

**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

Order Approving Petition

ORDER NO. 24,791

September 21, 2007

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

I. PROCEDURAL BACKGROUND

On September 14, 2007, Unitil Energy Systems, Inc. (UES) filed a petition requesting approval of its solicitation and procurement of default service for the period beginning November 1, 2007. The filing was made pursuant to the terms of the settlement agreement approved by the Commission in Docket No. DE 05-064, *Unitil Energy Systems, Inc.*, 90 NH PUC 378 (2005). In support of the petition, UES filed the testimony and related exhibits of Robert S. Furino and Karen M. Asbury. UES also filed its updated, quarterly customer migration report with this filing.

The settlement approved in Docket No. DE 05-064 provides that UES shall solicit power supplies on a quarterly basis for 100 percent of the default service requirements for its G1 customers at fixed monthly prices that vary from month to month. The settlement further provides that UES solicit Non-G1 supply in four blocks on a ladder portfolio basis, each block consisting of 25 percent 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. Pursuant

to the settlement agreement, retail prices for non-G1 customers are reset every six months, effective May 1, and November 1, as composition of the portfolio changes. Following an order of notice issued on July 24, 2007 and a hearing on July 31, 2007, the Commission directed UES to issue a solicitation for one 12-month contract for 25 percent of non-G1 requirements and one 24-month contract for another 25 percent block of non-G1 requirements in the instant proceeding.

As a result of its solicitation process, UES selected Sempra Energy Trading Corp. (Sempra) to supply 100 percent of the three-month block of default service energy requirements for G1 customers. Based on this selection, UES will fix the monthly default service retail rates for G1 customers for the months of November and December 2007 and January 2008 as follows:

Month	November 2007	December 2007	January 2008
Price per kWh	\$0.10091	\$0.10803	\$0.12428

Based on a 3-month simple average, the current G1 default service rate is \$0.09653 per kilowatt hour (kWh). Comparing this rate to the 3-month simple average of the proposed rates, or \$0.11107 per kWh, results in a G1 default service rate increase of about 15 percent. UES noted that the G1 rate for November 2007 through January 2008 includes the partial recovery (\$451,888) of a \$852,717 under-collection through July 2007. UES proposes to collect the remainder in its next G1 default service filing. UES stated that the G1 rate includes, in addition to energy and capacity costs and partial recovery of the under-collection, an increase in administrative costs and a factor to recover costs related to UES' compliance with the new Renewable Portfolio Standard (RPS) requirements of RSA 362-F that become effective on January 1, 2008. UES also noted that the currently effective surcharge to recover rate case

expenses in connection with its most recent distribution base rate case will terminate November 1, 2007. The combination of the 15 percent increase in the default service rate and the elimination of the rate case surcharge results in an average G1 customer receiving an overall bill increase of about 9.3 percent.

For non-G1 customers, UES selected Connectiv Energy Supply, Inc. (Connectiv) as the supplier for both the 12-month and 24-month supply requirements. UES stated that the resulting fixed default service rate for non-G1 customers will be \$0.09534 per kWh, which amounts to an increase of \$0.00103 per kWh, or 1.1 percent, over the current rate. UES attributes the rate increase to higher contract costs for energy for the period November 1, 2007 through April 30, 2008 compared with the current period, May 1, 2007 through October 31, 2007. In addition to energy and capacity costs, the non-G1 default service rate includes a credit for a \$2.755 million over-collection, an increase in administrative costs and a charge for compliance with the RPS. The combination of the 1.1 percent increase in the default service rate and the elimination of the rate case surcharge results in an average non-G1 customer receiving an overall bill decrease of 0.8 percent.

UES attests that it included in its default service rates the estimated costs of complying with RSA 362-F. The Renewable Portfolio Standard requires utilities providing electric service to purchase a percentage of power requirements from a mix of eligible renewable energy resources, or renewable energy certificates (RECs) representing the same percentage of load. UES plans to purchase RECs. Beginning January 1, 2008, UES will have to purchase 3.5 percent of its load from qualified biomass (Class III), and 0.5 percent from existing small hydroelectric with certain fish passages (Class IV). UES states that, based on its current understanding of the market for RECs, the availability of Class III and Class IV certificates is in

