

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

GRANITE STATE ELECTRIC COMPANY D/B/A NATIONAL GRID

DOCKET NO. DE 11-016

MOTION FOR PROTECTIVE ORDER AND CONFIDENTIAL TREATMENT

NOW COMES Granite State Electric Company d/b/a National Grid (“National Grid” or “Company”) and hereby moves pursuant to N.H. Code of Administrative Rule Puc 203.08 for confidential treatment by the Commission with respect to the Transaction Confirmation (defined below) between National Grid and the winning supplier, NextEra Energy Power Marketing, LLC (“NextEra”) to provide Default Service to the Large and Medium Commercial and Industrial Customer Group (the “Large Customer Group”) for the three-month period August 1, 2011 through October 31, 2011. The Company also requests confidential treatment for the default service procurement summary and bid evaluation set forth in Schedule MMJ-2 (“RFP Summary”), calculations of the RPS compliance adder set forth in Schedule MMJ-5, and calculations of commodity costs at the retail meter set forth in Schedule MMJ-6. In support of this Motion, National Grid states as follows:

1. On June 8, 2011, National Grid and NextEra entered into an agreement whereby NextEra committed to provide, among other things, default service to the Large Customer Group for the three-month period August 1, 2011 through October 31, 2011 (the “Transaction Confirmation”).

2. National Grid’s Transaction Confirmation with NextEra, RFP Summary, RPS compliance adder calculations, and retail meter commodity costs calculations are provided as separate schedules to the testimony of Margaret M. Janzen in the above-captioned docket.

3. As noted above, National Grid requests confidential treatment for certain bid summary and evaluation, contract terms and conditions, and pricing information contained in the foregoing documents on the basis that this information is confidential. In particular, National Grid requests confidential treatment for the REC market prices contained in the Company's RPS compliance adder calculations provided in Exhibit 12 to Schedule MMJ-2 and Schedule MMJ-6. As explained further below, while the Company previously represented that this information was not confidential,¹ the Company obtained this REC market price information from various brokers only after agreeing to maintain it in confidence. As a result, the Company is seeking confidential treatment of that information.

4. Puc 203.08 provides in pertinent part that “[t]he Commission shall upon motion issue a protective order providing for the confidential treatment of one or more documents upon a finding that the document or documents are entitled to such treatment pursuant to RSA 91-A:5, or other applicable law based upon the information submitted pursuant to [Puc 203.08(b)].”

5. Documents exempted from public disclosure under RSA 91-A:5, IV include “records pertaining to . . . confidential, commercial, or financial information. . . .” In addition, RSA 91-A:5, IV exempts from public disclosure “other files whose disclosure would constitute an invasion of privacy.” To determine whether certain information falls under this exemption and qualifies for protective treatment, the Commission applies a three-step analysis. *See Public Service of New Hampshire*, Order No. 25,174 (November 24, 2010) (citing *Lamy v. N.H. Pub.*

¹ During the March 2011 hearing on the Company's default service filing, the Company represented to the Commission on the record that such REC market prices were obtained from broker sheets, which the Company at such time believed were not confidential. Following the March hearing, the Company reviewed the terms and conditions governing its broker sheets and determined that the Company is not legally authorized to disclose the information publicly based on such terms and conditions.

Utils. Comm'n, 152 N.H. 106 (2005)). First, the Commission evaluates whether there is a privacy interest at stake that would be invaded by the disclosure; second, if a privacy interest is at stake, the Commission assesses the public's interest in disclosure; and third, when there is a public interest in disclosure, that interest is balanced against any privacy interests in non-disclosure. *Id.* at 12.

6. As applied to the instant case, this three-step analysis demonstrates that the Transaction Confirmation, RFP Summary, RPS compliance adder calculations, including REC market prices, and retail meter commodity cost calculations contain competitive energy pricing and contract terms which warrant confidential treatment.

7. The Commission has previously recognized in Order No. 25,180 (December 20, 2010), Order No. 25,150 (September 27, 2010), Order No. 25,117 (June 18, 2010), Order No. 25,083 (March 22, 2010) as well as in Order No. 24,953 (March 23, 2009), Order No. 24,981 (June 19, 2009), and Order No. 25,013 (September 21, 2009), a privacy interest in the information contained within wholesale power contracts for Default Service, determining such data to be “confidential, commercial, or financial information”, the disclosure of which could adversely affect the business positions of the parties in the future. The privacy interest at stake for protecting the Transaction Confirmation from public disclosure similarly exists for information contained within the RFP Summary, the RPS compliance adder calculations, and the calculations of commodity costs at the retail meter because such information is also confidential, commercial or financial information that upon disclosure, could adversely affect the business positions of the parties involved. *See, e.g., North Atlantic Energy Corporation*, 87 NH PUC 396, 398 (2002) (“public disclosure of bids” could “result in competitive damage to bidders, and also

impair the ability of the state to obtain such information in the future” as well as “chill future auction transactions, thereby limiting the results that might otherwise have been achieved”).

8. Although the public may have some interest in the disclosure of this information regarding the development of default service rates, when this interest is weighed against the privacy interests of National Grid and NextEra as well as other suppliers and brokers, the balance tips significantly in favor of protecting such data from public disclosure. The terms of the Transaction Confirmation, bid summary and evaluation set forth in the RFP Summary, calculations provided in the RPS compliance adder, and calculations of commodity costs at the retail meter are commercially sensitive information. Disclosing this data could be harmful to the competitive positions of National Grid, NextEra, and participants in the RFP, which could chill the willingness of these suppliers to participate in providing energy services in New Hampshire in the future -- an outcome ultimately detrimental to the Company’s customers. In negotiating power supply contracts in New Hampshire, suppliers are sensitive to the protection of information they deem confidential or commercially sensitive and, thus, require that it be treated confidentially in order to safeguard their competitive position in the marketplace relative to other suppliers. Regarding the REC market prices contained in the Company’s RPS compliance adder calculations, releasing this information to the public would violate the confidential provisions the Company entered into when obtaining the information from its brokers. The REC market prices contained in Schedules MMJ-2 and MMJ-6 were derived from broker sheets the Company received from its brokers. Prior to providing the Company with the broker sheets and other data, each of the Company’s brokers required the Company to agree to certain terms and conditions, including confidentiality terms. Such terms and conditions expressly state that: (a) the data in

the broker sheet is “strictly confidential”; (b) the “market quotations for various markets” constitute “Confidential Information” which the Company cannot “copy, disclose, make available or divulge . . . to any person”; and (c) the data provided by a broker “is intended solely for the personal and confidential use of the recipient of the data. In addition, the public disclosure of the REC market prices could cause default service providers to bid slightly lower than the pricing provided by the brokers instead of providing their true lowest bid if such price sources are known. This is not in the ratepayer’s interest because such occurrence would result in higher rates. In addition, brokers may stop supplying the Company with REC market information if their data is released to the public, which would prevent the Company from establishing a REC market price in its default service and REC solicitations and, in turn, may adversely impact rates for default service customers. Confidential as well as public copies of the above-referenced broker terms and conditions are provided with this Motion as further support of the request sought herein, because they include the identities of the Company’s brokers, which the Company considers to be commercially sensitive information that is exempt from the public disclosure requirement.² One set of the foregoing terms and conditions, however, is confidential in its entirety, and no public version of that set will be provided.

9. For the reasons stated above, the Transaction Confirmation, the RFP Summary, the RPS compliance adder calculations, and the retail meter commodity cost calculations qualify for confidential treatment under state law and Commission rules and, thus, should be protected from disclosure. The Company requests that copying, duplication, dissemination, or disclosure

² The identities of the Company’s brokers are commercially sensitive for reasons similar to those regarding broker sheets. If released, Default Service suppliers could seek the same brokers, request the same broker sheets that the

in any form should be prohibited, except for use in this proceeding as part of a closed record or subject to similar protections. The protective order should also be extended to any discovery, testimony, argument, or briefing relative to the confidential information.

WHEREFORE, National Grid respectfully requests that the Commission:

- A. Issue an order protecting the information described above;
- B. Hold the information described above in a secure location within the Commission's offices, and not disclose such information to the public or any of the parties in this proceeding other than the Commission without National Grid's consent; and
- C. Grant such other and further relief as may be just and equitable.

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Company utilizes in determining REC market prices (as part of its evaluation of RPS compliance adder bids), and, instead of offering their true lowest bid, offer a higher bid based on the REC market price provided by the brokers.

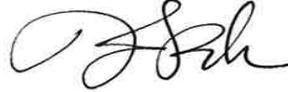
Date: June 14, 2011

Respectfully submitted,

GRANITE STATE ELECTRIC COMPANY D/B/A
NATIONAL GRID

By Its Attorneys

MCLANE, GRAF, RAULERSON &
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By: _____

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Motion for Protective Order and Confidential Treatment has been forwarded to all parties on the service list.



Dated: June 14, 2011

Jinjue Pak