

**DE 05-064**

**UNITIL ENERGY SYSTEMS, INC.**

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

**Order Approving Petition**

**ORDER NO. 24,639**

**June 22, 2006**

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

**I. BACKGROUND**

On June 16, 2006, Unitil Energy Systems, Inc. (UES) filed with the New Hampshire Public Utilities Commission (Commission) a Petition requesting approval of its solicitation and procurement of Default Service (DS) for its G1 customers for the three-month period beginning August 1, 2006, through October 31, 2006, and of the resulting DS retail rates. In support of the Petition, UES filed testimony of Robert S. Furino and Karen M. Asbury, a redacted Bid Evaluation Report (Schedule RSF-1), a copy of the Request for Proposal (RFP) for DS (Schedule RSF-2) and the proposed tariff (Schedule KMA-1). In addition, UES filed the testimony of Robyn A. Tafoya to inform the Commission about the development of the Purchased Power Lead/Lag Study which is integral to the calculation of the supply-related cash working capital costs to be included in DS rates. Preparation of the Lead/Lag study was a feature of the Settlement Agreement approved by the Commission in this docket. Order No. 24,511 (May 9, 2005). UES did not request approval of the Lead/Lag Study in connection with its Petition.

UES asserts that it filed the Petition pursuant to the terms of the Settlement Agreement, which provides that UES solicit DS supply for its G1 customers in three-month blocks, with fixed monthly prices that vary from month to month. UES issued the RFP on May 16, 2006, and received indicative bids on June 6, 2006. Final bids were received on June 13, 2006, and UES entered into a three-month power supply agreement (PSA) with Consolidated Edison Energy, Inc. (CEE) on June 14, 2006 commencing August 1, 2006. UES avers that it followed the solicitation and bid evaluation process set forth in the Settlement Agreement and approved by the Commission, and that its analysis of the bids and choice of suppliers is reasonable.

With its Petition, UES 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 UES seeks confidential treatment is contained in Tab A to Schedule RSF-1, attached to Exhibit RSF-1 of the Petition.

In addition to requesting protective treatment for the material contained in Tab A, UES 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 on that same page. UES 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. UES attests that FERC makes this information available to the

public through Electronic Quarterly Reports. UES 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. UES avers that until this pricing information is required by FERC to be made public, CEE will keep the information confidential so as to avoid disclosing price information which may be leveraged against it in other negotiations. UES also requests protective treatment of the indicative bid information provided to Commission Staff on June 9, 2006.

UES states that the material in Tab A presents a detailed and unredacted Bid Evaluation Report prepared 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 bids received; identification of the suppliers who responded to the RFP issued by Unitil on May 16, 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 UES, the financial security offered by each bidder, and UES' ranking of each bidder's financial security; the contact list used by UES during the RFP process; and the final PSA redlined against the original PSA as issued. Unitil avers that the bidders provided information to Unitil with the express understanding that the information would be maintained as confidential.

UES 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 UES' and the responding bidders' bargaining position with respect to future participation in the energy market.

On June 19, 2006, the Commission ordered a hearing for June 21, 2006, which was held as scheduled. At hearing, the Commission ordered record requests of UES with which UES complied on that same day.

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

### **A. UES**

UES 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. UES declared that it effected 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 who had expressed previous interest in receiving notices of solicitations. In addition, UES issued a media advisory to the power markets trade press announcing the RFP.

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 of 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.

UES testified that the RFP required bidders to submit bids for all requirements service at fixed energy-and-capacity prices. UES stated that it did not also require bidders to submit energy-only fixed price bids. According to UES, there is little uncertainty regarding the structure of the capacity market during the supply period, which runs from August 1, 2006, through October 31, 2006.

Unitil affirmed that it evaluated the indicative bids using both quantitative and qualitative criteria, including price, bidder creditworthiness, bidder willingness to extend adequate credit to UES, bidder ability to meet the terms of the RFP in a reliable manner, and bidder's willingness to enter into contractual terms acceptable to UES. UES averred that it negotiated with all potential suppliers who submitted proposals in order to obtain the most favorable terms.

