

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

GRANITE STATE ELECTRIC COMPANY D/B/A NATIONAL GRID

DOCKET 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 February 1, 2012 through April 30, 2012. The Company also requests confidential treatment for the default service procurement summary and bid evaluation set forth in Schedule MMJ-2 (“RFP Summary”), REC market prices contained in the Company’s calculations of the RPS 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 December 7, 2011, National Grid and NextEra entered into a wholesale Transaction Confirmation pursuant to which NextEra committed to provide default service to the Company’s Large Customer Group for the three-month period February 1, 2012 through April 30, 2012 (the “Transaction Confirmation”).

2. The Company's Transaction Confirmation with NextEra, RFP Summary, RPS adder calculations and retail meter commodity costs calculations are provided as separate schedules to the written testimony of Margaret M. Janzen in the above-captioned docket.¹

3. 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)]."

4. Documents exempt 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. 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.

¹ Although the confidential information set forth in the Transaction Confirmation and RFP Summary would be afforded protective treatment without further action by the Commission under Interim Rule Puc 201.06(a)(29), (b) and (c), the Company is including such confidential information in this request for protective treatment and this Motion due to the expiration of Interim Rule Puc 201.06 in September 2011.

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

6. The Commission has previously recognized 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. *See* Order No. 25,270 (September 23, 2011); Order No. 25,237 (June 17, 2011); 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). The privacy interest at stake for protecting the Transaction Confirmation from public disclosure similarly exists for information contained within the RFP Summary, RPS adder calculations and calculations of commodity costs at the retail meter because such information is also confidential, commercial or financial information which could, upon disclosure, adversely affect the business positions of the parties involved. *See id.*; *see also 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”).

7. 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, NextEra as well as other suppliers and brokers involved in the default service procurement process, 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, REC market prices provided in RPS adder calculations and calculations of commodity costs at the retail meter, which include wholesale contract information, are commercially sensitive information. Disclosing this data to the public could be harmful to the competitive positions of those suppliers as well as that of National Grid, as it could chill the willingness of these suppliers and brokers to participate in providing energy services or supplying necessary New Hampshire market data in the future, hamper National Grid's ability to engage suppliers in competitive bidding in the future, and, in turn, make it more difficult for National Grid to obtain its supply at competitive prices. 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. Additionally, 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. Such an outcome would result in higher rates and be detrimental to the customers of National Grid.

8. For the reasons provided herein, the Transaction Confirmation, the RFP Summary, RPS adder calculations and retail meter commodity cost calculations qualify for confidential treatment under state law and Commission rules and, thus, should be protected from

disclosure. With respect to the wholesale contract sales information set forth in Schedules MMJ-6, National Grid requests the Commission grant protective treatment until such time the information is published by the Federal Energy Regulatory Commission. The Company requests that copying, duplication, dissemination or disclosure 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.

Respectfully submitted,

GRANITE STATE ELECTRIC COMPANY D/B/A
NATIONAL GRID

By Its Attorneys

MCLANE, GRAF, RAULERSON &
MIDDLETON, P.A.

Date: December 13, 2011

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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 via electronic mail.

Dated: December 13, 2011



Jinjue Pak