

DE 08-015

UNITIL ENERGY SYSTEMS, INC.

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

Order Following Hearing

ORDER NO. 24,838

March 21, 2008

APPEARANCES: Gary M. Epler, Esq. on behalf of Unitil Energy Systems, Inc.; Rorie Hollenberg, Esq. of 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 HISTORY

On February 07, 2008, Unitil Energy Systems, Inc. (UES) filed a redlined copy of a Request for Proposals (RFP) to solicit default service supply for its large commercial and industrial (G1) customers and its small commercial and residential (Non-G1) customers for the period beginning May 1, 2008. The filing was made pursuant to the terms of the Settlement Agreement approved by the Commission in Order No. 24,511 in Docket No. DE 05-064, *Unitil Energy Systems, Inc.* 90 NH PUC 378 (2005). On February 25, 2008, the Office of Consumer Advocate (OCA) filed a letter indicating that it would participate in the docket on behalf of residential customers pursuant to RSA 363:28. The Commission, on February 28, 2008, issued an Order of Notice scheduling a hearing for March 19, 2008.

On March 14, 2008, UES filed a petition requesting approval of its solicitation and procurement of two contracts for default service, where the first contract is for 100% of G1 default service requirements for the period May 1, 2008 to July 30, 2008 and the second contract is for 25% of the Non-G1 customer default service requirements for a one-year period beginning May 1, 2008. In addition, UES requested approval of proposed tariffs revised to incorporate the

results of its solicitation in rates. In support of the Petition, UES filed the testimony and related exhibits of Robert S. Furino and Karen M. Asbury. UES selected Constellation Energy Commodities Group, Inc. (Constellation) as the supplier of the twelve-month Non-G1 supply requirement and FPL Energy Power Marketing, Inc. (FPL Energy) as the supplier for the three-month G1 supply requirement.

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 RSF-1, the testimony of Mr. Furino and includes UES' Bid Evaluation Report.

In addition to requesting protective treatment for the material contained in Tab A, UES also requests confidential treatment for 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 pages 3 (only for "January 08" and "total") and 5 of Schedule KMA-3. UES is requesting protective treatment of this information for a limited period of time. Finally, UES seeks protection from public disclosure of the indicative bid information provided in an e-mail to Commission Staff and the Office of Consumer Advocate (OCA) on March 6, 2008.

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 Schedule KMA-3 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 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, and that suppliers may completely refuse to participate in the New Hampshire market if their confidential information is publicly disclosed.

Tab A also included an unredacted copy of a Contract Amendment #2 with Constellation and an unredacted copy of the Power Supply Agreement negotiated with FPL Energy. UES maintains that the disclosure of the PSA or the Contract Amendment would reveal the terms and conditions UES and the winning bidders were willing to agree to in order to achieve 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 or Contract Amendment would disclose information that may be leveraged against either party to the PSA or Contract Amendment 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.

II. POSITIONS OF THE PARTIES AND STAFF

A. Unitil Energy Systems, Inc.

UES testified that, consistent with Order No. 24,511 issued in Docket No. DE 05-064, *Unitil Energy Systems, Inc.* 90 NH PUC 378 (2005) 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. UES declared that it effected market notification of the RFPs by electronically announcing their 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 RFPs 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 RFPs.

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 issued the RFPs on February 5, 2008. On February 26, 2008, UES received proposals and indicative bids 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 PSA in a reliable manner and their willingness to enter into contractual terms acceptable to UES. UES negotiated with potential suppliers who submitted proposals in order to obtain the most favorable contract terms each supplier was willing to offer. All bidders were invited to submit final bids.

On March 11, 2008, UES received final pricing from bidders and conducted its evaluation which included both the quantitative and qualitative criteria specified above. UES selected the lowest bid that included fixed energy-and-capacity costs for Non-G1 default service. For G1 default service, because the two lowest cost bids differed only slightly, UES also took into consideration the costs associated with different payment terms when selecting the winning bidder. One bidder required payments twice per month whereas the other accepted monthly payments. UES selected Constellation and FPL Energy as the respective winners of the Non-G1 and G1 service requirements. 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.

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. On March 6, 2008, UES provided Staff and the OCA with its initial analysis of the implied cost of capacity reflected in the indicative bids. UES stated that it then evaluated the implied cost of capacity reflected in the bids by comparison to its own estimates of the capacity costs, which are detailed in the confidential material in Tab A. As a result of this analysis, UES determined that it would be in the best interest of both its G1 and Non-G1 customers to select a bid that provides a fixed all-inclusive energy-and-capacity cost.

Based on its selected bids UES developed Non-G1 rates by dividing the total costs for each month (May through October), including a partial reconciliation of costs and revenues through January 2008, by the estimated monthly Non-G1 kWh purchases. UES then applied an estimated loss factor of 6.4 % to arrive at the proposed retail charges which vary from month to month. The fixed default service charge is calculated in a similar manner, except that the calculation is based on the totals for the entire six month period. Using this methodology, UES calculated a fixed default service charge for Non-G1 customers of \$0.10291 per kWh, which is an increase of \$0.00757 per kWh or 7.9% from the current fixed default service charge of \$0.09534. UES attributes most of this increase to the fact that the current rate reflects a large overcollection, whereas the proposed rate reflects a small overcollection.

For G1 customers, who pay fixed monthly rates which vary from month to month, the default service rates would be as follows:

Month	May	June	July
Rate per kWh	\$0.11451	\$0.11784	\$0.13143

UES stated that the current default service charge, based on a simple three-month average, is \$0.10898 per kWh, and the proposed default service charge similarly calculated is \$0.12126 per kWh. The difference, \$0.01228 per kWh, is equivalent to an increase of 11.27%. UES attributes the increase largely to the change in market prices.

Based on UES' calculations, the change in the default service component of retail rates will result in average customer bill increases of:

Customer Class:	Increase:
Residential	5.1%
General Service	5.3%
Large Commercial and Industrial	8.7%
Outdoor lighting	3.0%

For a typical residential customer using 500 kWhs per month, bills would increase from \$75.68 per month to \$79.46; residential customers using 750 kWhs per month would see their bills increase from \$109.94 to \$115.62.

UES noted that on March 14, 2008, it filed proposed increases in its stranded cost charge and external delivery charge and that the final rates effective May 1 would represent an increase, for residential customers, of about 8% over current rates. UES stated that the filing also includes the company's quarterly customer migration report, and noted that 77.6% of G1 customers take competitive supply.

UES testified that the company and Staff had discussed whether the default service administrative costs appropriately reflected the man-hours and associated labor costs of the Energy Contracts personnel devoted to UES' default service. UES said that, to address this concern, the company, Staff and the OCA had agreed that UES would begin to track more closely the Energy Contracts group man-hours attributable to UES' default service.

UES concluded by requesting that the Commission approve its petition and find that; UES has followed the solicitation process approved by the Commission; that its analysis of the bids is reasonable; that it has demonstrated that the resulting power supply costs are reasonable; and that the resulting rates are reasonable.

B. Office of Consumer Advocate

The OCA focused its cross-examination on the Renewable Portfolio Standard (RPS) adder which the Company created to comply with the Electric Renewable Portfolio Standard statute, RSA Chap. 362-F. In response to questions asked by the OCA, UES described how the company had calculated the adder. UES noted that it has to purchase Renewable Energy Credits (RECs) in an amount equivalent to 4% of its total megawatt hours, 0.5% representing Class IV (small hydro) and 3.5% representing Class III (eligible biomass). UES stated that if it could not purchase the requisite number of RECs, the company would have to make Alternative Compliance Payments (ACP) to the Renewable Energy Fund.¹ To derive an RPS adder, the company calculated, for each month from the period beginning May and ending October 2008, the total MWh it expected to purchase at wholesale. The company multiplied the resulting monthly amount by \$28.00, the ACP amount for Classes III and IV, to derive the REC cost at wholesale and then converted this cost to a per kWh adder at retail.² UES said that for Non-G1 customers the adder at the retail level would be \$0.00119 per kWh. For G1 customers the adder would be \$0.00117 per kWh. In further response to questions by the OCA, UES stated that it would track the costs of the RECs and that these costs would be included in its annual reconciliation calculation.

¹ For detailed information, see N.H. RSA Chap. 362-F, Electric Renewable Portfolio Standard.

² KWh sales adjusted for losses.

OCA also requested that UES include in its next default service filing for the Non-G1 customers a statement of the average monthly residential customer use, the associated default service costs, and a calculation of the change in default service and overall rates.

C. Staff

Staff questioned UES witnesses about the cause of the increase in Non-G1 legal charges from an estimated \$8,000 to nearly \$13,000 actual. Because the company was not prepared to respond, the Commission reserved an exhibit for the company's answer. The request included specific detail to support the legal charges paid.

Staff expressed concern that the actual bad debt expense of \$266,044 for the Non-G1 customers for the period August 2007 to January 2008 was more than twice the company's estimate of about \$118,000. Again, because the company was not able to respond, the Commission reserved an exhibit for the company's answer. Staff added that the record response should address whether the Company's collection practices have been changed in response to the higher bad debt costs reflected in its filing.

Staff noted that schedule KMA-3 at page 3, which calculates by month the total default service costs to be included in the default service reconciliation calculation, showed that UES had included about \$190,000 in G1 default service charges that related to a supplier charge for December 2005 that had been incorrectly charged to G1 transition service. In addition, Staff noted that UES had included about \$32,000 in interest expenses related to this G1 charge in its default service reconciliation calculation. In response to Staff's question, UES explained that this error had just been uncovered and that corresponding credits had been made to the transition service charge in the company's annual reconciliation.

In conclusion, Staff agreed that UES complied with the solicitation process approved by the Commission in the 2005 default service docket, and that UES appropriately evaluated criteria in its selection of FPL Energy for the three-month power supply for G1 customers and of Constellation for the twelve-month contract for 25% of the power supply for Non-G1 customers. Staff also opined that UES' selection of an all inclusive energy-and-capacity bid was based on a reasonable analysis of the implied cost of capacity. Staff concluded by recommending that the Commission approve the petition but noted that Staff would continue to monitor the development of administrative costs and the issues regarding the bad debt expense.

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 and contract amendment.

UES states that the information contained in the materials included in Tab A must 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, including the "Provision for Uncollected Accounts," "Wholesale Rate," and "Supplier Charges" information, 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. 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 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 "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 (accorded protective treatment over power supply contract for 2005 default service rates); *Granite State Electric Company*, Order No. 24,318 (April 30, 2004) at 8 (accorded protective treatment over power supply contract for 2004 default service rates).

We do not find the public's interest in review of 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 protective treatment to the information in Tab A, including the Bid Evaluation Report, "Provision for Uncollected Account," "Wholesale Rate," and "Supplier Charges" values in KMA-3 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.

B. Default Service

Regarding UES' analysis of the bids and its selection of the winning bidders, we find that it substantially complied with the procedures approved in Order No. 24,511 for the G1 default service solicitation for the three months May 2008 through July 2008. We also find that UES substantially complied with the bid procedures regarding its selection of a supplier for one 25% block of default service requirements for Non-G1 default service customers for the twelve-month period beginning May 2008. 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 selections of FPL Energy as supplier for G1 supply, and Constellation as supplier for Non-G1 DS supply, are reasonable. We approve UES' request to include the wholesale power costs reflected in the winning bids in default service rates beginning May 1, 2008.

We agree with Staff that UES should address in its testimony events such as unexpected or unusual increases in default service related bad debt expenses, the recovery of supplier charges related to prior periods, and the calculation of the RPS adder. We also agree with the

OCA that the company should include in each default service filing the average monthly residential usage, the associated default service costs, and the changes in the monthly default service and overall bill. In addition, we will require UES to provide the same information for the median customer usage.

Based upon the foregoing, it is hereby

ORDERED, that the amendment to the Power Supply Agreement between FPL Energy and Unitil Energy Systems, Inc. to provide 100% of the three month default service power supply to G1 customers for the period May 1, 2008 through July 31, 2008 is hereby

APPROVED; and it is

FURTHER ORDERED, that the twelve-month Power Supply Agreement between Constellation and Unitil Energy Systems, Inc. to provide one 25% block of default service power supply to Non-G1 customers is hereby APPROVED; and it is

FURTHER ORDERED, that the company will improve its narrative description of significant events and calculations in its subsequent default service filings, and it is

FURTHER ORDERED, that UES respond to the outstanding record requests as soon as possible; and it is

FURTHER ORDERED, that UES shall file conforming tariffs within 30 days of the Order consistent with N.H. Admin. Rules Puc 1606.02.

By order of the Public Utilities Commission of New Hampshire this twenty-first day of
March, 2008.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Clifton C. Below
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary