

STATE OF NEW HAMPSHIRE  
BEFORE THE  
PUBLIC UTILITIES COMMISSION

UNITIL ENERGY SYSTEMS, INC. )  
NH ELECTRIC RENEWABLE )  
PORTFOLIO STANDARDS LAW )  
\_\_\_\_\_ )

DOCKET NO. DE 09-009

**SETTLEMENT AGREEMENT**

This Settlement Agreement is entered into this 16<sup>th</sup> day of July, 2009 by and among Unitil Energy systems, Inc. (“UES” or “Company”), and the Staff of the New Hampshire Public Utilities Commission (“Staff”) (collectively the “Parties”). By entering into this Settlement Agreement, the Parties desire that the New Hampshire Public Utilities Commission (“Commission”) approve the plan for compliance with the requirements of the New Hampshire Electric Renewable Portfolio Standards law (“RPS Law”)<sup>1</sup> as set forth in this Settlement Agreement.<sup>2</sup>

The Parties hereby agree as follows:

**I. Introduction**

The RPS Law requires all retail electricity suppliers in the state to source a specified portion of their annual energy needs from generators qualified by the Commission as renewable energy resources. The resources are divided into four separate classes. They are:

**Class I** consists of new generators (defined as those beginning operation after January 1, 2006) that utilize: 1) wind energy; 2) geothermal energy; 3) hydrogen derived from

<sup>1</sup> N.H. RSA 362-F.

<sup>2</sup> In Order No. 24,949, the Commission directed the Parties to submit a report detailing a formal process for complying with the requirements of the RPS law before UES’ next default service filing. At the June 17 hearing in this docket, the Parties advised the Commission that they had reached an agreement in principle.

biomass fuels or methane gas; 4) ocean thermal, wave, current, or tidal energy; 5) methane gas; 6) eligible biomass technologies; 7) incremental production from existing biomass, methane, or hydroelectric sources of any size; and 8) certain incremental production from Class II, III, and IV sources.

**Class II** consists of new generators utilizing solar technologies.

**Class III** consists of existing generators utilizing: 1) biomass technologies with a gross nameplate capacity of 25 MW or less; and 2) methane gas.

**Class IV** consists of existing qualifying small hydroelectric generators with a gross nameplate capacity of 5 MW or less.

The following table summarizes the annual RPS Law resource requirements from 2008 through 2025 in percentage increments:

| <b>Year</b> | <b>Class I</b> | <b>Class II</b> | <b>Class III</b> | <b>Class IV</b> | <b>Total</b> |
|-------------|----------------|-----------------|------------------|-----------------|--------------|
| 2008        | 0.0            | 0.0             | 3.5              | 0.5             | 4.0          |
| 2009        | 0.5            | 0.0             | 4.5              | 1.0             | 6.0          |
| 2010        | 1.0            | 0.04            | 5.5              | 1.0             | 7.54         |
| 2011        | 2.0            | 0.08            | 6.5              | 1.0             | 9.58         |
| 2012        | 3.0            | 0.15            | 6.5              | 1.0             | 10.65        |
| 2013        | 4.0            | 0.20            | 6.5              | 1.0             | 11.70        |
| 2014        | 5.0            | 0.30            | 6.5              | 1.0             | 12.80        |
|             | +1.0 annually  |                 |                  |                 |              |
| 2025        | 16.0           | 0.30            | 6.5              | 1.0             | 23.80        |

Retail electricity suppliers may satisfy these annual requirements by purchasing attribute certificates (“RECs”) created through the NEPOOL Generation Information System (“GIS”) or certified by the Commission<sup>3</sup> or by making the applicable Alternative Compliance Payment (“ACP”), as set forth in the RPS Law, to the New Hampshire Renewable Energy Fund. UES is subject to the RPS Law requirements relating to the power supply for its default service customers and will purchase RECs or remit an ACP, as necessary, to comply with the RPS Law.

The Parties recognize that the form of RECs that may be purchased includes:

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<sup>3</sup> As provided in New Hampshire Code of Administrative Rules Chapter PUC 2500, the Commission will certify production associated with in-state, behind-the-meter production of quantities too small to be recognized by the GIS.

