

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 07-013

UNITIL ENERGY SYSTEMS, INC.

**Petition for Approval of Default Service Solicitation
And Proposed Default Service Tariffs For
Large Commercial and Industrial Customers**

Order Approving Petition

ORDER NO. 24,766

June 22, 2007

Appearances: Gary M. Epler, Esq. on behalf of Unitil Energy Systems, Inc; and Suzanne G. Amidon, Esq. on behalf of the Staff of the Public Utilities Commission.

I. BACKGROUND

On June 15, 2007, Unitil Energy Systems, Inc. (UES) filed a petition requesting approval of its solicitation and procurement of default service for its it large commercial and industrial (G1) customers for the three-month period beginning August 1, 2007 through October 31, 2007, and of the resulting default service rates. In support of its petition, UES the 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 default service (Schedule RSF-2) and proposed tariffs. UES also included its quarterly customer migration report with its petition.

UES filed the petition pursuant to the terms of the settlement agreement approved by the Commission in Order No. 24,511 in Docket No. DE 05-064, reported as *Unitil Energy Systems, Inc.*, 90 NH PUC 378 (2005). Pursuant to the terms of the settlement agreement adopted in 2005, UES solicits default service supply for its G1 customers on a quarterly basis in three-month blocks, and establishes fixed monthly prices that vary from month to month.

UES filed a red-lined version of the RFP and proposed power supply agreement (PSA) with the Commission when UES issued the RFP on May 10, 2007. Suppliers submitted indicative bids to UES on June 5, 2007. Final bids were received on June 13, 2007. Also on June 13, 2007, UES selected Sempra Energy Trading Corp. (Sempra) as supplier for G1 default service power supply for the three-month period from August 2007 through October 2007. UES states that it followed the solicitation and bid evaluation process set forth in the settlement agreement and that its analysis of the bids and choice of suppliers is reasonable.

With its Petition, UES filed a motion for confidential treatment of certain information, pursuant to 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.

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 default service 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 10, 2007; 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 states that the bidders provided information to Unitil with the express understanding that the information would be maintained as confidential.

In addition to requesting protective treatment for the material contained in Tab A, UES also requests confidential treatment of the “Supplier Charges,” “Provision for Uncollected Accounts,” and “Supply Related Working Capital,” found on lines 2-5 of Page 2 of Schedule KMA-2, and the “Supplier Charges,” “Working Capital Requirement” found on lines 1, 3 and 5 of Page 3 of Schedule KMA-2. UES proposes to redact this information from the publicly available material for a limited period because revealing it would allow a person to compute information — the wholesale rate — which is properly treated as confidential.

According to UES, each wholesale supplier is obligated, pursuant to certain reporting requirements, to provide the Federal Energy Regulatory Commission (FERC) with the price and volume of the supplier’s 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 Revised Public Utility Filing Requirements*, 99 FERC ¶ 61,107 (2002) and 18 CFR Parts 2, 35. 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 states that until this pricing information is required by FERC to be made public, Sempra 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 Staff on June 6, 2007.

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 15, 2007, the Commission issued a secretarial letter scheduling a hearing for June 20, 2007, which was held as scheduled.

II. POSITIONS OF THE PARTIES

A. Until Energy Systems, Inc.

UES stated that, consistent with the 2005 settlement agreement, 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 reported 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 stated that this is the first RFP for which UES included daily capacity tag values along with the hourly load data. UES testified that it used its web site to make this information available to potential suppliers.

According to UES, it did not discriminate in favor of or against any individual potential supplier that expressed interest in the solicitation. UES said that it negotiated with all potential suppliers that submitted proposals, in order to obtain the most favorable terms each potential supplier was willing to offer.

UES affirmed that it evaluated the indicative bids using both quantitative and qualitative criteria, including price, creditworthiness, willingness to extend adequate credit to UES, ability to meet the terms of the RFP in a reliable manner, and willingness to enter into contractual terms acceptable to UES. UES stated that it negotiated with all potential suppliers that submitted proposals in order to obtain the most favorable terms. To evaluate costs in the bids, UES said it compared the pricing strips proposed by the bidders by calculating weighted average prices for each supply requirement using evaluation loads that were issued along with the RFP.

Consistent with the terms of the settlement agreement, UES requested suppliers to provide energy only and energy-and-capacity bids. UES calculated the implied cost of capacity reflected in bids by calculating the difference between the energy-and-capacity and the energy only price. UES then compared the implied capacity costs with its own internal estimates of capacity costs, which are detailed in the confidential section of the bid evaluation report. UES determined whether to accept energy-and-capacity prices or energy-only prices on the basis of those comparisons and discussed this information with Staff prior to receipt of the final bidding.

UES selected Sempra as the supplier for the three-month G1 supply requirement. The company testified that it believes Sempra offers the best overall value in terms of both price and non-price considerations for the supply requirement. Once the winning bidder was chosen, it was promptly notified and all other bidders were notified that they were not selected. The final

power supply agreement, which had been negotiated prior to the final bidding, was verified and signed shortly thereafter.

UES testified that the resulting G1 default service rates would be as follows:

Month	August, 2007	September, 2007	October, 2007
\$ per kWh	\$0.10250	\$0.09101	\$0.09609

UES stated that, based on a simple three-month average, the proposed rates represent an increase from \$0.08085 to \$0.09653 per kilowatt-hour (kWh), or \$0.01568 per kWh. This constitutes an increase in customer bills of between 11 to 14 percent, depending on customers' load factors.

The company attributed about half of the increase to an expected rise in commodity prices for the period August 1, 2007 through October 31, 2007 compared with the commodity prices for the period May 1, 2007 through July 31, 2007. UES attributed the other half of the increase to the fact that current rates include a credit for a prior period over-collection. UES testified that the proposed default service rate does not include reconciliation of any over- or under-collection.

At hearing, UES testified that the Company had decided to accept a bid for fixed energy-only prices and to pay Sempra its the spot market costs of capacity. UES testified that the decision was made based on the increased price of capacity in suppliers' final bids compared to the indicative bids. The company stated that, based on its internal estimate of capacity costs and the implied capacity costs in the final bids, Unitil concluded that the pass-through of capacity costs would result in savings for it G1 customers for the period August, 2007 through October, 2007,

In addition, UES testified that beginning May 1, 2008 it intends to reconcile default

service rates for all customers on an annual basis instead of the current quarterly and six monthly adjustments, respectively. In support of this change, UES presented five arguments. First, UES said that this change would be consistent with the annual reconciliation process employed by National Grid for default service. Second, UES stated that an annual reconciliation would be consistent with the reconciliation mechanisms used for the Company's delivery and stranded cost charges. Third, UES attested that reconciling on an annual basis would eliminate swings in over- and under-recoveries from quarter to quarter for the G1 class, or semi-annually for the non-G1 class. UES said that default service suppliers have raised concerns with UES' current rate calculation as the reconciliation component can be unpredictable or difficult to measure in advance of bidding and may have a large enough impact on the final retail rates that it may become a factor for suppliers when considering migration risk. UES testified that an annual reconciliation is better as the over- or under-recovery is spread over a longer period and can generally be known in advance of the bidding process with suppliers. Fourth, UES believes the change to an annual reconciliation will simplify both the rate calculations and the Commission's review of the default service filing since reconciliation will be made only once a year instead of multiple times. Fifth, UES explained that the annual reconciliation process will rely on actual data only, thus eliminating the major component of forecast error from the reconciliation process.

To effect the annual reconciliation, UES is proposing a six-month transition reconciliation in its default service filing for rates effective November 1, 2007 and annual reconciliations thereafter for rates effective May 1 of each year. UES explained that the six-month transition period is necessary based on its current expectation that the non-G1 class will

have a large over-collection and the G1 class a large under-collection. These expected imbalances result from a need to correct an error in the method used by the company to estimate accrued revenue in its reconciliation calculation.

UES recalled that, in its default service filing for effect May 1, 2007, it had revised its reconciliation calculation to include accrued revenue instead of billed revenue. At the hearing on March 21, 2007, Staff testified that it supported the change from billed to accrued revenue but reserved its position on UES' method for estimating accrued revenues pending completion of its investigation. Since that time, UES testified, the Company has continued to review its method and has concluded that there is a significant flaw in its method.

UES testified that it researched the estimation methods employed elsewhere and that it has selected an approach commonly used in the industry. UES concluded that this new method provides for a more accurate, stable and robust accrued revenue calculation. UES stated that it will discuss its new method with Staff and include use it in the company's August, 2007 filing for service beginning on November 1, 2007.

In summary, UES petitioned the Commission to find that: it has followed the solicitation process approved in the 2005 order, 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

Staff noted that UES had complied with the bid solicitation and evaluation process, and that the resulting rates appear to be reflective of competitive market prices. Staff expressed a concern that the UES selection of an energy-only bid relied on an internal estimate of capacity costs that is not significantly different from the fixed implied cost of capacity in the winning bid. As result, according to Staff, there is a substantial risk that the actual capacity costs flowed through to G1 customers may be higher than the fixed capacity cost included in the winning bid. Staff indicated that, while it would not object to the proposed default service rates based on the Company's selection of an energy-only bid, the actual cost of capacity should be monitored and compared with the proposed cost.

Staff noted that the proposed default service rate reflects an adjustment for losses. Upon questioning, UES stated that it calculates the adjustment using a fixed loss factor but that the adjustment is subsequently reconciled to actual losses.

Finally, Staff questioned whether UES was prepared to comply with the requirements of New Hampshire's renewable portfolio standard law, RSA 362-F, recently enacted as Chapter 25, N.H. Laws of 2007 and applicable to service provided as of January 1, 2008. The Company acknowledged that its next default service filing would include supply for periods after January 1, 2008 and that it was considering purchasing renewable energy credits, separate from power, to comply with the statute. UES indicated that no final decisions had been made on its plan to comply with RSA 362-F and that it would be looking for guidance from the Commission in that regard. The Company noted that, for residential customers, it would be seeking a 12-month and a 36-month supply contract in the RFP to be issued in August 2007.

Staff concluded by stating that, based on its review of the petition, UES had complied with the terms of the 2005 settlement agreement in its solicitation and bid evaluation process and recommended that the Commission approve the petition. Staff also said that it did not oppose the Company's motions for confidential treatment.

III. COMMISSION ANALYSIS

A. Confidentiality

First, we address UES' Motion for confidential treatment. The materials in Tab A, which UES seeks to protect from disclosure, 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 in Tab A should be protected from public disclosure because it is confidential, commercial and financial information within the meaning of RSA 91-A:5, IV. 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 would be reluctant to participate in future solicitations if their confidential bid information were disclosed. UES further contends that disclosure of the information could detrimentally impact the suppliers' ability to participate in other competitive solicitations in the market as well.

UES contends that disclosure of the Tab A materials would reveal the specific terms and conditions UES 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 successfully in the future.

UES also argues that its negotiating ability with other potential power suppliers would be harmed by disclosure.

With respect to the UES requests for confidential treatment of the “Provision for Uncollected Accounts,” “Wholesale Rate” and “Supplier Charges” information, UES stated that disclosure of this information could compromise its ability to negotiate prices in contracts arising from future solicitations. According to UES, this information is also subject to non-disclosure as confidential, commercial or financial information pursuant to RSA 91-A:5, IV.

We have conducted 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 concerning the “Supplier Charges,” “Provision for Uncollected Accounts,” and “Supply Related Working Capital,” found on lines 2-5 of Page 2 of Schedule KMA-2, and the “Supplier Charges,” “Working Capital Requirement” found on lines 1, 3 and 5 of Page 3 of Schedule KMA-2, taken in combination, would reveal the wholesale cost of power from the winning bidders and, therefore, constitutes confidential, commercial or financial information of the sort contemplated by RSA 91-A:5, IV.

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, given that it is customers as well as the corporate entities involved that benefit insofar as confidentiality promotes lower rates. *See Union Leader Corp. v. New Hampshire Housing Fin. Auth.*, 142 N.H. 540 (1997) (requiring application of balancing test to RSA 91-A:5,

IV determinations, weighing public's interest in disclosure against privacy interest). We therefore grant confidential treatment to the information in Tab A, including the Bid Evaluation Report, and the "Supplier Charges," "Provision for Uncollected Accounts," and "Supply Related Working Capital" and "Working Capital Requirement" values and the PSA. Consistent with our practice, the confidential 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 UES' analysis of the bids and its selection of the winning bidder, we find that UES substantially complied with the procedures approved in 2005 for the G1 default service 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 default service "be procured through the competitive market."

We also find that UES' evaluation of the bids and its selection of Sempra was reasonable. In light of the circumstances, we approve the petition.

We are concerned, however, with the decision of UES to enter into an energy-only contract with Sempra. The difference between the UES estimate of the market cost of capacity and the implied cost of capacity in the winning bid is small, raising the concern that the actual capacity costs paid by G1 customers could be greater than the capacity costs in the all-in bid. Therefore, we will require UES, at the end of the default service period in this proceeding, to file a report with the Commission that includes the actual costs of capacity on a dollar-per-kW-

month and dollar-per-MWh basis for August 2007 through October 2007. The report should also compare the per-MWh actual costs of capacity with the implied cost of capacity in the Sempra all-in bid.

We commend UES for the work that led to the discovery of the error in its method for estimating accrued revenues. We reserve our decision on the replacement method until after Staff and the parties submit their comments on the UES August 2007 filing.

With respect to the UES proposal to change its annual reconciliations, we understand the necessity of conducting a six-month transition reconciliation so as to avoid unnecessarily large balances in over- and under- recoveries during the interim period before the annual reconciliation takes effect. We agree that such a change is likely to result in a more efficient process and could result in direct customer savings

Based upon the foregoing, it is hereby

ORDERED, that the power supply agreement entered into by Unitol Energy Systems, Inc. with Sempra Energy Trading Corp. and resulted proposed rates are 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 purchase and sale agreement referenced herein for inclusion in retail rates beginning August 1, 2007 are APPROVED; and it is

FURTHER ORDERED, that the pending motions for confidential treatment of documents are GRANTED; and it is

FURTHER ORDERED, that the petitioner 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, 2007.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Clifton C. Below
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary