H. Admin. Rules, Puc 203.08. Specifically, UES requests that the Commission issue an order requiring confidential treatment for:

- (a) The material contained in Tab A of Schedule RSF-1 which is attached to Exhibit RSF-1 (with the exception of the name of the winning bidders, TransCanada Power Marketing Ltd., as the supplier for the 24-month Non-G1 supply requirements, and Hess Corporation as the supplier for the 3-month G1 supply Requirement.);
- (b) 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 (l) of Page 3 and columns (a), (d), (f) and (g) of

Page 5 of Schedule LSM-4. As discussed in paragraph no. 4, below, UES is seeking protective treatment of this information for only a limited period of time.

(c) The “Payment Date,” “Lead Period” and “Weighted Days” information contained in Schedule DC-2 which is attached to Exhibit DC-1.

(d) UES is also seeking protective treatment of confidential information provided to the Staff and OCA by e-mail on March 12, 2009.

In support of this motion, UES states as follows:

1. In its Petition, UES seeks Commission approval of the results of the Default Service solicitation, and approval of Proposed Default Service Tariffs for G1 and non-G-1 customers beginning May 1, 2010. As required by Order No. 24,511 (Docket DE 05-064), the Petition contains a Bid Evaluation Report (“Report”) in which UES provides a detailed analysis of the solicitation process. See Exhibit RSF-1, Schedule RSF-1. In addition, UES has provided Schedule LSM-4 which contains the calculation of the G1 Default Service Power Supply charges and supply related working capital, respectively.

2. Tab A of the Report contains the following information and material: a brief narrative discussion of the comparison of the bids received; identification of the suppliers who responded to the Request for Proposals (“RFP”) issued by UES on February 2, 2010; a pricing summary consisting of a comparison of all price bids, which is followed by each bidder’s final pricing; a summary of each bidder’s financial security requirements of UES and each bidder’s own provision of financial security and creditworthiness, and which includes UES’ ranking of bidders in terms of financial security, taking into account both the credit requirements imposed on UES and the

financial security offered by the bidder; information provided by each bidder upon their submission of the proposal submission form; the contact list used by UES during the RFP process, including a summary of UES' communications with each contact and UES' expectations with regard to each potential bidder's intention to bid; and the final Power Supply Agreement ("PSA") redlined against the original PSA as issued.

3. UES seeks protection from public disclosure of all of the information contained in Tab A because it is confidential commercial and financial information. The bidding suppliers' information, including each supplier's identity, bid price and non-price terms, and other information provided to UES in response to the RFP, has been provided to UES pursuant to express understandings that this material will be maintained as confidential. UES submits that suppliers will be reluctant to participate in future solicitations by UES, and may completely refuse to participate in this market, if their confidential bid information is publicly disclosed. Disclosure of this information may detrimentally impact upon such suppliers' ability to participate in competitive solicitations in other markets within the northeast region as well. For the same reasons, UES seeks protection from public disclosure of the confidential information provided to Commission Staff and the Office of Consumer Advocate by e-mail on March 17, 2010.

4. 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 (l) of Page 3 and columns (a), (d), (f) and (g) of Page 5 of Schedule LSM-4. UES seeks confidential treatment of this information because if any of it is disclosed, the G1 class Wholesale Rate may be calculated. For example, since the kWh purchases are provided elsewhere, the Total G1

Class DS Supplier Charges must remain confidential, because dividing that number by the purchases would yield the confidential Wholesale Rate. Additionally, since there is a known relationship between the Supplier Charges, the Working Capital Requirement, and Working Capital Costs, it is necessary not only to protect the Working Capital Requirement and associated Working Capital Costs, but also another cost element such as the Provision for Uncollected Accounts. Since the G1 class has just one supplier with monthly pricing, without protection of the Provision for Uncollected Accounts, the Supplier Charges and Working Capital Costs of this supplier may be derived.

6. UES does not claim that the “Supplier Charges,” “Provision for Uncollected Accounts,” “Supply Related Working Capital” and “Working Capital Requirement” are confidential information. However, UES seeks to redact this information from the publicly available material for a limited period because revealing it would allow a person to compute information – the Wholesale Rate - which is confidential. As a result of the Settlement Agreement in Docket DE 05-064, UES’ supply-related working capital costs are to be recovered through default service rates. Thus, the inclusion of the above items in the attached schedule is necessary in order to show the calculation of the default service rate.

7. It is UES’ understanding 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. This information is then available to the

public electronically from FERC through its Electronic Quarterly Reports. Until such time as this pricing information is required by FERC to be made public in this manner, it is the expectation and intent of the winning supplier to keep this information confidential so as to avoid disclosing price information which may be leveraged against it in other contemporaneous negotiations. Thus, it is critical that the Wholesale Rate and the “Supplier Charges,” “Provision for Uncollected Accounts,” “Supply related Working Capital Costs” and Working Capital Requirement” described above be redacted only until the Wholesale rate becomes publicly available at FERC, so that a person would not be able to derive the precise Wholesale Rate under the contract. Accordingly, UES is seeking that this information be protected until September 1, 2010.

8. UES also requests confidential treatment for information contained in Schedule DC-2 which may lead to disclosure of the payment terms of the underlying supplier contracts. Accordingly, UES has redacted the “Payment Date,” the “Lead Period” and the “Weighted Days” from each of page in this schedule. UES seeks to redact this information from the publicly available material because revealing it would allow a person to compute information concerning the payments terms of its supply contracts, which is confidential.

9. R.S.A. 91-A:5(IV) expressly exempts from the public disclosure requirements of the Right-to-Know law, R.S.A. 91-A, any records pertaining to “confidential, commercial or financial information.” The Commission’s rule on confidential treatment of public records, Puc 203.08, also recognizes that confidential, commercial or financial information may be appropriately protected from public disclosure pursuant to an order of the Commission.

10. UES' request for a protective order is not inconsistent with the public disclosure requirements of the Right-to-Know law, R.S.A. 91-A. This statute generally provides open access to public records, but the Commission has recognized that the determination whether to disclose confidential information involves a balancing of the public's interest in full disclosure with the countervailing commercial or private interests for non-disclosure. In this instance, the interests in support of a protective order of limited duration, in addition to those discussed above, include as well the interest of the State in promoting a competitive market for electricity, as expressed in RSA 374-F:1. The Commission has granted UES' request for confidential treatment of similar information contained in its previous DS tariff filings. UES submits that the considerations which the Commission determined supported approval of the protective order in those instances apply to the present filing. In Order No. 24,682, the Commission agreed that the information in "Provision for Uncollected Accounts" and "Supply-Related Working Capital" taken in combination would reveal the wholesale cost of power from the winning bidders and therefore constitutes confidential commercial or financial information protected from disclosure by RSA 91-A. In past DS proceedings, the Commission has also recognized the necessity of protecting information concerning the payment terms of the supply contracts from public disclosure.

WHEREFORE, UES respectfully requests that the Commission issue an order protecting the confidential information specified herein from public disclosure.

Respectfully submitted,

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By its Attorney,

/s/ Gary Epler

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