- Existing RECs - RECs that have been issued by the GIS and that may be traded and transferred during a currently active GIS trading session (“Existing RECs”). These RECs are certified by the GIS from the final, reported production data of RPS-certified generation facilities. As a result, the number of available RECs is firm and known and delivery is typically made within days of the transaction with payment due shortly thereafter.
- Forward RECs – A purchase of RECs yet to be issued by the GIS (“Forward RECs”). Forward RECs may be unit-contingent sales from either the actual production of RPS-qualified generation facilities not yet certified by the GIS, or from future production of an RPS-qualified generation facility. A unit-contingent purchase is typically limited to actual plant output where the number of RECs purchased is tied to the generation output of the specified facility during the applicable term. Sales of Forward RECs may also be made on a system basis, which may or may not be firm, whereby a supplier who markets RECs from a portfolio of certified facilities and/or market-based transactions agrees to provide qualifying RECs in the future. Forward Certificates may be transferred within the GIS.
- Long-Term RECs – Pursuant to RSA 362-F, RECs associated with the output of RPS certified facilities, in conjunction with or independent of purchased power agreements with such facilities (“Long-Term RECs”). Should UES enter into a long term (i.e., greater than one year) purchased power agreement with such a facility, the Parties acknowledge that UES is not obligated to purchase the associated RECs but if it does so and seeks to recover the costs through rates the purchase is subject to Commission approval.
- Distributed Energy Resource RECs – Pursuant to RSA 374-G, RECs associated with RPS certified distributed energy resources either owned by UES or in which UES has an investment interest (“Distributed Energy Resource RECs”). The Parties acknowledge that UES is not obligated to purchase the RECs associated with a Distributed Energy Resource in which it has an investment interest but if it does so and seeks to recover the costs through rates the purchase is subject to Commission approval.

## **II. Compliance with RPS Law**

1. Under the RPS Law, retail energy providers must demonstrate compliance annually for each calendar year on or before July 1 of the following year. The calendar year for which compliance is required is the “Compliance Year”. Compliance must be demonstrated for each Class of RECs for which an

obligation exists in a given Compliance Year. For Compliance Year 2008, UES has procured Existing RECs and Forward RECs directly from REC holders and renewable energy brokers. To the extent UES is unable to meet its RPS Law compliance requirements with actual RECs, UES will make ACPs as required.

2. The Parties agree that beginning with Compliance Year 2009, UES will use a new process for purchasing qualifying RECs as follows. Evaluation criteria and other requirements are specified in subsequent sections.
  - a. UES will conduct two RFPs each Compliance Year to obtain Existing RECs and/or Forward RECs to meet one-hundred percent (100%) of its Unfilled REC Requirements (as defined below) (“REC RFPs”).
  - b. The REC RFPs will be conducted separately from UES’ default service RFPs. In order to increase the number of bidders, the REC RFPs may be issued to renewable energy brokers and renewable energy electronic platforms as well as directly to potential REC holders/generators. Offers received as a result of communications with brokers and electronic platforms must be in full compliance with the requirements of the REC RFPs and will be evaluated on a total cost basis, such that any broker fees or transaction costs are included with the offer price.
  - c. Since UES must comply with the RPS Law based upon its total retail sales, UES shall apply all RECs purchased to meet the combined requirements of its Small Customer Group and Large Customer Group.
  - d. The quantity of RECs sought via the REC RFPs (i.e., the Unfilled REC Requirements) will equal the Company forecast of default service sales to both Customer Groups for the Compliance Year times the percentage obligation for each Class of REC for a given

Compliance Year less any RECs carried forward from prior periods and RECs expected to be produced from existing Long-Term RECs and Distributed Energy Resource RECs during the Compliance Year. UES will update its projection of Unfilled REC Requirements prior to issuing each REC RFPs.

- e. If the Company receives an unsolicited offer to purchase RECs, it will evaluate the offer to determine if the purchase of such RECs would provide an economic benefit to the Company's customers. In determining whether an economic benefit is present, the Company will evaluate whether the offer is lower than the Company's estimate of the market price for RECs. The Company's estimate of the market price for RECs will be based on the cost of RECs purchased in the most recent REC RFP and/or the market price for RECs based on broker sheets or other market information available to the Company.
- f. The Parties acknowledge that unsolicited offers of RECs are generally received intermittently and often require a prompt decision on whether or not to contract. This is because unsolicited offers are often issued to multiple buyers simultaneously, thus increasing the probability that attractively priced RECs will be purchased by other buyers. For these reasons, the Company is excused from conferring with the Parties prior to purchasing unsolicited RECs. The Company, however, is required to demonstrate that the acquisition of any unsolicited RECs was prudent when it seeks rate treatment of the associated costs.
- g. To the extent UES procures more RECs than necessary to satisfy the RPS Law requirements, the Company will bank its excess RECs to meet future RPS Law requirements, as set forth in the New Hampshire Code of Administrative Rules Chapter PUC 2500. In the event that the Company is unable to obtain sufficient RECs to satisfy its RPS Law requirements through a combination of REC RFPs and unsolicited offers, the Company may use other means to acquire RECs prior to making an ACP for the unmet requirement.

3. UES will evaluate the bids received in response to the REC RFPs and select the lowest price if that price is equal to or lower than the Company's estimate of the market price for RECs. If the lowest price is higher than the Company's estimate of the market price for RECs, UES will reject the bid. The Company's estimate of the market price for RECs will be based on the cost of RECs purchased in the most recent REC RFP and/or the market price for RECs based on broker sheets or other market information available to the Company. The Company shall accept bids for RECs (ranked from lowest to highest cost) until the applicable amounts sought are met, however the Company may exercise its discretion to reject or accept any or all bids below the estimated ACP and will purchase RECs relating to bids that have not been rejected. UES will not purchase RECs at prices that are equal to or greater than the applicable ACP.
4. In the event the Company is unable to purchase the quantity of RECs sought via a REC RFP, it will use its discretion to either bundle the quantity of RECs it was unable to purchase under the REC RFP into another REC RFP or to issue an additional REC RFP, in either case attempting to procure the Unfilled REC Requirements for the Compliance Year under the RFP process established herein.
5. UES will share its confidential analysis of the bids received in response to the REC RFPs with Staff and the OCA, including its decision with regard to whether to accept any bids for RECs, prior to executing contracts for RECs with suppliers. The Parties acknowledge that respondents to the REC RFPs

may not agree to hold their offers long enough to allow for a meaningful exchange between the Parties in advance of contracting and that offers reviewed with Staff and the OCA may change before contracting is completed. The Parties agree to revisit this process if experience demonstrates that this pre-contracting review proves either of limited usefulness to the Parties or to be detrimental to successful contracting at the best possible prices. The Company does not anticipate a lengthy period of time between receiving indicative bids and final bids.

### **III. RPS Charge**

1. As part of the Company's default service filings in which new rates are proposed for either the Large or Small Customer Groups, the Company will calculate RPS Charges applicable to the periods covered by the Default Service Charges. As a result, the Company will calculate separate RPS Charges for the Large Customer and Small Customer Groups. The RPS Charge for the Large Customer Group will be fixed for the three month period of the proposed Large Customer Group Default Service Charges and be based upon expected REC prices during that three month period. Similarly, the RPS Charge for the Small Customer Group will be fixed for the six month period of the proposed Small Customer Group Default Service Charges and be based upon expected REC prices during that six month period.
2. The Parties agree that UES may recover all prudent costs of complying with the RPS Law requirements. This includes, among other things, all direct REC

purchase costs, broker fees, working capital and all other costs incurred in the procurement of RECs and processing of ACPs made to the state. Any difference between the revenue received from the approved RPS Charge(s) and the actual prudent cost of RPS Law compliance will be reconciled annually in May, including interest on over- or under-recoveries, and upon approval of the Commission, be reflected in the Company's RPS Charge(s) as provided for in the Default Service Charge Reconciliation provision of the Company's Default Service tariff.

#### **IV. Miscellaneous**

1. The Parties agree that this Settlement Agreement is the product of settlement negotiations and that the content of such negotiations (including any workpapers or documents produced in connection with the negotiations) shall be privileged and confidential, and all offers of settlement shall be without prejudice to the position of any party or participant presenting such offer.
2. This Settlement Agreement is submitted on the condition that it be approved in full by the Commission. Should the Commission not approve this Settlement Agreement in its entirety, the Parties shall have an opportunity to amend or terminate it. If terminated, this Settlement Agreement shall be deemed withdrawn and shall not constitute a part of the record in any proceeding or be used for any purpose.
3. Commission approval of this Settlement Agreement constitutes a determination that the provisions set forth herein are just and reasonable.

4. The making of this Settlement Agreement establishes no precedent and shall not be deemed to foreclose any party from making any contention in any future proceeding or investigation, except as to those issues and proceedings that are stated in this Settlement Agreement as being resolved and terminated by approval of this Settlement Agreement.
5. The Parties agree that this Settlement Agreement may be revised or modified by agreement of the Parties, subject to approval of the Commission.
6. The Commission shall have continuing jurisdiction to enforce the terms of this Settlement Agreement.
7. This Settlement Agreement may be executed in multiple counterparts, which together shall constitute one agreement.

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement, each being fully authorized to do so, as of the day and year written below.

UNITIL ENERGY SYSTEMS, INC.

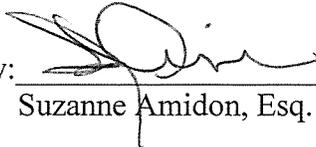
Date: JULY 16, 2009

By: \_\_\_\_\_

  
Gary Epler, Esq.

STAFF OF THE NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION

Date: July 20, 2009 By: \_\_\_\_\_

  
Suzanne Amidon, Esq.