

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

GRANITE STATE ELECTRIC COMPANY D/B/A NATIONAL GRID

DOCKET DE 12-023

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 Master Power Agreement and Transaction Confirmations between National Grid and the winning suppliers provided in Schedules MMJ-4 and MMJ-5. The Company also requests confidential treatment of the default service procurement summary and bid evaluation set forth in Schedule MMJ-2 (the “RFP Summary”), certain REC market prices contained in the Company’s calculations of the RPS adder set forth in Schedule MMJ-6, and the Company’s calculations of commodity costs at the retail meter set forth in Schedules SMM-1 and SMM-2. In support of this Motion, National Grid states as follows:

1. On March 15, 2012, National Grid entered into a wholesale Transaction Confirmation with the winning supplier Hess Corporation (“Hess”), whereby Hess committed to provide Default Service to the Large and Medium Commercial and Industrial Customer Group (the “Large Customer Group”) for the three-month period May 1, 2012 through July 31, 2012. A copy of the Hess Master Power Agreement was filed with the Commission on March 19, 2007 in Docket DE 07-012. A copy of the Hess First Amendment to the Master Power Agreement was filed with the Commission on June 15, 2009 in Docket DE 09-010.

2. National Grid entered into a Master Power Agreement with Macquarie Energy LLC (“Macquarie”) on March 10, 2010 and a wholesale Transaction Confirmation on March 15, 2012, pursuant to which Macquarie committed to provide Default Service to the Residential and Small Commercial Customer Group (the “Small Customer Group”) for the six-month period May 1, 2012 through October 31, 2012. Copies of the Macquarie Master Power Agreement and Transaction Confirmation are included in Schedule MMJ-5.

3. The RFP Summary, RPS adder calculations, and calculations of commodity costs at the retail meter are provided in separate schedules, as Schedules MMJ-2 and MMJ-6 to the written testimony of Margaret M. Janzen and Schedules SMM-1 and SMM-2 to the written testimony of Scott M. McCabe.

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 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.

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

7. The Commission has previously recognized a privacy interest in the information contained within wholesale power contracts for default service, such as the Master Power Agreement and Transaction Confirmations, 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. 25,304 (December 20, 2011); 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 wholesale power contracts 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. The parties have taken steps to avoid disclosure of this information, as disclosure could adversely affect the business position of the parties in the future. Indeed, the foregoing information has

routinely been afforded confidential treatment by the Commission in the past. *See* Order No. 25,304 (December 20, 2011); Order No. 25,270 (September 23, 2011); Order No. 25,237 (June 17, 2011); Order No. 25,207 (March 22, 2011).

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, energy suppliers and brokers involved in the default service procurement process, the balance tips significantly in favor of protecting such data from public disclosure. The wholesale power contracts, RFP Summary, calculations of commodity costs at the retail meter, and REC market prices provided in RPS adder calculations are commercially sensitive information. In negotiating power supply contracts in New Hampshire, suppliers are sensitive to the protection of negotiated contract provisions, their bids, and wholesale contract prices that they deem confidential or commercially sensitive, and, thus, require that such data be treated confidentially in order to safeguard their competitive position in the marketplace relative to other suppliers. Similarly, the brokers who provide the Company with REC market prices for the Company's RPS compliance adder calculations require that such price information be kept confidential. 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 in providing energy services or supplying necessary market data in New Hampshire 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. *See North Atlantic Energy Corporation*, 87 NH PUC 396, 398 (2002) ("public disclosure

of bids” could “result in competitive damage to bidders, . . . impair the ability of the state to obtain such information in the future” and “chill future auction transactions, thereby limiting the results that might otherwise have been achieved”); *see also* Order No. 25,237 (June 17, 2011). In addition, 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.

9. For the reasons provided herein, the Master Power Agreement, Transaction Confirmations, RFP Summary, RPS compliance 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 confidential wholesale contract sales information provided in the Schedules described herein, National Grid requests the Commission grant protective treatment until such time that information is published by the Federal Energy Regulatory Commission. The Company requests that copying, duplication, dissemination, or disclosure in any form be prohibited, except for use in this proceeding as part of a closed record or subject to similar protections, and 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: March 20, 2012

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 via electronic mail.

Dated: March 20, 2012



Jinjue Pak