

DE 05-163

GRANITE STATE ELECTRIC COMPANY

Petition for Approval of Default Service Rates for November 1, 2005 to April 30, 2006

Order Granting Petition

ORDER NO. 24,539

October 31, 2005

Appearances: Colin Owyang, Esq. on behalf of Granite State Electric Company; F. Anne Ross Esq. on behalf of the Office of Consumer Advocate; and Suzanne Amidon, Esq. on behalf of the Staff of the New Hampshire Public Utilities Commission.

I. PROCEDURAL BACKGROUND

On September 30, 2005, Granite State Electric Company (Granite State) filed with the New Hampshire Public Utilities Commission (Commission) a Petition for Approval of Default Service Rates for November 1, 2005 through April 30, 2006. Pursuant to RSA 374-F:2, Default Service is electricity supply for its retail customers who are otherwise without an electricity supplier and are ineligible for Transition Service. According to Granite State, sixteen customers are presently receiving Default Service.

With its Petition, Granite State filed the testimony of John D. Warshaw, the form of its request for proposal (RFP), the NYMEX Forward Price of Natural Gas, a comparison of natural gas prices to Independent System Operator (ISO) market clearing prices, a sample of the Power Supply Agreement (PSA) and a proposed summary of rates (Tariff Page 84). In addition, Granite State filed a Motion for Confidential Treatment for the unredacted copy of the PSA between Granite State and the winning bidder. The Motion for Confidential Treatment included a request to protect the identity of the winning bidder.

On October 11, 2005, the Commission issued an Order of Notice scheduling a hearing on the Petition for October 19, 2005. On October 18, 2005, the Office of Consumer Advocate (OCA) filed a notice with the Commission indicating that it would participate in the docket on behalf of residential ratepayers pursuant to RSA 363:28.

The hearing was held as scheduled on October 19, 2005. At the hearing, Staff made a record request to Granite State regarding the wide range in average rate increases expected for the sixteen Default Service customers. Granite State provided the response to the record request on October 25, 2005.

II. POSITIONS OF THE PARTIES

A. Granite State

Granite State indicated that its current Default Service supply contract which supplies Default Service to its large commercial customers expires on October 31, 2005. Therefore, to assure that supply will be available when needed, Granite State undertook a bid process to solicit Default Service supply for six months, from November 1, 2005 through April 30, 2006. Granite State issued a joint RFP with its retail distribution affiliates in Massachusetts, Massachusetts Electric Company and Nantucket Electric Company, which is consistent with past procurements, and with previous Commission orders. *See Re Granite State Electric Company*, 88 NHPUC 208, 210 (2003), Order No. 24,412 (December 22, 2004) slip op. at 9. In its RFP, Granite State did not link the provision of its New Hampshire Default Service supply with supply to any of the other retail distribution affiliates.

Granite State stated that the RFP was issued to over twenty-five potential suppliers, and also to members of the New England Power Pool (NEPOOL) Markets Committee.

Granite State asserts that the RFP therefore had wide distribution throughout the New England energy market. The RFP requested fixed pricing for each month of service on an as-delivered energy basis. Granite State required prices to include all market and ancillary costs, including capacity market costs. Granite State testified that it received indicative bids on September 7, 2005, and final binding proposals on September 14, 2005. Granite State averred that none of the bidders made their provision of Granite State's Default Service contingent upon the provision of any other service.

Granite State attested that both indicative and final bids were consistent with Granite State's forecast of wholesale energy prices. Granite State pointed out that since the conclusion of the last RFP in September, 2004, until the time the RFP was issued in August, 2005, the New York Mercantile Exchange (NYMEX) future prices for natural gas had increased, on average, approximately 48% for the period November 2005 through April 2006. Granite State further testified that from the time the RFP was issued in August 2005 until indicative bids were received in September, 2005, Hurricane Katrina inflicted damage to the Gulf of Mexico's natural gas and oil infrastructure and, as a result, the NYMEX natural gas futures prices increased an additional 25%.

Granite State testified that it had considered delaying the timing of the receipt of final, binding bids but, based on the available information at the time, it appeared there was a high risk of continued upward price pressure in the near term. Granite State pointed out that in the two-week period since the receipt of the final bids and the execution of a binding contract, the NYMEX natural gas futures prices increased an additional 33%, in part due to the damage inflicted by Hurricane Rita. Granite State also compared the resulting rates with those recently

approved by the Commission for Unitil Energy Systems, Inc. (Unitil) Commercial and Industrial customers *See* Order No. 24,526(October 11, 2005). Based on its evaluation, Granite State concluded that the bids were market based.

Granite State indicated that it evaluated all the proposals it received and selected the supplier that had the lowest prices and met the credit requirements of the RFP. Granite State testified that based on the selected bidder price, the average increase for the sixteen customers on Default Service in the first month of the new rates is 47%, on a total bill basis. The increase for individual customers would range from 15% to 61%. Granite State calculated that, on average, the proposed rates over the six-month period represent an overall increase of 61% on a total bill basis, with the increases for individual customers ranging from 19% to 79%.

In the record request response (Exhibit 4), Granite State corrected the above figures, stating that the ranges were miscalculated based upon an error in the calculation of two outdoor lighting accounts. According to Exhibit 4, the average increase for the customers on Default Service in the first month would be 45%, with the increases for individual customers ranging from an increase of 15% to 54%. The average increase for the six-month period would be 58%, with increases for individual customers ranging from 19% to 69%.

Granite State related that the monthly rates in cents per kilowatt hour for the six month period would be as follows:

<u>November 2005</u>	<u>December 2005</u>	<u>January 2006</u>	<u>February 2006</u>	<u>March 2006</u>	<u>April 2006</u>
\$00.10933	\$00.11763	\$00.15163	\$00.15010	\$00.11700	\$00.09190

In addition, Granite State proposed to implement the rate changes on a service-rendered basis. In the past, Granite State had billed customers who take Default Service on a

bills-rendered basis. However, Granite State proposes to change the implementation to billing on a service rendered basis in light of the upcoming end of Transition Service.

Granite State averred that it would derive no profit from the rates and the rates represented the actual costs of power and an adjustment for distribution loss. Granite State requested the Commission approve its Petition in time for the rate adjustments to take place on November 1, 2005, on a service-rendered basis.

Granite State filed a Motion for Confidential Treatment for the PSA between Granite State and the winning supplier. The Motion requests confidential protection for the redacted portions of the contract, which contain competitive energy pricing and commercially sensitive contract terms. In its Motion, Granite State points out that the PSA prevents Granite State from identifying the Supplier in public filings without its consent.

Granite State argues that the disclosure of the redacted portions of the contract would be harmful to the competitive position of the supplier and could chill its willingness to participate in providing energy services in New Hampshire in the future. Granite State avers that the parties have taken steps to avoid disclosure of commercially sensitive and confidential information contained in the PSA, and that the disclosure of such information could adversely affect the business position of the parties in the future.

Granite State points out that N.H. Admin. Rule Puc 204.06(a) provides in pertinent part that the Commission shall grant confidentiality to documents upon a finding that the information is confidential, commercial or financial, pursuant to RSA 91-A:5,IV. Granite State argues that the identify of the supplier and the redacted portions of the PSA are confidential

information exempted by RSA 91-A:5,IV and therefore are subject to confidential treatment pursuant to Puc 204.06(a)

B. OCA

At the hearing on October 19, 2005, the OCA indicated that it was monitoring the docket and did not intend to take a position on the Petition.

C. Commission Staff

Commission Staff reviewed the Petition and concluded that Granite State had complied with a competitive bid solicitation process. Staff initially questioned the absence of an explanation of the bid analysis Granite State employed in Granite State's prefiled testimony. However, at the hearing on October 19, 2005, Granite State presented a Default Service Price Comparison (Exhibit #2) worksheet which compared, for each month from November, 2005 to April, 2006, Granite State's Default Service filed rates with the monthly prices of the following: NYMEX Gas Futures for September 14, 2005; Unitil's approved rates; the NYMEX Gas Futures for September 27, 2005; and, Granite State's adjusted rates. The worksheet demonstrated that Granite State's average monthly adjusted rates were within 1% of Unitil's approved rate. Staff concluded that based on Granite State's analysis of NYMEX Gas Futures and the comparison demonstrated in the work sheet, the selected bidder offered competitive rates as required by RSA 374-F:3,V(c). The Staff also concluded that although the rates represented a significant increase over existing Default Service Rates, the rates were market based.

Staff supported Granite State's proposal to change billing from a bills-rendered to a service-rendered basis. Staff pointed out that this change would permit Granite State to pro-rate bills for monthly energy service to reflect the actual rates effective at the time service was

delivered, as opposed to billing a fixed rate for the month. Staff testified that billing on a service-rendered basis was appropriate in the competitive market. Staff also agreed with Granite State that the rates were reflective of the wholesale price of energy and that Granite State would not derive any profit from the increased rates.

Staff questioned why Granite State represented the range of increases for the different customers on Default Service to be from 19% to 79%. In response, Granite State explained that customers have different rate structures based on the nature of the service. Granite State also indicated in its record request response that its initial calculation contained errors and that the increases, based on corrected calculations, would range from 19% to 69%. Granite State asserted that the ranges varied among four classes of customers. General Service Time-of-Use Rate (G-1) customers would experience increases ranging from 48% to 53.3%; General Service Long Hours Use Rate (G-2) customers would experience increases ranging from 42.8% to 49.1%; General Service Rate (G-3) customers would experience increases ranging from 13.5% to 41.1%; and Outdoor Lighting Rate (M) customers would experience increases ranging from 16.2% to 37%. Staff was satisfied with this explanation of the range of increases.

