

DE 04-197

UNITIL ENERGY SYSTEMS, INC.

Petition for Approval of Proposed Transition Service and Default Service Tariffs for G1 Customers

Order Approving Solicitation and Rates

ORDER NO. 24,445

March 24, 2005

I. BACKGROUND

On March 17, 2005, Unitil Energy Systems, Inc. (Unitil) filed a Petition with the New Hampshire Public Utilities Commission (Commission) for the Approval of Proposed Transition Service (TS) and Default Service (DS) Tariffs for G1 customers from the period of May 1, 2005, to October 31, 2005. Unitil filed the Petition pursuant to Commission Order No. 24,420 (January 7, 2005). In Order No. 24,420, the Commission approved, *inter alia*, Unitil's petition for a one year extension (from May 1, 2005, through April 30, 2006) of TS and DS for Unitil's G1 customers and Unitil's proposal to solicit G1 TS and DS through two semi-annual solicitations for six month supply periods commencing May 1, 2005 and November 1, 2005, respectively. The Petition contained a Bid Evaluation Report and supporting testimony setting forth Unitil's selection of a supplier and proposed TS and DS rates for G1 customers from May 1, 2005, to October 31, 2005.

In Order No. 24,420, the Commission also approved Unitil's Request for Proposal (RFP) to solicit supply for its G1 customers and the proposed process for Unitil's evaluation of bids received in the solicitation process. In addition, the Commission approved the process whereby Unitil would seek Commission approval of the resulting rates for G1 customers. Under

the process approved by the Commission, Unitil has the burden to show that it followed the solicitation process approved by the Commission and that its analysis of the bids and choice of supplier is reasonable. Finally, Order No. 24,420 approved a schedule providing the Commission five business days from the day that Unitil filed the proposed rates to review and rule on the rates.

With its Petition, Unitil filed a Motion for Confidentiality and Protective Order (Motion) consistent with RSA 91-A:5(IV) and NH Admin. Rules, Puc 204.06. The information for which Unitil seeks confidential treatment is contained in Tab A to Schedule RSF-1 which is attached to Exhibit RSF-1 of the Petition. The material in Tab A presents the unredacted Bid Evaluation Report prepared by Unitil in connection with the bids received in response to its RFP for TS and DS. Unitil also requested confidential treatment for the “Wholesale Rate” and “Supplier Charges” information contained on page 1 of 7 of Schedule KMA-2, attached to Exhibit KMA-1 of the Petition and the Power Supply Agreement (PSA) negotiated with the selected bidder. With regard to the “Wholesale Rate” and “Supplier Charges” information, Unitil stated in its Motion that it was requesting confidential treatment of that information only until such time as that information becomes publicly available at the Federal Energy Regulatory Commission (FERC).¹ On March 24, 2005, Unitil amended the Motion to include the “Provision for Uncollected Accounts” on the same page of KMA-1, stating that its omission from the original request was in error.

On March 24, 2005, the Commission Staff recommended approval. In staff’s view, the solicitation complied with the requirements set forth in Order No. 24,420 and the RFP

¹ According to the Motion, it is Unitil’s understanding that, in accordance with FERC reporting requirements, the supplier is obligated to report, within thirty days of the end of a quarter, the price and volume of its wholesale contractual sales during the quarter and identify the party to whom the sale is being made.

Staff noted that the prices are significantly higher, but the rates “do not appear to be unreflective of current market conditions.”

II. SUMMARY OF UNITIL’S FILING

Unitil states it conducted an open solicitation process, actively sought interest among potential suppliers and provided potential suppliers access to sufficient information to enable them to assess the risks and obligations associated with providing the services sought. Unitil declares that it effected market notification of the RFP by announcing its availability electronically to all participants in the New England Power Pool (NEPOOL), in particular to the members of the NEPOOL Markets Committee. Unitil affirms that it also announced the issuance of the RFP to a list of contacts from energy companies who had expressed previous interest in receiving notices of solicitations conducted on behalf of Unitil’s Massachusetts affiliate. Unitil states that its contact list for the RFP ultimately included 54 individuals representing 28 separate energy suppliers.

In order to gain the greatest level of market interest, Unitil avers that it provided potential bidders with appropriate and accessible information. According to its filing, Unitil provided bidders with historic hourly load, historic monthly retail sales and customer counts, large customer concentration data and the evaluation loads, which are the estimated monthly volumes that Unitil would use to weight bids in terms of price.

Unitil affirms that it evaluated the indicative bids on both quantitative and qualitative criteria, including price, credit worthiness of the bidder, a bidder’s willingness to extend adequate credit to Unitil to facilitate the transaction, each bidder’s capability of performing the terms of the RFP in a reliable manner, and willingness to enter into contractual terms acceptable to Unitil. Unitil avers that it negotiated with all potential suppliers who

submitted proposals in order to obtain the most favorable terms each supplier was willing to offer. Unitil asserts that it received a positive response to its RFP, with bids from several qualified suppliers who competed to serve the load.

When the final bids were received, Unitil compiled weighted average prices, using the evaluation loads that were issued to bidders along with the RFP. Unitil then evaluated the price and non-price aspects of each final bid and awarded a single contract for its G1 customers' TS and DS load to a single bidder, Dominion Energy Marketing, Inc. (Dominion). In Unitil's opinion, Dominion offered the best overall value.

Unitil avers that it priced TS and DS as allowed by Order No. 24,420.² Under that plan, Unitil has, for retail pricing purposes, separated its G1 customers into Large G1 (those with an average metered monthly 15 minute peak kVA of equal to or greater than 1,000 kVA) and Small G1 (those with an average metered monthly peak kVA of less than 1,000 kVA). Large G1 customers will automatically receive TS and DS at the "G1 Variable Charge" as follows (in \$/kWh):

<u>May 2005</u>	<u>June 2005</u>	<u>July 2005</u>	<u>August 2005</u>	<u>September 2005</u>	<u>October 2005</u>
\$0.06733	\$0.06922	\$0.07600	\$0.07579	\$0.06734	\$0.06543

Unitil states that prices to Small G1 TS and DS customers will be at the "G1 Fixed Charge", a fixed rate calculated on the basis of weighted average monthly bid prices across the six-month period. The G1 Fixed Charge from May 1, 2005 to October 31, 2005 will be \$0.07037 per kilowatt-hour. Unitil points out that Small G1 customers may opt instead to receive the G1 Variable Charge if they make this choice prior to the start of the six-month

² Consistent with the Commission's approvals in Order No. 24,420, retail DS is priced the same as retail TS.

period. Small G1 customers choosing this option will not be able to switch back to the G1 Fixed Charge until the end of the six-month period.

Unitil explained that the proposed G1 Fixed Charge represents an increase of \$0.01522 per kWh when compared to the current TS Charge of \$0.05509 per kWh. According to Schedule KMA-3, page 1 of 2, the overall G1 class revenue will increase by about 16.3 percent as a result of the proposed change to the TS Charge.

In summary, Unitil requests the following: 1) that the Commission find that Unitil has followed the solicitation process approved by Order No. 24,420, that Unitil's analysis of the bids submitted was reasonable and that Unitil has supplied a reasonable rationale for its choice of supplier; 2) that based on these findings, the rates resulting from the solicitation process are reasonable and the tariffs containing these rates should be approved as filed; and 3) that the Order granting the approvals be issued on or before March 24, 2005, which date is five business days after the date of the filing, pursuant to the schedule approved in Order No. 24,420.

III. COMMISSION ANALYSIS

First, we address Unitil's Motion for Confidentiality and Protective Order.

The materials in Tab A, which Unitil seeks to protect, contain a brief discussion of the selection of the winning bidder; a bidder key which identifies the suppliers who participated in the RFP; the comparative pricing received from the bidders, including the implied total cost according to the evaluation loads provided with the RFP and a ranking of the transactions offered by each bidder in terms of financial security, including consideration of reasonable extension of credit to Unitil and the creditworthiness of the supplier and the credit assurance offered; the information provided by each bidder in the proposal submission forms; and the contact list used by Unitil during the RFP process. The confidential materials in Tab A also contain a redlined version of

the negotiated Power Supply Agreement (PSA) as well as the “Wholesale Rate” and “Supplier Charges” information contained on page 1 of 7 of Schedule KMA-2, attached to Exhibit KMA-1

Unitil states that the information contained in the materials included in Tab A must be protected from public disclosure because it is confidential commercial and financial information. Unitil states that the information provided by bidders was offered under the express understanding that such information would be maintained as confidential. Unitil contends that suppliers will be reluctant to participate in future solicitations by Unitil if their confidential bid information is disclosed. Unitil further argues that disclosure of the information could detrimentally impact the suppliers’ ability to participate in other competitive solicitations in the market as well.

Unitil requests confidential treatment of the “Wholesale Rate”, “Supplier Charges” and “Provision for Uncollected Accounts” information for the same reasons. Unitil states that the inclusion of these values would disclose confidential commercial and financial information that could compromise its ability to negotiate prices in contracts arising from future solicitations. Unitil states that the same information will be reported to the Federal Energy Regulatory Commission at the end of every calendar year quarter beginning March 31, 2005, and that disclosure in this docket would provide unnecessarily detailed monthly information which both Dominion and Unitil considered confidential during the course of their negotiations. Unitil contends that disclosure of this information could compromise Unitil’s bargaining position and ability to achieve the lowest possible price, reasonable credit quality provisions and other material terms in a competitive solicitation, to the detriment of Unitil and its customers.

Unitil argues that disclosure of the PSA would reveal what terms and conditions Unitil and Dominion were willing to agree to in order to reach a final agreement and, thereby,

could harm each party's ability to negotiate in the future. Unitil states that regardless of the fact that the proposed PSA was provided to the Commission in October 2004 with no request for confidential treatment, the disclosure of the fully negotiated PSA will reveal Unitil's negotiating posture to other potential power suppliers. Unitil claims that its customers would be harmed by Unitil's diminished negotiation position.

Unitil states that the information it seeks to exempt from public disclosure qualifies as "confidential, commercial or financial information," and such request is consistent with both the New Hampshire Right-to-Know law, RSA 91-A:5,IV, and the Commission's rule on confidential treatment of public records, Puc 204.06.

The New Hampshire Right- to- Know law provides each citizen the right to inspect all public records in the possession of the Commission. RSA 91-A:4,I. RSA 91-A:5,IV however, exempts from disclosure certain "confidential, commercial or financial information". In order to rule on the Motion, we have made an *in camera* review of Tab A which, as Unitil asserts, is a thorough analysis and evaluation of the price and non-price characteristics of the bids it received in response to the RFP. We point out that Unitil stated that the information would not have been provided by the bidders if not for Unitil's express assurance that the information would not be disclosed to the public. We also agree that the information on "Wholesale Rate," "Supplier Charges" and "Provision for Uncollected Accounts" taken in combination would reveal the wholesale cost of power from Dominion and falls into the same category of confidential commercial or financial information protected from disclosure by RSA 91-A.

The Commission notes that Unitil did not request protected treatment for the draft Power Supply Agreement in connection with its October 26, 2004 Petition for Approval of One-Year Extension of Transition and Default Service for G1 Customers in this same docket.

However, Unitil has argued that disclosure of the specific negotiated terms would compromise its ability to negotiate future contracts. We note that we have provided protective treatment to other PSAs. See Granite State Electric Company, Order No. 24,412 (December 22, 2004) at 8 (according protective treatment over power supply contract for 2005 default service rates); Granite State Electric Company, Order No. 24,318 (April 30, 2004) at 8 (according protective treatment over power supply contract for 2004 default service rates). We are persuaded here that the information is commercially sensitive and disclosure of the information may cause competitive harm to Unitil in its attempt to go forward with future solicitations for power supply

We do not find the public's interest in review of the financial, commercially sensitive information sufficient to outweigh the need for Unitil and its bidders to maintain confidentiality of such information. *Union Leader Corp. v. New Hampshire Housing Finance Authority*, 142 N.H. 540 (1997). We will, therefore, grant protective treatment to the information in Tab A, including the "Wholesale Rate," "Supplier Charges" and "Provision for Uncollected Accounts" values and the PSA. Consistent with our practice, the protective treatment provisions of this Order are subject to the on-going authority of the Commission, on its own motion or on the motion of Staff, any party or other member of the public, to reconsider this protective order in light of RSA 91-A, should circumstances so warrant.

Regarding Unitil's analysis of the bids and its selection of a winning bidder, based on our review of the record we are satisfied that 1) Unitil complied with the procedures approved by Order No. 24,420 for the TS and DS solicitation; 2) Unitil's evaluation of the bids and its selection of Dominion as the supplier were reasonable; and 3) the rates resulting from the solicitation process are reasonable. The process set forth in Order No. 24,420, which was fully litigated, anticipated a rapid response to solicit, negotiate and finalize rates under then-prevailing

market conditions. We recognize that these rates are higher than those currently in effect, which were negotiated under earlier market conditions. Though higher, they appear to reflect the market as it stands today. The Petition, for approval of TS and DS tariffs for G1 customers, therefore, will be approved.

Based upon the foregoing, it is hereby

ORDERED, that the Power Supply Agreement with Dominion Energy Marketing, Inc. is APPROVED; and it is

FURTHER ORDERED, that Unital's proposed rates for Transition Service and Default Service for G1 customers for the period from May 1, 2005 to October 31, 2005 are APPROVED; and it is

FURTHER ORDERED, that Unital's Motion for Confidentiality and Protective Order is GRANTED subject to the on-going rights of the Commission, on its own motion or on the motion of Staff, any party or any other member of the public, to reconsider the protective order in light of RSA 91-A, should circumstances so warrant; and it is

FURTHER ORDERED, that the Petitioner shall file a compliance tariff with the Commission on or before May 1, 2005, in accordance with N.H. Admin. Rules Puc 1603.02(b).

By order of the Public Utilities Commission of New Hampshire this twenty-fourth day of March, 2005.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Michael D. Harrington
Commissioner

Attested by:

Michelle A. Caraway
Assistant Executive Director