DE 01-247

UNITIL ENERGY SYSTEMS, INC.
AND
UNITIL POWER CORP.

Proposal to Restructure Unitil Companies

Order Approving Portfolio Sale And Assignment and Transition Service And Default Service Supply Agreement by and Among Unitil Power Corp., Unitil Energy Systems, Inc. and Mirant Americas Energy Marketing, LP

O R D E R N O. 24,139

March 14, 2003

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I. PROCEDURAL HISTORY

On January 25, 2002, Concord Electric Company (CEC) and Exeter & Hampton Electric Company (E&H), the corporate predecessors of Unitil Energy Systems, Inc. (UES), and Unitil Power Corp. (UPC; collectively, UES and UPC are referred to as the Unitil Companies, Unitil or the Companies) filed with the New Hampshire Public Utilities Commission (Commission) a petition for approval of an offer of settlement for restructuring the Unitil Companies. The proceedings have been divided into three phases.

The Phase I proceedings focused on how the Unitil Companies would implement electric industry restructuring pursuant to RSA 374-F. Phase I culminated in an order, *Concord Electric Company and Exeter & Hampton Electric Company*, Order No. 24,046 (August 28, 2002)(Phase I Order), which conditionally approved the Phase I Settlement Agreement for Restructuring the Unitil Companies.

Phase II dealt with the other issues in the docket except those reserved for decision in Phase III. Phase II issues included, among others, the merger of E&H and CEC into UES, the amendment of the so-called Unitil System Agreement, and the establishment of new distribution rates for UES. The Phase II proceedings resulted in an order, *Concord Electric Company and Exeter & Hampton Electric Company*, Order No. 24,072 (October 25, 2002)(Phase II Order), which approved the Phase II Settlement Agreement and an amendment to the Phase I Settlement Agreement, and denied a motion for rehearing of the Phase I Order.

The Phase II Order reserved for a later decision the matter of the imposition of a residential late payment fee contemplated in the Phase II Settlement Agreement. The Commission approved the implementation of a residential late

payment fee in *Concord Electric Company and Exeter & Hampton Electric Company*, Order No. 24,088 (November 22, 2002).

The focus of the Phase III proceedings is on the auction of UPC's power supply portfolio and UES' solicitations of transition and default supply service for its G-1 and non-G-1 customers, pursuant to the Phase I Settlement Agreement, as amended, and the Phase I Order.

In the first stage of Phase III, the Commission approved certain requests by the Unitil Companies in connection with the indicative round bidding for the sale of the power supply portfolio and the acquisition of transition and default service. *Unitil Energy Systems, Inc. and Unitil Power Corp.*, Order No. 24,118 (January 30, 2002) (Indicative Bid Order).

In particular, the Commission granted the approvals requested by the Unitil Companies with respect to (i) the modification in transition and default service supplier responsibilities to exclude the supplier's obligations for Regional Network Service (RNS) and network load, and to shift recovery of RNS and network load costs from the fixed supply cost for transition and default service to the external delivery charge, subject to final approval of tariff changes and charges in March, 2003; (ii) a downward adjustment of $2.50 per megawatt hour (MWh) to each of the annual prices in both pricing streams

for the supply solicitations consistent with the shift in RNS responsibility; (iii) an adjustment of the monthly payment in the portfolio auction to $880,000 per month and implied modifications to the stranded cost charges, subject to final approval in March, 2003; (iv) May 1, 2003 as the start date for customer choice for all customers; (v) certain technical adjustments to the "Agreed-Upon Procedures and Criteria"; (vi) the option for Unitil to postpone the final bid due date to February 14, 2003, with notice of such postponement to be provided by Unitil to the Commission by January 31, 2003; and (vii) confidential, protective treatment for Unitil's report and recommendations regarding the results of the indicative bid round of the auction and solicitation process.

The above cited orders and *Concord Electric Company and Exeter & Hampton Electric Company*, Order No. 23,935 (March 15, 2002)(Order Following Prehearing Conference) include a detailed procedural history of this docket up to January 30, 2003. The following discussion completes the procedural history from January 30, 2003, up to the date of this order.

Late in the day on January 30, 2003, Constellation Power Source (Constellation), a recipient of Unitil's Requests for Proposals, faxed a letter to the Commission expressing its concern about the time lag between the submission of the final

binding prices on February 7 or 14, the execution of an agreement with the winning bidder on February 26 and the final Phase III order on March 14. Constellation noted that it was not a party or intervenor in the proceedings and acknowledged the lateness of making its concern known. Constellation suggested that Unitil select two or three final bidders based on indicative bids and then obtain final prices for same day Commission approval. Constellation stated this process would avoid putting a bidder at risk for changes in wholesale market prices during the pending interval, thus risking a potential failure of the solicitation process.

On February 3, 2003, the Unitil Companies notified the Commission that they had elected to postpone the final bid due date until February 14, 2003, as permitted in the Indicative Bid Order.

On February 11, 2003, the Commission issued a secretarial letter rescheduling the final Phase III hearing from March 6, 2003 to March 5, 2003.

On February 27, 2003, Unitil filed with the Commission its final report on the portfolio auction and transition and default service solicitations, together with certain tariff pages and attachments, pursuant to prior Commission orders. The filing also requested protective treatment for the entire final

report on a provisional basis pending further report to the Commission at or before the March 5, 2003 hearing.

On March 5, 2003, Unitil filed a motion for protective order which addressed those portions of Unitil's February 26, 2003 submission for which Unitil continued to seek confidential treatment.

Prior to the hearing on March 5, 2003, Commission Staff filed the direct testimony of Brian J. Abbanat of La Capra Associates on its behalf and the Business & Industry Association of New Hampshire (BIA) filed a position statement.

On March 5 and 7, 2003, the Commission held a hearing on Unitil's final report filed on February 27, 2003. The hearing commenced in public session. Consistent with its motion for protective order filed on March 5, 2003, at the Unitil Companies' request, and without objection from the parties present, portions of the remainder of the hearing were held, and certain exhibits were received, on a confidential basis. David T. Lifland, a principal of The NorthBridge Group, and David K. Foote, Mark H. Collin and Karen M. Asbury testified on behalf of the Unitil Companies. Unitil also presented a panel of witnesses representing Mirant Americas Energy Marketing, LP (Mirant Americas), Mark S. Lynch, Vice President of, *inter alia*, Mirant Corporation, and Timothy P. Berrigan, Vice President,

Marketing, East Region, of Mirant Corporation. Mr. Abbanat testified for Staff. The BIA, OCA, Staff and the Unitil Companies each made final statements at the conclusion of the hearing.

On March 7, 2003, Unitil filed with the Commission Responses to Record Requests made at the hearings identified as Exhibits 40 and 41.

On March 11, 2003, Mirant Americas filed with the Commission Responses to Record Requests made at the hearings, identified as Exhibits 48 and 49.

On March 12, 2003, Mirant Americas filed with the Commission Responses to Record Requests made at the hearings, identified as Exhibits 46, 47 and 52.

On March 13, 2003, Unitil filed with the Commission redacted copies of Attachment DKF II, A and Exhibit 59C.

II. POSITIONS OF THE PARTIES AND STAFF

A. Unitil Companies

In its final report, Unitil summarized the results of its portfolio auction and supply solicitation as follows:

> Unitil received a robust response from the market to its RFPs for the portfolio auction and supply solicitation. Application of the agreed-upon selection criteria and final negotiations resulted in the execution of a single contract with the winning bidder for the sale of the UPC power supply portfolio and the acquisition of Transition/Default Service

supply for both large (G1) and small (non-G1) customers. The pricing in the winning bid, and in the resulting contract for both the power supply portfolio and Transition/Default Service supply, is below the bid test levels, thus creating a rebuttable presumption[1] that the proposed contract is reasonable, in the public good and consistent with RSA 374-F.

The consolidated agreement for the portfolio sale and Transition/Default Service supply reflects the same substantive provisions included in the previously filed separate contracts and provides enhanced security for Unitil and its customers. Additionally, the final agreement includes changes to the contract language which clarify certain provisions and address a number of Unitil's concerns raised by the final bids. As detailed herein, the final agreement restructures the pricing and payment streams in order to enhance Unitil's security over the full term of the contract.

As a result of increases in market prices for fuel and energy in recent months, the final bids reflected a higher price than originally provided for in the wholesale target of $.0625 per KWh for the combined stranded cost and transition service charges. In negotiating the final agreement in light of these higher market prices, Unitil was able to structure a transaction which improved upon the final Transition Service bids and which preserved the wholesale target rates in years two and three with only a modest increase in rates in year one. While the resulting retail rates for UES will reflect increased prices on May 1, 2003, UES's overall rates will continue to be among the lowest in the region.

Following the receipt of final bids on February 14, 2003, Unitil implemented a short round of post-final bid negotiations with certain bidders and thereafter focused its efforts on Mirant Americas.

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[1] *See* Phase I Settlement Agreement, sections 3.2.4 and 3.3.5.

Unitil requests the following specific approvals from the Commission in this Order: (i) approval of the Portfolio Sale and Assignment and Transition Service and Default Service Supply Agreement dated February 25, 2003 (the Agreement) by and among Unitil Power Corp., Unitil Energy Systems, Inc. and the winning bidder, Mirant Americas; (ii) approval of the UES tariffs submitted with the final report, which include revised terms and conditions for competitive suppliers, rate summary pages, rate schedules for Stranded Cost Charges, Transition Service Charges, Default Service Charges and External Delivery Charges, and a Competitive Electricity Supplier Trading Partner Agreement; (iii) affirmation, consistent with the Commission's holding in the Phase II Order (see page 49), that the costs incurred under, and defined in, the Agreement will be fully recoverable in retail rates; and (iv) approval of the Amended System Agreement as revised to reflect the merger of E&H and CECo to form UES. In addition, Unitil requests that the Commission grant its motion for protective order filed on March 5, 2003.

1. Summary of the Agreement With Mirant Americas

Mirant Americas, a Delaware limited partnership, is a wholly owned subsidiary of the Mirant Corporation, a publicly traded company whose shares are listed on the New York Stock Exchange (Mirant Americas and Mirant Corporation are sometimes

collectively referred to as Mirant; unless otherwise noted, the term Mirant is used to refer to Mirant Corporation as a whole.) Mirant Americas' general partner is Mirant Americas Development, Inc. and its limited partner is Mirant Americas Energy Marketing Investments, Inc.

The Agreement is a single agreement,[2] to become effective May 1, 2003, under which Mirant Americas undertakes to acquire UPC's interest in its power contracts included in the portfolio[3] in exchange for UPC's payment of so-called Entitlement Payments, which are to be paid on a monthly basis during a ninety month period, with monthly payments ranging from $1,240,000 to $400,000 over the course of the period. Mirant Americas simultaneously undertakes to provide power supplies to UES for its Transition and Default Service during a 2 year period for G-1 customers and a 3 year period for Non-G-1 customers in exchange for monthly payment of the prices set forth in the Agreement. The Agreement sets forth the following wholesale prices for G-1 service: 4.991 ¢/kWh in year one and 5.154 ¢/kWh in year two. For G-1 customers taking Default

[2] According to Unitil, a default by Mirant Americas in its obligations to UPC is a default by Mirant Americas in its obligations to UES, and vice versa; in addition, a default by UPC is a default by UES, and vice versa. Further, Mirant Americas cannot look to UPC to satisfy UES' obligations under the Agreement, nor to UES to satisfy UPC's obligations.

[3] At present, these contracts entitle UPC to approximately 118 MW of capacity and associated energy.

Service these rates are increased by 1.5 ¢/kWh during the months of June, July and August. For Non-G-1 Customers, the wholesale prices for both Transition and Default Service are 4.761 ¢/kWh in year one, 4.916 ¢/kWh in year two and 5.227 ¢/kWh in year three.

In addition, the Agreement requires Mirant Americas to supply transition and default service power to follow UES' load. However, in the event that UES' power demand exceeds certain levels, which escalate over time, the price for so-called Excess Power is adjusted, up or down, according to a formula set forth in the Agreement.

Under the Agreement, UES is responsible for certain costs of so-called Local Network Service and RNS, and for retail collection costs. In addition, UES is responsible for reporting to New Hampshire regulatory agencies and any required reporting to retail customers under so-called Attribute Laws.

Mirant America's obligations under the Agreement are to be guaranteed by Mirant Corporation up to $20 million. The Guaranty is to remain in effect through the term of the Agreement unless and until Mirant Americas satisfies certain so-called Acceptable Rating and Net Worth requirements. An Acceptable Rating is defined as a rating on senior unsecured debt securities of Mirant Americas of BBB+ (Standard and

Poor's), Baa1 (Moody's), or BBB+ (Fitch), or an equivalent rating of another nationally recognized rating service reasonably acceptable to UPC and UES. According to Unitil, based on the 2001 financial data provided to Unitil by Mirant Americas, Mirant Americas would meet the Net Worth requirement. Mirant Americas' currently reported ratings, BB (Standard and Poor's) and Ba3 (Moody's), are three grades below the Acceptable Rating levels.

During the period of transition service, UES commits to maintain a $20 million net worth. If UES' net worth falls below this amount, UES will be in default unless Unitil Corporation issues security, which may be in the form of a letter of credit or a guaranty, for the difference. Unless expressly provided in the Agreement, no party is to be liable for consequential, incidental, punitive, exemplary or indirect damages by statute, in tort or contract, under indemnity provisions or otherwise.[4] A binding arbitration process is to be followed in the event of any dispute between the parties as to a matter referred to in the Agreement or as to the interpretation of any part of the Agreement. The parties have agreed that the Agreement is to be governed by the substantive law of the State of New York.

2. Revised UES Tariffs and Rate Impacts

Consistent with the pricing set forth in the Agreement, Unitil filed revised tariff pages reflecting the recalculation of UES' retail transition service charges, default service charges and stranded cost charges, as well as the low income electric assistance program discounts. In addition, Unitil revised the external delivery charge to reflect the modification of the supplier responsibilities excluding the RNS obligation and shifting cost recovery from the transition service and to the external delivery charge, which the Commission approved in the Indicative Bid Order. The terms and conditions for competitive suppliers were also changed consistent with the RNS obligation change.

Another change to the rate schedules for transition and default service is the deletion of a provision inadvertently left over from Unitil's 1998 settlement proposal. This provision subjected the transition service charge to future market price adjustments, which, according to Unitil, is inconsistent with the settlements and orders in this docket and with the Agreement. Finally, Unitil included a revision to the competitive electricity supplier trading partner agreement simply to reflect May 1, 2003 as choice date.

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[4] Section 8.3(d).

As set forth in the Phase I Settlement Agreement approved in the Commission's Phase I Order issued on August 28, 2002, Unitil's proposed request for proposals was intended to result in a target wholesale price of $0.0625 per kWh for the combined first year stranded cost recovery charge and non-G-1 transition service charge, which would have resulted in an overall decrease of 1.08 percent on May 1, 2003. In its Phase II Order, the Commission found this target to be reasonable as of the date of the Order, October 25, 2002. A final round bid meeting this benchmark would have resulted in wholesale rates of $0.0653 per kWh and $0.0681 per kWh in years two and three, respectively. *See* Exhibit 40.

According to Unitil, the comparable final wholesale prices reflected in the Agreement would be $0.0649 per kWh in the first year, $0.0652 per kWh in the second year and $0.0680 per kWh in the third year, respectively. These figures do not include any amount for under or overrecovery of the interim fuel and purchased power charges as of May 1, 2003, which would be rolled into the stranded cost charge for recovery starting on May 1, 2004. In addition, this pricing relates to Non G-1 customers and includes an assured $0.0025 for RNS. As a result of the outcome of the competitive auction and solicitations, Unitil states that in the first year, commencing May 1, 2003,

the overall rate impact, excluding the electric consumption tax, would be an increase of 5.73 percent. As applied to the various rate classes, this represents a 4.76 percent increase for the residential class, a 3.38 percent increase for the small general service class, a 9.77 percent increase for the large general service class (G-1), and a 6.40 percent increase for the outdoor lighting class. A residential customer using 500 kWh per month with a current bill of $52.52 will see an increase of $2.46, or 4.7 percent, as of May 1, 2003. These rate and bill increases are lower than the increases Unitil estimates would occur on May 1, 2003, absent the Agreement.[5] Including the February 24, 2003 estimated interim fuel and purchased power undercollection, Unitil estimates that as of May 1, 2004 a residential customer using 500 kWh per month would pay $56.78 and as of May 1, 2005 the same customer would pay $54.91. *See* Exhibit 39. At the end of the proceedings, Unitil provided another analysis of the residential rates with the interim fuel and purchased power underrecovery removed, recognizing that the underrecovery would be collected whether or not restructuring is implemented. That

[5]Absent restructuring, UES estimates that rate increases would be approximately 22 percent in 2003. Approximately half of this increase is due to a projected FAC/PPAC under-recovery. The May 1, 2003 proposed rate calculations assume that the under-recovery is deferred for collection the following year. Given the potential significant level of under-recovery under current market conditions, UES continues to monitor its FAC/PPAC balances.

analysis indicated the following typical bills, assuming restructuring is implemented, for each of the three years: May 1, 2003, $54.99; May 1, 2004, $53.88; and May 1, 2005, $54.91.

3. Affirmation Of Retail Cost Recovery

Unitil requests that the Commission affirm in this Order that "the costs incurred under, and defined in," the Agreement be fully recoverable in retail rates. According to Unitil, this affirmation would satisfy one of the conditions precedent to closing the Agreement, applicable to both Mirant and Unitil, that the NHPUC Order contain language "substantially to the effect that the costs incurred under this Agreement, including, but not limited to, the [portfolio] Entitlement Payments, will be fully recoverable in retail rates."[6] Unitil states that such an affirmation would be consistent with the Commission's Phase II Order, which granted the parties' request made in the Phase II Settlement Agreement for a similar assurance to bidders for UPC's power supply portfolio and the solicitations for transition and default service.

Unitil has submitted a statement (Exhibit 41) identifying all "costs incurred under the Agreement" which it believes would be fully recoverable by UES in its retail rates, as follows:

> The purpose of the condition in Section 4.1(c) and 4.2(b) is to provide assurances to Mirant and UES that any amounts due Mirant under the Agreements will be fully recoverable by UES in retail rates, consistent with the assurance provided by the Commission in Order No. 24,072, p.49. In addition to the cost of the Entitlement Payments under Exhibit A, Section 3.2 and Appendix 1 and the costs of Transition and Default Service under Exhibit B, Sec. 3(a) and 3(b), these costs may include; costs associated with resolution of disputes under Sec. 10.1; costs associated with arbitration proceedings under Section 10.2; costs associated with billing and payments under Exhibit A, Section 3.4 and Exhibit B, Article 4; and the costs associated with remedies under Section 8.3.
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> There are other costs that may be incurred under the Agreement which UES would expect to collect through retail rates on behalf of UPC or UES, but which are not included in the above listing not recovered by the language referred to in Sections 4.1(c) and 4.2(b). For example, UES would expect to recover, through the External Delivery Charge, legal costs associated with pursuing a dispute under the Agreement. In general, UES expects that any costs incurred under the Agreement by UPC or UES, which do not represent costs due to Mirant, will also be recovered through UES' retail rates (absent a showing of imprudence), just as any payments received under the Agreement would be flowed back to ratepayers.

Mirant Americas has submitted a statement (Exhibit 47) identifying all "costs incurred under the Agreement" which it believes would be fully recoverable by UES in its retail rates, as follows:

> The purpose of the condition in Section 4.1(c) and 4.2(b) is to provide assurances to Mirant and UES that any amounts due Mirant under the Agreements will be fully recoverable by UES in retail rates, consistent

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[6] *See* Agreement, Article 4, sections 4.1(c) and 4.2(b).

with the assurance provided by the Commission in Order No. 24,072, p.49. In addition to the cost of the Entitlement Payments under Exhibit A, Section 3.2 and Appendix 1 and the costs of Transition and Default Service under Exhibit B, Sec. 3(a) and 3(b), these costs may include; costs associated with resolution of disputes under Sec. 10.1; costs associated with arbitration proceedings under Section 10.2; costs associated with billing and payments under Exhibit A, Section 3.4 and Exhibit B, Article 4; and the costs associated with remedies under Section 8.3, and the costs associated with any indemnification obligations under Section 9.3. Mirant is willing to accept the authorization which the Commission may grant to UES to recover the costs specified above as a sufficient form of credit to secure the obligations of UES and UPC under the Agreement in lieu of other forms of credit security such as a parent guaranty.

4. Amended System Agreement As Revised

Unitil seeks to revise the Amended System Agreement approved by the Commission as part of its approval of the Phase II Settlement Agreement in Order No. 24,072 in order to reflect the 2002 merger of CEC and E&H into UES. Unitil proposes no substantive changes to the Amended System Agreement.

5. Motion for Protective Order

Unitil requests that the Commission issue an order protecting the confidentiality of certain portions of its final report and attachments, including the summary of final round bids, the application of agreed upon evaluation and selection criteria, the description of the Companies' final round negotiations, specified sections of the Agreement, supporting

bid test level calculations, the Companies' calculation of mark-to-market exposure, and a comparison of conforming bids to final contract. In the interest of time, Unitil filed its final report with a request for confidential treatment of the entire filing; the motion specifically identifies the materials that are said to be competitively sensitive and should be protected from public disclosure under RSA 91-A:5,IV and Puc 204.06.

In support of its motion, Unitil asserts that certain of the materials in the final report constitute proprietary business information that if made public could detrimentally affect Mirant's future contract negotiations in the power marketplace as well as UES' ability to secure future transition and default service supplies after expiration of the Agreement. Unitil notes in this regard that the Commission found in the Indicative Bid Order that confidential treatment of certain materials, such as bids, bid analyses, financial assessments and auction-related data was necessary to protect the integrity of the bidding process and ratepayer interests in the success of future auction transactions.

Unitil further asserts that confidentiality of the specified provisions of the Agreement is necessary to protect Mirant's and Unitil's future negotiating positions vis a vis other participants in the marketplace. Unitil states that

public disclosure of particular contract language could reveal positions that the parties took in the negotiating process, sensitive contract parameters indicating concessions by the parties. According to Unitil, disclosure of such information could harm the competitive positions of Mirant and Unitil and give an unfair advantage to competitors.

6. Mirant

Unitil presented two witnesses from Mirant to provide the Commission with information regarding their business and experience in the New England power markets, and to discuss their financial situation. The Commission received other information on these subjects as well.

Mirant is a large merchant generation and trading energy company with headquarters in Atlanta, Georgia. Currently it operates in North America, the Caribbean and the Phillipines and has an operating office in Hong Kong. It owns or controls more than 22,000 MW of electric generating capacity worldwide, 17,000 MW of which is located in the United States, with approximately 1,000 MW under construction. In the United States, its generating assets are located close to large metropolitan areas, including San Francisco, Washington, D.C., New York City and Boston.

Mirant describes itself as an "asset heavy" company which uses its physical assets to support and hedge its United States trading and marketing efforts. Mirant states that it is a leader in energy risk management and the marketing of power, natural gas and other energy commodities.

During the third quarter of 2002, Mirant marketed 138 million MW hours of electricity and moved 22 Bcf/d of natural gas. It has reported adjusted earnings (unaudited) for 2001 of $683 million, and $134 million for the first quarter 2002, $145 million for the second quarter 2002 and $149 million for the third quarter of 2002.[7] Mirant estimates that its physical assets usually supply approximately 80 percent of its revenues with marketing and commodities trading providing the balance.

Mirant began operations in 1982, under another name, as a subsidiary of Southern Company. In 1992, Southern Company began pursuing investment opportunities outside its regulated southeastern electric utilities. Mirant was spun off from Southern Company in April 2000. Later that year it purchased the remaining outstanding shares of Vastar and took over all of the Mirant marketing assets. In September, 2000, Mirant shares

[7] New auditors, KPMG, were hired by Mirant in 2002 to replace Arthur Anderson and they are currently performing a reaudit of Mirant's financial statements for 2000 and 2001. Reaudited figures for 2000 and 2001 and figures for 2002 are expected to be published by April 15, 2003.

began being publicly traded. Mirant today is an independent company no longer affiliated in any way with Southern Company. In Massachusetts, Mirant owns generating units in Sandwich (Canal units), with a capacity of 1,109 MW, and in Cambridge (Kendall Station), with a capacity of 270 MW, as well as a smaller unit on Martha's Vineyard.

Mirant states that these are challenging times for Mirant and the merchant energy business in general. One of the major, immediate challenges facing Mirant in particular is a need to restructure substantial amounts of short term debt coming due in 2003, 2004 and 2005.[8] Mirant has reacted by raising $759 million of equity in December 2001; completing asset sales netting $2.2 billion and exiting markets in Europe and China, making a convertible offering of $370 million, reducing "net debt" by $1.5 billion to under $8 billion,[9] cutting annualized costs by more than $150 million, and deferring or cancelling several development projects in the United States in 2002; and downsizing its gas trading volume in 2003 since such trading has heavy liquidity demands. In addition, Mirant has reduced risk by negotiating the termination of approximately

[8] $1.646 billion of Mirant's debt matures in 2003 and $2.590 billion in 2004.
[9] "Net debt" is defined as total debt minus cash. Although net debt has decreased, Mirant's total debt has increased as it drew on its credit facilities in the third quarter of 2002.

$650 million to $750 million in "ratings triggers" which would otherwise require Mirant to post collateral in the event of a downgrade by a ratings agency.[10] Mirant states that it remains very focused on reducing the collateral required in its trading and marketing business. At year end 2002, Mirant's year end liquidity stood at almost $1.4 billion; at year end 2001, it was $1.6 billion.

Another challenge facing Mirant is to successfully resolve the numerous investigations and lawsuits concerning the developments in the California power markets, in which Mirant and many other companies have been accused of manipulating western electricity markets to raise prices illegally. Mirant believes that it acted lawfully in California and is defending itself against the charges being investigated and made regarding the California situation.

Mirant describes its operational capabilities as excellent and states that it is fully prepared to fulfill its obligations under the Agreement. Mirant has experience providing transition service to a third of the load of NSTAR in Massachusetts, providing almost 300 MW of power for NSTAR, and provides 3,000 MW of transition service power for Potomac

[10] At year end 2000, Mirant had posted collateral of $1.25 billion, of which $800 million was for the trading and marketing business.

Electric Power Company in PJM.

Unitil witnesses said that in the last 15 to 18 months, UPC has purchased in excess of $5 million of energy and installed capacity from Mirant and its Massachusetts affiliate has purchased several million dollars of natural gas. Unitil also said it has experienced no dissatisfaction with Mirant in its dealings with them and that it is comfortable with Mirant's ability to provide reliable transition and default service to New Hampshire customers during the next three years.

B. OCA

The OCA supported Unitil's filing. OCA expressed comfort with the robustness of the auction and the results of the auction; however, OCA did express concern about the creditworthiness of the winning bidder.

OCA also believes there is no other reasonable option other than the proposed transaction and that this contract provides some assurance and some benefits to ratepayers, if, in fact, market prices increase. According to OCA, the impacts benefits under a "business as usual" scenario over the next three years on expected retail prices are not positive; they are slightly negative.

OCA believes there is really no exposure under the proposal for ratepayers unless market prices go down. If prices

do go down, there is, in fact, some exposure to ratepayers. On the other hand, OCA thinks this situation is consistent with the result the Legislature contemplated: a transition rate that is higher than market rates may incent customers to enter the competitive market, thereby promoting competition.

C. BIA

The BIA expressed its support for Unitil's filing. It believes the Commission should approve Phase III as offered by Unitil because, in its entirety, the contract is appropriate. According to the BIA, the Agreement provides consumers with stable and competitive prices obtained at market, and protects customers from market exposure and volatility during the transition service period.

The BIA also said this filing is the successful result of a process that was developed during a negotiated settlement agreed upon by all of the interested parties in this docket. According to the BIA, the solicitation process contained a robust number of bids, and all of the bids were relatively comparable in price, which evidences the clear and concise manner in which the solicitation was offered.

BIA feels that the prices received in the bidding were indicative of the market. Although in the first year the result from a rate standpoint did not come in where anticipated, the

BIA states that does not mean that this was not a successful process. According to the BIA, the reason the prices are higher than anticipated is that there were unanticipated external occurrences between November 2002 and the bidding, which impacted the prices of energy upward. The BIA states that given all of the external factors that have caused energy prices to spike, this contract price increase is relatively low. It appears to BIA that the prices will still be both competitive regionally and within the state.

The BIA feels the final bid and contract as proposed is clearly better than all alternatives, including the alternative of continuing with the status quo which would have required rate adjustments that would impact rates upward, but for this contract. The BIA also states that the rates as proposed will provide business customers with a known and predictable rate path for the next two years, and will provide competitive suppliers with a rate to compete against. According to the BIA, the rate path established by this contract may also provide an opportunity for large business customers to negotiate competitive energy supply offers, if not immediately, then possibly in the near future should the market improve.

Finally, the BIA notes that at first glance, it appears that Unitil's G-1 customers would be the most adversely

affected by the bid process because the overall average rate increase for this class is 9.88 percent, as opposed to the average residential rate increase of approximately 5 percent. The BIA feels that comparing these two rates is misleading. The G-1 energy portfolio was bid out separately, and as such a different number resulted. According to the BIA, the number is understandably higher than that for residential customers, because a larger portion of G-1 customers' bills are comprised of energy, and a smaller portion is for delivery, while the reciprocal is true for residential ratepayers. Having G-1 customers with energy-heavy bills provides an even greater opportunity and incentive for competitive suppliers to market energy contracts to the G-1 customers, according to the BIA.

Finally, BIA feels that if customers do believe that the prices are too high, the viable option is to go to a competitive supplier.

The BIA requests that the Commission approve this contract as is, and not "blue pencil" the rates or the Agreement.

D. Staff

Mr. Abbanat testified at the hearing on behalf of Staff that he had reviewed the proposed Agreement in the context of the economics it would offer customers. He said that from

the standpoint of the prices implicit in the transition services and the monthly payments associated with the portfolio, subject to a remaining concern regarding Mirant's financial condition and performance under the Guaranty, the Agreement represents a reasonable resolution of this docket.

Staff expressed its general support for Unitil's filing. Staff said the portfolio auction and transition and default service solicitation procedures approved by the Commission were appropriate and that Unitil substantially followed the procedures set forth in the Phase I Settlement Agreement approved by the Commission. Staff also said that the final package negotiated by the Companies and Mirant offers better pricing than the bids of the other conforming bidders. Staff noted, however, that performance of the Agreement is not without risk in that Mirant's financial condition poses risks to both Unitil and its customers, although Staff said it had not been able to quantify a cost associated with these risks.

Staff recognized the benefit of Unitil's actions taken in the course of negotiating the terms of the Agreement to limit the financial exposure arising from Mirant's financial situation by (i) adopting a single contract in lieu of the three originally proposed individual contracts for Non G-1 transition and default service, G-1 transition and default service, and the

portfolio sale and (ii) extending the payment stream for the portfolio such that the payment period expires at the same time the supply contract obligations expire.

Nevertheless, Staff asserted that Unitil has proposed language with respect to the certainty of cost recovery for both Mirant and Unitil that is broader than that approved by the Commission in its Phase II Order. Staff also asserted that the language is not required by the Phase II Settlement Agreement. On the one hand, Staff expressed its understanding for assurances that the portfolio Entitlement Payments and payments for the transition and default service provided by Mirant Americas will be recoverable in retail rates. On the other hand, Staff expressed its concern that in approving the Agreement the Commission not give any assurances that might undermine the Commission's traditional regulatory authority to review the prudence of a regulated utility's actions, which Unitil touted as a reason for approving the restructuring plan in the first place.

Staff concluded that, subject to the uncertainties in the financial condition of Mirant Americas and the uncertainties in Mirant Corporation's ability to fulfill its obligations under the Guaranty, the Unitil Companies' proposal appears to represent a good result relative to the benchmark test levels

established in Phase I.

III. COMMISSION ANALYSIS

Through our approval of the Phase I Settlement Agreement, our Phase I Order established the general path for Unitil's implementation of the restructuring of its electric utility business pursuant to RSA 374-F.[11] We are now at the final stage of the proceedings in this docket. The basic decision we must now make is whether to approve the Agreement negotiated between Unitil and Mirant.

The Phase I Settlement Agreement provided that if Unitil requests Commission approval of portfolio sale and transition and default service contracts that reflect bids at or below what the parties have now come to refer to as the bid test levels, there shall be a "rebuttable presumption" that the contracts are "reasonable, in the public good and consistent with RSA 374-F." In previous testimony, Unitil has recognized that the parties were nevertheless free to comment on the final bid round results and the terms of any proposed contracts and that the Commission has the final say over whether to approve

[11] Our approval was conditional. The focus of the conditions was on obtaining alternative prices for Non-G-1 transition service, assuming several scenarios for choice date, through the bid process. As part of our Phase II Order, we approved an amendment to the Phase I Settlement Agreement reflecting a revised process for satisfying the conditions. Then, in the Indicative Bid Order, we recognized that the process of obtaining the indicative bids and the substance of those bids complied with the revised selection procedures and criteria, thus satisfying the concerns discussed in our Phase I Order.

such contracts. Further, we do not view our Phase I Order as necessarily limiting our statutory authority and duty under RSA 374-F to consider the possibility of delay in the implementation of choice when implementation would be inconsistent with the goal of near-term rate relief, or would not otherwise be in the public interest. *See* RSA 374-F:3,XV and 4,I.

Accordingly, we proceed with our review of the proposed Agreement by considering not only its price terms compared to the bid test levels but also its other features to determine whether or not to sustain the Phase I presumption and proceed with restructuring at this time pursuant to the Agreement. We do not review again the underlying plan for restructuring since we did so in our Phase I Order. At this stage, we consider, among other things, whether the terms of the Agreement are consistent with the interdependent policy principles and requirements set forth in RSA 374-F and in the public interest.

From our review of the record, we are satisfied that (i) Unitil substantially followed the procedures set forth in the Phase I Settlement Agreement for the portfolio auction and transition and default service solicitations; (ii) bidding for the acquisition of the power contract portfolio and supply of transition and default service was sufficiently competitive that

the bid results may be regarded as a valid reflection of market conditions; (iii) Unitil's decision to select Mirant Americas as the winning bidder for the portfolio and transition and default service supply with which to negotiate final contracts was reasonable; and (iv) the final package negotiated by Unitil and Mirant Americas offers better pricing than the bids of the other conforming bidders and given current market conditions, is a good result relative to the benchmark test levels calculated in Phase III according to procedures agreed upon in Phase I.

Particularly since the Agreement contains certain provisions that differ from those included in Unitil's previous filings, we examine whether the proposed Agreement complies with the policies and requirements of RSA 374-F. We surveyed these requirements in our Phase I Order, at pages 26-28, as follows:

> Electric utilities have the on-going obligation to take 'all reasonable measures to mitigate stranded costs.' RSA 374-F:3,XII(c). In accordance with RSA 374-F:3,XII(d), 'stranded costs should be determined on a net basis, should be verifiable, should not include transmission and distribution assets, and should be reconciled to actual electricity market conditions from time to time.' Once stranded costs are determined, the Commission is authorized to 'allow utilities to collect a stranded cost recovery charge, subject to its determination in the context of a rate case or adjudicated settlement proceeding that such charge is equitable, appropriate, and balanced, is in the public interest, and is substantially consistent with these interdependent principles….'
>
> As to providing Transition Service, RSA 374-F:3,V(b) states that customers should have the 'option of stable and

> predictable ceiling electricity prices through a reasonable transition period, consistent with the near term rate relief principle of RSA 374-F:3,XI.' Transition Service must be available for at least one year but not more than five years after May 1, 2001 for customers who have not yet chosen a competitive electricity supplier. See RSA 374-F:3,V(b). Transition Service should be obtained through competitive means. The Legislature advised that the price of Transition Service should increase over time to encourage customers to choose a competitive electricity supplier during the transition period. Finally, Transition Service should be separate and distinct from Default Service.
>
> RSA 374-F:3,V(c) provides that Default Service too should be procured through competitive means. Generally speaking, the allocation of the costs of administering Default Service should be borne by Default Service customers. RSA 374-F:3,V(d) states that the Commission should establish Transition and Default Service appropriate to the circumstances of each utility. Notwithstanding the provisions of RSA 374-F:3,V(b) and (c), RSA 374-F:3,V(e) authorizes the Commission to approve 'alternative means' of providing Transition or Default Service which are designed to 'minimize customer risk, not unduly harm the development of competitive markets, and mitigate against price volatility without creating new deferred costs,' if the Commission determines such means to be in the public interest.
>
> Laws of 2002, Chapter 268:4 adds a new paragraph (f) to RSA 374-F:3,V, authorizing a utility in its discretion to allow its customers to choose a 'renewable energy' Transition Service. [citations and footnotes omitted.]

Consistent with the request for proposals, in the proposed Agreement UPC will assign the power contracts included in the portfolio to Mirant Americas. To the extent any power contract is not assignable to Mirant Americas, UPC will sell its entitlement to capacity and associated energy and authorize

Mirant Americas to administer such power contract. However, under the proposed Agreement, Mirant Americas is not obligated to agree to an assignment which releases UPC from obligations or liabilities by the power supplier (a novation) until UPC has paid all the Entitlement Payments, which represent the above market amounts to be paid by UPC during the course of the Agreement. Although it has always been understood that the power suppliers were not bound to agree to a novation of the contracts and the parties were not obligated to agree to buydowns or other restructured arrangements involving the power contracts, in Phase I, divestiture (with novation) of the power contracts was conceived to be the primary means by which the stranded costs of the portfolio would be verified.

We believe that under this provision the divestiture of the portfolio contracts is sufficiently complete that the determination of the amount of stranded costs can be considered to be verified. Further, Unitil conducted the portfolio auction effectively and efficiently and as prescribed in our Phase I Order, and we believe that the stranded cost charges under the tariffs which result from the Agreement are equitable, appropriate, balanced and in the public interest. The Agreement also provides customers with an option for stable and predictable ceiling electricity prices through the transition

period. We conclude that the auction and solicitation process and the resulting Agreement comport with RSA 374-F.

We next consider the failure to meet the first year wholesale rate target of $0.0625 for the combined Non-G-1 transition service and stranded cost charge, which will mean a rate increase instead of the rate decrease expected by Unitil last fall. Unitil established this as a goal early in its planning for restructuring; it was not an absolute requirement for restructuring in the Phase I and Phase II Settlement Agreements. The electricity and oil and gas markets have witnessed dramatic price rises since last fall, and even though there is an expectation in some quarters for wholesale electricity prices to decline in the medium term, we are satisfied that the failure to meet the target is explained, at least in part, by current market conditions as reflected in the bids. Thus we find the failure to meet the first year target is not a reason to disapprove the Agreement.

The proposed transaction compares favorably to the "business as usual" case, as well. If one were to look only at a comparison of proposed transition service prices and forecast spot market prices, the restructuring proposal might produce slightly higher prices in the next three years. However, as testified by Mr. Foote, the Company could not supply its entire

portfolio from the market, and would want to hedge its risk, and that of its customers, against possible spikes in the spot market, by entering into bilateral contracts much like the transition service component of the proposed restructuring agreement with Mirant. Such contracting would be important to provide stable prices for consumers, but would require a premium that would bring the expected cost of the "business as usual" case up to the cost of the proposed transaction.

Whether under transition service as proposed, or under "business as usual," Unitil would have to enter into contractual arrangements to serve its New Hampshire customers, as it has insufficient entitlements to serve all of its load. As Mr. Foote pointed out, "business as usual" cannot mean a return to earlier forms of off-system sales agreements, priced at cost. Given the introduction of retail choice, any bilateral contracts desirable from the point of view of price stability will require some premium to protect the wholesale seller against the fact that the wholesale utility buyer is subject to a different risk profile than that experienced when utilities were typically vertically integrated. Under these new circumstances, the proposal put forward here is at least as favorable to consumers on a price comparison basis, and has the added benefit of

permitting consumer choice, as mandated by our statutes and policy.

Next, we consider Mirant's qualifications to perform the Agreement. We find its operational capabilities and its experience in providing the kinds of services required by the Agreement to be adequate. Other positive factors in Mirant's favor include its focus on the New England power markets, the generating capacity it owns near UES' service territory, and Unitil's prior business experience with Mirant.

Mirant's financial situation and the allegations made about Mirant's business practices in California are concerns. Given Mirant's financial situation, we must consider the implications in the event of default by Mirant.

The original form of contracts, as filed with the Commission by Unitil as part of the RFPs, included three separate and independent contracts: one each for G-1 Transition/Default Service, non-G1 Transition/Default Service and the portfolio. Unitil said that once it assessed the final round bids received, both conforming and non-conforming, it was clear Mirant's bid offered the greatest economic value on a combined basis. Even so, Mirant's below investment grade credit ratings could not be overlooked and Unitil immediately began to

explore whether contract modifications could provide sufficient protection against the possibility of default.

During the hearings, we devoted considerable attention to examining the maximum exposure for Unitil and its customers in the event of default. Much of the examination focused on confidential exhibits that depicted the estimated mark-to-market exposure under various market price scenarios for the G1 transition/default service, Non-G1 transition/default service and the portfolio, both individually and in aggregate.

From the graphical analysis, we could observe the present values of the expectations of the remaining cash flow positions under the contract compared to the remaining cash flows that could be expected in the event of default on the contract at various points in time. This information, according to Unitil, allowed the Company to assess the expected magnitude and source of its financial exposure as it changes over time, so that it could explore other opportunities to improve Unitil's security over the full term of the contract.

According to the Company, in this transaction, Unitil considers itself a buyer and cautions that the appropriate risk a buyer should ensure against is the risk that its seller defaults, leaving the buyer to find an alternative seller at an uncertain price. To guard against this, a buyer should ensure

that a seller's economic interest is not completely realized before the contract term is up. Consequently, to protect its interest and those of its customers, Unitil, through negotiations, modified the contracts to increase the likelihood that Mirant's economic interest in the deal will be maintained for the duration of the contract, even in a worst case scenario from Mirant's perspective. Unitil testified that it achieved this by restructuring the contract release payments, modifying the cash flows and extending the payment period, thus more closely aligning the economic value of the contract with the obligations underlying the contract. As originally bid, the entitlement payments would have been paid to Mirant in their entirety before the obligations of Mirant under the underlying power contracts had been fulfilled. As negotiated, the Entitlement Payments continue for a longer period. This increases the economic incentive for Mirant to perform the contract.

Unitil further testified that its decision to pursue a single contract instead of separate contracts for each of the three solicitations was based on advice from the Company's legal counsel, LeBoeuf, Lamb, Greene & MacRae. According to the Company, the single contract approach would afford Unitil greater protection in the event of a bankruptcy by Mirant. The

relative value of the three individual contracts (or the three components of the single contract) move with changes in the markets. Consequently, price decreases in the energy markets would increase the value to Mirant of the transition/default service contracts, while likely depressing the value of the portfolio contract. If, during the transition service period, Mirant were to enter bankruptcy and prices in the energy market were low, the bankruptcy court would have an incentive to affirm the transition/default service contracts but not the portfolio contract. By employing a single contract, Unitil hopes to incent Mirant to remain committed to the deal for the entire ninety month period and thus limit the Company's financial exposure under a bankruptcy situation.

Mirant's financial status is below investment grade. However, Unitil has taken reasonable precautions by negotiating modifications to the contract terms, specifically the single contract in lieu of three separate contracts and the modified payment stream for the entitlement payments. Further, Unitil has mitigated its exposure with the $20M parent guaranty.

We believe Unitil's characterization of its primary role as a buyer in this transaction oversimplifies its overall status which also includes the role of a seller of the portfolio of contracts. Nevertheless, we believe Unitil gave appropriate

attention to examining the creditworthiness of Mirant. Unitil testified that its analysis showed that the final agreement, with its restructured pricing, payment streams and $20 million guaranty from Mirant, protects against 95 percent of the possible range of outcomes.

With respect to allegations of unlawful practices by Mirant in the California market, we note that proceedings are ongoing in the appropriate forums to address these concerns, and we can neither substitute our judgment for the judgment of those tribunals, nor anticipate the outcome of those proceedings. The contract at issue here in any event does not lend itself to the types of transactions at issue in those proceedings, and we are satisfied that Unitil customers are not at undue risk by virtue of the choice of a counterparty which is a respondent in those proceedings.

Having carefully taken into account the factors discussed above, we will approve the Agreement. We will also approve the revised tariff pages included in Unitil's filing and the proposed housekeeping amendments to the Amended System Agreement.

We have been asked to provide an assurance to both Mirant and Unitil that costs "incurred under, and defined in," the Agreement will be fully recoverable in retail rates. We

heard testimony that Mirant Americas desires this assurance as part of its security for entering into the Agreement with Unitil. Other security required by Mirant Americas includes UES' maintenance of $20 million in net worth with a letter of credit or guarantee from Unitil Corporation to make up any shortfall, as well as freedom from an obligation to negotiate irrevocable and unconditional assignments of the power supply contracts from UPC until the Entitlement Payments are fully paid. Unitil testified that it does not rely on the Agreement or the assurance referred to in the Agreement for the retail recovery of costs; instead, Unitil relies on the Amended System Agreement between UPC and UES for the full recovery of its stranded costs and on the assurances provided in the UES tariffs for the recovery of its transition service costs.

Exhibits 41 and 47, submitted in response to record requests by Staff, indicate that Mirant and Unitil may have in mind a broad, open-ended assurance from the Commission about retail cost recovery of costs that may be said in any way to be "incurred under"and/or "defined in" the Agreement. Mirant and Unitil say that such an assurance is consistent with our Phase II order although they do not go so far as to claim that it is required by the Phase II Order. Indeed, we note that the Agreement is a new part of the transaction separate from the

RFPs put out to bid, and that the Agreement negotiated by Unitil and Mirant which is before us today differs in significant ways from the portfolio sale and transition and default service supply contracts included in the proposed RFP we saw at the time of the Phase II Order.

We wish to be clear about the scope of the assurance we are willing to approve. Our approval of the Agreement means that the Entitlement Payments and payments for the supply of transition and default service set forth in the Agreement to be paid by Unitil to Mirant Americas in exchange for Mirant America's performance of its obligations under the Agreement will be fully recoverable in retail rates provided Mirant in fact performs its obligations under the Agreement. In approving the Agreement, we have determined that Unitil has acted prudently in agreeing to pay these prices. Thus, we would not revisit this issue in the future merely because market conditions become more advantageous to Unitil than those provided in the Agreement, should that occur.

However, we cannot foresee every other situation that may arise from carrying out the Agreement. It is possible that we will determine in the future that other costs that might arguably be said to be incurred under and defined in the Agreement, not otherwise specifically prohibited in the

Agreement, *see* section 8.3(d), and that are described in UES' tariffs, should not be recoverable in retail rates, depending on, among other things, our judgment about whether they would be required to be paid under the Agreement, or are prudently incurred by Unitil in performing the Agreement, or would have been avoidable by Unitil through prudent action. We do not understand Mirant or Unitil to be requesting that in this Order we limit our authority or compromise our duty to act in the future according to law or that we relieve Unitil of its duty to act according to law, including its duty to act prudently. In any case, of course, we are unwilling and unable to do so.

Unitil's motion for protective order filed on March 5, 2003 contains a long list of items for which confidentiality is sought. We have considered the arguments made in the motion, but we have not had sufficient time to address on the motion in its entirety. In this Order we discuss some of the information for which confidentiality is sought. To the extent that order discloses such information, the request for confidential treatment is denied. A secretarial letter will be issued at a later date advising the parties of what further action will be taken on the motion and on confidential treatment for the portions of the recently concluded hearings conducted in non-public session.

Constellation's last minute suggestion for a different procedure for Unitil's acquisition of transition and default service is noted and in future solicitations we will consider whether same day contract approval is feasible. The plan for restructuring Unitil's New Hampshire electricity business involved a sale of the portfolio in addition to the acquisition of transition and default service. This is a unique, negotiated transaction which simultaneously establishes the levels of stranded costs for Unitil's customers as well as the prices for transition and default service. Because of the complexity of this matter and our need to give it careful review before issuing this Order, it was not feasible to conduct a same day approval process. We note that with our permission, Unitil modified the RFP process to reduce the time during which bidders were expected to hold their prices open in order to maximize the chances for a successful result. Further, in Unitil's view, better results would not necessarily have been obtained from a same day approval process.

Based upon the foregoing, it is hereby

ORDERED, that the Portfolio Sale and Assignment and Transition Service and Default Service Supply Agreement by and Among Unitil Power Corp., Unitil Energy Systems, Inc. and Mirant Americas Energy Marketing, LP and dated February 25, 2003 is

approved as discussed in this Order; and it is

FURTHER ORDERED, that the UES tariffs submitted with the final report are approved; and it is

FURTHER ORDERED, that the revised Amended System Agreement is approved; and it is

FURTHER ORDERED, that Unitil file with the Commission no later than 5 business days after closing, a true copy of the fully executed Agreement in the exact form on which it closed and a statement identifying any changes made to the Agreement, if any, since the date of this Order; and it is

FURTHER ORDERED, that as soon as practicable after closing the Agreement, Unitil submit true copies of the docket markings evidencing its withdrawal from the Federal court litigation with prejudice, as provided in the Phase II Settlement Agreement; and it is

FURTHER ORDERED, that Unitil's motion for protective order filed on March 5, 2003 is deemed denied to the extent that information for which confidential treatment was sought by Unitil is disclosed in this order.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of March, 2003.

Thomas B. Getz	Susan S. Geiger	Nancy Brockway
Chairman	Commissioner	Commissioner

Attested by:

Claire D. DiCicco
Assistant Secretary