

DE 06-123

UNITIL ENERGY SYSTEMS, INC.

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

Order Approving Petition

ORDER NO. 24,716

December 15, 2006

APPEARANCES: Gary M. Epler, Esq., on behalf of Unitil Energy Systems, Inc.; and Suzanne Amidon, Esq., on behalf of the Staff of the New Hampshire Public Utilities Commission.

I. BACKGROUND

On December 8, 2006, Unitil Energy Systems, Inc. (UES) filed with the New Hampshire Public Utilities Commission (Commission) a Petition for Approval of Default Service Solicitation and Proposed Default Service Tariffs. Specifically, UES requests: 1) approval of the Commission of its solicitation and procurement of Default Service (DS) for the company's large commercial and industrial (G1) customers for the period February 1, 2007 through April 30, 2007; and 2) approval of proposed tariffs incorporating the results of this solicitation into rates. In support of its petition, UES filed the testimony of Francis X. Wells and Karen M. Asbury, with related attachments and schedules.

UES states that it conducted the solicitation process, made its selection of the winning bidder, Constellation Energy Commodities Group (CECG), and entered into a Power Supply Agreement (PSA) with CECG pursuant to the terms of the Settlement Agreement. Pursuant to the PSA, CECG agrees to provide DS service to UES's G1 customers for three months, with prices fixed on a monthly basis.

On December 8, 2006, UES also filed a letter regarding Commission Order No. 24,682 (October 23, 2006). Among other things, Order No. 24,682 required filing of a report “regarding the calculation of over/under collections and associated interest.”¹ In its letter, UES states that UES, the Office of Consumer Advocate (OCA) and Staff have not agreed on what methodology UES should use in calculating the reconciliation amounts. In its letter, UES proposes to continue using the same methodology used to establish its current DS rates consistent with what the Commission approved in Order No. 24,682, until such time as the parties and Staff reach an agreement on this issue. To this end, UES excluded the prior period reconciliation amount (January 31, 2007 balance) and all interest from the calculation of the G1 DS charges to become effective February 1, 2007. On December 11, 2006, the Commission scheduled a hearing which took place on December 13, 2006.

UES filed with its petition a motion for confidential treatment for certain information, consistent with RSA 91-A:5, IV and prior Commission orders. The information for which UES seeks confidential treatment is contained in Tab A to Schedule FXW-1 (with the exception of the identification of the winning bidder, CECG), which includes: a brief narrative discussion of the comparison of the bids received; identification of the suppliers who responded to the RFP; a pricing summary consisting of a comparison of all price bids, followed by each bidder’s final pricing; a summary of each bidder’s financial security requirements of UES; each bidder’s own provision of financial security and creditworthiness that includes UES’ ranking of bidders in terms of financial security; the contact list used by UES during the RFP process; and the final PSA.

¹ See Order No 24,682 slip op. at 10-11.

UES seeks protection from public disclosure of the above information on the grounds that it is confidential, commercial and financial information. UES submits that suppliers would be reluctant to participate in future solicitations by UES, and possibly refuse to participate in the New Hampshire market, if their bid information were publicly disclosed. UES states that disclosure of the information may be detrimental to the suppliers' ability to participate in competitive solicitations in other markets. UES argues that RSA 91-A:5(IV) expressly exempts confidential, commercial or financial information from public disclosure. UES submits that the information for which confidential treatment sought is similar to information contained in previous DS filings that was granted confidential treatment.

UES also requests confidential treatment for certain information found on Page 2 of Schedule KMA-2, and the same supplier charges, working capital costs, and working capital requirements found on Page 3 of Schedule KMA-2. UES does not claim that Supply-Related Working Capital Costs and Provision for Uncollected Accounts are confidential, but requests confidential treatment of this information because, if disclosed, the supplier charges (for which confidential treatment has been requested) may be calculated.

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 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 supplier will keep the information confidential 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 Schedules KMA-2, KMA-3 and KMA-6 be protected from disclosure.

II. POSITIONS OF THE PARTIES AND STAFF

A. Unitil Energy Systems, Inc.

UES averred that, consistent with Order No. 24,511 (September 9, 2005),² 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 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 trade press announcing the RFP and followed up with telephone calls to power suppliers to solicit interest. According to its filing, UES provided bidders with historic hourly load, historic monthly retail sales and customer counts, large customer concentration data

² See *Re Unitil Energy Systems, Inc.*, 90 N.H. P.U.C. 378 (2005)

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 required bidders to submit both energy-and-capacity and energy-only fixed monthly price bids, and evaluated the implied cost of capacity reflected in bids by calculating the difference between the energy-and-capacity prices and the energy-only prices. UES affirmed that it also 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 averred that it negotiated with all potential suppliers who submitted proposals in order to obtain the most favorable terms. UES selected CECG because, in its opinion, CECG offered the best overall value in terms of both price and non-price considerations.

UES stated that DS will be available to G1 customers at a rate that changes from month to month reflecting the monthly wholesale prices paid to CECG. Inclusive of administrative costs, the resulting retail rates are: 10.681 cents per kilowatt hour (kWh) in February 2007, 9.750 cents per kWh in March 2007, and 9.401 cents per kWh in April 2007. UES testified that the current G1 DS based on a simple three-month average is 10.367 cents per kWh. UES claimed that the proposed rate, based on a simple three-month average, is 9.944 cents, which represents a decrease of .00423 cents per kWh, on average, from the currently effective rate. UES stated that the resulting rates reflect current market prices. UES also testified that G1 customers who do not choose a competitive supplier will see a decrease of about 3.0%, depending on usage, based on a simple three-month average.

In summary, UES petitioned the Commission to find that: it has followed the solicitation process approved in Order No. 24,511; its analysis of the bids submitted was reasonable; and it has supplied a reasonable rationale for its choice of supplier. UES also asked the Commission to conclude that 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.

B. Commission Staff

At hearing, Staff questioned UES regarding its calculation of the benchmark it used to evaluate the reasonableness of the implied capacity in CECG's bid. UES testified that the company chose to employ a method using the transition price of \$3.05 per kilowatt month (kWm) that was agreed to in the Forward Capacity Market settlement approved by the FERC. To determine the price to be paid by load, UES multiplied the transition price by the ratio of eligible generation divided by the total capacity requirements for the period of February 1, 2007 to April 30, 2007. UES testified that the result of the calculation was \$3.22 per kWm. UES testified that CECG's implied cost of capacity was within reasonable range of that benchmark. UES added that the company had considered taking the lowest energy bid and using a capacity adder, but concluded that, because of the imprecise nature of the capacity market, customers would have less risk paying a fixed energy-and-capacity cost.

Staff inquired whether there were any material changes to the PSA. UES stated that it changed the definition of "shareholder equity" and added the definition of "Generally Acceptable Account Principles" (GAAP) in order to better define the test that would be used for determining UES' ability to financially secure the transaction. In response to questioning, UES testified that

a new Financial Accounting Standard (FAS) 158, effective December 31, 2006, could potentially require UES to calculate shareholder equity by netting against pension obligations and post-retirement benefit obligations. UES stated that such treatment would make it difficult for UES to meet the financial security test stipulated by CECG, which is \$25 million. Staff made a record request that UES provide a copy of FAS 158 and explain its analysis regarding the PSA amendments; UES complied on December 14, 2006.

Staff also inquired whether UES could provide calendar quarterly information regarding the monthly migration of customers to competitive suppliers with information on customer numbers and load by class. UES replied that that information was contained in the RFP that it filed with the Commission in each of its DS filings, but agreed to provide it to the Commission on a calendar quarterly basis as well.

With respect to the issue of UES' method for accounting for reconciliation amounts and related interest, Staff asked UES whether the discussions were ongoing and UES agreed that the most recent explanation offered by UES had been delivered by e-mail to Staff on December 11, 2006. UES and Staff agreed to file a report with the Commission prior to UES' next DS filing.

Staff stated that it had reviewed the filing and concluded that UES had followed the solicitation and bid evaluation process ordered by the Commission and that the resulting rates are market-based. Staff concluded by stating that it had no objection to UES' motion for confidential treatment.

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 final version of the negotiated PSA.

UES states that the information contained in the materials included in FXW-1, Tab A, must be protected from public disclosure because it is confidential, commercial and 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 would reveal the specific terms and conditions UES and the winning bidders were willing to agree upon in order to reach a final agreement and, thereby, could harm each party's ability to negotiate in the future. UES also argues that its negotiating ability with other potential power suppliers would be harmed by disclosure.

With respect to UES' requests for confidential treatment of the "Wholesale rate," "Supplier Charges," "Provision for Uncollected Accounts," and "Supply-Related Working Capital Costs" found in KMA-2, UES stated that disclosure of this information could compromise its ability to negotiate prices in contracts arising from future solicitations. UES

asserts 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 RFP. 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,” “Supply-Related Working Capital Costs,” 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 (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 have also granted such confidential treatment specifically to UES in similar DS filings. See Order Nos. 24,445, 24,526, 24,541, 24,607, and 25,064.

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 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 FXW-1, Tab A, including the PSA, and in the Bid Evaluation Report, "Provision for Uncollected Account," "Wholesale Rate," and "Supplier Charges" values found in KMA-2. 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 warrant.

B. Default Service

At the outset, we note that Staff and UES are required to file a report recommending the method for UES to account for reconciliation of over- and under-recoveries and related interest. We expect to have a report, or reports as the case may be, before UES's next filing. In addition, while we accept the changes in this instance, we nonetheless instruct Staff to examine further any potential prospective effects of UES's change to the security requirements of the PSA, which it asserts were necessary to accommodate the requirements of FAS 158.

Regarding UES' analysis of the bids and its selection of the winning bidder, we find that it substantially complied with the procedures approved in Order No. 24,511 for the G1 DS solicitation. We are satisfied that UES met all procedural requirements set forth in prior orders and that the result is consistent with the requirement of RSA 374-F:3, V(c) that DS "be procured

through the competitive market.” We also find that UES’ evaluation of the bids and its selection of CECG as supplier was reasonable. In light of the circumstances, we grant the Petition.

Based upon the foregoing, it is hereby

ORDERED, that the Power Supply Agreement with Constellation Energy Commodities Group, Inc., is 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 PSA referenced herein for inclusion in retail rates beginning February 1, 2007, are APPROVED; and it is

FURTHER ORDERED, that UES’ Motion for Confidentiality and Protective Order is GRANTED; and it is

FURTHER ORDERED, that UES 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 fifteenth day of December, 2006.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Clifton C. Below
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary