

**DE 05-064**

**UNITIL ENERGY SYSTEMS, INC.**

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

**Order Approving Petition**

**ORDER NO. 24,607**

**March 24, 2006**

**APPEARANCES:** Gary M. Epler, Esq. on behalf of Unitil Energy Systems, Inc.; F. Anne Ross, Esq. on behalf of the Office of Consumer Advocate; and Suzanne Amidon, Esq. on behalf of the Staff of the New Hampshire Public Utilities Commission.

**I. BACKGROUND**

On March 17, 2006, Unitil Energy Systems, Inc. (Unitil) filed with the New Hampshire Public Utilities Commission (Commission) a Petition requesting approval of its solicitation and procurements of Default Service (DS) for its G1 and Non-G1 customers for the period beginning May 1, 2006, and of proposed DS retail rates (Petition). In support of the Petition, Unitil filed testimony of Robert S. Furino and Karen M. Asbury, a redacted Bid Evaluation Report (Schedule RSF-1), a redlined copy of the Request for Proposal (RFP) for Default Service (Schedule RSF-2) and the proposed tariff (Schedule KMA-1).

Unitil filed the Petition pursuant to the terms of the Settlement Agreement approved by Order No. 24,511 (May 9, 2005). In Order No. 24,511, the Commission approved the process for solicitation and procurement of DS supply for both G1 and Non-G1 customers of Unitil, and the process to be used by Unitil in evaluating the bids received in the solicitation process.

Unitil states that in Order No. 24,511, the Commission approved Unitil's proposal to implement a laddered portfolio approach to secure supply for Non-G1 DS. Under the approved plan, Unitil will solicit Non-G1 DS supply in four blocks, each representing 25 percent of Non-G1 requirements. Unitil solicited supply for two blocks of Non-G1 requirements on September 20, 2005, and entered into two power supply agreements, one for a period of six months and the other for a period of 18 months that together provide for 50 percent of Non-G1 DS supply requirements. The Commission approved these agreements by Order No. 24,542 (November 2, 2005). Unitil states that the RFP for the remaining 50 percent of Non-G1 DS supply was issued on February 2, 2006, and that on March 14, 2006, Unitil entered into two Non-G1 DS power supply agreements, one for a period of one year and the other for a period of three years. In addition, Unitil also requested bids for the G1 DS supply and, on March 14, 2006, entered into a three-month power supply agreement commencing May 1, 2006. Unitil avers that it followed the solicitation and bid evaluation process approved by the Commission, and that its analysis of the bids and choice of suppliers is reasonable.

With its Petition, Unitil filed a Motion for Confidentiality and Protective Order (Motion) for certain information, consistent with RSA 91-A:5, IV and prior Commission orders. The information for which Unitil seeks confidential treatment is contained in Tab A to Schedule RSF-1, attached to Exhibit RSF-1 of the Petition, with the exception of the name of the winning bidders: Amerada Hess Corporation (Amerada) (for the 12-month non-G1 DS agreement) and Constellation Energy Commodities Group, Inc. (Constellation) (for the three-month G1 and three-year Non-G1 DS agreements).

In addition to requesting protective treatment for the material contained in Tab A, Unitil also requests confidential treatment for the “Supplier Charges,” “Provision for Uncollected Accounts,” “Legal Charges,” and “Consulting Charges” found on lines 1-4 of Page 3 of 4 of Schedule KMA-2 (attached to Exhibit KMA-1) as well as the “Wholesale Rate” and “Supplier Charges” found at lines 7-8, 10-11, 13-14 and 16-17 on that same page. Unitil further seeks confidential treatment for the same information found at lines 1-4 and 7-8 at the bottom of Page 3 of 4 of Schedule KMA-3 (also attached to Exhibit KMA-1). Unitil states that a wholesale supplier is obligated, pursuant to certain reporting requirements, to report to the Federal Energy Regulatory Commission (FERC) the price and volume of its wholesale contractual sales during each quarter and to identify the party to whom the sale has been made, within 30 days of the end of that quarter. *See* FERC Docket No. RM01-8-000, Order No. 2001, 99 FERC ¶ 61, 107, 18 CFR Parts 2 and 35, issued April 25, 2002. Unitil attests that FERC makes this information available to the public through Electronic Quarterly Reports. Unitil therefore requests that the contract rate information, provided in Appendix B to the PSA, be maintained as confidential until this information becomes publicly available at FERC. Unitil avers that until this pricing information is required by FERC to be made public, the winning supplier will keep this information confidential so as to avoid disclosing price information which may be leveraged against it in other negotiations.