doubt. Therefore, UES plans to recover the costs of RPS compliance from customers by including estimated costs of RPS compliance as part of the proposed retail rates each time new default service rates are proposed. UES plans to reconcile the actual costs of RPS compliance as part of the company's annual default service reconciliation, with G1 and non-G1 costs reconciled separately. For G1 customers, UES estimates RPS compliance costs for January, 2008 to be \$9,014, which would be billed only in the month of January 2008. For non-G1 customers, UES estimates the RPS compliance costs for the period January through April, 2008 to be \$336,321. UES proposed to recover those costs from non-G1 customers beginning November 1, 2007. The RPS costs that are included in default service rates amounts to \$0.00119 per kWh for Non-G1 customers, and \$0.00117 per kWh for G1 customers.

On July 27, 2007, UES filed in the instant docket a petition for approval to update the internal administrative costs recovered through default service charges. With that petition, UES filed the testimony and related exhibits of Linda S. McNamara. UES attests that internal administrative costs associated with providing default service are \$69,051, as compared with the current costs of \$62,903. UES states that the proposed increase is reflected in the proposed G1 and non-G1 rates filed on September 14, 2007, and requests that the Commission approve the proposed increase coincident with its order regarding UES' request for approval of its default service solicitation.

With its petition, UES filed a motion for confidential treatment pursuant to RSA 91-A:5, IV and N.H. Code Admin. Rules Puc 203.08. Specifically, UES requests that the Commission issue an order requiring confidential treatment for (1) material in Tab A of Schedule RSF-1; (2) the "Total G1 Class DS Supplier Charges," "Working Capital Requirement," "Supply Related Working Capital," and "Provision for Uncollected Accounts," found on columns (a), (c), (e) and

(f) of page 5 of Schedule KMA-3; and (3) certain information related to indicative bids provided to the Staff and OCA.

In support of its Motion, UES states that Tab A contains the bid evaluation report which contains confidential commercial and financial information, including the company's detailed internal analysis of the solicitation process and bids, and the final negotiated power contracts. The bidding supplier's information, including each suppliers' identity, price and non-price terms, and other information provided to UES in response to the RFP and contained in Tab A was provided pursuant to express understandings that this information would be maintained as confidential. UES says that disclosure of this information may detrimentally impact upon such suppliers' ability to participate in competitive solicitation in other New England markets, and claims that if this information is disclosed, suppliers will be reluctant to participate in future solicitations. For the same reason, UES seeks protection from public disclosure of the indicative bid information provided by electronic mail to Commission Staff and the OCA around September 6, 2007.

UES seeks confidential treatment for the "Total G1 Class DS Supplier Charges," "Working Capital Requirement," "Supply Related Working Capital," "Working Capital Requirement," "Supply Related Working Capital," and "Provision for Uncollected Accounts," found on columns (a), (c), (e) and (f) of page 5 of Schedule KMA-3 because the disclosure of any of this information would allow the calculation of the G1 class wholesale rate. UES does not claim that "Supplier Charge," "Total G1 Class DS Supplier Charges," "Working Capital Requirement," "Supply Related Working Capital," "Provision for Uncollected Accounts," "Supply Related Working Capital," and "Working Capital Requirement" are confidential information. However, UES seeks to redact this information from the publicly available material

for a limited period because its disclosure would permit the calculation of confidential information, that is, the wholesale rate.

UES notes 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 Charge,” “Working Capital Requirement,” “Supply Related Working Capital,” “Provision for Uncollected Accounts,” as well as the contract rate information be maintained as confidential until the information becomes publicly available at FERC.

The OCA previously notified the Commission on February 7, 2007 of its participation in this docket on behalf of residential ratepayers, consistent with RSA 363:28. The Commission issued a Secretarial Letter on September 17, 2007 scheduling a hearing for September 20, 2007 at 10:00 a.m.

II. POSITIONS OF THE PARTIES AND STAFF

A. Unitil Energy Service, Inc.

UES testified that, consistent with Order No. 24,522, the company 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. In order to gain the greatest level of market interest, UES stated that it provided potential bidders with historic hourly load, historic monthly retail sales and

customer counts, and 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 issued the RFPs on August 3, 2007 and it reported that on August 28, 2007, it received proposals from several different respondents that included detailed background information on the bidding entity, proposed changes to the contract terms, and indicative pricing. UES stated that it reviewed the proposals and worked with the bidders to establish and evaluate their creditworthiness, their extension of adequate credit to UES to facilitate the transaction, their capability of performing the terms of the agreement in a reliable manner and their willingness to enter into contractual terms acceptable to UES.