UES stated that DS will be available to G1 customers at a rate that changes from month to month reflecting the monthly wholesale prices paid to CEE. Inclusive of administrative costs, the resulting retail rates are: \$0.09414 per kWh in August 2006, \$0.07711 per kWh in September, 2006, and \$0.08151 per kWh in October 2006. Unitil testified that the current G1 DS based on a simple three-month average is \$0.08494 per kWh. Unitil avers that the proposed rate, based on a simple three-month average, is \$0.08425, which represents a decrease of \$0.00069 per kWh, on average, from the currently effective rate. UES stated that the resulting rates reflect current market prices. UES also testified that G1 customers who do not choose a competitive supplier will see a decrease of about 0.6% on a total bill basis.

In summary, UES petitioned the Commission to find that: it has followed the solicitation process approved in Order No. 24,511; its analysis of the bids submitted was reasonable; and it has supplied a reasonable rationale for its choice of supplier. UES also asked the Commission to conclude that, based on these 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.

### **B. Commission Staff**

At hearing, Staff noted that the Settlement Agreement approved by the Commission in Order No. 24,511 required UES to seek both energy-and-capacity and energy-only fixed price bids until the FERC has issued final, non-appealable (locational or regional) capacity market rules. The energy-only fixed price bid would have the market cost of capacity passed directly to customers. Despite the fact that the FERC has yet to issue final capacity market rules, the RFP issued by UES requested only bundled energy-and-capacity fixed price bids.

Had UES complied with the terms of the Settlement Agreement, Staff contended that the Commission would have been better able to evaluate the pros and cons of approving a pass through bid at a time when the capacity deficiency auction at ISO New England is experiencing significant price volatility. Staff noted that while the capacity market structure may have stabilized, the price of capacity has not. Based on information submitted by UES in response to discovery, Staff notes that while capacity prices in the deficiency market for June 2006 rose sharply and unexpectedly to \$2,500 per MW-month, the capacity price for July, 2006 in the supply auction cleared significantly lower at \$1,200 per MW-month. Staff asserted that it was reasonable to expect capacity prices to fall further during the August through October period.

For this reason, Staff believes that UES should have required bidders to submit both energy-and-capacity and energy-only fixed price bids.

Staff noted that other than failing to seek energy-only fixed price bid prices, UES had complied with the bid solicitation and evaluation process, and that the resulting rates appear to be reflective of competitive market prices. Staff concluded by expressing its support for the Petition.

### **III. COMMISSION ANALYSIS**

#### **A. Confidentiality**

First, we address UES' Motion for Confidentiality and Protective Order. The materials in Tab A, which UES seeks to protect, include details regarding the bidders; the all inclusive prices received from the bidders, the evaluation loads used by UES, ranking of each bidder in terms of financial security, and the redlined version of the negotiated PSA.

UES 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. UES 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 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 UES' 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. UES 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 UES 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 UES stated that the information would not have been provided by the bidders absent its 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 (accordng 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 benefit derived from maintaining the confidentiality of such information insofar as it can redound to customers through lower rates. *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. 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**

At the outset, we note that we are in agreement with Staff regarding the merits of the requirement in the Settlement Agreement that UES seek both energy-only and energy-and-capacity bids, and we will direct UES to comply with this provision in the conduct of future solicitations. Pertinent market information would have been available had both types of products been solicited and would have contributed to a more meaningful assessment of the potential benefits and costs of passing through capacity market costs during the upcoming August-October period.

Regarding UES' analysis of the bids and its selection of the winning bidder, we find that it substantially complied with the procedures approved in Order No. 24,511 for the G1 DS solicitation. We are satisfied that UES 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 DS "be procured through the competitive market."

We also find that UES' evaluation of the bids and its selection of CEE as supplier was reasonable. 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 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 PSA referenced herein for inclusion in retail rates beginning August 1, 2006 are APPROVED; and it is

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

**FURTHER ORDERED**, that Unitil 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-second day of June, 2006.

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Thomas B. Getz  
Chairman

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Graham J. Morrison  
Commissioner

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Clifton C. Below  
Commissioner

Attested by:

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ChristiAne G. Mason  
Assistant Executive Director & Secretary