

DE 04-197

UNITIL ENERGY SYSTEMS, INC.

Petition for Approval of Proposed Transition Service and Default Service Tariffs for G1 Customers from November 1, 2005 – April 30, 2006

Order Approving Petition

ORDER NO. 24,526

October 11, 2005

I. BACKGROUND

On September 30, 2005, Unitil Energy Systems, Inc. (Unitil) filed a Petition with the New Hampshire Public Utilities Commission (Commission) for the Approval of Proposed Transition Service (TS) and Default Service (DS) Tariffs for G1 Customers from November 1, 2005 through April 30, 2006. Unitil filed the Petition pursuant to Commission Order No. 24,420 (January 7, 2005). In Order No. 24,420, the Commission approved, *inter alia*, Unitil's petition for a one year extension of TS and DS for Unitil's G1 customers (from May 1, 2005 through April 30, 2006) and Unitil's proposal to solicit TS and DS for G1 customers through two semi-annual solicitations for six month supply periods commencing May 1, 2005 and November 1, 2005, respectively. The Petition contained a Bid Evaluation Report and supporting testimony setting forth Unitil's selection of a supplier and proposed TS and DS rates for G1 customers from May 1, 2005 through October 31, 2005.

In Order No. 24,420, the Commission also approved Unitil's Request for Proposal (RFP) to solicit supply for its G1 customers and the proposed process for Unitil's evaluation of bids received in the solicitation process. In addition, the Commission-approved the process whereby Unitil would seek Commission approval of the resulting rates for G1 customers. Under the Commission approved solicitation process, Unitil has the burden to show that it followed the

solicitation process approved by the Commission and that its analysis of the bids and choice of supplier is reasonable. Finally, in Order No. 24,420, the Commission approved a schedule providing five business days from the day that Unitil filed the proposed rates for the Commission to review and rule on the rates.

With its Petition, Unitil filed a Motion for Confidentiality and Protective Order (Motion) consistent with RSA 91-A:5,IV and N.H. Admin. Rules, Puc 204.06. The information for which Unitil seeks confidential treatment is contained in Tab A to Schedule RSF-1 attached to Exhibit RSF-1 of the Petition. The material in Tab A presents a detailed and unredacted Bid Evaluation Report (Report) prepared by Unitil in connection with the bids received in response to its RFP for TS and DS. Unitil also requested confidential treatment for the “Provision for Uncollected Accounts” (line 3), “Wholesale Rate” (line 10) and “Supplier Charges” (lines 2 and 11) information contained on page 1 of 4 of Schedule KMA-2, attached to Exhibit KMA-1 of the Petition. With regard to the “Provision for Uncollected Accounts” “Wholesale Rate” and “Supplier Charges” information, Unitil stated in its Motion that it was requesting confidential treatment of that information only until such time as that information becomes publicly available at the Federal Energy Regulatory Commission (FERC)¹. In addition, Unitil requested confidential treatment of the final Power Supply Agreement (PSA) negotiated with the winning bidder because disclosure would otherwise compromise the ability of each party to negotiate in the future.

¹ According to the Motion, it is Unitil’s understanding that, in accordance with FERC reporting requirements, the supplier is obligated to report, within thirty days of the end of a quarter, the price and volume of its wholesale contractual sales during the quarter and identify the party to whom the sale was made.

On October 6, 2005, Staff filed a memorandum with the Commission recommending approval of the Petition. On October 7, 2005, the Commission issued a Secretarial Letter scheduling a hearing for October 10, 2005. The hearing was held as scheduled.

Robert S. Furino, Karen M. Asbury, and George Gantz testified at the hearing for Unitil. George McClusky presented Staff's testimony. At the hearing, Unitil withdrew its request for confidential treatment of one page of the materials in Tab A with the heading "UES Large Customer TS/DS RFP Results, Pricing Benchmark Analysis, UES results (9/27/05) versus MECo [Massachusetts Electric Company] results (9/14/95)" (Benchmark Analysis).

II. POSITIONS OF THE PARTIES AND STAFF

A. Unitil

Unitil states it conducted an open solicitation process, actively sought interest among potential suppliers and provided potential suppliers access to sufficient information to enable them to assess the risks and obligations associated with providing the services sought. Unitil declares that it effected market notification of the RFP by announcing its availability electronically to all participants in the New England Power Pool (NEPOOL), in particular to the members of the NEPOOL Markets Committee. Unitil affirms that it also announced the issuance of the RFP to a list of contacts from energy companies who had expressed previous interest in receiving notices of solicitations conducted on behalf of Unitil's Massachusetts affiliate.

In order to gain the greatest level of market interest, Unitil avers that it provided potential bidders with appropriate and accessible information. According to its filing, Unitil 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 Unitil would use to weight bids in terms of price.

Unitil affirms that it evaluated the indicative bids on both quantitative and qualitative criteria, including price, credit worthiness of the bidder, a bidder's willingness to extend adequate credit to Unitil to facilitate the transaction, each bidder's capability of performing the terms of the RFP in a reliable manner, and willingness to enter into contractual terms acceptable to Unitil. Unitil avers that it negotiated with all potential suppliers who submitted proposals in order to obtain the most favorable terms each supplier was willing to offer. Unitil asserts that it received a positive response to its RFP, with bids from several qualified suppliers who competed to serve the load.

When the final bids were received, Unitil compiled weighted average prices, using the evaluation loads that were issued to bidders along with the RFP. Unitil then evaluated the price and non-price aspects of each final bid and awarded a single contract for its G1 customers' TS and DS load to a single bidder, Consolidated Edison Energy, Inc. (ConEd). Based on its evaluation, Unitil determined that ConEd would offer the best overall value.

Unitil states that, as allowed by Order No. 24,420, TS and DS service is priced at either a fixed and variable rate. According to the tariff pages filed with its Petition and consistent with Order No. 24,420, Large G1 customers (those with a load of 1,000 kVA or more) taking TS and DS will pay rates that vary by month (G1 Variable Charge) as follows:

<u>November 2005</u>	<u>December 2005</u>	<u>January 2006</u>	<u>February 2006</u>	<u>March 2006</u>	<u>April 2006</u>
\$0.11902	\$0.12978	\$0.16921	\$0.15560	\$0.12483	\$0.11740

Small G1 TS and DS customers (those with a load of less than 1,000 kVA) would pay a fixed price (G1 Fixed Charge) of \$0.13638 per kWh. Consistent with Order No. 24,420, Small G1 customers may elect to receive the G1 Variable Charge if they make this choice prior

to the start of the six-month period. Small G1 customers having elected the G1 Fixed Charge will not be able to switch to the G1 Variable Charge until the end of the six-month period. Unitil testified that customers in the G1 class who do not choose a competitive supplier will see an increase of about 60% in their total bill, depending on usage. This impact analysis, according to Unitil, is based upon the G1 Fixed Charge.

In summary, Unitil petitioned the Commission to find that 1) Unitil has followed the solicitation process approved in Order No. 24,420, Unitil's analysis of the bids submitted was reasonable and Unitil has supplied a reasonable rationale for its choice of supplier; 2) based on these findings, the rates resulting from the solicitation process are reasonable and the tariffs containing these rates should be approved as filed; and 3) the order granting the approvals be issued on or before October 7, 2005,² which date is five business days after the date of the filing, pursuant to the schedule approved in Order No. 24,420.

At the hearing, Unitil testified that if the Commission did not approve the Petition, Unitil could conduct another solicitation, but it expected that prices resulting from another solicitation would be no lower than what it received from ConEd, and could possibly be higher. Unitil further opined that, in the event the Commission did not approve the Petition, Unitil would lose credibility in the market, thus compromising its ability to solicit future bids and negotiate supply contracts. Unitil offered that it had considered deferring recovery of some percentage of G1 supply costs as an alternative to the Petition, but concluded that such an approach raised significant financial issues. Unitil proffered that deferral of costs would require Unitil to raise significant funds to finance the deferral, thus impacting the company from a credit standpoint. Unitil also pointed out that deferring costs creates an artificial environment inimical

to competitive markets, and could undermine future power supply solicitations because of the uncertainties regarding recovery of the deferred costs.

Unitil attested that it did not earn profit through the power supply contract, and that the price of the power was simply passed through to retail customers. Unitil concluded that, in its opinion, there were no practical alternatives to the proposal contained in the Petition and requested the Commission approve the Petition.

B. Office of Consumer Advocate

At the hearing, the Office of Consumer Advocate (OCA) expressed its support for Unitil's Petition. OCA noted that Unitil still provided fixed prices for small G1 customers (those consumer less than 1,000 kVA). OCA opined that while the rate increases proposed by the Petition are unprecedented, Unitil had an obligation to continue to provide DS to G1 customers at market rates. OCA encouraged Unitil to work with its large G1 customers to encourage the use of cogeneration or self-supply.

C. Commission Staff

On October 6, 2005, the Commission Staff (Staff) recommended approval of Unitil's Petition and the resulting rates despite the very substantial increase in rates that G1 customers would face under the Petition. In Staff's view, the solicitation complied with the requirements set forth in Order No. 24,420 and Unitil used an appropriate evaluation process to select the winning bidder. Staff noted that, using various tests, Unitil had demonstrated that the monthly bid prices represented a competitive market result given the timing of the solicitation previously discussed. Based on this review, Staff concluded that the pricing obtained by Unitil was competitive.

² At hearing, Unitil revised its request to obtain a Commission order no later than October 11, 2005.

Staff observed that, although the proposed prices are significantly higher than those currently in effect, the rates were reflective of existing conditions in the energy market. Staff noted the extreme volatility in the energy market at present, due to a number of issues, including the impacts of Hurricanes Katrina and Rita on the natural gas production and refineries along the Gulf Coast. Staff cautioned that, if the Commission were inclined to reject Unitil's petition because of the resulting high retail rates, Unitil would probably have to purchase power for its TS and DS customers on the spot energy market, at least for some period of time. In addition, Staff pointed out that the financial assurance requirements of the Independent System Operator-New England (ISO-NE) would increase supply acquisition costs, which would inevitably be passed on to its retail customers, possibly resulting in even higher energy costs.

At the hearing, Staff commented on Unitil's Benchmark Analysis. Staff noted that the Benchmark Analysis demonstrated that the monthly bid prices proposed in the Petition are based on the competitive market. Staff pointed out that Unitil compared ConEd's prices with large customer default service rates recently approved by the Department of Telecommunications and Energy (DTE) for the Massachusetts Electric Company (MECo), adjusted to remove the effects of the Massachusetts Resource Portfolio Standard (RPS) and the price differences between the MECo and New Hampshire load zones. Staff noted that the spread between the two sets of prices, which is estimated at 11 percent, was then compared to the movement in the New York Mercantile Exchange (NYMEX) natural gas futures and contracts at Henry Hub and the NYMEX ISO-NE electric futures contracts during the time that elapsed between the final bid dates under the two solicitations. Staff observed that the NYMEX natural gas contracts increased by 15% and the ISO-NE electric futures contracts increased by 20% over

that time period. Based on these results, Staff concludes that the resulting pricing was market-based. Staff also agreed with Unitil statement that Unitil did not earn profit through the PSA, and that the price of the power was simply passed through to retail customers.

Staff commented that deferring costs of TS and DS for later recovery would be contrary to the principles of electric industry restructuring and pointed out that RSA 374-F:3, V (e) authorized the Commission to approve alternative means of providing transition or default service provided, among other things, that the means did not create new deferred costs. Staff indicated that, in fact, a rate proposal including cost deferrals would be contrary to the statutory limitation. In conclusion, Staff testified that the rates resulting from Unitil's Petition are competitive as required by RSA 374-F:3V(b) and (c) in light of the market and recommended the Commission approve the Petition.

IV. COMMISSION ANALYSIS

A. Confidentiality

First, we address Unitil's Motion for Confidentiality and Protective Order. We note that, at the October 10, 2005 hearing, Unitil withdrew its request for confidential treatment of the Benchmark Analysis. Therefore, we find that the Benchmark Analysis is public information and not subject to confidential treatment.

The materials in Tab A, which Unitil seeks to protect, contain a brief discussion of the selection of the winning bidder; a bidder key which identifies the suppliers who participated in the RFP; the comparative pricing received from the bidders, including the implied total cost according to the evaluation loads provided with the RFP and a ranking of the transactions offered by each bidder in terms of financial security, including consideration of

reasonable extension of credit to Unitil and the creditworthiness of the supplier and the credit assurance offered; the information provided by each bidder in the proposal submission forms; and the contact list used by Unitil during the RFP process. The confidential materials in Tab A also contain a redlined version of the negotiated PSA. In addition, Unitil requested confidential treatment of the “Provision for Uncollected Accounts” (line 3), “Wholesale Rate” (line 10) and “Supplier Charges” (lines 2 and 11) information contained on page 1 of 4 of Schedule KMA-2, attached to Exhibit KMA-1.

Unitil stated that the information contained in the materials included in Tab A must be protected from public disclosure because it is confidential commercial and financial information. Unitil states that the information provided by bidders was offered under the express understanding that such information would be maintained as confidential. Unitil contends that suppliers will be reluctant to participate in future solicitations by Unitil if their confidential bid information is disclosed. Unitil further argues that disclosure of the information could detrimentally impact the suppliers’ ability to participate in other competitive solicitations in the market as well.

Unitil argues that disclosure of the PSA would reveal the specific terms and conditions Unitil and ConEd were willing to agree to in order to reach a final agreement and, thereby, could harm each party’s ability to negotiate in the future. Unitil states that regardless of the fact that the proposed PSA was provided to the Commission in October 2004 with no request for confidential treatment, the disclosure of the fully negotiated PSA will reveal Unitil’s negotiating posture to other potential power suppliers. Unitil claims that its customers would be harmed by Unitil’s diminished negotiating position.

With respect to Unitil's requests for confidential treatment of the "Provision for Uncollected Accounts," "Wholesale Rate" and "Supplier Charges" information, Unitil stated that inclusion of these values would disclose confidential commercial and financial information that could compromise its ability to negotiate prices in contracts arising from future solicitations. Unitil states that disclosure in this docket would provide unnecessarily detailed monthly information which both ConEd and Unitil considered confidential during the course of their negotiations. Unitil contends that disclosure of this information could compromise Unitil's 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 Unitil and its customers. Unitil explains that the same information is reported quarterly to the FERC at the end of every quarter and requests that it be held confidential until such time as FERC makes the information available.

Unitil 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 the Commission's rule on confidential treatment of public records, Puc 204.06.

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. RSA 91-A:5,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 Unitil asserts, is a thorough analysis and evaluation of the price and non-price characteristics of the bids it received in response to the RFP. We point out that Unitil stated that the information would not have been

provided by the bidders absent Unitil's 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 ConEd 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 (according protective treatment over power supply contract for 2005 default service rates); *Granite State Electric Company*, Order No. 24,318 (April 30, 2004) at 8 (according protective treatment over power supply contract for 2004 default service rates).

We are persuaded that, with the exception of one element of the PSA, the information is commercially sensitive and disclosure of the information may cause competitive harm to Unitil in its attempt to go forward with future solicitations for power supply. The exception is the date by which ConEd and Unitil require Commission action on the Petition, a term which we do not find to warrant protective treatment. The date is October 11, 2005. As previously noted, Unitil initially requested the Commission issue a decision on its Petition within 5 days of filing, or by October 7, 2005. The PSA requirement of Commission action by October 11, 2005, allowed the Commission enough time to hold a hearing on the Petition but does not afford time for Unitil to rebid the contract or otherwise develop alternatives. We find the public interest in disclosure to outweigh the interest of Unitil in protecting the October 11, 2005 deadline.

With the exception of this one element of the PSA, we do not find the public's interest in review of the financial, commercially sensitive information sufficient to outweigh the need for Unitil and its bidders to maintain confidentiality of such information. *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 "Provision for Uncollected Account," "Wholesale Rate," and "Supplier Charges" values and the PSA, subject to the limitation noted above. Consistent with our 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. Transition and Default Service

Regarding Unitil's analysis of the bids and its selection of a winning bidder, based on our review of the record we find that Unitil complied with the procedures approved by Order No. 24,420 for the TS and DS solicitation. The process set forth in Order No. 24,420, which was fully litigated, anticipated that the solicitation, negotiation, and finalization of rates would take place according to a time line designed to ensure that the rate would reflect then-prevailing market conditions and would not contain a premium that might result from a protracted process. We are satisfied that Unitil met all procedural requirements consistent with prior orders of this Commission and the result is consistent with the requirement of RSA 374-F:3,V(b) that Transition Service "be procured through competitive means."

We also find that Unitil's evaluation of the bids and its selection of ConEd as the supplier was reasonable. In reaching this finding we rely, in part, on Staff's assertion that the

Benchmark Analysis used by Unitil is an appropriate basis to determine whether the resulting rates are reasonable. The Benchmark Analysis indicates that the bid prices reflect trends in the energy market, and supports the contention that the rates resulting from the solicitation process are reasonable under the circumstances and competitive.

We note that TS and DS customers may seek power from other suppliers. Because ConEd will be at risk for any change in customers over the term of this supply arrangement, Unitil's remaining customers and its shareholders will not be harmed by any G1 customer now taking TS and DS that seeks a different supply arrangement from a competitive supplier.

We recognize that these rates are substantially higher than those currently in effect, which were negotiated under very different market conditions. However, the evidence is clear that market prices for coal, oil, natural gas and electricity have risen sharply in 2005 and, as the cost of energy rises, it is inevitable that, in a competitive and deregulated market, those increased costs will ultimately be reflected in retail rates. We find it distressing that Unitil's commercial and industrial customers face an increase of this magnitude but the result is not inconsistent with the restructuring statute. RSA 374-F:3,V(b) specifically contemplated that "transition service should increase over time." Moreover, while RSA 374-F:1 noted, among other things, that the "most compelling reason to restructure the New Hampshire electric utility industry is to reduce costs for all consumers of electricity by harnessing the power of competitive markets", another facet of energy markets that must be acknowledged is price volatility resulting from exogenous factors such as global demand, political unrest and bad weather.

In its testimony at hearing, Unitil described its efforts to evaluate alternatives to

ameliorate the retail prices resulting from its solicitation for power for its G1 customers. As noted above, Unitil considered developing a deferred recovery mechanism. However, Unitil cited several financial disincentives to that design. In addition, the electric industry restructuring statute prohibits us from approving an alternative plan that creates additional deferred costs. RSA 374-F:3, V(e). Consequently, we are left with the decision to approve this Petition notwithstanding its unprecedented rate increases, or to deny the Petition at the risk that Unitil's G1 TS and DS customers would pay even higher rates for energy supply. In light of the circumstances, we grant the Petition.

Based upon the foregoing, it is hereby

ORDERED, that the Power Supply Agreement with Consolidated Edison Energy, Inc. is APPROVED; and it is

FURTHER ORDERED, that Unitil's proposed rates for Transition Service and Default Service for G1 customers for the period from November 1, 2005 to April 30, 2006 are APPROVED; and it is

FURTHER ORDERED, that Unitil's Motion for Confidentiality and Protective Order is GRANTED IN PART, as delineated herein, and it is

FURTHER ORDERED, that the Petitioner shall file a compliance tariff with the Commission on or before November 1, 2005, in accordance with N.H. Admin. Rules Puc 1603.02(b).

By order of the Public Utilities Commission of New Hampshire this eleventh day
of October, 2005.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Michael D. Harrington
Commissioner

Attested by:

Lori Normand
Assistant Secretary