The material in Tab A presents a detailed and unredacted Bid Evaluation Report prepared by Unitil in connection with the bids received in response to its RFP for DS supply. Included in Tab A is: a brief narrative discussion of the comparison of the bids received; identification of the suppliers who responded to the RFP issued by Unitil on February 2, 2006; a

pricing summary consisting of a comparison of all price bids, which is followed by each bidder's final pricing; a summary of each bidder's financial security requirements of Unitil and each bidder's own provision of financial security and creditworthiness; Unitil's ranking of bidders in terms of financial security, taking into account both the credit requirements imposed on Unitil and the financial security offered by the bidder; the contact list used by Unitil during the RFP process, including a summary of its UES' communications with each contact and Unitil's expectations with regard to each potential bidder's intention to bid; and the final Power Supply Agreement (PSA) redlined against the original PSA as issued.

Unitil asserts that the information contained in Tab A is "confidential, commercial or financial information" which is exempt from public disclosure under the Right-to-Know law, RSA 91-A:5, IV and that disclosure of this information would impair both Unitil's and the responding bidders' bargaining position with respect to future participation in the energy market. Finally, Unitil seeks confidential treatment of emails to Commission Staff Utility Analyst George McCluskey regarding the March 8, 2006 indicative bids and the March 14, 2006 final bids.

On March 17, 2006, the Commission ordered a hearing for March 20, 2006, which was held as scheduled. On March 21, 2006, Unitil submitted an exhibit showing the movement of the May 2006 NYMEX Henry Hub natural gas contract for the two days before and after March 14, 2006.

## **II. POSITIONS OF THE PARTIES AND STAFF**

### **A. Unitil**

Unitil averred that, consistent with Order No. 24,511, it conducted an open solicitation process, actively sought interest among potential suppliers and provided access to

sufficient information to enable them to assess the risks and obligations associated with providing the services sought. Unitil declared that it effected market notification of the RFP by announcing its availability electronically to all participants in the New England Power Pool (NEPOOL) and to the members of the NEPOOL Markets Committee. Unitil affirmed 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.

In order to gain the greatest level of market interest, Unitil attested 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 testified that it used its website to make this information available to potential suppliers.

Unitil stated that it did not discriminate in favor or against any individual potential supplier who expressed interest in the solicitation. Unitil offered that it negotiated with all potential suppliers who submitted proposals, in order to obtain the most favorable terms each potential supplier was willing to offer. In accordance with Order No. 24,511, Unitil required bidders to submit both energy-and-capacity and energy-only fixed monthly price bids during the period that uncertainty exists in the capacity market. The most recent instruction from FERC indicates that a new capacity market would not be implemented prior to October 1, 2006. Therefore, Unitil required bidders to provide both forms of monthly pricing, beginning with October 2006.

Unitil affirmed that it evaluated the indicative bids on both quantitative and qualitative criteria, including price, creditworthiness of the bidder, a bidder's willingness to extend adequate credit to Unitil to facilitate the transaction, each bidder's ability to meet the terms of the RFP in a reliable manner, and willingness to enter into contractual terms acceptable to Unitil. Unitil averred 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 asserted that it received a positive response to its RFP, with bids from several qualified suppliers.

According to Unitil, it also determined the implied cost of capacity reflected in its energy-and-capacity bids for the period beginning October 2006 by calculating the difference between the energy-and-capacity prices and the energy-only prices. As required by Order No. 24,511, Unitil discussed with Commission Staff and the Office of Consumer Advocate (OCA), during the time between indicative and final bidding, the implied cost of capacity reflected in the bids and Unitil's decision-making parameters with regard to whether to solicit final fixed prices that include the cost of capacity.

At the hearing, Unitil testified that the resulting bids reflected the trend of price increases in the natural gas market at the time the bids were submitted. In response to a record request, Unitil submitted Exhibit No. 10 showing the movement of the May 2006 NYMEX Henry Hub natural gas contract for the two days prior and two days after March 14, the day Unitil received its final bids. Unitil pointed out that the chart shows the May contract closed on Friday, March 10, 2006, at approximately \$6.89/MMBTU. On the following Monday morning, March 13, 2006, the same market opened at approximately \$7.13/MMBTU. Unitil stated that the large difference between the Friday closing price and the Monday opening price depicts an increase in

the market known as “gapping up.” Unitil pointed out that the trend continued on Tuesday morning when the market gapped up again to approximately \$7.30/MMBTU, and the market continued to rise until it peaked on Thursday, March 16, 2006 at just above \$7.50/MMBTU. Finally, Unitil reiterated that while this data is informative, Unitil relies on a competitive bid process to establish fixed prices for its default service power supplies.

Unitil testified that for each supply obligation period sought, it selected the proposal offered by the bidder it believed offered the best overall value in terms of price and non-price considerations, including its decision to fix the price of capacity for the period beginning October 2006. Unitil stated that once the winning bidders were selected, they were promptly notified and the final PSAs, which had been negotiated prior to the final bidding, were verified and signed. Unitil also testified that the chosen bidders offered the lowest capacity costs when compared with the expected Future Capacity Market transitional cost of \$3.05 per kW month. As a result, Unitil selected those suppliers that offered capacity in a fixed energy-and-capacity price.

Unitil stated that DS will be available to G1 customers at a rate that changes from month to month reflecting the monthly wholesale price that Unitil pays to its chosen G1 DS provider. Unitil selected Constellation to supply its G1 customers. Unitil states that the resulting retail rates, inclusive of administrative costs, are as follows: \$0.08072 per kWh in May 2006; \$0.08149 per kWh in June 2006; and \$0.09261 per kWh in July 2006. Unitil testified that the current G1 DS rate is \$0.13638 and, therefore, the proposed G1 DS rates for May through July, 2006 represent a reduction of approximately 34% for large C&I customers.<sup>1</sup>

Unitil reiterated that, consistent with Order No. 24,511, the rates for the Non-G1

---

<sup>1</sup> Inclusive of changes in the stranded cost charges and the external delivery charge.

customers would be fixed for six-month periods and equal to the weighted average of the four supply blocks. Unitil stated that, as a result of this round of bidding and the round completed in the fall of 2005, the Non-G1 class rate would be fixed at \$0.10180<sup>2</sup> per kWh for the period May 1, 2006 through October 31, 2006, an increase of approximately 35% for residential customers over current Transition Service rates. Unitil stated that the changes to the G1 and Non-G1 rates reflect the change in market pricing.

In summary, Unitil petitioned the Commission to find that: Unitil has followed the solicitation process approved in Order No. 24,511; Unitil's analysis of the bids submitted was reasonable; and Unitil has supplied a reasonable rationale for its choice of supplier. Unitil also asked the Commission to conclude that, based on these findings, the power supply costs resulting from the solicitation are reasonable, and subject to the ongoing obligation of Unitil to act prudently, according to law and in conformity with Commission orders, the amounts payable to the sellers under the PSAs are approved for inclusion in retail rates as set forth in the proposed tariff.

#### **B. Office of Consumer Advocate**

At the hearing, OCA reiterated its support for Unitil's laddered approach to obtaining a DS Supply for Non-G1 customers. OCA testified that, while the resulting rates represent a significant increase for residential customers, it believed Unitil properly conducted the auction and the results reflect competitive market prices. OCA recommended the Commission approve the fixed price contracts for energy and capacity with Amerada and

---

<sup>2</sup> Unitil testified that this rate does not include the proposed Stranded Cost Charge and the External Delivery Charge being considered by the Commission in a separate proceeding. *See* Docket No. DE 06-042.

Constellation. OCA also expressed interest in participating in the composition of any customer message regarding the rate increase for inclusion with customer bills.

### **C. Commission Staff**

At the hearing George McCluskey for the Commission Staff (Staff) testified that, based on Until's testimony and schedules, it appeared that Until had followed the solicitation process approved by the Commission in Order No. 24,511. Mr. McCluskey noted that although the wholesale rate components offered by the winning bidders are significantly higher than Transition Service rates, the resulting retail rates reflect current market conditions. He also testified that Until's proposal to accept the energy and capacity fixed-price bids submitted by the winning bidders was sound and should be approved.

Mr. McCluskey cautioned the Commission not to judge the potential rates resulting from the current solicitation in terms of the percentage increase over current TS rates for Until's Non-G1 customers. Such a comparison would be inappropriate, in Staff's view, because current TS rates reflect competitive market conditions that no longer exist. According to Staff, the number of bidders in both the indicative and final rounds of the solicitation and the closeness of those bids indicated a competitive market result under current market conditions and expectations for the periods during which power was sought. He concluded by reiterating Staff's view that the Commission should approve Until's Petition and resulting rates.

## **III. COMMISSION ANALYSIS**

### **A. Confidentiality**

First, we address Until's Motion for Confidentiality and Protective Order. The materials in Tab A, which Until seeks to protect, include details regarding the bidders; the

comparative energy and capacity prices received from the bidders, including the estimated 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, extension of credit to Unitil, the creditworthiness of the supplier, and redlined version of the negotiated PSA.

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 asserts that the information provided by bidders was offered under the express understanding that such information would be maintained as confidential and 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 argues that disclosure of the Tab A materials would reveal the specific terms and conditions Unitil and the winning bidders 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 also argues that its negotiating ability with other potential power suppliers would be harmed by disclosure.

With respect to Unitil's requests for confidential treatment of the "Provision for Uncollected Accounts," "Wholesale Rate" and "Supplier Charges" information, Unitil stated that disclosure of this information could compromise its ability to negotiate prices in contracts arising from future solicitations and would provide unnecessarily detailed monthly information which Amerada, Constellation and Unitil considered confidential during the course of their

negotiations. Unitil explains that the same information is reported quarterly to the FERC at the end of every quarter and requests that it be held confidential until such time as FERC makes the information available. 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 prior Commission orders.

The New Hampshire Right to Know law provides each citizen the right to inspect public records in the possession of the Commission. RSA 91-A:4, I. Section 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 absent Unitil’s express assurance that the information would not be disclosed to the public. We also agree that the information on “Provision for Uncollected Accounts,” “Wholesale Rate,” and “Supplier Charges” taken in combination would reveal the wholesale cost of power from the winning bidders and constitutes confidential commercial or financial information protected from disclosure by RSA 91-A.

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 (accordg protective treatment over power supply contract for 2005 default service rates); *Granite State Electric Company*, Order No. 24,318 (April 30, 2004) at 8 (accordg protective treatment over power supply contract for 2004 default service rates).

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 Bid Evaluation Report, "Provision for Uncollected Account," "Wholesale Rate," and "Supplier Charges" values and the PSA. We will also grant protective treatment to the content of two e-mails sent by Unitil to Mr. McCluskey regarding the indicative and final bids. 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.

### **B. Default Service**

Regarding Unitil's analyses of the bids and its selection of the winning bidders for the first two components of its Default Service portfolio, we find that Unitil complied with the procedures approved by Order No. 24,511 for the Non-G1 DS solicitation. The process set forth in Order No. 24,511 anticipated that the solicitation, negotiation, and finalization of rates would take place according to a timeline designed to ensure that the rate would reflect then-prevailing market conditions and would not contain a premium that might result from a protracted process. We are satisfied that Unitil met all procedural requirements set forth in prior orders and the result is consistent with the requirement of RSA 374-F:3, V(c) that Default Service "be procured through the competitive market."

We also find that Unitil's evaluation of the bids and its selection of Amerada and Constellation as suppliers was reasonable. In reaching this finding we rely, in part, on Staff's assertion that a simple comparison to the rates currently in effect is not an appropriate basis to determine whether the proposed rates are reasonable. The current rates, which were competitive at the time they were approved, reflected market conditions that have since changed. The testimony of Unitil, OCA and Staff, together with Unitil's Bid Evaluation Report, indicates that the bid prices reflect current market conditions and therefore are reasonable. *See also* Order No. 24,526 (October 11, 2005) slip op. at 13 (approving Unitil DS rates for G1 customers, noting market conditions' impact on rates and the intent of the legislature that DS rates reflect the market); Order No. 24,539 (October 31, 2005) (approving Granite State Electric Company's DS rates for commercial customers, with same observation regarding market conditions and legislative intent). In light of the circumstances, we grant the Petition.

**Based upon the foregoing, it is hereby**

**ORDERED**, that the Power Supply Agreement with Amerada Hess Corporation is APPROVED; and it is

**FURTHER ORDERED**, that the Power Supply Agreement with Constellation Energy Commodities Group, Inc. is APPROVED: and it is

**FURTHER ORDERED**, that the power supply costs resulting from the solicitation are reasonable and, subject to the ongoing obligation of Unitil to act prudently, according to law and in conformity with Commission Orders, the amounts payable to the sellers for power supply costs under the three month, 12-month and three-year PSAs referenced herein for inclusion in retail rates beginning May 1, 2006 are APPROVED; and it is

**FURTHER ORDERED**, that Unutil's Motion for Confidentiality and Protective Order is GRANTED; and it is

**FURTHER ORDERED**, that Unutil shall file conforming tariffs within 30 days of the date of this Order, consistent with N.H. Admin. Rule Puc 1603.02.

By order of the Public Utilities Commission of New Hampshire this twenty-fourth day of March, 2006.

---

Thomas B. Getz  
Chairman

---

Graham J. Morrison  
Commissioner

---

Clifton C. Below  
Commissioner

Attested by:

---

Debra A. Howland  
Executive Director & Secretary