

DE 01-130

CONCORD ELECTRIC COMPANY AND
EXETER & HAMPTON ELECTRIC COMPANY

Retail Fuel and Purchased Power Adjustments and
Short-Term Power Purchase Rates for Qualifying Facilities

Order Approving Charges and
Granting Motion for Confidential Treatment

O R D E R N O. 23,757

July 31, 2001

APPEARANCES: LeBoeuf, Lamb, Greene & McRae, LLP by Scott J. Mueller, Esq. for Concord Electric Company and Exeter & Hampton Electric Company and Donald M. Kreis, Esq. for the Staff of the New Hampshire Public Utilities Commission.

I. PROCEDURAL HISTORY

On June 15, 2001, Unitil Service Corporation (USC) filed with the New Hampshire Public Utilities Commission (Commission) a set of proposed tariff changes, supporting testimony and exhibits on behalf of USC affiliates Concord Electric Company (CEC) and Exeter & Hampton Electric Company (E&H) (collectively, the Companies) to revise their retail fuel adjustment clause (FAC) charges, purchased power adjustment clause (PPAC) charges and short-term power purchase rates for qualifying facilities. The proposed changes would apply to the six-month period commencing on August 1, 2001.

The petition proposes a net decrease of \$0.01844 per kilowatt-hour in the combined FAC and PPAC rate for CEC and a corresponding net decrease of \$0.01921 for E&H. According to

the petition, the proposal, if approved, would cause the typical 500 kilowatt-hour monthly residential bill of a CEC customer to decrease by \$9.31, or \$14.81 percent, to \$51.09. For E&C, the typical 500 kilowatt-hour monthly residential customer would see a decrease of \$9.66, or 15.90 percent, to \$51.09. The short-term power purchase rates for Qualifying Facilities (QFs) would also decrease with respect to both CEC and E&H.¹

The petition further notes that in Order No. 23,707 (May 17, 2001), the Commission ordered CEC and E&H to include in their next FAC/PPAC filing a report of the results of the institution of their Load Response Program as approved in that Order, along with expense information and verification that only costs attributable to regulated utilities (i.e., CEC and E&H, as opposed to nonregulated affiliates of parent company Unutil Corporation) are included in the charges assessed under the Load Response Tariff. Accordingly, the petition reports that no eligible CEC or E&H customers have enrolled in the Load Response Program and, therefore, no costs are proposed for recovery in connection with the instant filing.

¹ Unutil witness Linda S. McNamara corrected the proposed QF short term power purchase rates during her oral testimony on July 24, 2001. We deem the petition to have been modified accordingly.

DE 01-130

-3-

The Commission issued an Order of Notice on June 26, 2001, outlining a procedural schedule that began with a Pre-Hearing Conference on July 5, 2001. The Pre-Hearing Conference took place as scheduled, after which the Companies and Commission Staff (Staff) held a technical session, and Companies filed certain supplemental testimony on July 9, 2001. Staff and the Companies held an informal meeting on July 23, 2001 to discuss the current wholesale power purchase arrangements entered into by Unitil Power Corporation (UPC) and the Unitil System Agreement by which UPC provides this wholesale power, in turn, to CEC and E&H. A merits hearing took place before the Commission on July 24, 2001.

II. POSITIONS OF THE PARTIES AND STAFF

A. Concord Electric Company and Exeter & Hampton Electric Company

The companies presented the testimony of Linda S. McNamara, project leader for regulatory operations with USC; the joint testimony of Francis X. Wells, Senior Energy Trader with USC, and David K. Foote, vice president of USC and president of UPC; the supplemental testimony of Mr. Foote and the testimony of George R. Gantz, senior vice president of USC.

The purpose of Ms. McNamara's testimony was to explain the impact of the proposed rate changes. She noted that the proposed decreases are due primarily to lower fuel charges paid by CEC and E&H to UPC effective on July 1, 2001.

The fuel charges themselves were the subject of the joint testimony of Messrs. Wells and Foote. They noted that, effective on July 1, the wholesale rates payable by CEC and E&H to UPC decreased by 13.22 percent, reflecting a demand charge of \$17.63 per kilowatt-month, a base energy charge of \$0.00529 per kilowatt-hour and a fuel charge of \$0.03542 per kilowatt-hour.²

According to Messrs. Wells and Foote, the proposed decrease in the demand charge from \$19.51 to \$17.63 is attributable to two major factors: the expiration on October 31, 2001 of a contract with Central Vermont Public Service Company in connection with 25 megawatts of capacity from the Vermont Yankee nuclear power plant, and the receipt of two

² As noted by Messrs. Wells and Foote, the demand charge is based on the sum of the costs for capacity, transmission, administrative and general expenses and unbilled prior demand costs, the latter being costs that were under-recovered or over-recovered during the prior period. The base energy charge is developed in the same manner, but reflects capacity charges that are billed per kilowatt-hour when the unit in question is available for service. The fuel charge is based on the sum of the forecast fuel production cost and unbilled prior fuel costs.

payments totaling \$1.18 million in connection with the buyout of UPC's contract for 10 megawatts of capacity at the Salem Harbor 3 plant in Massachusetts. Messrs. Wells and Foote noted that the base energy charge is increasing from its previous level of \$0.00475, primarily due to an increase in administrative and general costs as well as an increase in the amount of unbilled prior costs. They testified that the fuel charge is decreasing from \$0.04407, due primarily to moderating fuel prices and a major decrease in the amount of unbilled prior costs associated with that charge.

Mr. Foote's supplemental testimony responded to a concern expressed in the Commission's Order of Notice with regard to UPC's contract to purchase power from the gas-fired Ocean State Power (OSP) I and II facilities in Rhode Island and, specifically, UPC's entitlement to certain proceeds received by those facilities for the sale of natural gas entitlements. Mr. Foote explained that it originally entered into a contract with New England Power (NEP), which was entitled to the Ocean States Power output in question. According to Mr. Foote, the contract includes a term running from May 1993 to October 2010 and NEP has assigned its rights in the contract to TransCanada Power.

Mr. Foote further testified that the contract calls

for payment by UPC of a cost-of-service capacity charge and a fuel-based energy charge, the latter consisting of pipeline and gas supply demand charges as well as commodity charges. According to Mr. Foote, the commodity charges are determined on the basis of an index that tracks changes in fossil fuel costs. Mr. Foote further testified that (1) prior to May 1999, the index used was the Average Fossil Fuel Cost (AFFC) index published by the New England Power Pool (NEPOOL), which was discontinued at that point, (2) the parties to the contracts for purchase of OSP power were required to renegotiate a substitute index, (3) this did not happen until December 1999, (4) commodity charges between May and November of 1999 were based on the AFFC index from April 1999, which UPC estimates reduced its charges by approximately \$66,000 from what they ultimately would have been under the substitute index, and (5) the index ultimately agreed upon, the Published Fossil Fuel Index, is based on various published coal, gas and oil indices. Mr. Foote averred that, UPC was not involved in these negotiations because it is not an original OSP participant and had no voting or contractual rights to take part. According to Mr. Foote, UPC's dispute with TransCanada arose because UPC did not receive notice of the new fuel index going into effect. He indicated that UPC also had concerns

about whether the proceeds of any sales by OSP of gas not used for generation were being properly credited to UPC. According to Mr. Foote, these issues have been resolved and UPC has been receiving proper credit.

B. Staff

Staff presented no witnesses and indicated that, based on the Companies' filing and responses during the abbreviated discovery phase of this proceeding, Staff supports the petition. Staff's cross-examination of the Companies' witnesses focused on the reasons for volatility in fuel and purchased power costs, the extent to which the companies are reliant on short-term purchases, the companies' exposure to additional Installed Capability (ICAP) charges given the ongoing controversy about such charges in the New England Power Pool before the Federal Energy Regulatory Commission (FERC), the seven-year termination period specified in the Unitil System Agreement by which CEC and E&H purchase their power from UPC, increases in the Companies' administrative and general costs and the power purchase arrangement with the Ocean States Power facilities.

In response to a record request from Staff, on July 25, 2001 USC filed documentation related to the resolution of

UPC's dispute with TransCanada related to Ocean States Power. On cross examination, the Companies' witnesses indicated that much of the increase in administrative and general costs is related to preparations for a possible settlement of the pending federal litigation between the Companies and the Commission over the restructuring of CEC and E&H. Mr. Gantz indicated that he expected a proposal to be submitted to the Commission in approximately a month.

III. COMMISSION ANALYSIS

We have reviewed the companies' proposal for new fuel adjustment charges, purchased power charges and short term power purchase rates for Qualifying Facilities, find them to be consistent with the public interest and therefore approve them as submitted.

Our chief concern with regard to the CEC and E&H power supplies remains price volatility. As noted in the Order of Notice, Staff investigated whether they are steps the Companies should take or should have taken to mitigate the impact of fuel-price swings on the Companies' retail rates. We commend the Companies for their responsiveness to Staff's request, particularly given the short period permitted for investigation.

As the companies noted, the increased price

volatility is at least to some extent a function of greater exposure to short-term power purchase arrangements, including purchases on the spot market. This lessened reliance on long-term contracts is, in turn, a deliberate response to the impending implementation of restructuring, i.e., the process of permitting the Companies' retail customers to purchase energy from other sources.

Three considerations present themselves in this regard. First, fewer long-term power arrangements could mean lower stranded costs that post-restructuring customers would have to pay in order to permit the Companies to satisfy long-term power purchase obligations that are not economical in a competitive marketplace. Second, implicit in the notion of restructuring has been the possibility that competitive suppliers of retail energy could employ appropriate hedging strategies to reduce price volatility, assuming the risk of such efforts, in ways that might not be appropriate for the distribution company in its role as supplier of last-resort Default Service. Third, recent developments in retail electricity markets elsewhere, and continued uncertainty regarding the long-term behavior of interstate wholesale markets, suggests some caution in expectations that competitive markets will be able, at least in the near term,

to provide stable prices for retail consumers.

Staff's investigation suggests that, at present, the UPC is striking the right balance between preparing for a deregulated market and reducing, to the extent practicable, price volatility experienced by retail customers. As Mr. Gantz noted in his testimony, it was nearly five years ago that UPC first indicated (in its Interim Integrated Resource Plan) that it intended to move its power supply portfolio gradually into the short-term market. Mr. Gantz also acknowledged that, prior to the introduction of retail choice in the CEC and E&H service territories, UPC "retains its traditional obligation to plan for least cost resources." In addition, through a transition period and perhaps beyond, UPC's retail affiliates may, as other utilities have, be charged with procuring power for last-resort customers and other non-choosers. We will expect UPC and its affiliates to remain mindful of its traditional obligation and these potential future obligations during this final period of vertical integration.

With regard to the Ocean States Power contract, we are satisfied that UPC has kept faith with its obligation to see that retail customers are properly credited with any proceeds from the sale of fuel resources. However, we are

concerned about what appears to have been a failure of UPC to receive timely notice that a key issue had arisen under the contract, i.e., the problem with the index used to establish the relevant commodity charges. We expect UPC to remain vigilant in this regard and, in situations such as this one (i.e., where UPC has contracted to repurchase energy from an entity that is a direct participant in the unit in question) we expect UPC to assert its right under its power contract to cause the seller to act appropriately.

The hearing in this docket sounded a familiar theme: Regional electricity markets are in a state of flux as the FERC considers a paradigm shift in the form of a consolidation of the independent system operators in the northeast into one large Regional Transmission Organization. The record here shows that it has become necessary for UPC and its affiliates to intervene in no fewer than 58 proceedings before the FERC in order to assert, on its own behalf as well as on behalf of ratepayers, its right to wholesale energy at just and reasonable rates. We commend the Unitil companies for their vigilance in this regard.

At hearing, Staff expressed its appreciation for the Companies' level of responsiveness and cooperation with regard

to the investigation conducted in this docket, which took place in a very short period. We too thank the Companies for their assistance.

IV. MOTION FOR CONFIDENTIAL TREATMENT

The only other outstanding matter in this docket is the motion for confidential treatment submitted by UPC on July 25, 2001 in connection with the documents it submitted on that date detailing its resolution with TransCanada of the commodity pricing issues that arose under the Ocean States Power contract.

The New Hampshire Right-to-Know Law provides each citizen with the right to inspect all public records in the possession of the Commission. See RSA 91-A:4, I. The statute contains an exception, invoked here, for "confidential, commercial or financial information." RSA 91-A:5, IV. In *Union Leader Corp. v. New Hampshire Housing Finance Authority*, 142 N.H. 540 (1997), the New Hampshire Supreme Court provided a framework for analyzing requests to employ this exception to shield from public disclosure documents that would otherwise be deemed public records. There must be a determination of whether the information is confidential, commercial or financial information "and whether disclosure would constitute an invasion of privacy." *Id.* at 552 (emphasis in original, citations omitted). "An expansive construction of these terms must be avoided," lest the exemption "swallow the rule." *Id.* at 552-53 (citations omitted). "Furthermore, the asserted private confidential, commercial, or financial interest must be balanced against the public's interest in disclosure, . . . since these categorical exemptions mean not that the information is *per se* exempt, but rather that it is sufficiently private that it must be balanced against the public's interest in disclosure." *Id.* at 553 (citations omitted).

Our applicable rule is designed to facilitate the employment of this balancing test. We require a motion for confidentiality to contain (1) the specific documents or portions thereof for which confidential treatment is sought, (2) reference to statutory or common law authority favoring confidentiality, (3) "[f]acts describing the benefits of non-disclosure to the public, including evidence of harm that would result from disclosure to be weighed against the benefits of disclosure to the public," and certain evidence. Puc 204.06(b). The evidence must go to the issue of whether the information "would likely create a competitive disadvantage for the petitioner." *Id.* at (c).

In this instance, UPC takes the position that the documents at issue concerns confidential, commercially sensitive information concerning TransCanada's long-term gas supply arrangements, as well as pricing and cost information related to the operation of TransCanada's generating units in the competitive wholesale power markets. According to UPC, public disclosure of these documents would place TransCanada at a disadvantage relative to its competitors.

We conclude that the public's interest in disclosure of these documents is not outweighed by UPC's interest in maintaining its confidentiality on behalf of TransCanada.

Staff requested this data simply to confirm UPC's testimony with regard to its recent negotiations with TransCanada. Thus, the data is essentially corroborative of information that is already in the public domain and, accordingly, its non-disclosure would not significantly hamper public efforts to scrutinize the manner in which the Commission regulates the Unitil companies.

Based upon the foregoing, it is hereby

ORDERED, that the tariff NHPUC No. 12, seventeenth revised page 22, eighteenth revised page 24 and eighteenth revised page 47 as filed on June 15, 2001 for Concord Electric Company are approved except that the Qualifying Facility Short-Term Capacity Rate shall be \$21.84 per kilowatt-year effective August 1, 2001; and it is

FURTHER ORDERED, that the tariff NHPUC No. 17, seventeenth revised page 22, eighteenth revised page 24 and eighteenth revised page 48 as filed on June 15, 2001 for Exeter & Hampton Electric Company are approved except that the Qualifying Facility Short-Term Capacity Rate shall be \$21.84 per kilowatt-year; and it is

FURTHER ORDERED, that the motion of Unitil Power Corporation for confidential treatment of certain documents submitted to the Commission on July 25, 2001 is GRANTED.

DE 01-130

-17-

By order of the Public Utilities Commission of New
Hampshire this thirty-first day of July, 2001.

Douglas L. Patch
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Thomas B. Getz
Executive Director and Secretary