

**DE 04-057**

**GRANITE STATE ELECTRIC COMPANY**

**Default Service Rates for May 1, 2004 through December 31, 2004**

**Order Approving Default Service Rates**

**ORDER NO. 24,318**

**April 30, 2004**

**Appearances** Gallagher, Callahan and Gartrell, P.A. by Seth L. Shortlidge, Esq. for Granite State Electric Company; James T. Rodier, Esq. for Freedom Partners, LLC d/b/a Freedom Energy, and Donald M. Kreis, Esq. for the Staff of the New Hampshire Public Utilities Commission.

**I. PROCEDURAL HISTORY**

On March 30, 2004, Granite State Electric Company (Granite State or Company) filed with the New Hampshire Public Utilities Commission (Commission) a petition for approval of Default Service rates for the period May 1, 2004 through December 31, 2004. On April 14, 2004, the Commission issued an Order of Notice, establishing April 29, 2004 as the deadline for intervention petitions, providing for discovery and scheduling a hearing for April 29th, 2004. The Commission Staff conducted discovery and Granite State submitted a motion for confidential treatment of certain documents provided to Staff. On April 27, 2004, the Commission received an intervention petition from Freedom Partners, LLC d/b/a Freedom Energy (Freedom Energy). The hearing took place as scheduled on April 29, 2004. At the commencement of the hearing, without objection, the Commission granted Freedom Energy's intervention petition.

## II. POSITIONS OF THE PARTIES AND STAFF

### **Granite State Electric Company**

Pursuant to RSA 374-F:2, Default Service is electricity supply for retail customers who are otherwise without an electricity supplier and are ineligible for Transition Service. According to Granite State's filing, six customers were receiving Default Service as of March 2004. None of the customers were residential.

According to Granite State, the Company conducted a competitive bidding process and chose Constellation Power Source, Inc. (Constellation) as its Default Service provider for the period. Granite State indicated that it selected a bidder willing to provide Default Service to Granite State customers as well as Standard Offer Service 3 to customers of two affiliates in Massachusetts (Massachusetts Electric Company and Nantucket Electric Company). The proposed contract with Constellation contains Default Service rates that will vary by month, from a low of \$0.06080 per kilowatt-hour (kWh) in October 2004 to a high of \$0.07481 per kWh in July of 2004. The average rate would be approximately \$0.06838 per kWh, compared to the present average Default Service rate of about \$0.06918. The proposed average Default Service rate of \$0.06838 per kWh would result in an average decrease of approximately one percent.

As provided on page 12 of the pre-filed direct testimony of Granite State witness John D. Warshaw, the following table displays the proposed rates on a monthly basis.

<b>Month</b>	<b>\$/kWh</b>
May 2004	0.06338
June 2004	0.06876
July 2004	0.07481
August 2004	0.07392
September 2004	0.06446
October 2004	0.06080
November 2004	0.06224
December 2004	0.06634

The only significant issue at hearing with respect to the amount and structure of the Default Service rates concerned installed capacity charges. At present, load-serving entities in the New England Power Pool (NEPOOL) are required when obtaining wholesale energy to pay suppliers an installed capacity charge (ICAP) that is designed to assure the existence of adequate generation capacity to meet the region's long-term electricity needs regardless of actual usage at any given time.

As noted in the Granite State petition, on March 1, 2004 the operator of the New England electricity grid, ISO-New England, sought approval from the Federal Energy Regulatory Commission (FERC) to implement a significant change in the installed capacity requirement. In essence, ISO-New England proposed replacing ICAP charges with locational installed capacity (LICAP) charges that would vary by region and take account of the fact that congestion on the grid in certain areas of New England would limit the availability in those areas of remotely located generation capacity. As a result, LICAP charges would vary by zones within the region.

The LICAP proposal generated significant controversy and, as a result, Mr. Warshaw testified that Granite State was concerned about uncertainty with respect to what capacity charges would apply in the future to energy provided to its Default Service Customers. According to Granite State, the Company therefore asked each bidder to make two proposals: one with wholesale energy prices that covered all applicable costs including LICAP (in the manner of Granite State's previous Default Service contracts) and the other providing for the supplier to bill Granite State separately for the supplier's actually incurred LICAP charges. Mr. Warshaw testified that this enabled Granite State to ascertain how its bidders viewed the likely capacity costs associated with the service.

