

DE 01-247

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

Notice of Intent to File Rate Schedules

Order Following Prehearing Conference

O R D E R N O. 23,935

March 15, 2002

APPEARANCES: Scott J. Mueller, Esq. of LeBoeuf, Lamb Greene and MacRae, L.L.P. for Concord Electric Co. and Exeter & Hampton Electric Co.; Wynn Arnold, Esq. of the New Hampshire Attorney General's Office and Meredith Hatfield, Esq. for the Governor's Office of Energy and Community Services; Anne Ross, Esq. 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

On December 17, 2001, Concord Electric Company and Exeter & Hampton Electric Company (the Companies) submitted written notice to the New Hampshire Public Utilities Commission (Commission) of their intent to file new consolidated rate schedules in conjunction with submission of a restructuring proposal in order to comply with the requirements of RSA 374-F et seq. and provide retail choice to their customers. The Companies' submission included a Motion for Protective Order regarding all market sensitive or proprietary business information, including draft documents, pertaining to the potential divestiture of Unitil Power

Corporation's (UPC's) power supply portfolio (collectively the Companies and UPC are sometimes referred to as Unitil).

On January 25, 2002, Unitil filed a Petition for Approval of an Offer of Settlement for Restructuring the Unitil Companies together with supporting testimony and associated documents.

As part of the filing, Unitil submitted a Petition for Expedited Approval of Divestiture Process and Transition Service Process. Unitil also submitted a second Motion for Protective Order regarding a confidential addendum to the direct testimony of David K. Foote. According to Unitil, the addendum contains market sensitive and proprietary business information pertaining to the potential divestiture of UPC's power supply portfolio and acquisition of transition service.

An Order of Notice dated February 12, 2002 was issued, requiring, among other things, Unitil to publish a copy of the Order of Notice in a statewide newspaper.

By letter dated February 14, 2002, the Office of Consumer Advocate (OCA) notified the Commission it will be participating in the docket on behalf of residential ratepayers consistent with RSA 363:28.

The Governor's Office of Energy and Community Services (GOECS) filed a Motion to Intervene on February 21,

2002.

Alan Linder, Staff Attorney for New Hampshire Legal Assistance, asked to be added to the service list by letter dated February 20, 2002.

Representative Jeb E. Bradley filed a letter requesting full intervention status on February 22, 2002.

On February 26, 2002, the Business and Industry Association of New Hampshire (BIA) filed a Petition for Intervention.

As provided in the Order of Notice, a Prehearing Conference was held on March 4, 2002, commencing at 10 a.m. at the offices of the Commission. Unitil confirmed that newspaper publication was made in accordance with the Order of Notice and submitted a fax copy of the original affidavit of publication which will be filed with the Commission.

There being no objection, the intervention requests of GOECS, Representative Bradley and BIA were granted and Alan Linder, Esq. has been added to the service list as requested.

II. PRELIMINARY POSITIONS OF THE PARTIES AND STAFF

A. Unitil

Unitil reviewed the elements of the restructuring proposal. Unitil said the proceeding would focus first on the divestiture of UPC's power supply portfolio and the

solicitation of transition and default service, with the executed contracts to be submitted before the final Commission order is issued.

Unitil explained that its proposed settlement will allow customers to know what their rates will be up front. In contrast, when Unitil last proposed a restructuring settlement, it proposed divestiture of the power supply portfolio with transition service to be obtained at a later date, which created some uncertainty about the resulting rates. Unitil said upon implementation of the settlement it expects customers will be paying the same or slightly less than when its restructuring filing was made, and slightly more than what they are paying today as a result of new fuel and purchased power adjustment charges. Unitil said its proposal provides for stable but escalating transition service prices over time.

B. BIA

The BIA said it intends to monitor the docket. It has no formal position on the filing at this time but will have one once the proceeding is underway.

C. GOECS

GOECS said the Unitil offer is a constructive one. It further said that the divestiture process requires a great

deal of scrutiny and Unitil's expedited schedule has to be weighed against that. Although the filing does not address low income energy assistance or demand side management matters, GOECS concurs with Unitil in addressing these matters in separate dockets.

D. OCA

OCA said it generally favors Unitil's restructuring proposal. OCA will look carefully at rate impacts, including such matters as FAS 109 costs, depreciation expense and pension costs.

E. Staff

Staff noted that Unitil's proposal is important, and agreed with a Unitil witness that it is intensely complex. Staff said it is looking for a realistic procedural schedule that is deliberately speedy, allowing sufficient time for review and assessment of the proposed transactions. Staff will be actively involved in discovery.

III. PROCEDURAL SCHEDULE

At their technical session following the prehearing conference, the parties and Staff agreed to recommend a procedural schedule. At a subsequent technical session, the parties revisited the schedule, and proposed the following revised procedural schedule:

March 12, 2002 - Technical session/settlement discussions regarding divestiture of power supply portfolio and acquisition of transition/default service ("phase 1").

April 19, 2002 - Rolling data requests by Staff and intervenors due regarding phase 1. Otherwise, rolling data requests any time up to date of last hearing, to be answered within ten business days or less. Data requests and responses to be sent by email with follow-up paper copies.

April 26, 2002 - Deadline for responses by companies to phase 1 data requests.

May 1, 2002 - Technical session/settlement discussions regarding phase 1.

May 10, 2002 - Staff and intervenor testimony regarding phase 1 issues.

May 14, 2002 - Technical session/settlement discussions regarding phase 1.

May 22, 23, 24, 2002 - Dates set aside for Commission hearings regarding process for divestiture of portfolio and acquisition of transition/default service.

May 31, 2002 - Post-hearing written comments by parties.

June 3, 7, 14, 2002 - Technical session/settlement discussions regarding remainder of issues involved in restructuring and rate-setting ("phase 2").

June 28, 2002 - Staff and intervenor testimony regarding phase 2 issues.

July 2, 2002 - Anticipated Commission Order regarding process for divestiture of portfolio and acquisition of transition/default service. Order understood to be interlocutory in nature.

July 9, 2002 - If approved by Commission, power supply and transition/default service solicitation

commences.

July 12, 2002 - Rebuttal testimony regarding phase 2 issues, if necessary.

July 22-26, 2002 - Dates set aside for Commission hearings regarding remainder of issues involved in restructuring and rate-setting.

August 9, 2002 - Written briefs by parties regarding all phase 2 issues, other than those specifically related to the final bids, are due.

September 17, 2002 - Power supply and transition/default service indicative bids due, with explanations and/or testimony describing adjustments to the proposal, if any, filed with the Commission. Also, reply briefs, if any, regarding phase 2 issues are due.

October 1, 2002 - Final bids due.

October 15, 2002 - Executed power supply portfolio and transition/default service contracts filed with the Commission.

October 21, 2002 - Written comments by parties regarding final bids and contract award(s).

October 23, 2002 - Commission hearing date set aside for review of bids.

November 1, 2002 - Anticipated final Commission Order.

February 1, 2003 - Date for implementation of restructuring, including commencement of power supply portfolio and transition/default service contracts.

Finally, it is understood the parties may agree upon additional technical sessions in the interest of settlement should such sessions appear to be useful.

We note that the schedule provides for a two-phase proceeding. The first phase would address the question of the proposed divestiture of Unitil's supply portfolio, and the acquisition of transition and default service. The Companies propose that a decision be made on this aspect of its restructuring proposal in time for UNITIL to put its portfolio of contracts out for bids, and solicit bids on transition and initial default service, so as to complete the transfer of supply responsibility promptly.

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. Implicit in the Companies' approach (divestiture and relatively short-term transition and default contracts) are answers of the Companies to the above questions, but no explicit opinions are presented in the filing. To provide the Companies a full opportunity to express their view on the long-term default and transition service questions, and to provide the Commission with the benefit of the Companies' considered views, we direct the Companies to file additional testimony addressing the above default/transition service issues, by April 12, 2002. This will provide the Staff and intervenors sufficient time to propound additional data requests, if necessary, before the deadline proposed by the parties for filing data requests of the Companies.

With this further evidence from the Companies, the proposed revised schedule should allow the Commission and the parties to explore the various issues raised by the Companies' filing in a phased manner, preserving the option of granting the authority for divestiture as requested in the time requested. We note that dates after the completion of phase 1

issues may require adjustment if circumstances change as the case proceeds.

IV. UNITIL'S MOTIONS FOR PROTECTIVE ORDER

The Motion for Protective Order filed on January 25, 2002 requests confidential treatment for (i) the same information requested in the Motion for Protective Order filed on December 17, 2002, namely certain power supply, pricing and cost information regarding the power supply contracts included in the portfolio to be sold, and (ii) certain other information contained in Mr. Foote's testimony, including the Companies' estimates of market prices. Unitil intends to make such information available to parties who enter into appropriate confidentiality agreements consistent with the requested protective order.

Unitil asserts that the need for confidentiality regarding the portfolio divestiture information is due to contract data and details that could be used to determine UPC's need to purchase energy and capacity during the remainder of this year. Unitil states that if suppliers were not bound by confidentiality they could use this information to inflate any pricing offers to UPC during that interim term to the detriment of its retail customers. Further, according to Unitil, its estimates of market prices and similar

information could be used by transition service or portfolio bidders to determine how Unitil assesses the market, potentially limiting the range of bids to the detriment of Unitil's customers.

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 exemption, invoked here, for "confidential, commercial or financial information." RSA 91-A:5,IV. Our applicable rule, Puc 204.06, is designed to facilitate the implementation of the statute as it as been interpreted by the courts. In most cases, a balancing test is used to determine whether confidential treatment should be granted. See e.g., *Union Leader Corporation v. New Hampshire Housing Finance Authority*, 142 N.H. 540 (1997).

No parties have objected to the Motions for Protective Order. In balancing the interests for and against public disclosure of the information for which confidential treatment is sought, we are persuaded that the interest of Unitil and ultimately Unitil's ratepayers in non-disclosure outweighs the public's interest in obtaining access to the information. We will therefore grant the Motions for Protective Order at this time. Consistent with our practice,

the protective treatment provisions of this Order are 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 in light of RSA 91-A, should circumstances so warrant.

Based upon the foregoing, it is hereby

ORDERED, the procedural schedule set forth above is approved except that the Companies shall file additional phase 1 testimony as outlined above by April 12, 2002; and it is

FURTHER ORDERED, that Unitil's Motions for Protective Order are 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 in light of RSA 91-A, should circumstances so warrant.

By order of the Public Utilities Commission of New Hampshire this fifteenth day of March, 2002.

Thomas B. Getz
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary