

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 09-010

GRANITE STATE ELECTRIC COMPANY D/B/A NATIONAL GRID

**Petition for Approval of Proposed Default Service Rates for February 1, 2010 through
April 30, 2010 for Large Commercial and Industrial Customers**

Order Approving Petition

ORDER NO. 25,055

December 21, 2009

APPEARANCES: Gallagher, Callahan and Gartrell by Marla B. Matthews, Esq. on behalf of Granite State Electric Company d/b/a National Grid; and Suzanne G. Amidon, Esq. on behalf of the Staff of the New Hampshire Public Utilities Commission.

I. BACKGROUND

On December 14, 2009, Granite State Electric Company d/b/a National Grid (National Grid or Company) filed a petition requesting approval of default service rates for its large and medium commercial and industrial customers (Large Customer Group) for the period from February 1, 2010 through April 30, 2010. National Grid named DTE Energy Trading, Inc. (DTE) as the winning default service supplier for this period. In support of its petition, National Grid filed the testimony of Margaret M. Janzen and related exhibits. Ms. Janzen is the director of electric supply and distributed generation for National Grid USA Service Company, Inc., the National Grid affiliate with responsibility for procurement of default service power for National Grid. National Grid also filed its quarterly customer migration report with its petition.

National Grid made this filing pursuant to a settlement agreement approved by the Commission in Order No. 24,577 (January 13, 2006), 91 NH PUC 6. In Order No. 24,577, the Commission approved the process for solicitation, bid evaluation and procurement of default

service supply by National Grid for its Large Customer Group. According to the terms of the settlement agreement, National Grid procures default service for its Large Customer Group under three-month contracts with fixed prices that vary month-to-month. National Grid charges the Large Customer Group retail rates consisting of monthly fixed energy charges, administrative costs and a reconciliation charge.

With its petition, National Grid filed a motion for confidential treatment of certain information pursuant to N.H. Code Admin. Rules Puc 203.08. On December 14, 2009, the Commission scheduled a hearing for December 17, 2009, which took place as scheduled.

II. POSITIONS OF THE PARTIES AND STAFF

A. National Grid

National Grid testified that it conducted its solicitation process consistent with the terms of the settlement agreement approved by the Commission in Order No. 24,577. As with prior solicitations, National Grid and its retail distribution affiliates in Massachusetts, Massachusetts Electric Company and Nantucket Electric Company, prepared a joint request for proposals (RFP) for certain power supplies, including default service supply for National Grid's Large Customer Group for the period February 1, 2010 through April 30, 2010. The RFP requested fixed pricing for each month of service on an as-delivered energy basis and allowed prices to vary by month so that prices did not have to be uniform across the entire service period.

According to National Grid, the RFP was sent to more than 25 potential suppliers on October 30, 2009. The RFP was also distributed to all members of the New England Power Pool (NEPOOL) Markets Committee and was posted on National Grid's energy supply website. According to National Grid, the RFP was widely distributed through the New England energy supply marketplace.

The Company testified that suppliers filed indicative bids on December 2, 2009 and final proposals on December 9, 2009. According to the Company, none of the bidders made their provision of National Grid's Large Customer Group default service contingent upon the provision of any other service. The Company testified that it evaluated the bids and selected DTE because its bid conformed to the RFP, had the lowest price, met the credit requirements described in the RFP, and passed National Grid's qualitative evaluation. National Grid attested that it complied with the solicitation and bid evaluation process approved by the Commission and that its choice of supplier is reasonable. On December 9, 2009, National Grid entered into a master power agreement and a wholesale transaction confirmation with DTE, the winning bidder for the Large Customer Group. National Grid testified that, although the transaction confirmation and master power agreement have differences from the sample power supply agreement approved by the Commission, the executed documents do not shift any of the risks or obligations described in the sample power supply agreement provided in the settlement agreement.

Consistent with the RPS settlement agreement approved in Order No. 24,953 (March 23, 2009) in this docket, National Grid solicited an RPS compliance adder with the RFP for default service supply. The RPS compliance adder is the incremental charge by a bidder for agreeing to take on the RPS obligation with the default service obligation. The Company explained that the RPS adder from the winning default service bidder was close to the alternative compliance payment (ACP) and, therefore, the Company did not accept the winning bid with the RPS compliance adder.

To comply with RPS requirements for the months of 2010 associated with the supplies that have been procured as a result of the current RFP, National Grid will need to procure Class I

(new renewable resources) RECs for 1.0 percent of sales, Class II (solar resources) RECs for 0.04 percent of sales, Class III (existing biomass resources) RECs for 5.5 percent of sales, and Class IV (existing small hydro resources) RECs for 1.0 percent of sales. Pursuant to the RPS settlement agreement, National Grid issued RFPs in 2009 to solicit New Hampshire RECs for its 2008 through 2010 REC requirements. The Company received bids for RECs and contracted for all of the RECs classes for 2009 and 2010 obligations. National Grid said that it used the costs of these RECs to develop its RPS compliance adder of \$0.00232 per kilowatt hour (kWh).

National Grid testified that the rates for the Large Customer Group for the period February, 2010 through April 30, 2010, including the various components included in the rate, in cost per kWh, will be as follows:

| Month | February 2010 | March 2010 | April 2010 |
|--|---------------|-------------|-------------|
| Base Default Service (DS) Rate | \$0.08322 | \$0.08324 | \$0.08467 |
| DS Cost Reclassification ¹ | (\$0.00285) | (\$0.00285) | (\$0.00285) |
| DS Adjustment Reconciliation Factor ² | \$0.00055 | \$0.00055 | \$0.00055 |
| RPS Adder | \$0.00232 | \$0.00232 | \$0.00232 |
| Total Default Service Rate | \$0.08324 | \$0.08326 | \$0.08469 |

According to testimony, the load-weighted average of the default service rates for the Large Customer Group for the period February through April 2010 is \$0.08376 per kWh, compared with the load-weighted average rate of \$0.07293 per kWh for the period ending January 31, 2010. For the customers in the Large Customer Group that remain on default service, overall bill impacts will be increases ranging from 9% to 10.9%. The Company attributed the increase to changes in the market price for energy.

¹ The filing states that the DS Cost Reclassification Factor (for use on and after May 1, 2007) recovers costs associated with unbundling the default service-related administrative costs.

² This factor is approved by the Commission for reconciling costs and revenues for default service. See National Grid Second Revised Page 87 of the National Grid Tariff.

B. Staff

Staff stated that it had reviewed the petition and determined that National Grid had complied with the settlement agreement approved by the Commission in Order No. 24,577 in conducting the bid solicitation process, evaluating the bids, and selecting the final bidder. The Staff also said that, in its view, the resulting rates are market based and recommended that the Commission approve the petition.

III. COMMISSION ANALYSIS

A. Confidentiality

First, we address National Grid's motion for confidential treatment. The information for which National Grid seeks confidential treatment is redacted from its public filing and was submitted separately with the motion. In the motion, National Grid requests confidential treatment of: the amendment to the Master Power agreement with DTE (Schedule MMJ-4 attached to Ms. Janzen's testimony) including the transaction confirmation; the summary of the RFP bid evaluation (Schedule MMJ-2); the analysis comparing changes in electric and gas futures costs to changes in power procurement costs (Schedule MMJ-3); the calculation of commodity costs at the retail customer meter (MMJ-6); and the indicative bid and REC purchase summary provided to Staff (Exhibit 16).

In support of its motion, the Company states that these materials contain commercially sensitive information, the disclosure of which could be harmful to the competitive positions of DTE and the participants in the RFP, and could stifle the willingness of those suppliers to participate in future energy service solicitations in New Hampshire. In addition, National Grid represents that competitive suppliers protect information they deem confidential or commercially sensitive. According to National Grid, the parties have taken steps to avoid disclosure of this

information and believe that disclosure of such information could adversely affect the business position of the parties in the future.

The Company notes that documents exempt from public disclosure under RSA 91-A:5, IV include records that comprise “confidential, commercial, or financial” information and other documents whose disclosure would constitute an invasion of privacy. National Grid states that the information for which it seeks a protective order is confidential, commercial, or financial information within the meaning of RSA 91-A:5, IV and should be exempt from disclosure.

We note that similar requests for confidential treatment have been made in past default service solicitations and have been consistently granted by the Commission. *See e.g.*, Order No. 23,953 (March 23, 2009), Order No. 24,981 (June 19, 2009) and Order No. 25,013 (September 21, 2009) in this docket.

The Right-to-Know Law provides each citizen with the right to inspect public information in the possession of the Commission. RSA 91-A:4, I. We recently had occasion to rule on motions for confidential treatment in the context of confidential, commercial and financial information regarding utilities and their affiliates. *See, Unitil Corporation and Northern Utilities, Inc.*, Order No. 25,014 (September 22, 2009) and *Public Service Co. of New Hampshire*, Order No. 25,037 (October 30, 2009). Following the approach in these cases, we consider the three-step analysis applied by the New Hampshire Supreme Court in *Lambert v. Belknap County Convention*, 157 N.H. 375, 382 (2008), in determining whether the information identified by National Grid should be deemed confidential and private. First, the analysis requires an evaluation of whether there is a privacy interest at stake that would be invaded by the disclosure. If no such interest is at stake, the Right-to-Know law requires disclosure. *Id.* at 382-83. Second, when a privacy interest is at stake, the public’s interest in disclosure is assessed. *Id.*

at 383. Disclosure should inform the public of the conduct and activities of its government; if the information does not serve that purpose, disclosure is not warranted. *Id.* Finally, when there is a public interest in disclosure, that interest is balanced against any privacy interests in non-disclosure. *Id.*

In furtherance of the Right-to-Know law, the Commission's rule on requests for confidential treatment, Puc 203.08, is designed to facilitate the balancing test required by the relevant case law. The rule requires petitioners to: (1) provide the material for which confidential treatment is sought or a detailed description of the types of information for which confidentiality is sought; (2) reference specific statutory or common law authority favoring confidentiality; and (3) provide a detailed statement of the harm that would result from disclosure to be weighted against the benefits of disclosure to the public. Puc 203.08 (b).

We have conducted an *in camera* review of the materials for which National Grid seeks confidential treatment. We agree that the transaction confirmation and master power agreement between National Grid and DTE is proprietary and confidential information. In addition, we also find the indicative bid summary provided to Staff on December 10, 2009, the REC procurement summary provided to Staff on November 30, 2009 and the Company's analysis comparing changes in electric and gas futures costs to changes in procurement costs to be confidential. Finally, we also find calculation of commodity costs at the retail customer meter to be confidential as well.

Next we assess the public's interest in the disclosure of the information. The information, including that contained in the negotiated transaction confirmation and master power supply agreement and the comparison of procurement costs to electric and gas futures, pertains to the wholesale costs of National Grid's Large Customer Group default service supply

for the period February 1 through April 30, 2010. These costs are used by the Company to develop the default service retail rates. Public disclosure of these costs would allow for a detailed understanding of the various cost components in the Large Customer Group default service rates and would therefore assist the public in understanding the basis for the Commission's approval of these default service rates. Thus the public has an interest in disclosure. However, as the Company states in its motion, disclosure of this information would allow competitors to see the wholesale costs of National Grid's Large Customer Group default service supply which could negatively impact the ability of National Grid to secure a competitive price in future solicitations. Similarly, if the information contained in Exhibit 16 were disclosed, the Company would find itself disadvantaged in being able to procure RECs at competitive prices.

We find that the interest in public disclosure of such financial, commercially sensitive information is outweighed by the benefit derived from maintaining the confidentiality of such information, given that confidentiality helps produce lower rates. *See Union Leader Corp. v. New Hampshire Housing Fin. Auth.*, 142 N.H. 540 (1997) (requiring application of balancing test to RSA 91-A:5, IV determinations, weighing the public interest in disclosure against privacy interest). We therefore grant the motion for confidential treatment.

Pursuant to Federal Energy Regulatory Commission (FERC) requirements, each wholesale supplier is obligated to report to 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 Revised Public Utility Filing Requirements*, 99 FERC ¶ 61,107 (April 25, 2002) and 18 CFR Parts 2, 35. The FERC makes this information available to the public through electronic quarterly reports. Therefore, insofar as protection is

requested for wholesale contractual sales, we grant such information protective treatment until such time as the information is published by the FERC. We understand from National Grid's motion for confidential treatment that the date such information will be disclosed is May 1, 2010.

Consistent with N.H. Code Admin. Rules Puc 203.08(k), the confidential 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.

B. Default Service

We find that National Grid complied with the procedures approved in Order No. 24,577 regarding National Grid's analysis of the bids and its selection of the winning bidder for default service supply for its Large Customer Group for the three-month period from February 1, 2010 through April 30, 2010. We are likewise satisfied that the participation of multiple bidders in the process is indicative of a competitive bid and, consequently, that the result is consistent with the requirement of RSA 374-F:3, V(c) that default service be procured through the competitive market.

We also find that National Grid's evaluation of the bids and its selection of DTE as its default service supplier for the Large Customer Group for the period from February 1, 2010 through April 30, 2010 are reasonable. The testimony of National Grid, together with its bid evaluation report, indicates that the bid prices reflect current market conditions and, therefore, are reasonable. In light of the circumstances, we will grant the petition.

Based upon the foregoing, it is hereby

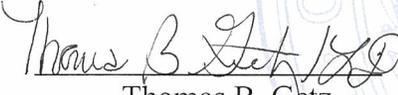
ORDERED, that the transaction confirmation and master power supply agreement between Granite State Electric Company d/b/a National Grid and DTE Energy Trading, Inc., and the resulting proposed rates, are APPROVED; and it is

FURTHER ORDERED, that the power supply costs resulting from the solicitation are reasonable and, subject to the ongoing obligation of Granite State Electric Company d/b/a National Grid to act prudently, according to law and in conformity with Commission orders, the amounts payable to the seller for power supply costs under the three-month transaction confirmation for the period from February 1, 2010 through April 30, 2010 are APPROVED; and it is

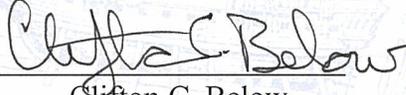
FURTHER ORDERED, that National Grid's motion for confidential treatment is GRANTED subject to the conditions discussed herein; and it is

FURTHER ORDERED, that National Grid shall file conforming tariffs within 30 days of the date of this Order, consistent with N.H. Code Admin. Rule Puc 1603.02.

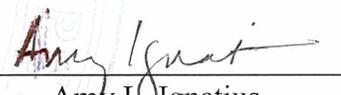
By order of the Public Utilities Commission of New Hampshire this twenty-first day of December, 2009.



Thomas B. Getz
Chairman



Clifton C. Below
Commissioner



Amy L. Ignatius
Commissioner

Attested by:



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