On September 11, 2007, UES received final pricing from bidders and conducted its evaluation which included both the quantitative and qualitative criteria specified above. UES selected the lowest bids that included fixed energy-and-capacity costs for both G1 and Non-G1 default service. UES selected and notified Connectiv as the winner of the one 12-month and one 24 month blocks of non-G1 energy and capacity requirements, and Sempra as the winner of the 3-month block of G1 energy and capacity requirements. UES testified that it followed the solicitation and bid evaluation process set forth in the settlement and approved by the Commission, and that its analysis of the bids and choice of suppliers is reasonable.

UES stated that it requested both energy-only and energy-and-capacity bids for both G1 and non-G1 energy requirements. As part of its bid evaluation, UES calculated the implied cost of capacity reflected in the two sets of bid prices. UES estimated the cost of capacity during the applicable supply periods and determined whether or not to procure capacity under a fixed price based on a comparison of the implied capacity costs bid by the respondents and UES' estimates of capacity costs. Since the implied capacity costs associated with the winning bids for both

supply requirements did not exceed UES' estimates, UES entered into contracts that include both energy and capacity at fixed prices.

According to the company, the typical bill impact by class is as follows. For customers in the residential and general service classes on default service, bills will decrease by about 0.8 percent. For the large general service class, bills will increase about 9.3 percent, and for outdoor lighting customers, bills will decrease about 0.5 percent.

UES noted that its proposed DS rates reflect changes to other underlying cost components. First, following inquiries by Staff in October 2006, UES determined that it had made an error in the way it estimated accrued revenues. To correct its error, UES recast its reconciliation of default service revenue to include unbilled revenues and to reflect them in the proper call, service and month.

UES explained that, as a result of the recasting of prior period revenues, the company determined it had an over-collected \$2,755,248 from the non-G1 class. UES proposed to apply the over-collection to rates for the six-month period from November 2007 through April 2008. According to the company, the recasting also resulted in an under-collection of \$852,717 for its G1 customers through July 2007. UES proposed to recover \$451,888 in this default service filing with the remainder to be collected in the next G1 default service filing.

UES also requested approval to recover the increase in internal administrative costs collected through default service rates. UES testified that in the settlement agreement approved by the Commission in Order No. 24,522, it agreed to remove from distribution rates the internal administrative costs associated with providing default service, and to include those default service related costs in default service rates. UES stated that, in Docket No. DE 05-178, UES's first distribution rate case following the approval of the settlement, UES removed the default

service related internal company administrative costs from distribution expense and began recovering such default service related costs through default service rates for the period beginning January 1, 2006, effective as of November 1, 2006, the effective date of the new distribution rates. The company testified that as a part of UES's distribution base rate case, internal administrative costs associated with providing default service were determined to total \$64,903, with \$37,812 attributable to the G1 class and \$25,091 attributable to the non-G1 class. In this filing, UES requested that the Commission approve overall internal administrative costs associated with providing default service of \$69,051, with \$41,505 of that amount attributable to the G1 class and \$27,546 attributable to the Non-G1 class.

With the testimony of Ms. McNamara, UES filed a table demonstrating the hours and associated costs attributable to the delivery of default service similar to the table filed with the testimony of Ms. Asbury in Docket No. DE 05-178, UES's delivery service rate case. On page 1 of the Schedule, Ms McNamara shows that 400 of the energy contract department man-hours were allocated to UES default service in New Hampshire.

On the issue of the RPS, UES testified that it intended to comply with the provisions of RA 362-F by purchasing RECs, as available, or to make alternative compliance payments as required, separately from its default service supply solicitations. UES stated that separating the purchase of RECs from power made sense for several reasons. First, UES said it considered that suppliers bidding in its default service solicitations are not necessarily the parties who hold title to generation facilities likely to qualify as sources of RECs. Second, the market for power supply attributes, as represented by RECs, is a distinct market separate from the market for power supply. Third, UES testified that anecdotal evidence suggested that when suppliers offer energy supply bundled with RECs, such suppliers typically provide for compliance by assuming

the alternative compliance price in their bids. UES said it preferred to pay a price less than the alternative compliance price for RECs if they are available. Finally, soliciting bids for power supply and RECs adds a level of complexity to the default service RFP process which may discourage some bidders from participating. Finally, if UES were required to bundle RPS compliance with its default service procurements, it would be required to pay these costs at the same time it pays for power supply costs even though RPS compliance could occur many months after the delivery of the supply obligations.

Based on these considerations, UES stated its intent to recover the costs of RPS compliance from customers by including estimated costs of RPS compliance as part of its proposed retail rates each time new default service rates are proposed. According to the company, it would reconcile the estimated costs of RPS compliance with the actual costs as part of UES's annual default service reconciliation with G1 and non-G1 costs reconciled separately.

UES said that based on its current understanding of the RECs market, compliance will involve making alternative compliance payments. As of January 2008, Chapter 362-F requires suppliers to purchase 3.5 percent of its power from existing, qualified biomass (Class III), and .05 percent from existing small hydroelectric with certain fish passages (Class IV). The statute, UES pointed out, prices alternative compliance payments for both Class III and Class IV at \$28 per megawatt-hour. According to UES, generation that would qualify as Class III REC in New Hampshire also qualifies as a REC in other states where the current market offers a much higher price. Therefore, it will be highly unlikely than any Class III RECs will be offered in New Hampshire. UES further stated that it is not aware of the availability of existing small hydroelectric facilities that would qualify as Class IV. Therefore, UES testified, it assumed that both the Class III and Class IV obligations would be met at the \$28 per mWh cost of the

alternative compliance payment. UES included the estimated \$9,014 in RPS compliance costs in default service rates for G1 customers for January, 2008, and \$336,321 in RPS compliance costs in default service rates for non-G1 customers for the period January through April, 2008 to be included in rates beginning November 1, 2007.

In conclusion, UES requested that the Commission find that UES has followed the solicitation process approved by the Commission, that its analysis of the submitted bids was reasonable, that UES has supplied a reasonable rationale for its choice of suppliers, and that the amounts payable to the sellers under the supply agreements are approved for inclusion in retail rates. In addition, UES requested that the Commission approve the requested increase to the default service related internal administrative costs to be included in default service rates as of November 1, 2007 for G1 and non-G1 customers. Finally, UES requested the Commission approve its proposal for compliance with RSA 362-F as reasonable.

B. Office of Consumer Advocate

OCA pointed out that National Grid had calculated REC costs for Class IV RECs to be \$2.00 per mWh. OCA noted that UES used the alternative compliance payment of \$28 per mWh when calculating its compliance costs with RSA 362-F. OCA inquired of UES whether the company had objective knowledge of how the markets for RECs worked in Rhode Island and Connecticut. UES stated that it did not have first-hand knowledge of the REC markets in those states. However, UES did state that its estimates of REC costs would be subject to annual reconciliation beginning March, 2009.

OCA also inquired as to whether it may be more appropriate for the company, in estimating the average impact on residential customer bills, to use a measure of 650 kWh per month. UES replied that if the Commission should require all utilities to re-characterize the

average residential monthly bill as something greater than 500 kWh per month, it could provide that information. However, UES noted that the rate decrease of 0.8 percent for residential customers with an average use of 500 kWh per month would apply to customers with an average use of 650 kWh per month as well. OCA concluded by stating that it had no objection to the petition.

C. Commission Staff

Staff noted that the settlement approved in Docket No. DE 05-064 provided that UES shall recover all internal administrative costs associated with default service procurement in default service rates following UES next distribution rate case. Staff noted that the estimate of 400 man-hours per year developed by UES in its distribution rate case, Docket No. DE 05-178, is also used in this proceeding to calculate the amount of internal administrative costs associated with default service procurement in New Hampshire. Without commenting on the propriety of the number of man-hours, Staff and UES expressed agreement to review whether the hours allocated to UES default service rate is appropriate and to resolve this issue prior to UES' next reconciliation proceeding.

Staff agreed with UES' recasting of revenues and costs in its reconciliation calculation. However, while Staff agreed that the reconciliation presented in the instant docket appeared to be correctly calculated, it chose to reserve judgment on the adequacy of UES' reconciliation process until it has had a chance to review subsequent filings.

Staff stated that it supported UES' calculation of RPS rates because the rates are subject to reconciliation in UES' annual reconciliation filing. Staff noted that UES had complied with the solicitation and bid evaluation process established in the settlement in Docket No. DE 05-064

and that the resulting bids appeared to be market based. Staff concluded by recommending that the Commission approve the petition.

III. COMMISSION ANALYSIS

A. Motion for Confidentiality

First, we address UES' Motion for confidential treatment. 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 and contract amendment.

UES states that the information contained in the materials included in Tab A should be protected from public disclosure because it is confidential, commercial, or 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. UES further argues that disclosure of the information could detrimentally impact the suppliers' ability to participate in other competitive solicitations in the market as well.

UES argues 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 with others in the future. In addition, UES argues that the data identified as the "Supplier Charge," "Total G1 Class DS Supplier Charges," "Working Capital Requirement," "Supply Related Working Capital," "Provision for Uncollected Accounts," "Supply Related Working Capital," and "Working Capital Requirement," while not confidential in and of itself, can be used by competitors to derive the wholes price, which is confidential. 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 Right-to-Know law provides each citizen the right to inspect public records in the possession of the Commission. RSA 91-A:4, I. RSA 91-A:5 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 RFPs. 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 “Supplier Charge,” ”Total G1 Class DS Supplier Charges,” “Working Capital Requirement,” “Supply Related Working Capital,” “Provision for Uncollected Accounts,” “Supply Related Working Capital,” and “Working Capital Requirement” 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 will also provide confidential treatment to the purchase power supply agreement between UES and Connectiv, and UES’ contract with Sempra. 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 this 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 confidential treatment to the information in Tab A, including the Bid Evaluation Report, including the “Supplier Charge,” “Total G1 Class DS Supplier Charges,” “Working Capital Requirement,” “Supply Related Working Capital,” “Provision for Uncollected Accounts,” “Supply Related Working Capital,” and “Working Capital Requirement” values and UES’s power supply agreements with Sempra and Connectiv. 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.

B. Default Service Solicitation and Resulting Rates

We note that Staff and UES agreed to review the allocation of internal administrative costs of UES’ default service procurement in New Hampshire. Based on this proposed review, and the fact that no objections were made to the increase in internal administrative costs added to default service rates in this proceeding, we approve the recovery of the increased administrative costs as proposed in the testimony of Ms. McNamara.

We also approve UES’ methodology to comply with the RPS requirements of RSA 362-F. We do so acknowledging that we may find at a later time that there is a more appropriate way to recover these costs, and that these costs will be subject to reconciliation in UES’ annual retail rate reconciliation filing.

We find that UES' analysis of the bids and its selection of the winning bidders for default service supply for its G1 and non-G1 customers to be consistent with the procedures approved in Docket No. DE 05-064. We are likewise satisfied that the participation of multiple bidders in the process is indicative of a competitive bid, and consequently that the result is consistent with the requirements of RSA 374-F:3,V(c) that default service be procured through the competitive market.

We find that UES' evaluation of the bids and that its selection of Sempra as provider of default service to its G1 customers and its selection of Connectiv to supply both the 12-month and 24-month blocks (each representing 25 percent of the load) of default service to its Non-G1 customers is reasonable. We approve this petition and we will allow the power supply and capacity costs to be included in the company's rates beginning November 1, 2007.

Based upon the foregoing, it is hereby

ORDERED, that the power supply agreement between Sempra Energy Trading Corp. and Unitil Energy Systems, Inc. for three months of default service supply for UES's G1 customers beginning November 1, 2007 is hereby APPROVED; and it is

FURTHER ORDERED, that the power supply agreement between Connectiv Energy Supply, Inc and Unitil Energy Systems, Inc. for one 12-month and one 24-month default service supply for UES's non-G1 customers beginning November 1, 2007 is hereby APPROVED; and it is

FURTHER ORDERED, that the rates proposed by UES for G1 for the period November 1, 2007 through January 31, 2008, and non-G1 customers for the period beginning November 1, 2007 through April 30, 2008, are hereby APPROVED; and it is

FURTHER ORDERED, that UES shall file conforming tariffs within 30 days of the date of this Order pursuant to N.H. Code Admin. Rules Puc 1606.02.

By order of the Public Utilities Commission of New Hampshire this twenty-first day of September, 2007.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Clifton C. Below
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary