

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 08-015

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. 24,861

June 20, 2008

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 13, 2008, 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 August 1, 2008 through October 31, 2008, and of the resulting default service rates. In support of its petition, UES filed the testimony of Robert S. Furino and Linda S. McNamara, a redacted bid evaluation report (Schedule RSF-1), a copy of the request for proposals (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 *Unitil Energy Systems, Inc.*, Order No. 24,511, 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 on May 15, 2008. UES issued the requests for proposals (RFP) on May 8, 2008. Suppliers submitted indicative bids to UES on June 3, 2008. On June 6, 2008, UES provided a copy of the indicative bids on a confidential basis to Commission Staff to allow Staff to review the implied cost of capacity in the indicative bids. Final bids were received on June 10, 2008. Also on June 10, 2008, UES selected PSEG Energy Resources & Trade (PSEG) as supplier for G1 default service power supply for the three-month period from August 2008 through October 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, contained in Tab A to Schedule RSF-1, attached to Exhibit RSF-1 of the petition. 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's ranking of each bidder's financial security; the contact list used by UES during the RFP process; and the final PSA with PSEG redlined to compare it with 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), (e), (g) and (h) of Page 2 of Schedule LSM-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. Finally, UES also requested protective treatment of the indicative bid information provided to Staff on June 6, 2008.

UES asserts that the information for which it seeks protective treatment 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’s and the responding bidders’ bargaining positions with respect to future participation in the energy market.

On June 16, 2008, the Commission issued a secretarial letter scheduling a hearing for June 18, 2008, which was held as scheduled. At hearing, the Commission directed UES to adjust its working capital requirement calculation to account for lead revenues. On June 19, 2008, UES filed an electronic copy of the revised working capital requirement calculation and the resulting revised rates.

II. POSITIONS OF THE PARTIES

A. Unifil 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 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 PSEG 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 PSEG. The company testified that it believes PSEG offers the best overall value in terms of both price and non-price considerations for the supply requirement. Once PSEG 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 retail rates adjusted for reconciliation, the Renewable Portfolio Standard (RPS) adder, working capital requirements, provision for uncollected accounts and internal company administrative costs, the retail rates for each month in the period will be as follows:

| Month | August 2008 | September 2008 | October 2008 |
|------------|-------------|----------------|--------------|
| \$ per kWh | \$0.15900 | \$0.14119 | \$0.14383 |

The company testified that the proposed rates produce a simple three-month average rate of \$0.14801 per kWh. The proposed rates represent an increase of \$0.02675 per kWh, on average, from the current rate of \$0.12126 per kWh for the approximately 60 G1 customers that remain on default service, which constitutes roughly 40% of the G1 class. The company said that on an overall bill basis G1 class customers who do not choose a competitive supplier will experience rate increases of approximately 16.7 percent.

UES testified that the Renewable Portfolio Standard (RPS) statute, RSA 362-F, requires providers of electric service to either purchase a portion of their power from renewable sources through the acquisition of renewable energy certificates (RECs) or, if such RECs are not available, 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 megawatt-hour 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. The company calculated the adder for the period August 1 through October 31, 2008 to be \$0.00117 per kWh. According to UES, the total cost to comply with the statute for its large customer group for the period from August 1, 2008 through October 31, 2008 will be \$28,547.

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. Finally, UES requested the Commission grant its motion for confidential treatment.

B. Commission Staff

Staff noted that UES, for the first time, had included the estimated RPS obligations and an additional estimated amount for Generation Information System (GIS) support payments in its calculation of working capital requirements.¹ In its 2005 lead/lag study, UES calculated a net lag of 11.61 days for its G1 customers. In response to questions, UES acknowledged that it is not required to transmit the RPS-related ACP payments to the state treasurer until July 1, 2009 and therefore the receipt of customer revenue associated with REC purchase obligations actually reduces rather than increases UES' working capital requirement. UES also agreed that there was a short lead, rather than a lag, associated with the GIS expenses. UES agreed to revise the working capital calculation accordingly. The Commission reserved Exhibit 6 for the modified rates that reflected the revised working capital calculation.

At the end of the hearing, Staff stated 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 recommended that the Commission approve the petition subject to revision of the working capital requirement and the resulting revision to rates.

On June 19, 2008, UES filed an electronic copy of Exhibit 6 which included the revised working capital calculation that applied a lead to the RPS revenue UES will receive from its G1

¹ The GIS is the mechanism through which RECs are traded throughout New England, since load-serving entities in every New England state except Vermont are obliged to purchase RECs under applicable state law. Managed by a private contractor, the GIS is ultimately overseen by ISO New England as operator of the regional electricity grid.

customers for the period August through October, 2008.² Exhibit 6 also included a revised calculation of rates for the B1 rate class. The resulting rates, which represent a 16.6 percent increase to overall average G1 bill, are as follows:

| Month | August | September | October |
|------------|-----------|-----------|-----------|
| \$ per kWh | \$0.15896 | \$0.14115 | \$0.14379 |

III. COMMISSION ANALYSIS

A. Confidentiality

First, we address UES' motion for confidential treatment. We note that UES has filed similar motions with its default service filings in the past and that we have granted motions for confidential treatment in such cases. *See* Order No. 24,716 (December 15, 2006), 91 NH PUC 617, and Order No. 24,766 (June 22, 2007). We have conducted an *in camera* review of Tab A and the other materials for which UES seeks confidential treatment. 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), (e), (g) and (h) of Page 2 of Schedule LSM-2" found on columns (a), (c), (e) and (f) of page 2 of Schedule LSM-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. In addition, the indicative bid information shared with Staff should also be accorded protective treatment.

We do not find the public's interest in review of the financial, commercially sensitive

² Exhibit 6 includes a confidential, revised copy of Schedule LSM-2, page 2 of 2, which is subject to the motion for confidential treatment.

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 the motion for confidential treatment.

Pursuant to requirements of the Federal Energy Regulatory Commission (FERC), each wholesale supplier is obligated to report to the 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 Revised Public Utility Filing Requirements*, 99 FERC ¶ 61,107 (April 25, 2002) and 18 CFR Parts 2, 35. FERC makes this information available to the public through electronic quarterly reports. Therefore, insofar as protection is requested for wholesale contractual sales, we grant such information protective treatment until such time as the information is published by the FERC.

Consistent with past 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 the UES analysis of the bids and its selection of the winning bidder, we find that UES substantially complied with the procedures approved in Order No. 24,511 for the G1 default service solicitation. We are satisfied that UES met the 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 PSEG was reasonable. The testimony of UES, together with its bid evaluation report, indicates that the bid prices reflect current market conditions driven primarily by rising natural gas prices. In light of the circumstances, we approve the petition and the revised rates submitted by UES on June 19, 2008.

Based upon the foregoing, it is hereby

ORDERED, that the power supply agreement entered into by Unitil Energy Systems, Inc. with PSEG Energy Resources & Trade and resulting proposed rates, as revised on June 19, 2008, 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, 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 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 twentieth day of
June, 2008.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Clifton C. Below
Commissioner

Attested by:

Lori A. Normand
Assistant Secretary