THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Fitchburg Gas and Electric Light Company Default Service Tariff Filing M.D.T.E. Nos. 137-141 for June 1, 2006	)))))	**D.T.E. 99-60**

MOTION OF FITCHBURG GAS AND ELECTRIC LIGHT COMPANY d/b/a UNITIL FOR PROTECTIVE TREATMENT

I. INTRODUCTION

Fitchburg Gas and Electric Light Company d/b/a/ Unitil ("Unitil") hereby requests that the Department of Telecommunications and Energy ("Department") grant it protection from public disclosure, in accordance with G.L. c. 25, §5, for certain confidential, sensitive and proprietary information submitted in this proceeding. Simultaneously with this Motion, Unitil is submitting the results of its solicitation for Default Service supply and supporting documentation for service effective June 1, 2006. Tab B to that filing contains competitively sensitive cost and procurement information. Unitil is also filing under separate cover its Revised Tariff to implement its new Default Service Rates, Attachment 1 of which contains the confidential wholesale prices bid in response to Unitil's Request for Proposals ("RFP"). The original and one copy of the confidential material (Tab B and Attachment 1) has been provided to Secretary Cottrell for filing, and confidential copies have been provided each to the Attorney General (2 copies) and the Division of Energy Resources ("DOER") (1 copy) under the terms of a pre-existing Non-Disclosure Agreement.

For the following reasons, Unitil requests that the confidential results of its Default Service RFP contained in Tab B and Attachment 1 be protected from public disclosure.

II. LEGAL STANDARD

The Department may protect from public disclosure confidential business information in accordance with G.L. c. § 5D, which states in part that:

> [T]he [D]epartment may protect from public disclosure, trade secrets, confidential, competitively sensitive or other proprietary information provided in the course of proceedings conducted pursuant to this chapter. There shall be a presumption that the information for which such protection is sought is public information and the burden shall be upon the proponent of such protection to prove the need for such protection. Where such a need has been found to exist, the [D]epartment shall protect only so much of the information as is necessary to meet such need.

In interpreting the statute, the Department has held that:

> [T]he burden on the company is to establish the need for protection of the information cited by the company. In determining the existence and extent of such need, the Department must consider the presumption in favor of disclosure and specific reasons why disclosure of the disputed information benefits the public interest.

Berkshire Gas Co., D.P.U. 93-187/188/189/190, p. 16 (1994).

The Department has previously granted protective treatment for sensitive market information, including price terms:

> The Department will continue to accord protective status when the proponent carries its burden of proof by indicating the manner in which the price term is competitively sensitive.

Standard of Review for Electric Contracts, D.P.U. 96-39, at 2, Letter order (August 30, 1996). See also Colonial Gas Co., D.P.U. 96-18 at 4 (1996) (granting protective

treatment for pricing information including all "reservation fees or charges, demand charges, commodity charges and other pricing information").

The Department has also recognized that competitively sensitive terms in a competitive market should be protected and that such protection is desirable as a matter of public policy:

> The Department recognizes that the replacement gas purchases . . . [which] are being made in a substantially competitive market should allow LDC's to obtain lower gas prices for the benefit of their ratepayers. Clearly the Department should ensure that its review process does not undermine the LDC's efforts to negotiate low cost flexible supply contracts for their systems. The Department also recognizes that policy of affording contract confidentiality may add value to contracts and provide benefits to ultimate consumers of gas, the LDC's ratepayers, and therefore may be desirable for policy reasons.

Berkshire Gas Co., D.P.U. 93-187/188/189/190, p. 20 (1994).

III. CONFIDENTIAL AND COMPETITIVELY SENSITIVE INFORMATION SHOULD BE PROTECTED FROM PUBLIC DISCLOSURE

Unitil seeks Department protection from public disclosure for: (1) the data in Tab B attached to Unitil's Default Service supply solicitation filing, in particular, the identity of the suppliers and the pricing data, the economic analysis of the bids received (both price and non-price terms); and (2) the wholesale pricing information in Attachment 1 to the Revised Tariff filing. The final Default Service contracts contain Unitil's assurances that Unitil would treat all bid and contract information (particular with regard to name and price) confidential. Throughout the bidding process, the suppliers also relied on Unitil's commitment to maintain the confidentiality of the details of their individual bids.

Moreover, although Unitil recognizes that over time, the identity of the suppliers and the pricing information may be disclosed, the harm to the participants in Unitil's RFP would be mitigated by maintaining the confidentiality of the data for as long as possible. Disclosure of the confidential supplier information would also be detrimental to the broader competitive market. The public disclosure of the pricing of Unitil's default service, if a delta from a competitive market were known, could jeopardize Unitil's competitive position and may inhibit the ability of Unitil to minimize the price paid for Default Service by its customers in the future.

Confidential treatment of the identity of the contracting party and the detailed pricing information is appropriate to protect the Company's credibility among suppliers. As the pool of prospective suppliers is small, it could be further reduced if the market perceives greater risk from participating in future Unitil RFPs due to confidentiality concerns. Therefore, the obligation to keep the information confidential is critical to preserve the robust nature of the ongoing auction process, and to ensure continued participation by the maximum number of interested suppliers. It will optimize Unitil's ability to receive the best possible contract terms for default for its customers.

WHEREFORE, for the reasons stated above, Unitil requests that the Department grant its motion to protect from public disclosure the confidential, competitively sensitive and proprietary information regarding default service supply.

Respectfully submitted,

FITCHBURG GAS AND ELECTRIC LIGHT COMPANY d/b/a UNITIL

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Certificate

I certify that copies of this Motion for Protective Treatment have been served this 21st day of April, 2006, via First Class U.S. Mail, upon each entity identified on the Department's service list for this proceeding.

Gary Epler