STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

DE 14-061 and DE 14-211[1]

LIBERTY UTILITIES (GRANITE STATE ELECTRIC) CORP. d/b/a LIBERTY UTILITIES and UNITIL ENERGY SYSTEMS, INC.

Alternate Plan for Procurement of Energy Service Requirements for All Customer Groups

Order Following Hearing

O R D E R N O. 25,763

February 18, 2015

APPEARANCES: Gary Epler, Esq., on behalf of Unitil Energy Systems, Inc.; Sarah B. Knowlton, Esq., on behalf of Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty Utilities; Orr & Reno, PA, by Susan S. Geiger, Esq., on behalf of NextEra Energy Power Marketing, LLC; the Office of Consumer Advocate by Susan Chamberlin, Esq., on behalf of residential ratepayers; and Suzanne G. Amidon, Esq., on behalf of Commission Staff.

In this Order, the Commission denies Liberty Utilities' petition requesting approval of an alternate plan to procure energy requirements for all customer groups in the event of a failed auction. The Commission directs Liberty to develop a new contingency plan and to keep Staff apprised of the development of that plan. The Commission also finds that, while Unitil appears to have developed a sound alternative approach should an auction fail, it is not necessary to rule on Unitil's proposal at this time.

I. PROCEDURAL BACKGROUND

Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty Utilities (Liberty) and Unitil Energy Systems, Inc. (Unitil), are electric distribution utilities. Both procure electricity (energy service or default service) for customers who have not chosen a competitive electricity supplier. The rates for default service are set two times per year, through Commission-approved

[1] DE 14-031, Liberty's 2014 default service proceeding, was referenced in the Order of Notice for this hearing; however, DE 14-031 is closed and is not implicated by this Order.

procurement processes. Essentially, the energy service rate is set at the utility's prudent supply purchase prices and associated costs, which are recovered from default service customers in electric service rates.

While certain aspects of the procurement processes differ between the companies, both Liberty and Unitil periodically issue requests for proposals (RFPs) soliciting power requirements for the upcoming months. Following the selection of a winning bidder for each RFP, each company seeks Commission approval of its highest-ranking proposal. *See, e.g.*, DE 14-031 (Liberty's 2014 default service docket) and DE 14-061 (Unitil's 2014 default service docket).

In the hearing regarding its March 2014 energy service filing, Liberty testified as to the shrinking number of bidders responding to its RFPs for default service. Hearing Transcript of March 25, 2014 (Docket No. DE 14-031), at 35-36. As a result of its concern about fewer bidders responding to its RFP, Liberty filed a petition on August 1, 2014, requesting approval of a contingency plan to procure power requirements for all customer groups in the event of a failed RFP. The Commission designated the contingent plan filing as DE 14-211. On September 10, 2014, Unitil filed a contingency plan in the event of a failed RFP in DE 14-061, Unitil's 2014 default service proceeding.

The Commission issued an Order of Notice on Liberty's proposal on August 8, 2014, scheduling a merits hearing on September 24, 2014. Freedom Logistics, LLC d/b/a Freedom Energy and NextEra Energy Power Marketing, LLC (NextEra), filed petitions to intervene, both of which the Commission denied in Order No. 25,725 (September 8, 2014).

Following the September 24, 2014, merits hearing in DE 14-211, Liberty's request for approval of a contingency plan, the Commission issued Order No. 25,732 (November 4, 2014), consolidating the review of Unitil's alternative procurement proposal with that of Liberty's. The Commission also scheduled a single hearing on the two proposals on December 23, 2014.

On September 22, 2014, Liberty filed a motion for protective order for its contingency plan pricing methodology. The Commission granted the motion at hearing.

II. POSITIONS OF THE PARTIES

A. Liberty

In its filing, Liberty explained that a Settlement Agreement approved in Order No. 24,577 (January 13, 2006), as subsequently modified,[2] specifies the process by which Liberty solicits power supply for both its Small (residential) and Large (commercial and industrial) Customer Groups. Currently, Liberty issues three RFPs every six months seeking 100% of residential power requirements for a six-month period, and two, consecutive three-month blocks of 100% of Large Customer Group power requirements.

Pursuant to the Settlement Agreement, Liberty issues an RFP to wholesale power suppliers who express interest in receiving such solicitations, and to a much broader distribution list, including members of the New England Power Pool Markets Committee. According to Liberty, the number of bidders submitting responses to its RFPs has decreased over time, both here and to RFPs issued by Massachusetts electric utilities. Based on that experience, Liberty seeks approval of a contingency plan to follow when an RFP solicitation fails. Liberty said it would consider an RPF to be a failure if the Company received no final bids for a specific block, or if the solicitation resulted in a single bid where the price was significantly above Liberty's estimated forecast market price.

[2] The Commission modified Liberty's power procurement process in Order No. 24,922 (December 19, 2008) and Order No. 25,601 (November 27, 2013).

Under its proposal, in the event of a failed RFP, Liberty would not award a contract. Instead, Liberty would serve its customers by purchasing energy in the Independent System Operator-New England (ISO-NE) real-time market. Liberty would then set fixed monthly rates for customers based on (1) energy price forecasts, (2) an adjustment for future price volatility, (3) the cost of ancillary services based on most recently published data for the New Hampshire load zone, (4) capacity costs associated with the power purchase based on forward capacity market prices, and (5) an adjustment for losses from pooled transmission facilities to the retail customer. Liberty explained that the "adjustment for further price volatility" is intended to take into account anticipated variability in market prices, pointing to the variability in prices in the 2013-2014 winter period as an example.

To the extent that purchased power costs differed from energy service revenue received from customers, Liberty would reconcile those differences in its next energy service filing instead of waiting for its annual reconciliation filing. If the accumulated variance exceeded $1 million, Liberty would include an incremental reconciliation and adjustment for any significant wholesale market changes. Further, if significant customer migration to competitive suppliers occurred during a period, Liberty would impose a temporary, non-bypassable charge applicable only to those distribution customers in a customer group for which the alternate plan was implemented.

Liberty said that it would likely incur additional financial assurance obligations to the ISO-NE given the incremental purchases that would occur under its alternate plan. The costs of the financial assurance would be passed through to default service customers. Liberty also stated that the company currently has sufficient staff to implement the alternate plan.

Liberty testified that, except in one circumstance, it did not consider reissuance of an RFP to be a viable option in the event of a failed auction, because of the time constraints associated with the current Commission process governing review and approval of its default service rates. Liberty said it currently receives final bids about six weeks before the rates become effective. To allow for the possibility of reissuing an RFP to the competitive market (following a failed auction), Liberty would need additional time for the RFP process. As for the exception, Liberty explained that it currently solicits power supply for its Large Customer Group for a six-month period, in two consecutive three-month blocks. If the failed RFP was for the second three-month period for Liberty's Large Customer Group, there would be adequate time to issue an additional RFP and to make a filing for rates for that future period.

Liberty concluded by requesting approval of its alternate plan in the event of a failed auction. Liberty argued that its plan is designed to provide complete transparency to both customers and the marketplace, and would provide clear price information to customers. Liberty said its plan also ensured certainty, unlike other alternatives.

B. Unitil

The Commission approved the process whereby Unitil solicits power for its default service customers in Order No. 24,511 (September 9, 2005, as modified by subsequent orders, including, most recently, Order No. 25,397 (July 31, 2012)). Currently, for customers who have not elected to receive electricity from a competitive supplier, Unitil issues RFPs every six months to procure power to serve those customers. Unitil solicits 100% of supply for its residential customer group, its medium (small commercial and outdoor lighting) customer group, and its large (commercial and industrial) customer group. Unitil fixes monthly prices for a six-month period for its residential and medium customer groups. For the large customer group, Unitil establishes variable monthly prices based on ISO-NE prices measured at the New Hampshire load zone, plus a fixed monthly adder consisting of the supplier's ancillary and capacity costs, and the bidder's profit margin.

Similar to Liberty, Unitil defined a failed auction as an event where no suppliers responded to an RFP or where the only response offered a price that exceeded Unitil's forecast of market prices. According to Unitil, the likelihood of a failed auction is low because there appears to be a sufficient number of suppliers willing to provide power requirements to Unitil for default service customers, so long as those suppliers can recover their costs in their pricing bids. Nonetheless, Unitil prepared a contingency plan in the event of a failed auction.

Unitil's plan consists of four options, which represent a sequence of choices that Unitil would consider in the event of a failed auction. Under Option 1, Unitil would issue a new RFP for an abbreviated procurement period as soon as reasonably possible. The new RFP would seek fixed-price offers for the affected customer group(s) for a period of one to three months under otherwise standard terms of default service procurement. Depending on the circumstances that created the failed auction, however, Unitil said it may skip Option 1 and move directly to Option 2.

Under Option 2, Unitil would issue a new RFP for a six-month procurement period. This RFP would seek offers for the specific customer group(s) where the supplier would be asked to bid a fixed monthly adder to cover capacity costs, ancillary service costs and the supplier's margin, similar to what is currently solicited for in Unitil's large customer group.

Option 3 would require Unitil to issue a new RFP for a six-month procurement period, seeking offers that include a pass-through of all energy, capacity, and ancillary services.

Suppliers would be asked to submit bids for the margins to be included in the pricing of default service. These costs would flow through the winning bidder's ISO-NE settlement account. The company would set prices for all customers as it currently does for its large customer group.

Under Option 4, Unitil would explore servicing its default service load obligation through its ISO-NE settlement account. UES would develop rates based on the actual cost of power at the ISO-NE for the period in question. According to Unitil, it would have to consider a number of factors in evaluating this methodology, because Option 4 presents the most costly alternative for customers. Unitil considers Option 4 to be a last resort.

Unitil said that it would inform the Commission and Commission Staff if it determined that there was significant potential for a failed auction. Because Unitil continues to see many willing suppliers responding to its RFPs, Unitil stated that it was not asking the Commission to approve its contingency plan at this time.

C. NextEra

NextEra is a wholesale supplier of electricity products in New England markets and elsewhere, and has bid on default service solicitations issued in New Hampshire and other states. In the event of a failed auction for either Liberty or Unitil, NextEra stated that both companies should solicit bids each subsequent week until a viable bid is secured, or it is no longer feasible to pursue additional bids. NextEra prefers Unitil's plan over Liberty's. NextEra said that jumping directly from the current process into a direct unilateral procurement from the market as proposed by Liberty is not favored by competitive suppliers.

D. OCA

The OCA recommended that Unitil's Option 1 be required of both companies. The OCA argued that the reasons for a failed RFP may be different under different circumstances, and each company should make an effort to respond to those concerns to get the bidding process back on track. The OCA disfavored the companies immediately resorting to an ISO-NE pass-through process. With respect to Unitil's Options 2 and 3, the OCA said that, because Unitil is not asking for approval at this time, such options should be reviewed at the time such an event occurs, when Unitil believes it needs to implement one of these options.

For Liberty, the OCA recommended that the first resort in the event of a failed auction should be Unitil's Option 1, and the second should be the proposal filed by Liberty.

E. Staff

Staff said that while there may be some benefit in allowing both alternate plans to go forward, Liberty's plan should be modified to require Liberty to first go to the competitive market, as described in Unitil's Option 1, before enacting Liberty's plan to go directly to the ISO-NE. Staff pointed out that Unitil has a couple of extra weeks built into its procurement schedule that affords time for the company to issue an additional RPF. Staff suggested that Liberty could also build some extra time into its process to allow it to immediately issue a new RFP following a failed solicitation. Staff also expressed concern that customers have appropriate and clear price signals to evaluate their energy service options. Finally, Staff pointed out that RSA 374-F:3, V(c) and (e) allow the Commission to approve alternative methods of procuring default service provided that those alternatives do not harm the competitive market and do not create new deferred costs.

III. COMMISSION ANALYSIS

The provision of default service is subject to RSA ch. 374-F, the electric utility restructuring statute. Under the statute, default service should be procured through the competitive market, and the Commission should establish default service appropriate to the particular circumstances of each jurisdictional utility. RSA 374-F:3, V(d). In addition, the Commission may approve alternative means of providing default service "which are designed to minimize customer risk, not unduly harm the development of competitive markets, and mitigate against price volatility without creating new deferred costs if the commission determines such means to be in the public interest." RSA 374-F:3, V(e). Based on the foregoing, the Commission must determine whether the contingency plans offered by Liberty and Unitil are in the public interest.

As an initial matter, we separately approved the current methodology by which Unitil and Liberty procure default service power. We approved different settlement agreements for each utility and subsequently modified the procurement methodologies after reviewing changes offered by each company. We do not consider the contingency plans that are the subject of this proceeding to require an amendment to either company's default service power procurement process. Rather, we consider the contingency plans to be an action outside of the current approved solicitation process.

A. Liberty

Liberty's proposal presents a single contingency option. In the event of a failed auction, Liberty proposes to serve its customers by purchasing energy in the ISO-NE real-time market. Customer rates would be set for the default service period based on estimated future energy prices, adjusted for price volatility and capacity and other ancillary costs associated with purchases at the ISO-NE. We find that this proposal is inconsistent with the restructuring principle of RSA 374-F:3, V(e), which requires that alternative means of providing default service not unduly harm competitive markets. Consequently, we do not find it in the public interest for Liberty to procure electricity supply directly through the ISO-NE in the first instance, after a failed RFP.

Liberty proposes to set customer rates based on forecasts, not actual market prices, and to reconcile actual costs with revenues as necessary. In addition, if significant customer migration to competitive suppliers occurs during the default service period addressed by the contingency plan, Liberty proposes to implement a temporary, non-bypassable charge to recover costs from the customer group affected by the plan. We also find those provisions to be inconsistent with the principles of RSA 374-F:3.

First, customer rates should be based on actual costs, not on estimated costs, to give clear price signals to customers who may wish to seek energy service from a competitive supplier. Second, the proposal to recover new deferred costs, namely significant under-collections, is also contrary to the principles of restructuring. *See* RSA 374-F:3, V(e).

Based on the foregoing, we deny Liberty's request for approval of its contingency plan. We direct Liberty to develop a contingency plan that contains market-based options, and to keep Staff apprised of the plan as it is being developed. We also agree with Staff that one step Liberty could take is to build time into its solicitation process to re-issue a failed RFP before taking any other course of action.

B. Unitil

Although Unitil's contingency plan appears to satisfy the requirements of the restructuring statue, we agree with Unitil that it is not necessary for us to rule on it at this time. As explained above, Unitil's proposal consists of three steps Unitil would consider, in the first instance, to continue to seek power supply from the competitive market in the event of a failed auction. Unitil's proposed fourth step, for times when no competitive supply was available, involves Unitil purchasing power from the ISO-NE market. Also consistent with the restructuring statute, Unitil's pricing would be based on market prices, and would provide clear price signals to customers, who may seek energy service from competitive suppliers.

Unitil did not ask for approval of its contingency plan at this time because a sufficient number of power suppliers continues to be interested in bidding on its RFPs for default service power requirements. Unitil stated that it would keep the Commission and Staff informed in the event of a failed RFP. Based on the foregoing, we find that we need not rule on Unitil's contingency plan in this Order. We will consider Unitil's contingency plan if and when the company needs our approval to implement the plan.

Based upon the foregoing, it is hereby

ORDERED, that Liberty's request for approval of its August 1, 2014 contingency plan to procure power requirements for customers in the event of a failed RFP is hereby DENIED; and it is

FURTHER ORDERED, that Liberty is directed to continue the development of a contingency plan and to keep Staff apprised of the development of the plan.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of February, 2015.

Martin P. Honigberg
Chairman

Robert R. Scott
Commissioner

Attested by:

Debra A. Howland
Executive Director

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Executive.Director@puc.nh.gov
amanda.noonan@puc.nh.gov
david.goyette@puc.nh.gov
grant.siwinski@puc.nh.gov
james.brennan@oca.nh.gov
leszek.stachow@puc.nh.gov
ocalitigation@oca.nh.gov
sarah.knowlton@libertyutilities.com
Stephen.Hall@libertyutilities.com
susan.chamberlin@oca.nh.gov
suzanne.amidon@puc.nh.gov
tom.frantz@puc.nh.gov