**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**

**Order Approving Petition**

**O R D E R N O. 24,897**

**September 19, 2008**

**APPEARANCES:** Gary M. Epler, Esq. on behalf of Unitil Energy Systems, Inc.; Office of Consumer Advocate by Rorie Hollenberg, Esq. 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 12, 2008, Unitil Energy Systems, Inc. (UES) filed a petition requesting approval of its solicitation and procurement of default service for the period beginning November 1, 2008. The filing was made 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 (September 9, 2005). In support of the petition, UES filed the testimony and related exhibits of Robert S. Furino and Linda S. McNamara. UES also filed its updated, quarterly customer migration report with this filing.

The settlement agreement approved in Order No. 24,511 provides that UES shall solicit power supplies on a quarterly basis for 100 percent of a three-month block of default service requirements for its large general service class (G1) customers at fixed monthly prices that vary from month to month. In its petition, UES requests approval of a three-month default service supply for its G1 customers for the period November 2008 through January 2009. UES' large general service customers are industrial or commercial customers with average use consistently equal to or in excess of 200 kilovolt amperes of demand and generally greater than or equal to 100,000 kilowatt hours (kWh) per month.

The settlement agreement further provides that UES solicit Non-G1 supply in four blocks on a laddered portfolio basis, (i.e., at six month intervals) 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.[1] Non-G1 includes customers in the residential, general service G2 and outdoor lighting rate classes. Pursuant to the settlement agreement, retail prices for Non-G1 customers are reset every six months, effective May 1, and November 1, as the composition of the portfolio changes. In this petition, UES requests approval of its solicitation of one 24-month power contract to supply 25% of the requirements for Non-G1 customers. Consistent with the settlement agreement, UES proposes to reset the rates for its Non-G1 customer classes for the six-month period from November 2008 through April 2009.

As a result of its solicitation process, UES selected FPL Energy Power Marketing (FPL Energy) to supply 100 percent of the three-month block of default service energy requirements for G1 customers and Connectiv Energy Supply, Inc. (Connectiv) to supply the 24-month block of default service energy requirements for Non-G1 customers. According to the company, overall bills for customers in the residential and general service classes on default service will increase by 5.8 percent. For the large general service class, total bills will decrease by 20.3 percent, and for outdoor lighting customers, bills will increase about 3.6 percent.

With its petition, UES filed a motion for confidential treatment of certain information contained in Tab A and in certain exhibits to the testimony of Ms. McNamara pursuant to RSA 91-A:5, IV and N.H. Code Admin. Rules Puc 203.08. The motion for confidential treatment is

---

[1] Following an order of notice issued on July 24, 2007 and a hearing on July 31, 2007, the Commission decided that UES should solicit a 24-month power supply contract in lieu of a 36-month power supply contract to advance the possibility of implementing time-of-use pricing.

similar to motions UES has filed in previous default service dockets.[2] UES claims that the information for which it seeks confidential treatment is sensitive commercial and financial information, the disclosure of which would impair its ability to solicit power supply on a competitive basis. In addition, UES claims that some of the information, if disclosed, would permit the calculation of the wholesale rate.[3] 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.[4]

The Office of Consumer Advocate (OCA) previously notified the Commission on February 25, 2008 of its participation in this docket on behalf of residential ratepayers, consistent with RSA 363:28. The Commission issued a Secretarial Letter on September 15, 2008 scheduling a hearing for September 17, 2008 which was held as scheduled.

## II. POSITIONS OF THE PARTIES AND STAFF

### A. Unitil Energy Systems, Inc.

UES testified that, consistent with Order No. 24,511, it conducted an open solicitation process, actively sought interest among potential suppliers and provided access to sufficient information to enable potential bidders 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

[2] *See* filings in Docket Nos. DE 06-123, DE 07-013 and prior filings in the instant docket, DE 08-015.
[3] UES 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.
[4] *See* FERC Docket No. RM01-8-000, Order No. 2001, 99 FERC ¶ 61, 107, 18 CFR Parts 2 and 35, issued April 25, 2002.

customer counts, large customer concentration data and the evaluation loads, which are the estimated monthly volumes that UES would use to weight bid pricing terms. UES issued the request for proposals (RFPs) on July 31, 2008. On August 26, 2008, UES reported that 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 9, 2008, UES received final pricing from bidders and conducted its evaluation of these bids including 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 Connectiv as the winning bidder for the 24-month contract for 25 percent of the Non-G1 power supply requirements, and FPL Energy as the winning bidder for the 3-month contract for 100% of the G1 power supply 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 power supply 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 then determined whether or not to procure capacity under a fixed price based on a comparison of the implied capacity costs bid by the respondents with 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.

As a result of its selection of FPL Energy to supply 100 percent of G1 customer requirements for three months, UES will fix the monthly default service retail rate component for G1 customers for the months of November through January 2009 as follows:

| Month | November 2008 | December 2008 | January 2009 |
|---|---|---|---|
| Price per kWh | $0.09799 | $0.10800 | $0.12171 |

Based on a 3-month simple average, the current G1 default service rate is $0.14797 per kilowatt hour (kWh). The proposed rate, based on a simple 3-month average, is $0.10923 per kWh. The result is a 26.17 percent decrease in the default service component of retail rates. UES said that the decrease reflects the change in market prices from one period to the next. The overall bill impact, including distribution service costs, external delivery and stranded costs charges, and the system benefit charge is a reduction of 20.3 percent from $0.16888 per kWh to $0.13014 per kWh.

For Non-G1 customers, UES selected Connectiv as the supplier for the 24-month Non-G1 power supply requirements. UES stated that the resulting fixed default service rate for Non-G1 residential customers will be $0.11239 per kWh, which amounts to an increase of $0.00948 per kWh, or approximately 9.2 percent, in the cost of the default service energy over the currently effective energy cost. UES attributed the rate increase to the higher contract costs for the period November 1, 2008 through April 30, 2009, compared to the contract costs for the current period, May 1, 2008 through October 31, 2008

UES described how it plans to comply with the renewable energy portfolio standard required by RSA 362-F. For 2008 sales, UES said that it will need to provide Class III (eligible biomass) renewable energy certificates (RECs) for 3.5 percent of sales and Class IV RECs (small hydroelectric) RECs for 0.5 percent of sales with each REC representing one megawatt of power sold. For 2009 sales, UES said it will need to provide Class I (generally, new renewable sources) RECs for 0.5 percent of sales, Class III RECs for 4.5 percent of sales and Class IV RECs for 1.0 percent of sales. UES testified that it would meet these requirements by either purchasing RECs or making alternative compliance payments.

As of the time UES prepared its testimony, it estimated the cost of Class I and Class III RECs at the alternative compliance payment cost. For 2009, UES applied the annual inflation factor used to adjust the alternative compliance payments in the calculation of its obligations. UES stated that it used the alternative compliance payment for Class III RECs for 2008, which is $28.72 per REC, and for 2009, which is $29.46. UES stated that its estimate for the alternative compliance payment for Class I RECs is $60.08. With respect to Class IV RECs, UES indicated that some RECs would be available, and therefore it used an estimate of $26.00 for Class IV RECs for 2008 and 2009.

For G1 customers, UES estimated overall RPS compliance costs for November and December 2008 to be $8,493 and $8,435 respectively, and compliance costs for January 2009 to be $24,350. UES stated that RPS compliance costs would be billed only in their respective months and would not be spread over the entire three-month period. For Non-G1 customers, UES estimated the overall RPS compliance costs for the period November through December 2008 to be $174,890, and for January through April 2009 to be $580,691. According to UES, the

RPS costs included in default service rates amount to \$0.00174 per kWh for Non-G1 customers and \$0.00145 per kWh for G1 customers.

UES testified that the filing made adjustments to administrative costs attributable to the delivery of default service as allowed by the settlement agreement approved in Order No. 24,511. UES said that it was working with Staff to track all such administrative costs because Staff had expressed concern that not all such administrative costs were included in default service rates. In response to questioning by Staff, UES stated that it would accumulate a year's worth of data and review the results with Staff and the OCA before adding additional employee hours or other administrative costs to those costs recovered in the default service rates.

UES noted that Staff had raised questions prior to hearing about the validity of the working capital calculation associated with RECs for both G1 and Non-G1 customers. As a result, UES agreed to reexamine the calculations and share the results of its review, together with related work papers, with Staff and the OCA. UES, Staff and the OCA would then meet to determine whether default service costs should be adjusted.

At hearing, UES requested that the Commission approve its motion for confidential treatment which also covers confidential information provided in an electronic mail from UES to Staff and the OCA. In conclusion, UES requested that the Commission find that: (1) UES followed the solicitation process approved by the Commission; (2) UES' analysis of the submitted bids was reasonable; (3) UES supplied a reasonable rationale for its choice of suppliers; (4) the amounts payable to the sellers under the supply agreements may be included in retail rates: (5) the requested increase to the default service related to internal administrative costs may be included in default service rates as of November 1, 2008 for G1 and Non-G1 customers; and (6) UES' proposal for compliance with RSA 362-F is reasonable.

**B. Office of Consumer Advocate**

The OCA asked UES if the recent Gulf Coast hurricane, "Hurricane Ike," impacted the prices it received in its solicitation. UES replied that it did not believe the hurricane impacted bid prices. The OCA also asked UES to provide it with information related to UES' review of administrative costs associated with the delivery of default service. The OCA concluded by stating that it supported UES' petition and the laddered portfolio approach for procuring default service supply for Non-G1 customers.

**C. Commission Staff**

Staff asked UES to explain why rates for G1 customers are decreasing at the same time that rates for Non-G1 customers are increasing. UES pointed out that the G1 customer rates moved up or down depending on energy market conditions at the time of the solicitation. UES observed that energy market prices for the current period (November 08 through April 09) had fallen relative to prices for the prior default service period. While UES agreed with Staff that the average price for each of the three existing Non-G1 supply contracts for the current period was higher than the average price under the proposed contract it nevertheless contended that the laddered portfolio approach provided price stability.

Based on its review of the filing, Staff stated that UES had complied with the solicitation and bid evaluation process established in the settlement approved in Order No. 24,511 and that the resulting bids appeared to be market based. Staff recommended that the Commission approve the petition.

## III. COMMISSION ANALYSIS

### A. Motion for Confidentiality

First, we address UES' Motion for confidential treatment. The Right-to-Know law provides each citizen the right to inspect public records in the possession of the Commission. *See,* RSA 91-A:4, I. RSA 91-A:5, IV, however, exempts from disclosure certain "confidential, commercial, or financial information." We note that we have previously considered and granted motions for confidential treatment of the materials in Tab A, an exhibit which accompanies each of UES' default service filings, on the basis that the information in Tab A is confidential commercial or financial information. *See, Unitil Energy Systems, Inc*., Docket No. DE 06-123, 91 NH PUC 409, Order No. 24,676 (September 29, 2006); Docket No. DE 07-013, Order No. 24,735 (March 26, 2007) and Order No. 24,791 (September 21, 2007); and, in the instant Docket No. DE 08-015, Order No. 24,838 (March 21, 2008).

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. *See, 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 and the e-mail documents dated September 3 and September 12, 2008 to Staff and the OCA which, respectively, contained confidential information related to UES' analysis of initial bids and a copy of Tab A. 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 that the ongoing review of default service related internal administrative costs should continue, and that the OCA will participate in this review, which is to be completed after 12 months of information has been collected. Based on this review, and the fact that no objections were made to the proposed increase in internal administrative costs 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 these costs will be subject to reconciliation in UES' annual retail rate reconciliation filing and that we may find at a later time that there is a more appropriate way to recover these costs.

We find 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 Order No. 24,511. 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 note that UES stated that it will seek two blocks of supply in its next Non-G1 default service RFP, one with a 12-month term and the other with a 36-month term. UES was instructed to solicit a 24-month block of power in lieu of a 36-month block in order to allow for the implementation of time-of-use rates, consistent with our ruling in, *Investigation into Implementation of the Energy Policy Act of 2005,* Order No. 24,763 (June 22, 2007). *See also,* DE 07-013, Secretarial Letter (August 3, 2007). More recently in Docket No. DE 06-061, we directed Staff to convene a meeting to establish a working group to facilitate the evaluation and implementation of time-based rates in New Hampshire. *See,* Order No. 24,895 (September 15, 2008). Until directed otherwise, UES shall substitute a 24-month contract for any 36-month default service contract that it planned to acquire.

We find that UES' evaluation of the bids, its selection of FPL Energy as provider of default service to its G1 customers, and its selection of Connectiv to supply the 24-month block (representing 25 percent of the load requirements) of default service to its Non-G1 customers, is reasonable. We approve this petition and we will allow the power supply, administrative costs, RPS compliance costs and capacity costs to be included in UES' default service rates beginning November 1, 2008.

**Based upon the foregoing, it is hereby**

**ORDERED**, that the power supply agreement between FPL Energy Power Marketing and Unitil Energy Systems, Inc. for three months of default service supply for UES' G1 customers beginning November 1, 2008 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 24-month block consisting of 25% of default service supply for UES' non-G1 customers beginning November 1, 2008 is hereby APPROVED; and it is

**FURTHER ORDERED**, that the default service rates proposed by UES for G1 customers for the period November 1, 2008 through January 31, 2009, and non-G1 customers for the period beginning November 1, 2008 through April 30, 2009, 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 nineteenth day of September, 2008.

| | | |
|---|---|---|
| Thomas B. Getz<br>Chairman | Graham J. Morrison<br>Commissioner | Clifton C. Below<br>Commissioner |

Attested by:

Debra A. Howland
Executive Director & Secretary