

DE 01-247

**CONCORD ELECTRIC COMPANY AND EXETER & HAMPTON
ELECTRIC COMPANY**

**Notice of Intent to File Rate Schedules
And Proposal to Restructure**

Order Approving Phase I Settlement Agreement

O R D E R N O. 24,046

August 28, 2002

APPEARANCES: Scott J. Mueller, Esq. and Meabh Purcell, Esq. of LeBoeuf, Lamb, Greene & MacRae, L.L.P. for Concord Electric Co., Exeter & Hampton Electric Co. and Unitil Power Corporation; Wynn Arnold, Esq. of the New Hampshire Attorney General's Office for the Governor's Office of Energy and Community Services; Kenneth E. Traum for the Office of Consumer Advocate; Michael Giaimo for the Business and Industry Association of New Hampshire; and Edward N. Damon, Esq. for the Staff of the New Hampshire Public Utilities Commission.

I. PROCEDURAL HISTORY

Pursuant to the submission of a notice of intent to file new consolidated rate schedules by Concord Electric Company (CEC) and Exeter & Hampton Electric Company (E&H) on December 17, 2001, CEC, E&H and Unitil Power Corporation (UPC) (collectively, Unitil, the Unitil Companies or the Companies) filed with the New Hampshire Public Utilities Commission (Commission), on January 25, 2002, a petition for approval of an offer of settlement for restructuring the Unitil Companies (Petition). A proposed form of settlement agreement for restructuring the Unitil Companies was included in the filing.

The Petition requested certain authorizations from the Commission, including:

- expedited approval of the proposed divestiture process to be used in the auction and sale of UPC's resource portfolio (Divestiture Process) and the solicitation process for acquiring Transition and Default Service (Solicitation Process) in order to complete the auction and solicitation process by August, 2002, including approval of proposed requests for proposal and contract forms;
- approval of an Amended Unitil System Agreement between the Unitil Companies which establishes the contract termination charges to be paid by CEC and E&H to UPC;
- approval of the combination of CEC, E&H and the remaining functions of UPC into a single distribution utility, Unitil Energy Systems, Inc. (UES) and certain related transactions;
- approval of new, unbundled retail delivery rates and tariffs of UES effective upon restructuring;
- approval of the actual transactions resulting from the Divestiture Process and the Solicitation Process;
- approval of stranded cost recovery charges to be collected from UES customers, including a reconciliation mechanism;
- approval of the Transition Service and prices to be effective through October 31, 2005, as well as Default Service and prices to be effective during the first year of the transition period;
- and, approval of the reclassification of Unitil's transmission and distribution plant.

According to Unitil, the proposed form of settlement was intended to resolve all issues outstanding with respect to Unitil from the electric restructuring proceeding in DR 96-150 and the subsequent federal court litigation.¹

The Commission issued an Order Following Prehearing Conference (Order No. 23,935) on March 15, 2002. The procedural schedule set forth in the Order established two "phases" of the proceedings for the Commission's determination of the numerous issues involved in the docket. The issues related to the Divestiture Process and Solicitation Process were included in Phase 1 (or "I"); Phase 2 (or "II") included consideration of the remainder of the issues involved in restructuring and rate-setting other than those related to the final bids submitted during the Divestiture Process and Solicitation Process. A final Commission order, anticipated for November 1, 2002, was to address issues related to the final bids, award of the contracts for the sale of the power supply portfolio and acquisition of Transition and Default Service.

In Order No. 23,935, the Commission discussed certain concerns not sufficiently addressed, in the Commission's view,

¹ UNITIL is a plaintiff in federal court litigation instituted against the Commission in 1997 and docketed as Public Service Company of New Hampshire, et al. V. Patch, et al., District of N.H. C.A. No. 97-97-JD, District of R.I. C.A. No. 97-12IL.

by the prefiled testimony accompanying Unitil's petition:

The Companies' restructuring proposal raises significant questions concerning how default service customers will meet their power needs over the long term. Since markets have opened in other states, we have made valuable observations that inform our understanding of how competitive power markets may function over the long term. We also have experience with the difficulties of creating fully competitive wholesale and retail markets. As a result, it is now possible to examine issues of default service with more understanding of the consequences of different approaches.

A responsible consideration of the Companies' proposal to divest its remaining supply portfolio will thus require that we address a number of questions not addressed directly in the Companies' filing to date. These include consideration of the likely proportion of consumers (particularly small residential and commercial customers) who will be able to select (or interested in selecting) competitive providers for supply, even beyond the transition period. To the extent that proportion is significant, we are presented with the questions of whether the likely path of market prices will be stable, or will be subject to sharp increases and decreases such as those that characterize commodities markets. If the latter is expected to occur, we must consider whether the statutory scheme requires that we leave small consumers exposed to the booms and busts of the supply markets, or whether instead the Commission has some responsibility to intervene and establish a more stable price path for consumers. Again, assuming that determination is made, the question would remain concerning which entity or entities should be charged with that responsibility, and how that obligation would be carried out, including the timing of any corresponding rights to serve default customers.

All these questions require more thorough examination than is presented in the prefiled testimony of the Companies to date. A careful review of such questions is needed before a determination of the divestiture proposal can properly proceed. That review should include whether the Companies should provide default service over the long term out of a

balanced portfolio of supply resources, including the current remaining Unitil portfolio. *Id.*, at pages 8-9.

The Commission directed Unitil to file additional testimony addressing the above Transition and Default Service issues. In response, the Unitil Companies filed supplemental testimony of John A. Eberlein and David K. Foote on April 12, 2002.

After Order No. 23,935 was issued, the Unitil Companies filed certain materials on March 29, 2002 reflecting updates for test year 2001 actual information, including updated testimony and accompanying schedules of Mark H. Collin and Douglas J. Debski, UES Tariff No. 1, report of proposed rate changes, and supplementary filing requirements. The Unitil Companies also made updated supplementary filings on May 1, 2002. In addition, the Unitil Companies filed motions for protective orders on May 1, 8, 9, and 10, 2002 with respect to certain data requests.

On May 10, 2002, Staff filed its testimony regarding Phase I issues. The testimony was provided by Douglas Smith and Brian Abbanat of LaCapra Associates on behalf of Staff.

The parties held settlement discussions regarding Phase I on May 23 and 29, 2002. In light of the settlement discussions between the parties, the Commission announced the

cancellation of the Phase I hearings scheduled for May 22-24, 2002, and directed Staff to file a copy of the settlement agreement no later than May 31, 2002, with a hearing on the merits of the settlement to be held on June 6, 2002.

On May 31, 2002, Staff filed a Phase I Settlement Agreement for Restructuring the Unitil Companies, including Settlement Agreement Tab A and confidential Settlement Agreement Tab B (collectively the Settlement Agreement), together with the Unitil Companies' motion for protective order regarding Settlement Agreement Tab B.

The Unitil Companies filed a motion to consolidate their pending motions for protective order on June 5, 2002. Also on June 5, Alan Linder, Esq., of New Hampshire Legal Assistance, filed a motion to intervene in Phase II of the proceedings on behalf of Wendy Page, which was granted before the hearing on the merits of the settlement commenced on June 6, 2002.

Subsequent to the hearing, Unitil filed a motion for protective order, dated June 13, 2002, regarding its response to Staff Data Request No. 442. On June 21, 2002, Unitil filed a motion for protective order regarding its response to Staff Data Request No. 490. On July 16, 2002, Unitil filed: (i) a letter request to exclude from the proposed portfolio divestiture sale

a purchased power contract between UPC and Massachusetts Municipal Wholesale Electric Company (MMWEC) because it had substantially negotiated a beneficial buyout of the contract; (ii) supplemental testimony of David K. Foote in support of the request; and, (iii) a motion for protective order regarding certain confidential information included in Mr. Foote's supplemental testimony.

II. SUMMARY OF THE TERMS OF THE SETTLEMENT AGREEMENT

The Settlement Agreement between the parties² and Staff resolves certain issues presented in Phase I, primarily those related to the Divestiture Process and Solicitation Process. Under the proposed power supply restructuring, Unitil will undertake two simultaneous transactions: the sale of UPC's portfolio of power supply contracts through the Divestiture Process and the acquisition of a market-based Transition and Default Service through the Solicitation Process. Settlement Agreement, section 3.1.

In the Settlement Agreement, the parties request the Commission find that the Divestiture Process and the Solicitation Process, as set forth in the Settlement Agreement,

² The parties to the Settlement Agreement are, in addition to Staff, the three Unitil Companies, the New Hampshire Office of Consumer Advocate, the New Hampshire Governor's Office of Energy and Community Services, the Business and Industry Association of New Hampshire, and Representative Jeb E. Bradley.

are "appropriate, reasonable and consistent with the objectives of RSA 374-F." Settlement Agreement, sections 3.2, 3.3. Unitil's proposed requests for proposals (RFPs) regarding the portfolio sale and acquisition of Transition and Default Service are intended to result in a target wholesale price of \$.0625 per kWh for the combined initial stranded cost recovery charge and initial Transition Service charge. Settlement Agreement, section 3.1. Unitil was to file, by July 15, 2002, revised RFPs reflecting the terms of the Phase I settlement and the Commission's Phase I order. Settlement Agreement, section 1.2.3.

A. Divestiture Process

Approval of the Divestiture Process includes approval of the provisions set forth in sections 3.2.1 through 3.2.5. Among these provisions are the Agreed Upon Provisions of the Revised Portfolio Sale RFP included as part of Tab A to the Settlement Agreement. Settlement Agreement, section 3.2.1. As set forth in Tab A, UPC will be offering the entire portfolio of power purchase agreements for sale as a single package. However, UPC reserves the right to exclude individual contracts from the portfolio prior to the receipt of final bids and to include certain agreements which are initially being excluded

from the portfolio sale.³ Settlement Agreement, sections 3.2.2, 3.2.3. In addition, under section 3.2 of the Settlement Agreement, Unitil will take all reasonable actions to secure rights to include in any portfolio sale, for the benefit of its customers, the so-called "generation attributes"⁴ associated with UPC's existing contract entitlements.

As specified in Tab A to the Settlement Agreement, if a bidder considers the portfolio in aggregate to have stranded costs, the bidder should bid the number of whole or partial months over which he would require a monthly payment of \$984,000⁵. The monthly payment would compensate the purchaser for the assumption of stranded costs associated with the portfolio. Stranded costs could be produced if the winning bid reflects a belief that the cost of power in the portfolio contracts exceeds the market price.

On the other hand, if a bidder considers the portfolio to have a net positive value, the bidder would bid the uniform monthly amount he would be willing to pay through April 31,

³ In the event UPC believes it is able to negotiate a beneficial buyout of any of its purchased power contracts prior to the issuance of the requests for proposals, it will request approval of the buyout prior to July 15, 2002. Similarly, if UPC determines that it may be beneficial to include any of the excluded agreements in the portfolio sale, it will request approval for inclusion prior to July 15, 2002.

⁴ Included in this term are attributes pertaining to NEPOOL's generation information system.

⁵ This amount is subject to being changed in response to a Commission order in Phase III.

2006. Tentative stranded cost charges will be established in Phase II and finalized in Phase III. Settlement Agreement, sections 2.1, 3.1.

The winning bidder would be selected using a two-round auction process. In the first stage, the bidders will submit non-binding indicative bids along with statements of qualifications and proposed revisions to the draft portfolio sale contract. Based on this information, UPC will select a short list of bidders who would be invited to submit binding bids in the second round of bids. Settlement Agreement, Tab A.

UPC intends to transfer the contracts to the purchaser in a two-stage process. In the first stage, UPC would enter into "back to back" arrangements with the purchaser whereby UPC would transfer all rights and obligations under the contracts to the purchaser while UPC remains the contracting party with the original counterparty. In the second stage, UPC would assign the contracts to the purchaser to the extent feasible. *Id.*

Other important provisions related to the Divestiture Process are the bid selection procedures and criteria contained in parts 1-3 of the Confidential Agreed Upon Selection Procedures and Criteria in Tab B to the Settlement Agreement, which include a method for establishing a target for evaluating portfolio bids. Settlement Agreement, section 3.2.4. If Unitil

requests approval of a contract reflecting a bid that exceeds the target of net present value stranded cost, Unitil will have the burden of demonstrating that divestiture of the portfolio under that contract, in conjunction with the proposed Transition Service transactions, is "reasonable, in the public good and consistent with RSA 374-F." On the other hand if the bid price falls below the target, there is a rebuttable presumption that the proposed contract is "reasonable, in the public good and consistent with RSA 374-F." *Id.* Finally, section 3.2.5 states that "[s]tranded costs shall be allocated to rate classes based on annual kilowatt hour sales."

B. Transition and Default Service Solicitation Process

Approval of the Solicitation Process includes approval of the provisions set forth in sections 3.3.1 through 3.3.8 of the Settlement Agreement. Among these provisions are the Agreed Upon Provisions of Revised Transition and Default Service RFP included as part of Tab A to the Settlement Agreement.

As set forth in Tab A, Unitil will solicit Transition and Default Service for two customer groups, G-1 customers, Unitil's large commercial and industrial customers, and Non-G-1 customers, i.e., all other customers. *See also* Settlement Agreement, section 3.3.1. With respect to each of the two customer groups, Unitil will solicit a single supply from which

to provide Transition Service, for three years for the Non-G-1 group and two years for the G-1 group, as well as Default Service for at least one year for both groups. See also Settlement Agreement, sections 3.3.2, 3.3.3. The Settlement Agreement also sets forth certain specifications for providing Default Service thereafter subject to change by Commission action; these are described in more detail below.

In particular, Transition Service will be provided to Non-G-1 customers from Choice Date, when customers are allowed to choose competing electric energy suppliers,⁶ through April 30, 2006. Transition Service will be provided to G-1 customers from Choice Date through April 30, 2005 with the possibility of a one year extension.⁷ Settlement Agreement, Tab A.

Target wholesale prices for Transition Service to G-1 and Non-G-1 customers are \$.047 per kWh in the first year, \$.050 per kWh in the second year, and, for Non-G-1 customers, \$.053 per kWh in the third year. The target prices are subject to adjustment as provided in Confidential Agreed Upon Selection Procedures and Criteria in Tab B to the Settlement Agreement. Retail prices for Transition Service to G-1 and Non-G-1

⁶ The target date is May 1, 2003.

⁷ Eighteen months after Choice Date, Unitil will file a report on the status of the competitive markets for G-1 customers, including a recommendation regarding the continuation of transition service after April 30, 2005. Settlement Agreement, section 3.3.3.

customers will include (i) the price bid by the supplier, (ii) provision for losses and (iii) provision for uncollectible accounts. Questions regarding the level of administrative costs for Transition Service, the allocation of such costs and their recovery through rates will be addressed in Phase II.

Settlement Agreement, sections 3.3.2, 3.3.3.

In order to support a so-called "green transition service" option, Unitil will participate in the discussions agreed to in DE 02-007 and will file a green Transition Service proposal within ninety days after Choice Date. Settlement Agreement, section 3.3.8.

Customers who leave Transition Service for a competitive supply and then return to Unitil for supply service shall only be eligible for Default Service, except that low income customers, as defined in Docket No. DE 02-034, are allowed to return to Transition Service at any time during the transition period. Low income customers will be automatically placed on the less costly of Transition or Default Service. Settlement Agreement, Tab A and section 3.3.4.

Pricing for Default Service to the Non-G-1 group shall be the same as Transition Service to the Non-G-1 group for at least one year and until the Default Service load exceeds 5 megawatts. Settlement Agreement, section 3.3.2. Except for the

summer premium (adder) described below, pricing for Default Service to the G-1 group shall also be the same as Transition Service to the G-1 group for at least one year and until the Default Service load exceeds 5 megawatts. Settlement Agreement, section 3.3.3.

Bids for each customer group are required to specify a minimum and/or maximum percentage of the bundled Transition and Default Service load responsibility to which the bid applies. The pricing terms of each bid shall take the form of a single discount or premium to the prices in the schedule of proposed prices (target prices). For example, a winning bid of 90% would result in prices paid to the winning bidder of 90% of \$.047 in the first year, 90% of \$.050 in the second year, and, for Non-G-1 customers, 90% of \$.053 in the third year.

Unitil does not intend to consider bids specifying different discount or premium percentages for different contract periods; however, bidders preferring a different structure of payments across the contract periods should discuss their comments in their indicative bids. A so-called summer premium adjustment to the wholesale price for Default Service to G-1 customers during the months June through August is fixed at \$.015 per kWh and will not be subject to the percentage discount or premium bid. The proceeds of this premium will go to the

supplier. Unitil reserves the right to alter the schedule of proposed prices (and for G-1 customers, the fixed amount of the summer premium) prior to the receipt of final bids. Linked bids for both the portfolio sale and Non-G-1 Transition Service will be considered. Settlement Agreement, Tab A; see also section 3.3.5.

Like the process for the portfolio auction, the winning bidder will be selected using a two-round auction process. In the first stage, the bidders will submit non-binding indicative bids along with statements of qualifications and a description of contract language the bidder finds unacceptable. Based on this information, UPC will select a short list of bidders who will be invited to submit binding bids in the second round of bids. Settlement Agreement, Tab A.

Parts 1, 2, 4 and 5 of the Confidential Agreed Upon Selection Procedures and Criteria in Tab B to the Settlement Agreement contain other important bid selection procedures and criteria provisions related to the Solicitation Process. These procedures and criteria include a methodology for establishing a target for evaluating Transition Service bids for both customer groups. If Unitil requests approval of a contract reflecting a bid that exceeds the target of net present value stranded cost, Unitil will have the burden of demonstrating that contracting

for a Non-G-1 Transition Service at that price, in conjunction with the divestiture transaction, is "reasonable, in the public good and consistent with RSA 374-F." On the other hand, if Unitil requests approval of a Non-G-1 Transition Service contract reflecting a bid at or below the target, there is a rebuttable presumption that the proposed contract is "reasonable, in the public good and consistent with RSA 374-F." Settlement Agreement, section 3.3.5.

After April 30, 2004, Default Service for either the G-1 or the Non-G-1 class shall continue to be supplied from the supplier(s) of Transition Service until such time as the load of either group exceeds 5 megawatts. When this occurs, Unitil will initiate a Default Service supply RFP for that group. Settlement Agreement, section 3.3.6. Until the Commission implements generic rules for Default Service or determines otherwise, such solicitation will be based on monthly pricing for six month periods.⁸ Settlement Agreement, section 3.3.7; see also section 3.4.3. Retail prices for such Default Service to G-1 and Non-G-1 customers will reflect (i) the price bid by the supplier, together with the summer premium for the G-1 group,

⁸ G-1 customers will automatically receive supply at monthly prices while prices to Non-G-1 customers will reflect monthly bid prices averaged across the six month period; Non-G-1 customers may also opt to receive monthly pricing.

(ii) provision for losses and (iii) provision for uncollectible accounts. The administrative costs associated with such Default Service will be collected from all customers. *Id.*

C. Other Matters, Including Delineation of Issues in Phases II and III and Revised Procedural Schedule

The Settlement Agreement delineates the matters to be taken up in subsequent phases of this docket and contains a revised procedural schedule. Basically, all remaining issues in the docket will be dealt with in Phase II except for those which are reserved for Phase III. Settlement Agreement, section 2.1.

Thus, Phase II issues include: establishing the level of distribution rates; identifying anticipated Transition Service prices based on market data and other information provided by Unitil and other parties; identifying tentative stranded cost charges which would be finalized in the Phase III ruling on the amount of the monthly payment stream for final, binding bids; responding to Unitil's request to consolidate CEC, E&H and UPC into one distribution company, UES; and responding to Unitil's request to approve the Amended System Agreement.⁹ See Settlement Agreement, sections 2.1 and 3.1. In addition, Phase II will determine, in conjunction with the decision on

⁹ However, the Amended System Agreement and resulting wholesale charges will not be implemented until Phase III following the completion of the divestiture and transition service solicitations. Settlement Agreement, section 2.2, footnote 1.

distribution rates, the appropriate target charges resulting from the portfolio sale and Transition Service acquisition and will address the level of administrative costs for Transition Service for both the Non-G-1 and G-1 customer groups, the proper allocation of those costs, and their recovery through rates. Settlement Agreement, sections 3.1, 3.3.2, and 3.3.3. Under section 3.4.1 of the Settlement Agreement, the parties

"request that the Commission's Phase II Order include assurances to potential bidders that the costs incurred under, and defined in, the portfolio sale agreement, the G-1 Transition/Default Service agreement and the Non-G-1 Transition/Default Service agreement, which agreements will be subject to final Commission approval in Phase III, will be fully recoverable in retail rates."

In Phase III, Unitil will conduct the portfolio auction and the supply solicitation for Transition and Default Service. Unitil will submit a filing (scheduled for January 14, 2003) indicating, based on the Divestiture Process and Solicitation Process indicative bids, whether modification of the target stranded cost charges to support a different monthly payment stream and a different combination of stranded cost charges, Transition Service prices and stranded cost recovery period (relative to those explicit or implicit in the Phase II order) would likely benefit customers. Settlement Agreement, section 3.1. This section recognizes the possibility of a modification to the stranded cost charges if the indicative bids

suggest that Transition Service prices are likely to be some kWh increment above the levels anticipated in the Commission's Phase II order and bids in the Divestiture Process would allow a like per kWh reduction to the target stranded cost charges without significantly affecting the length of the stranded cost recovery period.

On February 12, 2003, Unitil will submit for final Commission approval the executed agreements resulting from the Divestiture and Solicitation Processes, the final tariffs for Transition and Default Service, documentation of the bid selection process (including verifications by Unitil that it implemented the Settlement Agreement Tab A and Tab B procedures), and a systematic discussion of the rationale for any deviations from the bid review procedures set forth in the Settlement Agreement. Settlement Agreement, sections 2.1, 3.4.2. Phase III is the stage for finalizing the stranded cost charges and approving the final contracts and resulting Transition Service rates, Default Service rates and stranded cost charges. Settlement Agreement, sections 2.1, 3.1, 3.4.1.

Section 4.3 of the Settlement Agreement provides that if the Commission in a subsequent phase of this proceeding renders any part of the Settlement Agreement ineffective, Unitil will be allowed to recover those reasonable costs for legal, consulting and other outside services incurred in reliance on the Commission's approval of the Phase I settlement absent a finding of imprudence on Unitil's part by the appropriate regulatory authority.

Consistent with the parties' delineation of the issues, section 2.2 contains a revised procedural schedule for Phases II and III, as follows:

<u>PHASE II</u>	
June 3, 7, and 14, 2002 and dates to be determined	Technical sessions/Settlement discussions on Phase II
June 28, 2002	Intervenor testimony - Phase II
July 12, 2002	Rebuttal testimony - Phase II
July 22 thru 26, 2002	Hearings on Phase II
Two weeks after end of hearings	Initial Briefs
One week after Initial Briefs	Rebuttal Briefs
October 1, 2002	Final Order on Phase II
November 1, 2002	Upon Commission approval, implementation of corporate combination and revised rates

PHASE III	
October 18, 2002	Commencement of Divestiture and Solicitation RFPs
January 10, 2003	Indicative Bids Due
January 14, 2003	Potential adjustments to Monthly Payment Stream, if any, filed with Commission
January 16, 2003	Commission Order finalizing Stranded Cost Charges
January 24, 2003	Final Bids Due
February 12, 2003	Executed Contracts filed with Commission
February 19, 2003	Hearings on Executed Contracts
February 28, 2003	Final Commission Order on Executed Contracts
May 1, 2003	Implementation of Choice, Divestiture, Revised Rates and the Amended System Agreement

III. PENDING MOTIONS FOR PROTECTIVE ORDER

Unitil's Motion to Consolidate Motions for Protective Orders filed on June 5, 2002 requests the Commission to consolidate all of Unitil's pending motions for protective orders and grant a single protective order for certain information, namely, Tab B of the Settlement Agreement and its answers to Staff data requests 1-25(c), 255, 258, 265, 273, 275, 277, 339-343, and 346-347.

In support of its motion, Unitil states that these documents reveal confidential information pertaining to the sale of UPC's power supply portfolio, including the number and identity of potential bidders for the sale of the portfolio and

the acquisition by UES of Transition Service, as well as information on how the price range for the sale was developed or the criteria to be used to select a bidder. Unitil further states that maintaining the confidentiality of this information is in the best interests of customers since this will help ensure (i) full participation in the planned auction and solicitation, (ii) maximization of value to be attained for Unitil's customers, (iii) protection of future solicitations by other utilities in other states, or (iv) protection of the fairness of the process. Unitil states that it has made such information available to Staff, the Office of Consumer Advocate (OCA), the Governor's Office of Energy and Community Services (GOECS) and other parties that have executed appropriate confidentiality certifications or agreements. No party objected to this motion.

Unitil's Motion for Protective Order, dated June 13, 2002, requests confidential treatment for its responses to data requests or other inquiries in this proceeding which reveal confidential information pertaining to the identity and usage characteristics of Unitil's customers and potential customers, and in particular for its response to Staff data request 442, which asks about Unitil's commercial or industrial customers that have taken service near the Steeplegate Mall in Concord and

the usage history of such customers. In support of its motion, Unitil states that it seeks to protect the confidentiality of this information in order to preserve the privacy of these customers. Again, no party objected to this motion.

Unitil's Motion for Protective Order, dated June 20, 2002, requests confidential treatment for its responses to data requests or other inquiries in this proceeding which reveal confidential information pertaining to the details of UPC's power contracts, including the identity of the suppliers and the volumes delivered under the contracts, and in particular for its response to Staff Data Request No. 490, which asks about new commitments made by UPC on behalf of CEC and E&H since the effective date of the new restructuring law. In support of its motion Unitil states that protection of the confidentiality of this information is critical for negotiating future power supply contracts. Again, no party objected to this motion.

Unitil's Motion for Protective Order filed on July 16, 2002 requests protective treatment for a confidential attachment to Mr. Foote's supplemental testimony which discusses the terms of the proposed buyout of the MMWEC power supply contract and analyzes the benefits. In support of its Motion, Unitil states that maintaining the confidentiality of the details of UPC's buyout is critical for renegotiating other power supply

contracts. Unutil further states that it is pursuing another contract renegotiation and disclosure of the details of the MMWEC buyout could compromise UPC's negotiation position, to the detriment of Unutil's customers. Again, no party objected to this motion.

IV. COMMISSION ANALYSIS

A. Statutory Framework Applicable to Proposed Divestiture Process and Solicitation Process

The principles and requirements of RSA 374-F, Electric Utility Restructuring, govern the determinations we are called on to make in this Order. We also consult Commission orders involving relevant restructuring issues,¹⁰ for further guidance.

In order to approve the Settlement Agreement, we must find that it is "in the public interest and substantially consistent with the principles established in [RSA 374-F]." See RSA 374-F:4,III. Early implementation of restructuring had been the legislative preference, see RSA 374-F:3, XV and 4,I, although legislation was recently enacted to authorize the Commission to delay such implementation in the service territory of an electric utility when it would be "inconsistent with the goal of near-term rate relief, or would otherwise not be in the

¹⁰ See, e.g., *Statewide Electric Restructuring Plan*, 82 NH PUC 122 (1997) and *Electric Utility Restructuring*, 83 NH PUC 126 (1998) (Order on rehearing of 82 NH PUC 122).

public interest." Laws of 2002, Chapter 212:6 and 7, amending RSA 374-F:3, XV and 4,I, respectively.

Recently, when we were called upon to review and approve a proposed settlement agreement regarding Granite State Electric Company's proposed Transition Service filing, we reaffirmed that

"[t]he Commission has general authority under RSA 541-A:31, V(a) to resolve contested matters through consideration of settlement agreements. In general, the Commission encourages parties to attempt to reach settlement of issues through negotiation and compromise, as it is an opportunity for creative problem-solving, allows the parties to reach a result more in line with their expectations, and is often a more expedient alternative to litigation.

As we have stated in previous dockets, the Commission has an independent statutory duty to resolve matters before it in a manner consistent with the public interest and all applicable specific statutory requirements. Thus, even where, as in the present case, all parties join the settlement agreement, the Commission cannot approve it without independently determining that the result comports with the applicable standards. Moreover, the issues must be reviewed, considered and ultimately judged according to standards that provide the public with the assurance that a just and reasonable result has been reached." *Granite State Electric Company*, Order No. 23,966 (May 8, 2002), slip op. at 10-11.

Electric utilities have the on-going obligation to take "all reasonable measures to mitigate stranded costs."¹¹ RSA 374-F:3,XII(c). In accordance with RSA 374-F:3,XII(d), "stranded costs should be determined on a net basis, should be verifiable, should not include transmission and distribution assets, and should be reconciled to actual electricity market conditions from time to time." Once stranded costs are determined, the Commission is authorized to

allow utilities to collect a stranded cost recovery charge, subject to its determination in the context of a rate case or adjudicated settlement proceeding that such charge is equitable, appropriate, and balanced, is in the public interest, and is substantially consistent with these interdependent principles. The burden of proof for any stranded cost recovery claim shall be borne by the utility making such claim."¹² RSA 374-F:4,V.

¹¹ "'Stranded costs' means costs, liabilities, and investments, such as uneconomic assets, that electric utilities would reasonably expect to recover if the existing regulatory structure with retail rates for the bundled provision of electric service continued and that will not be recovered as a result of restructured industry regulation that allows retail choice of electricity suppliers, unless a specific mechanism for such cost recovery is provided. Stranded costs may only include costs of:

(a) Existing commitments or obligations incurred prior to the effective date of this chapter;
(b) Renegotiated commitments approved by the commission; and
(c) New mandated commitments approved by the commission." RSA 374-F:2,IV.

¹² We note we are not being called on at this stage of the proceedings to rule on the question of setting or collecting a stranded cost recovery charge. Section 3.2.5 of the Settlement Agreement does, however, require the allocation of stranded costs to rate classes based on annual kilowatt hour sales.

As to providing Transition Service, RSA 374-F:3,V(b) states that customers should have the "option of stable and predictable ceiling electricity prices through a reasonable transition period, consistent with the near term rate relief principle of RSA 374-F:3,XI." Transition Service must be available for at least one year but not more than five years after May 1, 2001 for customers who have not yet chosen a competitive electricity supplier. See RSA 374-F:3,V(b). Transition Service should be obtained through competitive means. *Id.* The Legislature advised that the price of Transition Service should increase over time to encourage customers to choose a competitive electricity supplier during the transition period. *Id.* Finally, Transition Service should be separate and distinct from Default Service. *Id.*

RSA 374-F:3,V(c) provides that Default Service too should be procured through competitive means. Generally speaking, the allocation of the costs of administering Default Service should be borne by Default Service customers.

RSA 374-F:3,V(d) states that the Commission should establish Transition and Default Service appropriate to the circumstances of each utility. Notwithstanding the provisions of RSA 374-F:3,V(b) and (c), RSA 374-F:3,V(e) authorizes the Commission to approve "alternative means" of providing

Transition or 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.

Laws of 2002, Chapter 268:4 adds a new paragraph (f) to RSA 374-F:3,V, authorizing a utility in its discretion to allow its customers to choose a "renewable energy" Transition Service.

**B. Consistency of Proposed Divestiture Process
and Solicitation Process with Statutory Principles**

The Divestiture Process provides a method of verifying stranded costs inherent in UPC's power supply contracts based on market conditions as of year-end 2002. As specified in Tab A to the Settlement Agreement, if a bidder considers the portfolio in aggregate to have costs above the portfolio's market value, the bidder should bid the number of whole or partial months over which it would require a monthly payment of \$984,000 (or such other amount as the Commission may order). The number of months times the monthly payment amount yields the nominal amount of the stranded costs to be recovered through retail rates and paid

over time pursuant to the proposed Amended System Agreement between UPC and CEC and E&H or their proposed successor, UES.

The Solicitation Process is a competitive means of obtaining Transition Service and Default Service for Unitil customers. See RSA 374-F:3,V(b) and (c); see also *Granite State Electric Company*, Order No. 23,966 (May 8, 2002), slip op. at 12 (referring to the "general directive from the Legislature to use competitive means to determine [transition service] prices whenever possible, so as to achieve the lowest price"). The pricing terms of bids for providing Transition Service and Default Service will take the form of a discount or premium to the target wholesale prices of \$.047 in the first year, \$.050 in the second year, and, for Non-G-1 customers, \$.053 in the third year. Thus, the Solicitation Process is designed to result in customers having the option of stable and predictable ceiling prices through the Transition Service period and the prices will increase over time as provided in RSA 374-F:3,V(b).

The length of Transition Service, from May 1, 2003 through April 30, 2006, for Non-G-1 customers and from May 1, 2003 through at least April 30, 2005, for G-1 customers (with the possibility of a one year extension), is within the limits

established in the statute.¹³ *Id.* Transition and Default Service will be initially obtained from the same supply, and pricing for Default Service to the Non-G-1 customer group will initially be at Transition Service prices; nevertheless, Transition Service will be separate and distinct from Default Service. *Id.*

The summer premium payable by G-1 Default Service customers is a gaming prevention measure contemplated by RSA 374-F:3,V(c). Presumably, the availability of the additional 1.5 cents per kWh in the summer from the G-1 class will enable a Transition Service bidder to make a more favorable bid than if the anti-gaming premium did not exist or such revenues were directly returned to consumers. So long as the bid process achieves this positive result, the mechanism selected to prevent gaming appears to be an alternative means of providing such service that would be in the public interest. Finally, the provision in section 3.3.8 of the Settlement Agreement in which Unutil agrees to propose a "green" Transition Service proposal is consistent with RSA 374-F:3,V(f). We discuss other features

¹³ Moreover, the period for providing transition service coincides with the periods applicable to Public Service Company of New Hampshire and Granite State Electric Company. See e.g., *Granite State Electric Company*, Order No. 23,966 (May 8, 2002) slip op. at 6. As a result, we expect we will have the opportunity to make some important policy decisions regarding the future of transition and default service in a coordinated fashion at a time when we will have gained further useful experience with such service and the development of competitive markets in New Hampshire.

of Transition Service and Default Service product design in a separate section (III.,D.) below.

Not only are we obliged to determine whether the Settlement Agreement is consistent with applicable statutory principles and requirements, but we must also rule on the related but separate question of whether moving forward with the Divestiture and Solicitation Processes is in the public interest. Simply because the Settlement Agreement is consistent with the statutory framework does not necessarily mean that we must find it to be in the public interest. We must exercise a measure of discretion in applying the public interest standard.

After careful review of the Settlement Agreement and testimony, we are satisfied that the terms of the proposed Divestiture Process and Solicitation Process are substantially consistent with the statutory principles set forth in RSA 374-F. However, we note that our approval of the processes that comprise the Settlement should not be interpreted as pre-approval of the results of those processes.

The Unitil restructuring situation is unique among New Hampshire electric utilities because the Unitil companies' rates were, before restructuring, among the lowest in the state. Historically, Unitil management has pursued a prudent strategy to acquire power for sale to Concord Electric and Exeter and

Hampton customers. UPC has steadily purchased a small portion of its needs periodically, building up over time a "laddered" portfolio of intermediate and long term contracts, leaving some portions of its forecast demand to be met by shorter term transactions and purchases from the spot market. While the prices of power acquired in this way have fluctuated with the market, the laddering approach has smoothed out the volatility, and diversified the risk of reliance on any given fuel source or supplier. This careful portfolio management has been successful, and the divestiture will bring Unitil's approach to serving its customers to an end.

The Commission must consider whether divestiture, and the shift of portfolio responsibilities elsewhere, are in the public interest. Although the successful completion of the portfolio divestiture, as well as the Transition and Default Service acquisition, is not intended to have an adverse impact on the overall rate level, it is unclear at this juncture whether customers will receive near-term rate relief.

When the legislature first passed New Hampshire's restructuring statute, it contemplated that divestiture would improve the competitiveness of the markets, bringing benefits to customers. See RSA 374-F:1, I. Since then, difficulties in developing a fully competitive wholesale market have given rise

to limited reconsideration of this policy direction, including the provisions of legislation concerning Public Service of New Hampshire (PSNH) that restrict the sale of certain generation assets. See NH Laws 2001, Ch. 29:4, eff. May 22, 2001. While this legislation does not apply directly to the Unitil companies, it is indicative of the continually evolving public policy considerations surrounding the restructuring of the electric industry. In the case of the Unitil companies, then, the question arises whether Unitil's stated intention to exit the power supply business for its retail customers is not in the public interest. In evaluating the public interest, we must include in the balance the interdependent principles set forth in RSA 374-F and other statutory requirements.

We thus consider the merits of a restructuring arrangement which, as reflected in the Settlement Agreement, includes sale of the power supply portfolio and the acquisition of Transition and Default Service from a third party supplier in simultaneous competitive bid transactions as compared to a possible alternative arrangement in which Unitil would supply Transition and Default Service in part from its existing portfolio and supplement it with spot or forward purchases.

Pursuant to the Order Following Prehearing Conference, we asked for supplemental testimony from Unitil bearing on certain questions relevant to our review of the divestiture proposal. One of the important questions we asked was whether Unitil should provide Default (and Transition) Service over the long term out of a balanced portfolio of supply resources, including the current remaining Unitil portfolio. These questions were explored in Unitil's supplemental pre-filed testimony (Exhibit 6) and pursued further during the hearing on June 6, 2002.

As detailed in Exhibit 6 and reflected in testimony at the hearing,¹⁴ Unitil argues that the goal of price stability should not preclude divestiture of UPC's portfolio and divestiture serves the public interest. The argument proceeds along these lines: Retention of the existing portfolio is not necessary to achieve a reasonable range of Default Service price stability goals; other, more promising market approaches are available. See Exhibit 6 at 9-10. According to Unitil, its portfolio is not a useful tool for providing Transition and

¹⁴ See 6/6/02 Tr. at 54-57.

Default Service for several reasons. First, it is not priced at market for a service with the characteristics of Default Service, and, therefore, there is a potential for adverse consequences. Second, its costs are partly fixed, partly subject to contractually specified escalation factors and partly indexed to various other factors. Third, the portfolio is subject to output risk, i.e., the risk that a generating unit underlying a contract would have an extended outage. Fourth, its long term usefulness would be limited to the contract expiration schedule.¹⁵ Exhibit 6 at 23-24, 51.

In further support of its argument that the public interest is not served by retention of the existing portfolio, Unitil points out that retention of the portfolio would make it more difficult to quantify the portfolio's existing stranded costs for purposes of allocating those costs to all customers (not just Default or Transition Service customers) and establishing a fixed stranded cost recovery charge.¹⁶ Unitil argues in addition that dedicating the portfolio to a use to which it is not suited risks losing value which might otherwise

¹⁵ After October 31, 2005, the portfolio will total only 60 megawatts and most of the remaining portfolio expires by October 31, 2010. Exhibit 6 at 24.

¹⁶ Unitil describes possible methods of repricing default service in a suitable manner and calculating stranded costs both of which rely on making a series of estimates which it says would be difficult (but not impossible) to make and possibly perceived as being unfair. See Exhibit 6 at 26-30, 32.

be realized from divesting the portfolio. See Exhibit 6, at 24-25, 32-33, 51.

Unitil asserts that even though the existing power supply contracts in UPC's portfolio were acquired in arm's length transactions, they should not be considered part of a market-priced Default Service portfolio for two reasons. First, they do not reflect what a willing supplier would have charged to provide a service with the characteristics of Default Service and second, they were obtained too long ago to be considered "fresh." Exhibit 6 at 25-26.

During the hearing, Unitil reiterated that UPC's portfolio of power supply contracts was acquired to serve an "all requirements" contract with CEC and E&H, whose load levels have varied with economic growth or downturns but generally without large swings in either direction. Unitil stated that serving different classes of service, i.e., Transition and Default Service, would be inconsistent with UPC's business goals and how it has managed its business for the Unitil Companies. See 6/6/02 Tr. at 46-47; see also Exhibit 6 at 51. Regarding Unitil's concern about the impact of sudden, unexpected price swings on load levels, Unitil stated that it would need to develop load guidelines similar to its supply guidelines to deal with that risk. 6/6/02 Tr. at 43-46. And even if the load

migration risk might be low, Unitil expressed concern for the possible adverse financial consequences on its business, which it says it is not capitalized to handle. See 6/6/02 Tr. at 107-112. Unitil says that the contract prices do not include a premium for the switching risk a Default Service supplier would bear. Exhibit 6, at 25-26. The most recent contract in the portfolio was priced in 1994. See Exhibit 6 at 26. Switching risk was estimated to add a not insignificant cost to the provision of retail service under a retail competition industry structure.

Staff's witnesses agree that an auction involving multiple bidders offers the possibility of achieving maximum value for the portfolio, and they believe it is appropriate for the divestiture auction to go forward on the terms contained in the Settlement Agreement. See Exhibit 9 at 16, 18; see also 6/6/02 Tr. at 146. They contend the Commission's goal should be to protect ratepayers against a clearly adverse result by ensuring that the winning bid reasonably reflects the value that could be obtained by Unitil's retention of the portfolio. Exhibit 9 at 20; see also 6/6/02 Tr. at 146. If the portfolio auction were to produce insufficient value, they believe that it would be reasonable for UPC to retain the portfolio to supply part of its needs to supply Transition and Default Service.

Exhibit 9 at 20-21. They agree with Unitil that retaining the portfolio would introduce a number of difficult implementation issues, but they say such issues are not insurmountable. See Exhibit 9 at 23-24.

Staff's witnesses conclude that the history of retail access in other states reveals that it is primarily larger commercial and industrial customers that have accepted the supply offerings of competitive energy suppliers. They note that residential and small commercial customers have yet to participate in competitive retail generation markets in significant numbers. Exhibit 9 at 39. Their findings parallel our own understanding of the development of competitive supply markets; see *Granite State Electric Company*, Order No. 23,966 (May 8, 2002) slip op. at 15.

During the hearing, Staff testified that the procedures in Tab B contain effective methods of marking the portfolio to market when the bids come in. According to Staff, the methods are basically intended to ensure that that the most attractive portfolio bid is not only the best of the bids, but that it provides sufficient value relative to retaining the portfolio and current wholesale prices, thus giving reasonable protection to ratepayers in the event of potential adverse outcomes, including, in particular, a low portfolio bid

resulting in high stranded costs combined with high Transition and Default Service bids. 6/6/02 Tr. at 148-149; see also page 57.

In addition, Staff testified that the Settlement Agreement satisfies its recommendation that the portfolio sale be conducted after the Phase II order; in this way the regulatory uncertainty that might dampen bidder interest in the portfolio divestiture and solicitation of Transition Service and Default Service is avoided. According to Staff, these uncertainties are ameliorated by having bidders submit final proposals after they have seen a Phase II order that addresses a number of key issues such as the treatment of stranded costs. 6/6/02 Tr. at 149-150.

Staff further testified that the matter of evaluating the bids has been clarified in the Tab B procedures, which address non-price issues such as the financial condition of the bidders and guarantee provisions by including qualification criteria. 6/6/02 Tr. at 150-151. Staff also testified it is comfortable that Unitil has adequately explored the questions of whether a constant monthly payment stream for above market contract costs is the least cost approach and whether to exclude the Hydro-Quebec entitlement from the portfolio. 6/6/02 Tr. at 151-152, 152-153. Finally, Staff testified that the Settlement

Agreement effectively addresses its concerns that Unitil seek to protect the value of the "generation attributes" of its portfolio for the benefit of ratepayers. 6/6/02 Tr. at 152.

Regarding the process for acquiring Transition Service and Default Service, Staff testified that the Tab B procedures offer reasonable protection to ratepayers by screening out unduly high bids. 6/6/02 Tr. at 153. Moreover, according to Staff, the benefits of delaying the portfolio sale until after the Phase II order apply equally to the Solicitation Process. *Id.*

In considering whether to approve a restructuring process which calls for the divestiture of UPC's portfolio and the simultaneous acquisition of Transition and Default Service through competitive bidding, we realize we cannot know in advance precisely how the results of the Divestiture and Solicitation Processes will affect rates. The question now before us, however, does not require us to make a final judgment on this point, since we have the authority to review the results.

Although the parties have crafted a comprehensive, well thought-out plan for proceeding, which is reasonably designed to protect ratepayer interests, we nonetheless believe the plan should be modified to take into account the possibility

that Transition Service prices for Non-G-1 customers, as structured, could result in unbundled rates that are higher than current rates. Recent experience shows us that suppliers may require a substantial "migration premium," even in periods when substantial migration is unlikely to occur, which is the case in current competitive retail electricity markets, particularly for small consumers.

We therefore find that the Divestiture Process and the Solicitation Process, as set forth in the Settlement Agreement, should be modified to require that all bids for Transition Service for Non-G-1 customers include alternative prices that:

- 1) assume that Non-G-1 customers are free to choose an alternate supplier for the entire term;
- 2) assume that Non-G-1 customers may not migrate to a competitive supplier in the first year;
- 3) assume that Non-G-1 customers may not migrate to a competitive supplier in the first and second year; and,
- 4) assume that Non-G-1 customers may not migrate to a competitive supplier for the entire three-year term.

The results of this type of bidding process should help us determine whether the premium associated with the risk of migration outweighs the benefit of customer choice. We will then be in a better position to assess whether it is in the public interest to allow competition for Non-G-1 customers or whether choice for those

customers should be delayed for some period of time as authorized by Laws of 2002, Chapter 212:6 and 7.

This change in the bidding regime also necessitates revisions to the Phase III process in order to make the selection of a Transition Service provider administratively more efficient. Specifically, in Phase III, contract execution for both the Divestiture and Solicitation Processes should be delayed until after a hearing on the respective recommended winning bids. Contract execution would then proceed consistent with the Commission order relating to the winning bid. Correspondingly, the request for bids should make clear that the bids will remain effective for a period of sufficient length to encompass Commission action.

In light of the foregoing considerations, we will approve the Divestiture and Solicitation process as set forth in the Settlement Agreement on the condition that the Settlement Agreement be amended to reflect a Transition Service bid process, and corresponding contract execution timing, that is consistent with the principles outlined above. We note that paragraph 4.1 of the Settlement Agreement enables the parties to make such an amendment.

Finally, we note that under section 4.3 of the Settlement Agreement, customers will bear the risk, in the event

of an unsuccessful auction(s), of Unitil's "reasonable costs for legal, consulting and other outside services incurred in reliance on the Commission's approval" of the Settlement Agreement, assuming no finding of imprudence on Unitil's part by the appropriate regulatory authority. We find this risk provision reasonable for customers to bear, given the legislative mandate to open retail markets to choice.

C. Application of Public Interest Standard to Transition Service and Default Service Product Design Features

Under Unitil's original proposal, Transition Service was to be available to customers as a single group. See Exhibit 1 at 102-103. The switching rules allowed low income customers to return to Transition Service at any time during the Transition Service period, and all other customers except G-1 customers would be allowed to return to Transition Service at any time before November 1, 2003. *Id.*

Unitil's original Default Service proposal also applied to one customer group but for a one year period; however, the only group that might have required Default Service during the first year were G-1 customers. See Exhibit 1 at 105. During the three summer months, the proposal called for an adder to the wholesale Default Service price of 1.5 cents per kWh to prevent gaming. *Id.* Unitil proposed that Default Service would

be available to customers who returned to utility provided service after selecting a competitive supply option and who were otherwise ineligible for Transition Service. *Id.*

The Settlement Agreement includes certain changes to the features of Transition Service and Default Service as originally proposed. Such changes are responsive to recommendations made by the Staff's consultants in their pre-filed testimony. Staff witnesses summarized these changes in testimony during the hearing. See 6/6/02 Tr. at 153-156, as follows: First, regarding Staff's recommendation to separate customer classes, two customer groups (G-1 and Non-G-1) were created for the purpose of procuring Transition Service supply. The concern was that because of the opportunities some customers (and particularly the G-1 customers) may have for leaving Transition Service for a competitive supply, risk would be imposed on the supplier which might well translate into higher prices for other customers, and particularly smaller customers, who would then be subsidizing the larger customers with the shopping opportunities. See also Exhibit 9 at 50-51.

Second, Staff recommended that Transition Service rates be set at levels sufficient to recover all costs related to the provision of the service, including the actual market-based supply costs, in order to ensure that appropriate prices

and price signals be provided to customers and to preclude possible subsidies being embodied in generation rates and distortions in the competitive landscape. See also Exhibit 9 at 47-48. Staff testified that the Settlement Agreement makes reasonable accommodations in this regard. As an example, for both customer classes final retail prices must: include the price bid by the supplier (a market-based bid); provide for the Companies' distribution losses; and, provide for uncollectible accounts. The Settlement Agreement does not, however, decide the question of the allocation of administrative costs, leaving this for a decision in Phase II. We note that the Settlement Agreement does not specify that suppliers should assume that their bids do not reflect distribution line losses, although this provision is set out in the draft RFP. There is also some potential confusion in the treatment of uncollectibles between the suppliers and Unitil. We will ask the parties to clarify these points in any revised Agreement and in the RFP.

Third, Staff recommended that Transition Service prices to G-1 customers not be based on a multi-year contract but instead reflect short term purchase commitments. Staff's concern was that longer term commitments may encompass additional risks to either Unitil or its customers. The Settlement Agreement addresses Staff's recommendation by

providing a shorter (two year), initial Transition Service supply solicitation for G-1 customers than for Non-G-1 customers.

Staff made these same three recommendations for the design of Default Service, and the terms of the Settlement are similarly responsive although in somewhat different ways than for Transition Service. As with Transition Service, customers are separated into classes, G-1 and Non-G-1, for purposes of procuring and pricing Default Service. Unlike Transition Service, the first solicitation for Default Service solicitations is for a minimum one year period.

After April 30, 2004, when the load of either class exceeds five megawatts, Unitil will initiate a Default Service supply solicitation for succeeding six-month periods for the relevant class or classes unless the Commission should in the future determine otherwise. Pricing during these periods is relatively short term: monthly pricing for G-1 customers and, for Non-G-1 customers, monthly pricing averaged over the six-month period or monthly pricing if chosen by the customer.

As with Transition Service, the Settlement Agreement specifies that the retail prices for such Default Service will reflect the price bid by the supplier, provision for losses and provision for uncollectible accounts; unlike the situation with

Transition Service, however, the Settlement Agreement specifies that the administrative costs associated with such Default Service will be collected from all customers. We note the same questions concerning distribution line losses and uncollectibles as cited above, and will direct parties to clarify these provisions in any revised Agreement and the RFP.

Staff's fourth recommendation regarding Default Service was for Unitil to provide a plan for how Default Service would be provided in future years,¹⁷ a recommendation incorporated into the Settlement Agreement as disclosed above.

We have carefully reviewed the Transition Service features incorporated in the Settlement Agreement in light of those we reviewed in *Granite State Electric Company*, Order No. 23,966 (May 8, 2002) in order to ensure the consistency and continuity of Commission policy. Although the features are not exactly identical to those we approved in the Granite State order, they are similar in many respects and we are satisfied that the dissimilar features are not significantly inconsistent with the fundamental policies we sought to achieve in that order. We find the Transition Service proposals reasonable, with the modifications noted above. Similarly, we find the

¹⁷ See Exhibit 9 at 5 and 6/6/02 Tr. at 156.

Default Service product features to be reasonable, with the modifications noted above.

D. Pending Motions for Protective Order

Unitil's Motion to Consolidate Motions for Protective Orders seeks confidential treatment of certain information for reasons similar to those advanced in previous motions we granted in the Order Following Prehearing Conference, see pages 10-12, namely, protection of the integrity of the bidding process and protection of ratepayer interests in the outcome of the portfolio sale and Transition and Default Service solicitation. We will therefore grant the present Motion on the same terms.

Unitil's Motion for Protective Order dated June 13, 2002 is based on protecting certain financially or commercially sensitive customer information and the privacy interest of certain of its customers. The New Hampshire Right-to-Know Law, RSA 91-A, as well as our applicable rule, Puc 204.06, recognize such reasons as being legitimate grounds for granting protective treatment.

No parties objected to this Motion. In balancing the interests for and against public disclosure of the information for which confidential treatment is sought, we are satisfied at this time that the interest of Unitil's customers in non-disclosure outweighs the public's interest in obtaining access

to the information. We will therefore grant this Motion on the terms specified below.

The grounds for Unitil's Motion for Protective Order dated June 20, 2002 are not set forth in detail. However, we assume that Unitil believes public disclosure of the information requested in Staff Data Request No. 490 will compromise Unitil's ability to successfully negotiate low-priced short term power contracts on behalf of ratepayers. Unitil does not say specifically that the information for which confidentiality is sought has not been, and will not be, made public in another forum. Nevertheless, on balance we think the interest of ratepayers in obtaining low rates is a legitimate basis for upholding confidentiality of the information as requested and we are therefore inclined to grant this Motion on the terms specified below.

The underlying basis for the protective treatment requested in Unitil's Motion for Protective Order filed on July 16, 2002 is the protection of ratepayer interests by means of favorable power supply contract renegotiations conducted by Unitil. This is a sufficient and persuasive basis for granting the Motion and will therefore do so. In Phase II we will rule on Unitil's request to exclude the MMWEC contract from the proposed portfolio divestiture sale.

We note that the Phase I Settlement Agreement does not expressly deal with Unitil's on-going right or obligation to renegotiate its power supply contracts other than arranging for a buyout of a contract prior to issuance of the requests for proposals. We assume the parties did not intend to preclude Unitil from renegotiating power supply contracts on favorable terms since Unitil has the continuing obligation under RSA 374-F:3,XII(c) (2) to take reasonable measures to mitigate stranded costs, including the renegotiation of existing contracts. However, in order to maintain a degree of regulatory oversight over contract renegotiations during the restructuring proceedings which is consistent with the treatment of buyouts, we will require Unitil to provide us with the same information for such contract renegotiations, and on the same terms, as now required by section 3.2.2 for buyouts.

Based upon the foregoing, it is hereby

ORDERED, that the Phase I Settlement Agreement for Restructuring the Unitil Companies proposed by the parties is conditionally approved, consistent with the foregoing analysis; and it is

FURTHER ORDERED, that the parties to the Settlement Agreement notify the Commission no later than thirty days after the date of this order whether they intend to amend the

Settlement Agreement as authorized by paragraph 4.1 of that Agreement to include the multi-part bid for Non-G-1 Transition Service as discussed herein and clarify the issue of distribution line losses and uncollectibles in the RFP for Transition and Default Service; and it is

FURTHER ORDERED, that in the event the parties amend the Settlement Agreement, (i) the Phase III schedule will be set forth in a subsequent order or secretarial letter; and, (ii) Unitil shall file with the Commission revised proposed documentation regarding Non-G-1 Transition Service, including requests for proposals, supplier contract forms and tariff pages, reflecting changes necessary to conform to the conditions specified in this order, within sixty days of the date of this order; and it is

FURTHER ORDERED, that Unitil's Motion to Consolidate Motions for Protective Order filed on June 5, 2002, Unitil's Motion for Protective Order dated June 13, 2002, Unitil's Motion for Protective Order dated June 20, 2002, and Unitil's Motion for Protective Order filed on July 16, 2002 are granted, subject to the on-going authority of the Commission, on its own motion or on the motion of Staff, any party or any other member of the public, to reconsider in light of RSA 91-A, should circumstances so warrant.

By order of the Public Utilities Commission of New
Hampshire this twenty-eighth day of August, 2002.

Thomas B. Getz
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary