

DE 06-123

UNITIL ENERGY SYSTEMS, INC.

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

**Order Approving Selection of Default Service Providers and
Recovery of Related Power Supply Costs**

ORDER NO. 24,676

September 29, 2006

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

I. BACKGROUND

On September 5, 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 G-1 and non-G1 customers for the period beginning November 1, 2006. In support of the Petition, UES filed the testimony and related exhibits of Francis X. Wells and Karen M. Asbury. In addition, UES filed the testimony of Robyn A. Tafoya supporting UES' Purchased Power Lead/Lag Study, which is used to calculate the supply-related cash working capital costs to be included in DS rates.¹

UES asserts that it filed the Petition pursuant to the terms of the Settlement Agreement approved by the Commission in Order No. 24,511 (September 9, 2005) in Docket No. DE 05-064. The Settlement Agreement provides that UES shall solicit power supplies on a quarterly basis for 100% of the DS requirements for G1 customers at fixed monthly prices that vary from month to month. The Settlement Agreement further provides that UES solicit non-G1 supply in

¹ Preparation of a Lead/Lag study was a requirement of the Settlement Agreement approved by the Commission in Order No. 24,511 (September 9, 2005) in Docket No. 05-064. See slip op. at 10 and Settlement Agreement at 6.

four blocks on a laddered portfolio basis, each block consisting of 25% of the power supply requirements for non-G1 customers, with retail prices based upon a simple average of the wholesale prices for each of the four blocks. Retail prices would be reset every six months as the composition of the portfolio changes.²

The current non-G1 portfolio includes one 18-month supply block (approved in Order No. 24,541), one 12-month supply block (approved in Order No. 24,607) and one three-year supply block (approved in Order No. 24,607). In the instant Petition, UES seeks approval of a second 12-month non-G1 supply block for the period beginning November 1, 2006. In addition, UES seeks approval of a full requirements contract to provide 100% of the DS supply for its G1 customers for the three-month period November 1, 2006, through January 31, 2007. UES also requests that the Commission permit UES to recover the costs of the non-G1 portfolio via a single fixed rate that is based upon a twelve-month cost projection instead of the six-month calculation as provided in the Settlement Agreement.

UES issued a Request for Proposals (RFP) for DS for both G1 and non-G1 DS power supply on August 3, 2006. UES states that it initially proposed to collect final bids on September 12, 2006. However, on August 2, 2006, Connecticut Light and Power (CL&P) issued a major power supply RFP seeking up to approximately 4,000 megawatts of power supply to meet its standard service requirements with a final bid date of September 12, 2006, the same day UES had proposed to receive final bids. UES was concerned that such a large procurement would limit suppliers' ability to participate in UES's RFP, and therefore notified the Commission of

² Non-G1 customers can also elect to receive prices that vary by month.

this problem. The Commission issued a Secretarial Letter, dated September 7, 2006, approving UES' proposal to delay the receipt of final bids until September 19, 2006.

UES received indicative bids on September 6, 2006, and final bids on September 19, 2006. UES selected the lowest bids that included fixed energy-and-capacity costs for both G1 and non-G1 DS services. UES awarded the three-month G1 contract to Sempra Energy Trading Corporation (Sempra) and the 12-month non-G1 DS supply contract to Amerada Hess Corporation (Hess). 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, which it asserts is consistent with RSA 91-A:5, IV and prior Commission orders. The information for which UES seeks confidential treatment is contained in Tab A of Schedule FXW-1, the testimony of Mr. Wells.

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," "Supply Related Working Capital," "Internal Company Administrative Costs", "Legal Charges," and "Consulting Charges" found at pages 3 and 4 of Schedule KMA-2, pages 4 and 5 of Schedule KMA-3, and Pages 4, 5, and 6 of Schedule KMA-6 (attached to Exhibit KMA-1, the testimony of Ms. Asbury) as well as the "Wholesale Rate" and "Supplier Charges" found in those same schedules and pages. In addition, UES also seeks confidential treatment of information related to the calculation of cash working capital found on Page 5 of Schedule KMA-2, Page 6 of Schedule KMA-3, and Pages 7 and 8 of Schedule KMA-6. Finally UES

seeks confidential treatment of the indicative and final bid information contained in e-mails sent by UES to Commission Staff (Staff) and the Office of Consumer Advocate (OCA) on September 8, 13, and 21, 2006.

In support of its request for confidential treatment of information related to wholesale rates, 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 “Wholesale Rate” and “Supplier Charges” as well as the contract rate information provided in Appendices to the Power Supply Agreements (PSA) be maintained as confidential until the information becomes publicly available at FERC. UES avers that until this pricing information is required by FERC to be made public, the winning suppliers will keep the information confidential so as to avoid disclosing price information that may be leveraged against it in other negotiations. UES also states that it is critical that the wholesale rate in the PSA and as reported on Schedules KMA-2, KMA-3 and KMA-6 be protected from disclosure.

UES states that with respect to the information consisting of UES’ analysis and evaluation of the bids received, UES considers this to be confidential and proprietary commercial information and has not publicly disclosed the information in any other forum. UES asserts that disclosure of the information could compromise UES’ 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 UES and its customers.

UES further maintains that the disclosure of the final PSA, which is included in Tab A, would reveal what terms and conditions UES and the winning bidder were willing to agree to in order to achieve a final agreement and thereby harm each party's ability to negotiate in the future. UES contends that providing even partial disclosure of the final PSA would disclose information that may be leveraged against either party to the PSA by showing what was not changed during the negotiation process and by focusing attention on what was changed. UES insists that disclosure of this information could compromise UES' 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 UES and its customers. 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.

At its meeting on September 6, 2006, the Commission announced that a hearing on UES' Petition would be held at 9:00 a.m. on September 27, 2006. The hearing was held as scheduled.

II. POSITIONS OF THE PARTIES

A. Unifil Energy Service, Inc.

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, UES attested that it provided potential bidders with appropriate and accessible information. According to its filing, UES 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 UES would use to weight bids in terms of price. UES testified that it used its website to make this information available to potential suppliers.

UES testified that it determined the implied cost of capacity reflected in the energy-and-capacity bids by calculating the difference between the energy-and-capacity prices and the energy-only prices. As required in Order No. 24,511, UES discussed with Staff and the OCA, during the time between indicative and final bidding, the implied cost of capacity reflected in the bids and discussed UES' decision-making parameters that led to the selection of bids that include the cost of capacity under fixed prices.

UES offered that for each supply obligation period sought, UES selected the proposal it

believes offered the best overall value in terms of both price and non-price considerations, including its decision of whether or not to fix the price of capacity. UES stated that the PSAs with Sempra and Hess contain fixed energy-and-capacity costs. UES attested that, in its opinion, the Forward Capacity Market Settlement Agreement (FCM) would be implemented as scheduled on December 1, 2006, and that all-inclusive prices produce the best value for customers.

With respect to the resulting DS retail rates for the G1 class, UES testified that the monthly rates for G1 DS would be \$0.09020 per kWh in November 2006, \$0.10946 per kWh in December 2006, and \$0.14098 per kWh in January 2007, inclusive of under-recovered power costs from the prior period. UES stated that these represent an increase of \$0.0293 relative to current rates based on a simple three-month average basis.

UES testified that the non-G1 fixed DS rate using the six-month approach results in a rate of \$0.11949 per kWh for the period from November 1, 2006, through April 30, 2007, inclusive of under-recovered power costs from the prior period. According to UES, this represents an increase of \$0.01769 from the current non-G1 DS rate of \$0.10180 per kWh. UES also testified that the DS rate for non-G1 customers using the twelve-month approach would be \$0.10912 per kWh for the period from November 1, 2006, through October 31, 2007. According to UES, the proposed twelve-month rate would represent an increase of \$0.00732 from the current rate. At hearing, UES stated that this twelve-month calculation would produce a more stable rate for customers because it expected that, using the six-month rate calculation, customers would see a price decrease beginning May 1, 2007, because power costs are typically lower in the summer than in the winter.

UES acknowledged that under its twelve-month rate proposal summer customers would

be paying for costs incurred in the winter heating months, but argued that this delay in the recovery of costs is not a deferral within the meaning of RSA 374-F:3 (V)(e). UES opined that a twelve-month rate would eliminate the seasonal price volatility inherent in the existing rate design for non-G1 customers.

At hearing, UES was asked about an under-recovery of \$2,974,494 in DS power costs for non-G1 customers during the months of May through October 2006, which it proposes to recover through rates over a twelve-month period beginning November 1, 2006. According to UES, the bulk of this under-recovery occurred in May 2006, when Transition Service (TS) ended and DS began. UES explained that this is the result of service-rendered billing, which books all May revenues that relate to consumption in April to TS. UES acknowledged, however, that it did not design its DS rates, for effect May 1, 2006, to recover the anticipated May 2006 under-recovery. UES claimed that its decision not to include the anticipated May under-recovery in rates effective May 1 is consistent with its rate design practice. UES also insisted that it is entitled to recover the associated interest expense because non-G1 customers had benefited from the receipt of DS and that the under-recovery was not the result of imprudent decision making.

Regarding the calculation of carrying charges on the supply-related working capital requirement, UES defended use of its distribution-related cost of capital stating that the Settlement Agreement in Docket 05-064 contemplated that UES would include supply-related cash working capital costs in DS rates in conjunction with UES' next base distribution rate case. UES also said that because its creditors and rating agencies evaluate the Company as a provider of bundled service, it would be inappropriate to develop separate carrying charges that reflect the different risks of distribution- and supply-related services. Consequently, UES maintained that

a carrying charge based on the agreed cost of capital in the distribution rate case is appropriate for calculating a supply-related working capital adjustment.

At hearing, UES repeated its request that the Commission find that: it had 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. UES requested that the Commission issue an order by September 29, 2006.

UES also requested that the Commission approve the proposed twelve-month rate for non-G1 customers. However, because arguments were raised regarding the appropriateness of twelve-month rate, the recovery of interest related to the under recovered power costs, and the use of a distribution-related cost of capital for calculating the carrying costs on the supply-related cash working capital requirement, UES suggested that the Commission could issue a separate order on these issues on a date later than September 29, 2006, but in sufficient time for UES to prepare customer bills for November 2006 service. Neither the Staff nor the OCA objected to the request.

B. Office of Consumer Advocate

The OCA opined that UES had followed the solicitation process as required by the Commission in Order No. 24,511, and that its selection of the winning bidder was reasonable. However, the OCA disagreed with the proposal to calculate DS rates for non-G1 customers on a twelve-month basis because customers would not receive price signals that reflect the seasonal

variation in power costs. A uniform annual rate would, according to the OCA, reduce the incentive in the current rate design to conserve energy during the high cost winter period. The OCA also testified that a flat annual rate will require summer customers to pay a portion of the cost incurred to serve winter space heating load. For these reasons, the OCA recommended that the Commission reject UES' request to change the period of the non-G1 rate.

The OCA also opposed UES' request to include in rates the interest expense associated with under-recovered power costs, which according to KMA-2, page 2, will amount to \$123,709 for non-G1 customers for the period May through October 2006, plus an additional \$77,580 for the period November 2006 through April 2007. The OCA argued that its opposition is based on two facts: (i) UES anticipated an under-recovery; and (ii) the under-recovery could have been avoided had the Company acted to increase the non-G1 rate for effect May 1 so that the balance in the reconciliation account at the end October 2006 would be close to zero. The OCA also recommended that because the under-recovery was accrued in the summer months, the Commission should require UES to recover the shortfall over the six-month period May 2007 through October 2007. Finally, the OCA agreed with Staff that UES should not use a distribution-related cost of capital to calculate a supply-related cash working capital adjustment to DS rates.

C. Commission Staff

Staff testified that it appeared that UES had complied with the DS bid solicitation requirements established by the Commission in Order No. 24,511, and that its selection of DS suppliers was reasonable. In addition, Staff noted that UES' decision to procure capacity under fixed price contracts is based on an assumption that the FCM will not be delayed beyond the

scheduled December 1, 2006 start date. Staff testified that it did not consider the Company's assumption to be unreasonable.

Staff also testified that it opposed UES' proposal to use an 11.44% carrying charge rate to calculate the supply-related cash working capital adjustment to DS rates as set forth in KMA-2 page 5 at line 19. According to Staff, the proposed carrying charge is too high because it reflects the business and financial risks associated with distribution service. Absent imprudence on the part of the Company, Staff asserted that the risk to UES of not recovering its DS power costs is essentially zero, which would justify a much lower carrying charge rate. Accordingly, Staff recommended that the Commission require UES to use the prime rate for calculating the cost of working capital for DS supply.

Staff also opposed UES' proposal to calculate DS rates for non-G1 customers over a twelve month period. Staff opposition was based on three concerns. First, Staff shared the OCA's concern that a twelve-month rate would send the wrong price signals to customers resulting in less energy conservation during the high cost winter months. Second, Staff agreed with the OCA that a uniform annual rate would result in the subsidization of space heating load by air conditioning load. Third, Staff noted that the elimination of the six-month rate structure would further distance DS from the market. While non-G1 customers have few competitive opportunities currently, Staff argued that this change would make it even less likely that a market would develop for small customers. For these reasons, Staff recommended that the Commission continue to require UES to calculate DS rates for non-G1 customers on a six-month basis.

Regarding the under-recovery of approximately \$3 million of DS power costs for non-GI customers, Staff opined that because UES knew that it would under-recover its costs, absent an adjustment in rates to address the shortfall, the Commission should not allow collection of the interest expense on the under-recovery.

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 (accordng 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 past 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.

UES also requests confidential treatment for “Supply Related Working Capital,” “Internal Company Administrative Costs,” “Legal Charges,” and “Consulting Costs.” We understand the rationale for protecting the “Wholesale Rate” and “Supplier Charges” because these two categories of information could be used by competitors to back into a wholesale price. However, “Supply Related Working Capital,” “Internal Company Administrative Costs,” “Legal Charges,” and “Consulting Charges” are components of the cost to provide DS service which are provided in the public record by other utilities and UES presents no evidence to support its contention that these categories of information are confidential. Therefore, with respect to the components of “Supply Related Working Capital,” “Internal Company Administrative Costs,” “Legal Charges,” and Consulting Charges,” we deny the motion for confidentiality.

B. Default Service

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 for the three months beginning November 2006 through January 2007. We also find that UES substantially complied with the bid procedures regarding its selection of a supplier for its non-G1 DS customers for the six-month period from November 2006 through April 2007. 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 selections of Sempra as supplier for G1 DS supply, and Hess as supplier for non-G1 DS supply are reasonable. We approve UES’ request to include the power costs represented in the PSA in default service rates beginning November 1, 2006.

With respect to the issues concerning: whether UES should be allowed to calculate rates over twelve months instead of six months for non-G1 customers; whether UES should be allowed to recover interest associated with the approximately \$3 million under-recovery from non-G1 DS customers; the time period over which UES may recover the amount under-collected; and whether UES should be allowed to use the cost of capital rate established in the recently completed distribution rate case for calculating the carrying cost associated with supply-related cash working capital, we adopt Unitil's suggestion to issue a separate order addressing the merits of these issues. We also note the question of the recoverability of interest expense associated with under-recovered DS costs applies equally to non-G1 customers and G1 customers. We will issue such an order in time for Unitil to prepare bills for service beginning November 1, 2006.

Based upon the foregoing, it is hereby

ORDERED, that the three-month Power Supply Agreement with Sempra Energy Trading Corporation is APPROVED; and it is

FURTHER ORDERED, that the one-year Power Supply Agreement with Amerada Hess Corporation is APPROVED; and it is

FURTHER ORDERED, that UES' Motion for Confidentiality and Protective Order is GRANTED in part and DENIED in part as set forth herein.

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of
September, 2006.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Clifton C. Below
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary