

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 09-009

UNITIL ENERGY SYSTEMS, INC.

**Petition for Approval of Default Service Solicitation
And Proposed Default Service Tariffs For Large Commercial and Industrial Customers**

Order Approving Petition

ORDER NO. 25,054

December 18, 2009

Appearances: Gary M. Epler, Esq. on behalf of Unitil Energy Systems, Inc.; and Suzanne G. Amidon, Esq. on behalf of the Staff of the Public Utilities Commission.

I. BACKGROUND

On December 11, 2009, Unitil Energy Systems, Inc. (UES or Company) filed a petition requesting approval of its solicitation and procurement of default service for its large commercial and industrial (G1) customers for the three-month period February 1, 2010 through April 30, 2010, and of the resulting default service rates. In support of its petition, UES filed the testimony of Robert S. Furino and Linda S. McNamara, a redacted bid evaluation report (Schedule RSF-1), a copy of the request for proposals (RFP) for default service (Schedule RSF-2) and proposed tariffs. With its petition, UES also included its quarterly customer migration report and a motion for confidential treatment of certain information in the filing. UES stated that overall bill impacts for its G1 customers will result in increases from current November 2009 default service rates ranging from 3.9% to 4.9% when comparing total bundled bills. UES bundled bills include charges for distribution, external delivery, stranded costs, system benefits and default service. UES attributed the increase in the default service rate to the increased cost of energy in the market.

UES filed the petition pursuant to the terms of the settlement agreement approved by the Commission in *Unitil Energy Systems, Inc.*, Order No. 24,511 (September 9, 2005) 90 NH PUC 378. Pursuant to the terms of that agreement, UES solicits default service supply for its G1 customers on a quarterly basis in three-month blocks, and establishes fixed monthly prices that vary from month to month.

UES issued the RFP on November 3, 2009. Suppliers submitted indicative bids to UES on November 24, 2009. On December 8, 2009, UES selected PSEG-ER&T as supplier for G1 default service power supply for the three-month period from February 1, 2010 through April 30, 2010. UES stated that it followed the solicitation and bid evaluation process set forth in the settlement agreement and that its analysis of the bids and choice of suppliers is reasonable.

On December 16, 2009, the Commission issued a secretarial letter scheduling a hearing for December 17, 2009, which was held as scheduled.

II. POSITIONS OF THE PARTIES

A. Unitil Energy Systems, Inc.

UES stated that, consistent with the 2005 settlement agreement, 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. UES reported that it achieved market notification of the RFP by electronically announcing its availability to all participants in the New England Power Pool (NEPOOL) and to the members of the NEPOOL Markets Committee. UES affirmed that it also announced the issuance of the RFP to a list of contacts from energy companies that had

previously expressed interest in receiving notices of solicitations. In addition, UES issued a media advisory to the power markets trade press announcing the RFP.

UES stated that it provided potential bidders with appropriate and accessible information in order to gain the greatest level of market interest. According to its filing, UES' 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 UES would use to weight bids in terms of price, were made available to potential bidders via UES' web site. Consistent with Order No. 24,921 (December 12, 2008) in Docket No. DE 08-015, UES' 2008 Default Service Procurement docket, UES solicited only all-inclusive energy and capacity bids.

According to UES, it did not discriminate in favor of or against any individual potential supplier that expressed interest in the solicitation. UES said that it negotiated with all potential suppliers that submitted proposals in order to obtain the most favorable terms each supplier was willing to offer.

UES affirmed that it evaluated the indicative bids using both quantitative and qualitative criteria including price, creditworthiness, willingness to extend adequate credit to UES, ability to meet the terms of the RFP in a reliable manner, and willingness to enter into contractual terms acceptable to UES. To evaluate the bids, UES said it compared the pricing strips proposed by each of the bidders by calculating weighted average prices for each supply requirement using evaluation loads that were issued along with the RFP.

The Company testified that it determined that PSEG-ER&T offered the best overall value in terms of both price and non-price considerations for the supply requirements and selected it as the winning bidder. UES and PSEG-ER&T executed an amendment to the existing June 11,

2008 contract for the power supply for G1 customers for the period February 1, 2010 through April 30, 2010.

UES testified that it plans to comply with the electric Renewable Portfolio Standard (RPS) requirements of RSA 362-F outside the default service procurement process by separately purchasing qualifying available renewable energy certificates (RECs) or by making alternative compliance payments as necessary. For 2009 RPS compliance, UES said it issued the first of two RFPs for RECs under which it purchased approximately 50 % of its 2009 REC obligations. UES said it expects to issue its second REC RFP seeking the balance of its 2009 REC requirements in late spring 2010.

To comply with RPS requirements for the months of 2010 associated with the supplies that have been procured as a result of the current RFP, UES will need to provide Class I (new renewable resources) RECs for 1.0% of sales, Class II (solar resources) RECs for 0.04% of sales, Class III (existing biomass resources) RECs for 5.5% of sales, and Class IV (existing small hydro resources) RECs for 1.0% of sales. In developing the RPS adder, UES estimated the cost of Class I RECs at \$40.00, Class II RECs at \$80.00, Class III RECS at \$27.00 and Class IV RECs at \$25.00.

At the hearing, UES introduced an Exhibit identified as Exhibit 14, which contained detailed information regarding the Company's REC purchases. The Exhibit included tables showing the Classes of RECs purchased by UES, the cost of the RECs by Class, and the identity of the seller for each Class of RECs. UES requested confidential treatment of this information.

UES testified that the revised G1 retail rates, adjusted for reconciliation, working capital requirements, provision for uncollected accounts and internal company administrative costs, and

the RPS adder, for each month in the period will be as follows:

Month	February 2010	March 2010	April 2010
\$ per kWh	\$0.09297	\$0.08329	\$0.08149
RPS adder (\$ per kWh)	\$0.00220	\$0.00220	\$0.00220
Total rate (\$ per kWh)	\$0.09517	\$0.08549	\$0.08369

The proposed default service costs produce a simple three-month average rate of \$0.08812 per kWh, which represent an increase of \$0.00561 per kWh, or approximately 6.8 percent, over the current simple three-month average rate of \$0.08251 per kWh for the G1 customers that remain on default service. UES attributed the increase to an increase in market rates. Overall bill impacts for G1 customers will be increases ranging from 3.9 % to 4.9% for G1 customers when comparing the November 2009 default service rate with the February 2010 default service rate.

In summary, UES requested that the Commission find that the UES: (1) followed the solicitation process approved in Order No. 24,511, (2) conducted a reasonable analysis of the bids submitted, and (3) supplied a reasonable rationale for its choice of supplier. UES also asked the Commission to determine that, based on those findings, the power supply costs resulting from the solicitation are reasonable, subject to the ongoing obligation of UES to act prudently, according to law and in conformity with Commission orders. Finally, UES requested the Commission grant its motion for confidential treatment, and included in its request confidential treatment for Exhibit 14 introduced at hearing, which provided details regarding UES' purchase of RECs from various suppliers.

In response to a question regarding whether it believes that this filing comports with its most recently filed least cost plan pursuant to RSA 378:41, UES responded by saying that both the UES default service procurement and the REC procurement were conducted pursuant to

settlement agreements with Staff and the Office of Consumer Advocate that were approved by the Commission after hearing. Inasmuch as the Commission approved the procurement processes, UES said that the filing should be approved.

B. Commission Staff

Staff stated that it had reviewed the petition and determined that UES had complied with the settlement agreement approved by the Commission in Order No. 24,511 in conducting the bid solicitation process, evaluating the bids, and selecting the final bidder. Staff also said that the resulting rates are market based and recommended that the Commission approve the petition. Finally, Staff noted that UES does not own any generation and procures its entire default service supply through an RFP process. Staff opined that the requirements of the least cost plan statute did not apply to UES except for the filing of a distribution plan that the Company had agreed to file in the near future.

III. COMMISSION ANALYSIS

A. Confidentiality

First, we address UES' motion for confidential treatment. UES requests confidential treatment of most of the information contained in Tab A to Schedule RSF-1, attached to Exhibit RSF-1 of the petition. Included in Tab A is a brief narrative discussion of the bids received; a list of the suppliers who responded to the RFP; a pricing summary consisting of a comparison of all price bids, which is followed by each bidder's final pricing; a summary of each bidder's financial security requirements of UES; a description of the financial security offered by each bidder; UES' ranking of each bidder's financial security; the contact list used by UES during the RFP process; and the amendment to UES' existing contract with PSEG-ER&T redlined for

purposes of comparison to the original PSA as issued. UES states that the bidders provided information to UES with the express understanding that the information would be maintained as confidential.

In addition to requesting confidential treatment for the material contained in Tab A, UES also requests confidential treatment of the “Total G1 Class DS Supplier Charges,” “Working Capital Requirements,” “Supply Related Working Capital” and “Provision for Uncollected Accounts” found in columns (a), (d), (f) and (g) of Page 2 of Schedule LSM-2 because the information, if disclosed, could be used to calculate the wholesale rate. UES is seeking confidential protection for this information until May 1, 2010, when the Federal Energy Regulatory Commission (FERC) makes the information available to the public through electronic quarterly reports. UES also requested confidential treatment of the contents of Exhibit 14 concerning the Company’s REC procurement which included pricing details and sellers’ identities. UES proposes to redact this information from the publicly available material for a limited period because revealing it would allow a person to compute the wholesale rate which is properly treated as confidential. UES asserts that the information for which it seeks protective treatment is “confidential, commercial, or financial information” that is exempt from public disclosure under the Right-to-Know Law, RSA 91-A:5, IV, and that disclosure of this information would impair the bargaining positions of both UES and the responding bidders with respect to future participation in the energy market.

We note that UES has filed similar motions with its default service filings in the past and that we have granted motions for confidential treatment in such cases. *See e.g.*, Order No. 24,716 (December 15, 2006) 91 NH PUC 617, and Order No. 24,766 (June 22, 2007) 92 NH

PUC 227 and Order No. 25,011 (September 4, 2009).

The Right-to-Know Law provides each citizen with the right to inspect public information in the possession of the Commission. RSA 91-A:4,I. We recently had occasion to rule on motions for confidential treatment in the context of confidential, commercial and financial information regarding utilities and their affiliates. *See, Unitil Corporation and Northern Utilities, Inc.*, Order No. 25,014 (September 22, 2009) and *Public Service Co. of New Hampshire*, Order No. 25,037 (October 30, 2009). Following the approach in these cases, we consider the three-step analysis applied by the New Hampshire Supreme Court in *Lambert v. Belknap County Convention*, 157 N.H. 375, 382 (2008) in determining whether the information identified by UES should be deemed confidential and private. First, the analysis requires an evaluation of whether there is a privacy interest at stake that would be invaded by the disclosure. If no such interest is at stake, the Right-to-Know law requires disclosure. *Id.* at 382-83. Second, when a privacy interest is at stake, the public's interest in disclosure is assessed. *Id.* at 383. Disclosure should inform the public of the conduct and activities of its government; if the information does not serve that purpose, disclosure is not warranted. *Id.* Finally, when there is a public interest in disclosure, that interest is balanced against any privacy interests in non-disclosure. *Id.*

In furtherance of the Right-to-Know law, the Commission's rule on requests for confidential treatment, Puc 203.08, is designed to facilitate the balancing test required by the relevant case law. The rule requires petitioners to: (1) provide the material for which confidential treatment is sought or a detailed description of the types of information for which confidentiality is sought; (2) reference specific statutory or common law authority favoring

confidentiality; and (3) provide a detailed statement of the harm that would result from disclosure to be weighted against the benefits of disclosure to the public. Puc 203.08 (b).

We have conducted an *in camera* review of Tab A and the other materials for which UES seeks confidential treatment. We agree that the information concerning the “Total G1 Class DS Supplier Charges,” “Working Capital Requirements,” “Supply Related Working Capital” and “Provision for Uncollected Accounts” found in columns (a), (d), (f) and (g) of Page 2 of Schedule LSM-2, taken in combination, would reveal the wholesale cost of power from the winning bidders and, therefore, constitute confidential, commercial, or financial information contemplated by RSA 91-A:5, IV. We also agree that the REC pricing and seller identities contained in Exhibit 14 includes information not publicly available, and therefore, we find that the information for which UES requests confidential treatment is private information.

Next we assess the public’s interest in the disclosure of the information. The information pertains to the wholesale costs of UES G1 default service supply for the period February 1 through April 30, 2010. These costs are used by the Company to develop the default service retail rates. Public disclosure of these costs would allow for a detailed understanding of the various cost components in the G1 default service rates and would therefore assist the public in understanding the basis for the Commission’s approval of these default service rates. Thus the public has an interest in disclosure. However, as the Company states in its motion, that disclosure of this information would allow competitors to see the wholesale costs of UES’ G1 default service supply, which could negatively impact the ability of UES to secure a competitive price in future solicitations. Similarly, if the information contained in Exhibit 14 were disclosed, the Company would find itself disadvantaged in being able to procure RECs at competitive

prices.

We find that the interest in public disclosure of such financial, commercially sensitive information is outweighed by the benefit derived from maintaining the confidentiality of such information, given that confidentiality helps produce lower rates. *See Union Leader Corp. v. New Hampshire Housing Fin. Auth.*, 142 N.H. 540 (1997) (requiring application of balancing test to RSA 91-A:5, IV determinations, weighing the public interest in disclosure against privacy interest). We therefore grant the motion for confidential treatment.

As stated by UES, pursuant to FERC requirements each wholesale supplier is obligated to report to 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 Revised Public Utility Filing Requirements*, 99 FERC ¶ 61,107 (April 25, 2002) and 18 CFR Parts 2, 35. FERC makes this information available to the public through electronic quarterly reports. Therefore, insofar as protection is requested for wholesale contractual sales, we grant such information protective treatment until such time as the information is published by the FERC. We understand from UES' motion for confidential treatment that the date such information will be disclosed is May 1, 2010.

Consistent with N.H. Code Admin. Rules Puc 203.08(k), the confidential 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.

B. Default Service

Regarding UES' analysis of the bids and its selection of the winning bidder, we find that

UES substantially complied with the procedures approved in Order No. 24,511 for the G1 default service solicitation. We are satisfied that UES met the procedural requirements set forth in prior orders and that the result of the bidding process 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 UES’ evaluation of the bids and selection of PSEG-ER&T was reasonable. The testimony of UES, together with its bid evaluation report, indicates that the bid prices reflect current market conditions.

We also find that because UES procures both RECs and default service supply through competitive bidding processes pursuant to settlement agreements approved by the Commission, the procurements are just and reasonable and in the public interest.

Based upon the foregoing, it is hereby

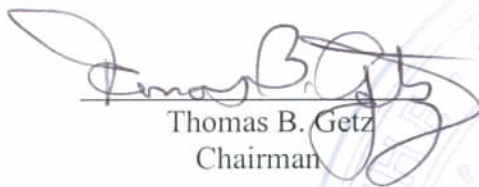
ORDERED, that the power supply agreement entered into by Unitil Energy Systems, Inc. with PSEG Energy Resources and Trade, LLC and the resulting proposed rates are APPROVED; and it is

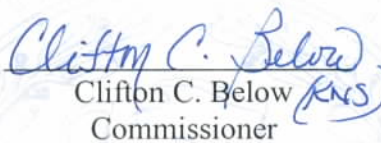
FURTHER ORDERED, that the power supply costs resulting from the solicitation are reasonable and, subject to the ongoing obligation of UES to act prudently, according to law and in conformity with Commission orders, the amounts payable to the sellers for power supply costs under the three-month purchase and sale agreement referenced herein for inclusion in retail rates to G1 customers beginning February 1, 2010 are APPROVED; and it is

FURTHER ORDERED, that the pending motion for confidential treatment of documents is GRANTED subject to the conditions discussed herein; and it is

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

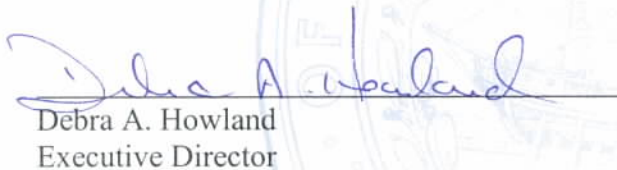
By order of the Public Utilities Commission of New Hampshire this eighteenth day of December, 2009.


Thomas B. Getz
Chairman


Clifton C. Below
Commissioner


Amy L. Ignatius
Commissioner

Attested by:


Debra A. Howland
Executive Director