

DE 05-064

UNITIL ENERGY SYSTEMS, INC.

**Petition for Approval of a Default Service Supply Proposal
for Non-G1 Customers and Approval of Solicitation Process**

Order Approving Petition

ORDER NO. 24,541

November 2, 2005

APPEARANCES: Gary M. Epler, Esq. on behalf of Unitil Energy Systems, Inc.; Rorie Hollenberg, Esq. on behalf of the Office of Consumer Advocate; and Amy Ignatius, Esq. on behalf of the Staff of the New Hampshire Public Utilities Commission.

I. BACKGROUND

On October 21, 2005, Unitil Energy Systems, Inc. (Unitil) filed with the New Hampshire Public Utilities Commission (Commission) a Petition requesting approval of Unitil's solicitation and procurement of Default Service (DS) supply for its Non-G1 customers for the period beginning May 1, 2006. In support of its Petition, Unitil filed testimony of Robert S. Furino, the Request for Proposal (RFP) as Schedule RSF-2, and a redacted Bid Evaluation Report (Schedule RSF-1).

Unitil filed the Petition pursuant to the terms of the Settlement Agreement approved by Order No. 24,511 (May 9, 2005) which accepted Unitil's proposal to implement a laddered portfolio approach to secure supply for Non-G1 DS. Under the approved plan, Unitil will solicit 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. Following the solicitation, Unitil entered into two power supply agreements, one for a period of six months and the other for a period of eighteen months, that together provide for 50 percent of Non-G1 DS supply requirements. These agreements provide for a phase-in of Unitil's portfolio approach.

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. In its Petition, Unitil avers that it followed the solicitation process approved by the Commission and that its analysis of the bids and choice of supplier(s) 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 N.H. Admin. Rules, Puc 204.06. 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: Consolidated Edison Energy (ConEd) (six-month agreement) and BP Energy Company (BP) (18-month agreement).

The material in Tab A presents a detailed and unredacted Bid Evaluation Report (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 September 20, 2005; a pricing summary consisting of a comparison of all price bids, 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, and 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; information provided by each bidder in the proposal submission form; the contact list used by Unitil during the RFP process, including a summary of 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 notes that the nature of the information for which it requests confidential treatment is expressly excluded from public disclosure under RSA 91-A:5, IV as it pertains to “confidential, commercial or financial information” and would therefore be subject to confidential treatment pursuant to Puc 204.06.

Unitil states that all information pertaining to the wholesale rates, supplier charges and provisions for uncollected accounts contained in the PSA is confidential. According to Unitil, 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 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 only until this information becomes publicly available at FERC. Until such time as this pricing information is required by FERC to be made public in this manner, Unitil avers that it is the expectation and intent of the winning supplier to keep this information confidential so as to avoid disclosing price information which may be leveraged against it in the other contemporaneous negotiations.

On October 25, 2005, the Commission issued a Secretarial Letter scheduling a hearing for October 27, 2005. The hearing was held as scheduled.

II. POSITIONS OF THE PARTIES AND STAFF

A. Unitil

Unitil avers that, consistent with Order No. 24,511, 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) and 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.

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 testified that this information was made available to potential suppliers through its corporate website.

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.

Given the uncertainty in the capacity market and in compliance with the Settlement Agreement, Unitil required bidders to submit both energy-and-capacity and energy only fixed price bids. This allowed Unitil to evaluate the implied cost of Locational Installed Capacity (LICAP) reflected in the bids for the period beginning October 2006 by calculating the difference between the bids that included capacity under fixed prices and bids that excluded the cost of capacity under fixed prices. In its evaluation process, Unitil compared the pricing strips by calculating weighted average prices for the six-month and eighteen-month periods during which service was sought, 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 six-month contract for 25 percent of its Non-G1 customers' DS load to a single bidder, ConEd and a single eighteen-month contract for 25 percent of its Non-G1 customers' DS load to a single bidder, BP. Based on its evaluation, Unitil determined that the ConEd and BP bids would offer the best overall value for the respective contract periods.

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 for power supply costs under the six-month and the eighteen-month supply agreements are approved for inclusion in retail rates for the Non-G1 customers beginning May 1, 2006.¹

At the hearing, Unitil testified that if the Commission did not approve the Petition, Unitil could conduct another solicitation. Unitil explained, however, that it expected prices resulting from another solicitation would be no lower than what those received in this solicitation, and could possibly be higher. Unitil further opined that, in the event the Commission did not approve the Petition, Unitil would lose credibility in the market, thus compromising its ability to solicit future bids and negotiate supply contracts.

Unitil pointed out that the wholesale costs resulting from the current solicitation constitutes 50 percent of the DS power supply. Unitil explained that, consistent with Order No. 24,522, it would seek the remaining 50 percent of requirements in a solicitation in February 2006. The actual DS retail rate would be based upon the simple average of the wholesale pricing for each block. Unitil indicated that the wholesale power cost increase represented by the current solicitation represents only two of the four blocks of requirements, and does not necessarily represent the actual DS rate which Unitil expects to file in March 2006.

Unitil attested that it did not earn profit through the power supply contract, and that the price of the power was simply passed through to retail customers. Unitil concluded that, in its opinion, there were no practical alternatives to the proposal contained in the Petition and requested the Commission approve the Petition as filed.

¹ Unitil indicated that once it has procured all four blocks of supply, it will present the resulting rates to the Commission for approval. In Order No. 24,511, Unitil stated that retail pricing of DS will be based upon a simple average of the wholesale pricing for each of the four blocks and would be reset every six months as the composition of the contracts for the four blocks change. See Order No. 24,511 (September 9, 2005) slip op at 5.

B. Office of Consumer Advocate

At the hearing, the Office of Consumer Advocate (OCA) reiterated its support for Unitil's laddered approach to obtaining a DS Supply for Non-G1 customers. OCA testified that, while the rate components resulting from the solicitation are high, 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 ConEd and BP.

C. Commission Staff

At the hearing, George R. McCluskey testified on behalf of the Commission Staff (Staff) that, based on Unitil's testimony and schedules, it appeared that Unitil 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 (TS) rates, TS rates were set several years ago when energy market conditions and expectations differed markedly. He noted the extreme volatility in the energy market at present, due to a number of issues, including the impacts of Hurricanes Katrina and Rita on natural gas production and refinery facilities along the Gulf Coast.

Mr. McCluskey cautioned the Commission not to judge the potential rates resulting from the current solicitation in terms of the percentage increase over TS rates now in effect for Unitil's Non-G1 customers. Such a comparison would be inappropriate, in Staff's view, because 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.

Mr. McCluskey explained that, in deciding whether to support Unitil's petition, Staff evaluated possible alternatives. For example, Unitil could abandon its portfolio approach and re-bid the entire Non-G1 load at a single point in time for a contract of short duration (*i.e.*, six months), as Granite State Electric Company recently proposed. (*See* Docket No. DE 05-126). Staff suggested that such an approach might allow Unitil to re-bid at a time when prices were lower, but pointed out there was no guarantee that the resulting prices would be lower. In addition, Staff noted that such an approach would also eliminate the purported benefit of the portfolio: protecting residential customers against price volatility, (*See* Order No 24,511, slip op. at 13) thus exposing customers to greater price swings that might result from going to the market during a time of instability. He also considered that Unitil could re-bid these contracts in February 2006 when it solicits supply to cover the remaining 50 percent of its Non-G1 load. He further cautioned that if Unitil were to pursue this alternative, Unitil's entire load would be exposed to the market at a single point in time, which would be extremely unfavorable if market prices remain at current levels or increase. Staff concluded that approving the results of the current solicitation was the least risky option and recommended that the Commission approve the Petition as filed.

Mr. McCluskey agreed with Unitil's statement that the price of power was simply passed through to retail customers and that Unitil would not earn profits through the proposed retail pricing. He also testified that Unitil's proposal to accept the energy and capacity fixed-price bids submitted by the winning bidders was sound and should be approved. In Staff's view, the fixed capacity prices were reasonable and provided customers with a good hedge against the uncertainty in the LICAP market.

III. COMMISSION ANALYSIS

A. Confidentiality

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 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, 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 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 PSA would reveal the specific terms and conditions Unitil and the winning bidders (ConEd and BP) 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 the disclosure of the fully negotiated PSA will reveal Unitil's negotiating posture to other potential power suppliers claims that its customers would be harmed by Unitil's diminished negotiating position.

With respect to Unitil's requests for confidential treatment of the "Provision for Uncollected Accounts," "Wholesale Rate" and "Supplier Charges" information, Unitil stated that 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 disclosure in this docket would provide unnecessarily detailed monthly information which ConEd, BP 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 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 the Commission's administrative rule on confidential treatment of public records, Puc 204.06.

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 (accorded protective treatment over power supply contract for 2005 default service rates); *Granite State Electric Company*, Order No. 24,318 (April 30, 2004) at 8 (accorded 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, subject to the limitation noted above. 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 time line 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 consistent with prior orders of this Commission 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 ConEd and of BP 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. This is because the current rates, which were competitive at the time they were first implemented, reflected expectations, formed several years ago, for market conditions that have changed. The testimony of Unitil, OCA and Staff, together with Unitil's Bid Evaluation Report, indicates that the bid prices are reflective of 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).

While these two contracts will contribute to substantial rate increases, because of Unitil's portfolio approach to DS, they reflect only 50 percent of the retail rate that will go into effect on May 1, 2006. It should be noted, as well, that approval of these contracts is the first step in a well-constructed portfolio approach to acquiring default service energy supplies that will moderate customer risk over time as the components of the portfolio are periodically replaced. Additionally, should the resulting rate that becomes effective May 1, 2006, cause a change in customer load over the term of this supply arrangement, Unitil's DS customers and its shareholders will not be harmed, given that the suppliers will be at risk for load changes.

In their testimony, Unitil and Staff described alternatives they considered to ameliorate the impact on retail prices resulting from current market conditions. However, no alternative proved superior and each carried the risk of producing even higher retail electric rates. Consequently, as in Order No. 24,526 and Order No. 24,539 previously noted, we are again left with the decision to approve this Petition notwithstanding the level of the potential rate increases, or to deny the Petition at the risk that Unitil's Non-G1 DS customers would pay even higher rates for energy supply. In light of the circumstances, we grant the Petition.

Based upon the foregoing, it is hereby

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

FURTHER ORDERED, that the Power Supply Agreement with BP Energy Company 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 six-month and the eighteen-month supply agreements referenced herein for inclusion in retail rates beginning May 1, 2006 are APPROVED; and it is

FURTHER ORDERED, that Unitil's Motion for Confidentiality and Protective Order is GRANTED.

By order of the Public Utilities Commission of New Hampshire this second day of November, 2005.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Michael D. Harrington
Commissioner

Attested by:

Debra A. Howland
Executive Director and Secretary