With respect to Granite State's Motion for Confidential Treatment, Staff agreed that the Commission should find the redacted, financial terms of the PSA to be subject to confidential treatment. However, Staff urged the Commission to find that the name of the winning supplier should be a matter of public record.

III. COMMISSION ANALYSIS

A. Confidentiality

First we address Granite State's Motion for Confidential Treatment. The material which Granite State seeks to protect is the unredacted version of the PSA, including the name of the contracting supplier, submitted as a separate Schedule to the Testimony of Mr. Warshaw. Granite State argues that the redacted portions of the contract contain competitive energy pricing and contract terms which are commercially sensitive, the disclosure of which could be harmful to the competitive position of the supplier and which could chill its willingness to participating in providing energy services in New Hampshire.

Granite State avers that the parties have taken steps to avoid disclosure of this information and the disclosure of such information could adversely affect the business position of the parties in the future. Granite State further states that the information contained in the redacted PSA is confidential, commercial or financial information qualifying for exemption from public disclosure under RSA 91-A: 5,IV. Granite State indicates that the Commission should therefore hold such information confidential pursuant to Puc 204.06(a).

In order to rule on the Motion, we have made an *in camera* review of the PSA which, as Granite State asserts, contains sensitive commercial or financial information relative to the supplier's offer to provide power supply to Granite State for its Default Service customers. We note that we have provided protective treatment to other PSAs. See *Granite State Electric Company*, Order No. 24,412 (December 22, 2004) at 8 (according protective treatment over power supply contract for 2005 default service rates); *Granite State Electric Company*, Order No. 24,318 (April 30, 2004) at 8 (according protective treatment over power supply contract for

2004 default service rates).

We are persuaded that, with the exception of one element of the PSA, the information is commercially sensitive and disclosure of the information may cause competitive harm to Granite State in its attempt to go forward with future solicitations for power supply. The exception is the identification of the supplier. We find that the public interest in the identity of the supplier outweighs any harm to the competitive position of the supplier as Granite State alleges. We will therefore grant protective treatment to the redacted PSA submitted on a confidential basis by Granite State with its Motion for Confidential Treatment but we will not accord such treatment to the identity of the supplier, and note for the record that the winning bidder and supplier of Granite State Default Service power is Constellation Energy Commodities Group, Inc. (Constellation).

Consistent with our practice, the protective treatment provisions of this Order are subject to the on-going authority of the Commission, on its own motion or on the motion of Staff, any party or other member of the public, to reconsider this protective order in light of RSA 91-A , should circumstances so warrant.

B. Default Service

We find that Granite State's bid solicitation process and its selection of a winning bidder was performed consistently with the procedures approved in prior Commission orders. *See* Order No 24,412 (December 22, 2004); Order No. 24,318 (April 30, 2004); and Order No 24,163 (April 24, 2003). We conclude that Granite State met all procedural requirements as set forth in prior orders of this Commission.

We find that Granite State proved that its selection of Constellation as the supplier is reasonable. We base this finding in part on Granite State's testimony comparing the resulting rates with market conditions and upon Staff's determination that those comparisons were a valid reflection of prevailing competitive market rates as required by RSA 374-F:3,V(c). While there may be little solace for customers in doing so, we nevertheless recognize that although the rate increases for Granite State's Default Service customers are substantial, in the event that changes to market conditions push the costs of power down, these customers will have the ability to seek supply from competitive suppliers at such lower prices.

As we noted in Order No. 24,526 (October 11, 2005) concerning Unitil Energy Systems' Transition and Default Service which is for the same period as Granite State's Default Service, we are left with the decision to approve the Petition notwithstanding the level of the rate increases or to deny the Petition, with the risk that customers could pay even higher rates if Granite State were to go back to the market to seek new bids. In light of the circumstances, we grant the Petition, on a service rendered basis, effective November 1, 2005, as filed.

Based upon the foregoing, it is hereby

ORDERED, that the Petition of Granite State Electric Company for Default Service Rates beginning November 1, 2005 through April 30, 2006 is hereby APPROVED; and it is

FURTHER ORDERED, that Granite State's proposed rates for Default Service for its large commercial customers for the period beginning November 1, 2005 through April 30, 2006 are APPROVED, and it is

FURTHER ORDERED, that Granite State's Motion for Confidential Treatment

is GRANTED IN PART, as delineated herein, and it is

FURTHER ORDERED, that Granite State shall file a compliance tariff with the Commission on or before November 1, 2005, in accordance with N.H. Admin.

Rules Puc 1603.02(b).

By order of the Public Utilities Commission of New Hampshire this thirty-first day of October, 2005.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Michael D. Harrington
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary