

**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. 24,921**

**December 12, 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 December 5, 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 February 1, 2009 through April 30, 2009, 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 that agreement, 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 issued the RFPs on November 6, 2008. UES filed a red-lined version of the RFP and proposed power supply agreement (PSA) with the Commission on November 10, 2008. Suppliers submitted indicative bids to UES on November 25, 2008, and on November 26, 2008. UES provided a copy of the indicative bids on a confidential basis to Commission Staff. Final bids were received on December 2, 2008. Also on December 2, 2008, UES selected FPL Energy Power Marketing, Inc. (FPL Energy) as power supplier for G1 default service for the three-month period from February 2009 through April 2009. UES stated 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 supplier was 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; 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 FPL Energy redlined to compare it with the original PSA as issued. UES stated that the bidders provided information to UES with the express understanding that the information would be maintained as confidential. UES did not seek confidential treatment of the name of the winning bidder.

In addition to requesting protective treatment for the material contained in Tab A, UES also requested confidential treatment of the "Total G1 Class DS Supplier Charges," "Working Capital Requirement," "Supply Related Working Capital" and "Provision for Uncollected

Accounts” found in columns (a), (d), (f) and (l) 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 the wholesale rate, which is properly treated as confidential. UES also requested confidential treatment of the indicative bid information provided to Staff on November 26, 2008.<sup>1</sup> Finally, at hearing UES requested confidential treatment for an e-mail to Staff on December 5, 2008 which contained the materials in Tab A.

UES asserted 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’ and the responding bidders’ bargaining positions with respect to future participation in the energy market.

On December 8, 2008, the Commission issued a secretarial letter scheduling a hearing for December 10, 2008, which was held as scheduled.

## **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

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<sup>1</sup> UES’ motion references June 6, 2008. At hearing, UES said that the correct date is November 26, 2008.

announced the issuance of the RFP to a list of contacts at 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.

UES attested that, in order to gain the greatest level of market interest, it provided potential 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 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 final 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 bids.

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

Month	February 2009	March 2009	April 2009
\$ per kWh	\$0.10811	\$0.09527	\$0.09431

UES testified that the proposed rates are equivalent to an average rate of \$0.09923 per kWh for the three-month period. As a result, the average G1 customer taking default service will experience a decrease of approximately 6.5 percent on a total bill basis compared to current rates.

UES testified that the 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.

The company said that, to satisfy its 2009 RPS requirements, it must procure Class I RECs equivalent to 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 stated that it would purchase RECs, if available, to comply with the RPS law. In the event RECs are not available, UES said it would make ACPs to the renewable energy fund.

UES estimated the cost of Class I and Class III RECs at their respective ACPs, adjusting the ACP by the Northeast Region Consumer Price Index on an annual basis in December of each year for the following calendar year. According to UES, the total cost to comply with the RPS statute for its large customer group for the period from February 1, 2009 through April 30, 2009 will be \$44,900. UES said it would collect the associated costs by charging customers an adder equal to the product of \$44,900 divided by the expected sales for the period (23,855,635 kWh) multiplied by the loss factor (1 + 4.591%). The company calculated the adder to be \$0.00198 per kWh. UES testified that it had acquired 20 percent of its 2009 Class IV REC requirements through the market at a cost of \$24 per REC. The remainder of the 2009 Class IV REC requirements are priced at the ACP.

UES stated that the settlement agreement approved by the Commission in Order No. 24,511 requires UES to solicit from suppliers pricing which both includes and excludes the cost

of capacity. According to UES, this requirement was intended as an interim measure to protect customers from excessive capacity prices due to the regulatory and market uncertainty in the New England capacity market. At the time the settlement agreement was entered into, it was unclear whether the bid prices including capacity would grossly exceed the actual value of capacity due to the proposed structure of the capacity market and the ongoing litigation regarding the capacity market rules. UES asserted that since that time the Independent System Operator (ISO) for New England has concluded its first Forward Capacity Auction (FCA) and was in the process of conducting the second FCA. UES maintained that, in light of the change in circumstances, there is no longer a need to separately evaluate pricing both with and without capacity, and requested that the Commission authorize UES to begin soliciting energy and capacity only bids with its next solicitation.

In summary, UES petitioned the Commission to find that the utility has: (1) followed the solicitation process approved in Order No. 24,511, (2) conducted a reasonable analysis of the bids submitted, and (3) 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. In addition, UES requested that the Commission authorize UES to solicit full requirements service under energy and capacity only pricing beginning with its next solicitation. Finally, UES requested that the Commission grant its motion for confidential treatment.

#### **B. Commission Staff**

In response to a Staff inquiry as to how UES acquired the 20 percent of its 2009 Class IV

REC requirements purchased from the market, UES stated that it had entered into a bilateral contract with a qualifying hydroelectric facility to acquire 1,000 RECs at a price of \$24 per REC. UES added that it had not considered acquiring RECs from default service power suppliers or through an independent RFP, although it would not rule out the latter.

Staff also inquired about the status of UES' review of its internal administrative costs associated with the delivery of default service. UES responded that Company employees working on default service were appropriately billing their time, that UES would file a final report on internal administrative costs after it had acquired a year's worth of data, and that such a report would be filed sometime in June 2009.

At the end of the hearing, Staff opined 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. Finally, Staff indicated it had no objection to UES soliciting a single service (i.e., an all inclusive energy-and-capacity fixed price product) beginning with its next solicitation in February, 2009.

### **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 Unitil Energy Systems, Inc.*, Order No. 24,716, 91 NH PUC 617 (December 15, 2006), *Unitil Energy Systems, Inc.*, Order No. 24,766 (June 22, 2007) and *Unitil Energy Systems, Inc.*, Order No. 24,861 (June 20, 2008). We have conducted an *in camera* review of Tab A and the other materials for which UES seeks confidential treatment.



We agree that the information concerning the “Total G1 Class DS Supplier Charges,” “Working Capital Requirement,” “Supply Related Working Capital,” and “Provision for Uncollected Accounts” found on columns (a), (d), (f) and (l) 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, we agree the information shared with Staff by e-mail should be accorded protective treatment.

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 the benefits of confidentiality accrue not only to the corporate entities involved but also to UES's customers, whose rates will likely be lower as a result. *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 confidential treatment is requested for wholesale contractual sales, we grant such information confidential treatment until such time as the information is published by the FERC.

Consistent with our applicable rule, N.H. Code Admin. Rules Puc 203.08(k), 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 the determination.

### **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 that 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 FPL Energy were reasonable. The testimony of UES, together with its bid evaluation report, indicates that the bids reflect current market conditions. In light of the circumstances, we approve the petition and the revised rates submitted by UES on February 1, 2009.

We next consider the request that UES solicit only all inclusive energy-and-capacity bids beginning with its next solicitation scheduled for February 2009. We agree with UES that the forward capacity market is operating in a predictable manner. At the time we approved the settlement agreement in Order No. 24,511, the capacity market was nascent and price forecasts varied over a broad range. As a result, we required UES to solicit energy-only and energy-and-capacity bids so that we could evaluate the cost of capacity contained in the all inclusive bids and avoid a situation where customers over-paid for capacity. Now that the rules governing the forward capacity market are well established and price expectations are less uncertain, we find

that it is reasonable for UES to forego soliciting energy-only bids in subsequent default service RFPs.

We note that UES acquired a portion of its 2009 Class IV REC requirements through a bilateral contract with an eligible hydroelectric generator rather than through an RFP. In order to ensure that the cost of meeting UES's obligations under the RPS statute is minimized, we will require Staff and the Office of Consumer Advocate to meet with UES to develop procedures for procuring RECs. This is consistent with our decision in Order No. 24,902, which addressed the same issue for Granite State Electric Company.

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

**ORDERED**, that the power supply agreement entered into by Unitil Energy Systems, Inc. with FPL Energy Power Marketing, 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, 2009 are APPROVED; and it is

**FURTHER ORDERED**, that UES may discontinue the solicitation of energy-only bids in connection with its solicitation for default service power supply; and it is

**FURTHER ORDERED**, that the pending motion for confidential treatment is 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. Rules Puc 1603.02.

By order of the Public Utilities Commission of New Hampshire this twelfth day of December, 2008.

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Thomas B. Getz  
Chairman

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Graham J. Morrison  
Commissioner

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Clifton C. Below  
Commissioner

Attested by:

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Debra A. Howland  
Executive Director