In its initial filing, Granite State requested Commission approval of a contract that provided for pass-through of the LICAP charges. According to the Company, it opted for this approach because it was concerned that the alternative would require its Default Service customers to pay a premium arising out of the uncertainty of future capacity costs. Granite State noted that, under the Default Service reconciliation mechanism previously approved by the Commission, any over- or under-recovery generated by this direct pass-through of capacity charges would be recovered from all Granite State customers as opposed to only those customers taking Default Service.

At hearing, Granite State indicated that it was indifferent to which of the two approaches to capacity costs the Commission adopted. Accordingly, Mr. Warshaw testified that Granite State had obtained an alternative proposal from Constellation that contained rates including capacity charges. The alternative proposal, which appears here as Exhibit 2, includes

Constellation's monthly estimates of capacity costs. They range from a low of \$0.00043 per kilowatt-hour in May to \$0.00156 in October. The resulting rates are as follows:

<b>Month</b>	<b>\$/kWh</b>
May 2004	0.05953
June 2004	0.06552
July 2004	0.07115
August 2004	0.07380
September 2004	0.06851
October 2004	0.06187
November 2004	0.06081
December 2004	0.06373

Under either proposal, Granite State requested authority to continue billing Default Service customers on a bills-rendered basis. The Company employed the same methodology that has been approved by the Commission in previous Default Service rate filings. *See, e.g.*, Order No. 24,163 (April 25, 2003).

Additionally, under either alternative, Granite State's contract with Constellation would expire on December 31, 2004 – and, thus, the Default Service period requested here is less than the full year approved in prior proceedings. According to Granite State, the requirement that its affiliates offer Standard Offer Service 3 terminates on December 31, 2004 and a number of other long-term standard supply contracts terminate on that date. Thus, according to Granite State, given that its Default Service contract is currently paired with the Massachusetts Standard Offer Service 3 of its affiliates, the bidding process was optimized by providing for a December 31 end date with respect to New Hampshire customers.

**Commission Staff**

Staff supported the second of the two approaches described by Granite State. According to Staff, it would be consistent with the description of Default Service in RSA 374-F:3, V(c) as a “safety net” to require only Default Service customers, as opposed to all Granite State customers, to shoulder the risk of uncertainty associated with capacity charges arising out of Default Service. Staff noted that RSA 374-F embraces the general notion that it is in the competitive marketplace, as opposed to Default Service, that customers will obtain energy that is at the lowest possible cost. Accordingly, in Staff’s view, it is consistent with RSA 374-F for Granite State’s Default Service customers to pay Constellation a predetermined price for energy that would leave them at risk of paying too much for energy because capacity costs turned out to be lower than Constellation estimated at the time of its bid. The alternative – fixing Default Service prices for the period now and vesting in all Granite State customers the complimentary risk that capacity charges will be higher than predicted – is less desirable from Staff’s standpoint.

**Freedom Partners, LLC d/b/a Freedom Energy**

Freedom Energy indicated at hearing that it had no objection to Granite State’s proposed agreements with Constellation. Rather, Freedom Energy asked the Commission to direct Granite State to make available to competitive energy suppliers such as Freedom Energy the identity of the Company’s Default Service customers – or at least the larger ones that are part of Granite State’s G-2 rate class. According to Freedom Energy, Granite State’s affiliates in Massachusetts are required to make such disclosures.

Both Staff and Granite State opposed Freedom Energy's disclosure request on the ground that it is an issue that should be decided generically in a rulemaking and was not noticed in connection with this proceeding. Staff also noted the pendency of unrelated civil litigation under the Right-to-Know Law, RSA 91-A, concerning the extent to which the Commission is obliged to provide public access to certain customer-identifying information it receives from utilities. According to Staff, before confronting the issue raised by Freedom Energy, the Commission should await the results of the litigation.

### **III. COMMISSION ANALYSIS**

It is our determination that the initial proposal of Granite State, providing for Constellation to bill the Company separately for its actual capacity costs, is reasonable considering the uncertain circumstances currently surrounding LICAP charges. When we approved Granite State's proposed Default Service reconciliation mechanism in *Granite State Electric Company*, 85 NH PUC 628 (2000), we approved a mechanism for recovering administrative costs associated with Default Service from Granite State's entire customer base. We noted that Default Service advances the RSA 374-F:3, V(a) policy objective of universal electric service and, thus, that it is not only Default Service customers but all customers who benefit from the availability of what is described in RSA 374-F:3, V(c) as a safety net. In light of these benefits to all customers, and the fact that any financial impact on the entire body of customers would likely be *de minimis* it is equitable to impose upon them the risk that capacity charges will be greater than Granite State and its Default Service provider presently project. We note the considerable possibility that the opposite situation will unfold and that capacity charges

will be lower than anticipated. In this instance, the reconciliation mechanism will operate so as to spread any savings across the Company's entire customer base. This, too, is equitable.

We turn next to the two pending motions for confidential treatment. They concern (1) the contract entered into between Constellation and Granite State, (2) Granite State's request for proposal and documents received in response from bidders, and (3) documents that reveal the identities and other data with respect to Granite State's Default Service Customers.

As noted in Order No. 24,163 (April 25, 2003) approving Granite State's current Default Service arrangements, application of the balancing test required by RSA 91-A:5, IV and related judicial construction of the statute results in a determination that Granite State is entitled to confidential treatment of the documents in question for the reasons stated by Granite State in its motions. *See* Order No. 24,163, slip op. at 7-10 and cases cited therein.

A related issue is Freedom Energy's request that we require Granite State to provide Freedom Energy with a list of Granite State's Default Service customers. We agree with Staff and Granite State that this proceeding is not the appropriate forum for making such a determination. Accordingly, we deny without prejudice Freedom Energy's request.

We conclude by discussing an ongoing administrative concern. In Order No. 24,163, we instructed Granite State to file by January 1, 2004 a request to modify its Default Service offering in the event the Company planned to offer Default Service on terms different than it had in the past. This requirement appears to have produced some confusion. In our view, proposing to move from an all-in Default Service price to a paradigm in which the Default Service provider bills capacity charges separately comprises a change in terms within the

meaning of the quoted language from Order No. 24,163. Thus, Granite State should have made its filing in January. However, we are aware of the possibility of unnecessary increases to customer costs if Granite State were required to enter into a Default Service contract four months in advance of the contract's effective date. We credit Granite State's explanation that this accounts for why the Company did not make its filing until March 31, 2004.

However, it is evident that, in general, one month is insufficient time for the Commission to consider and rule upon a change in the terms (as opposed to the associated prices) on which Granite State offers Default Service. Accordingly, we direct Granite State to make its 2005 Default Service filing on or before November 1, 2004 if it intends to offer Default Service as of January 1, 2005 on different terms than those approved in this Order. Should Granite State determine it is improvident to make such a filing by that date, it should file an appropriate motion with the Commission.

**Based upon the foregoing, it is hereby**

**ORDERED**, the Granite State's Default Service rates are approved at the monthly rates set forth in its initial filing for the period May 1, 2004 through December 31, 2004; and it is

**FURTHER ORDERED**, that in the event Granite State intends to provide Default Service after December 31, 2004 on terms different than it has in the past, it shall file a petition for approval of its Default Service offering with the Commission by November 1, 2004; and it is

**FURTHER ORDERED**, that Granite State's motions for confidential treatment of certain documents are hereby GRANTED, and it is

**FURTHER ORDERED**, that the determinations as to confidential treatment made herein are subject to the ongoing authority of the Commission, on its own motion or on the motion of Staff, any party or any other member of the public, to reconsider this Order in light of RSA 91-A, should circumstances so warrant; and it is

**FURTHER ORDERED**, that Granite State shall file a revised tariff page reflecting the terms of this Order with the Commission on or before May 14, 2004.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of April, 2004.

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Thomas B. Getz  
Chairman

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Susan S. Geiger  
Commissioner

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Graham J. Morrison  
Commissioner

Attested by:

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Debra A. Howland  
Executive Director & Secretary