

**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. 24,809

December 17, 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 December 7, 2007, Unitil Energy Systems, Inc. (UES) filed a petition requesting approval of its solicitation and procurement of default service for its large commercial and industrial (G1) customers for the three-month period February 1, 2008 through April 30, 2008, and of the resulting default service rates. In support of its petition, UES filed the 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, 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 monthly 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 November 1, 2007. Suppliers submitted indicative bids to UES on November 27, 2007. Final bids were received on December 4, 2007. On December 4, 2007, UES selected Citigroup Energy, Inc. (Citigroup) as supplier for G1 default service power supply for the three-month period from February 2008 through April 2008. 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. 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; a list of the suppliers who responded to the RFP; 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; a description of the financial security offered by each bidder; UES' ranking of each bidder's financial security; the contact list used by UES during the RFP process; and the final Power Supply Agreement (PSA) with Citigroup's proposed agreement redlined against the original PSA as issued. UES states that the bidders provided information to UES 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 "Total G1 Class DS Supplier Charges," "Working

Capital Requirements,” “Provision for Uncollected Accounts,” and “Supply Related Working Capital,” found on columns (a), (c), (e) and (f) of Page 2 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. According to the company, until such time as this pricing information is required by FERC to be made public in this manner, it is the expectation and intent of Citigroup to keep this information confidential so as to avoid disclosing price information which may be leveraged against it in other contemporaneous negotiations. UES also requests protective treatment of the indicative bid information provided to Staff on December 3, 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 positions with respect to future participation in the energy market.

On December 17, 2007, the Commission issued a secretarial letter scheduling a hearing for December 19, 2007, which was held as scheduled.

II. POSITIONS OF THE PARTIES

A. Unital 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 that 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 fixed energy-and-capacity prices or fixed energy-only prices on the basis of those comparisons and discussed this issue with Staff prior to receipt of the final bidding.

UES selected Citigroup as the supplier for the three-month G1 supply requirement. UES said that, based on an analysis of the implied capacity costs and its own internal evaluation of the costs of capacity, it selected a fixed energy-and-capacity bid from Citigroup. The company testified that it believes Citigroup offers the best overall value in terms of both price and non-price considerations for the supply requirement. Once Citigroup was chosen, it was promptly notified and all other bidders were notified that they were not selected. The final PSA, 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	February 2008	March 2008	April 2008
\$ per kWh	\$0.11714	\$0.10670	\$0.10311

The company testified that the proposed rates produce a simple three-month average rate of \$0.10898 per kWh. The proposed rates represent a decrease of \$0.00209 per kWh, on average, from the current rate of \$0.11107 per kWh. UES attributed the decrease to the fact that its current estimate of under-recoveries, which would be reconciled with rates for the period February through April 2008, are lower than what UES anticipated when it prepared rates in the last default service filing for G1 customers.

UES testified that the recently-enacted Renewable Portfolio Standard (RPS) statute, RSA 362-F, requires providers of electric service to purchase a portion of their power from renewable sources through the acquisition of renewable energy credits (RECs) or to make specified alternative compliance payments (ACPs) to the renewable energy fund created by the RPS law. In effect, the ACPs function as a REC price cap. UES said it would collect the associated costs from customers by adding to its calculated retail rate an amount equal to the product of the ACP (i.e., \$28 per MWh of renewable energy purchase requirements) and 4 percent of its default service load for the three months of the supply contract in the instant proceeding. According to UES, the cost to comply with the statute for its large customer group for the period from February 1, 2008 through April 30, 2008 will be \$29,085.

The company testified that on November 17, 2007, pursuant to Order No. 24,766 (June 22, 2007), it filed a report comparing the actual costs of capacity for G1 customers for the period

from August 1, 2007 to October 31, 2007 with the implied cost offered by the winning bid during its last solicitation. For the period from August 1, 2007 to October 31, 2007, UES selected a bid that provided energy only. According to the company, the large customer group paid an additional \$7,215 in capacity costs over the implied costs of capacity offered by the winning bidder for the period in question. UES attributed the additional capacity costs to the unexpected migration of customers to the competitive market, testifying that the load factors of customers purchasing from competitive suppliers also affects the UES capacity factor.

In summary, UES petitioned the Commission to find that the utility: (1) has followed the solicitation process approved in the 2005 order, (2) conducted a reasonable analysis of the bids submitted, and (3) has supplied a reasonable rationale for its choice of supplier. UES also asked the Commission to determine 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 inquired about the method UES used to estimate the cost of capacity. Staff noted that the UES internal estimate of the cost of capacity was a factor in its selection of an energy-only bid for the August 1, 2007 to October 31, 2007 period for the large customer group and that it is a factor in its selection of an all inclusive fixed energy-and-capacity price in this proceeding. In response to Staff's questions, UES explained that several components to the calculation are based on data provided by the regional grid operator, ISO-New England. In order to improve Staff's understanding of UES' calculation, the Company agreed to provide additional information on specific components of the calculation and to specify the ISO-New England

sources. Staff's questions were made in the form of a record request to be provided after the hearing.¹

In conclusion, 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 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. However, Staff noted that the differences between the capacity cost estimates of UES and National Grid, were sufficient to merit further investigation. Staff indicated that its investigation could be conducted outside of the instant proceeding.

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

¹ As of the date of this Order, the record request response has not been received.

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 "Total G1 Class DS Supplier Charges," "Working Capital Requirements," "Provision for Uncollected Accounts," and "Supply Related Working Capital," found on columns (a), (c), (e) and (f) of Page 2 of Schedule KMA-2 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. We are aware of the UES representation that the information would not have been provided by the bidders absent the utility's assurance that the information would not be disclosed to the public. We also agree that the information concerning the "Total G1 Class DS Supplier Charges," "Working Capital Requirements," "Provision for Uncollected Accounts," and "Supply Related Working Capital," found on columns (a), (c), (e) and (f) of Page 2 of Schedule KMA-2" found on columns (a), (c), (e) and (f) of page 2 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 "Total G1 Class DS Supplier Charges," "Working Capital Requirements," "Provision for Uncollected Accounts," and "Supply Related Working Capital," 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 Citigroup was

reasonable. In light of the circumstances, we approve the petition.

We note that UES' past selection of an energy-only bid in a prior solicitation will result in customers paying a higher default service rate than they would have paid had a fixed energy-and-capacity price been selected. We also note that National Grid proposes, in its current filing, to secure energy only and to pass through to customers the actual cost of capacity. Both these decisions were based upon internal estimates of the cost of capacity. We, therefore, concur with Staff that it is appropriate to investigate the estimation methods used by the utilities to determine whether each method produces a reasonable estimate of the future cost of capacity and results in sound power procurement decisions.

We expect that UES will provide answers to the record request made by Staff at hearing. In addition, we order UES to provide a more detailed analysis of the capacity costs incurred for service to G1 customers for the period August 1, 2007 through October 31 2007. We instruct UES to provide a narrative explanation of the information it provided in the table attached to its November 27, 2007 letter, and to include an explanation of how load factors affected the capacity costs for that period, the extent to which the capacity costs included account for mandatory reserves, and an analysis of how the actual capacity costs compare with UES' internal estimate of the costs of capacity for the period in question.

Based upon the foregoing, it is hereby

ORDERED, that the power supply agreement entered into by Unital Energy Systems, Inc. with Citigroup Energy, Inc. and resulting 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 February 1, 2008 are APPROVED; and it is

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

FURTHER ORDERED, that UES shall provide a more detailed analysis of capacity costs reported by the Company in its letter of November 27, 2007; and it is

FURTHER ORDERED, that Staff shall investigate the methods by which UES and National Grid calculate the estimated costs of capacity to determine whether the methods produce a reasonable estimate of future capacity cost and result in sound power procurement decisions; 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 seventeenth day of December, 2007.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Clifton C. Below
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary