

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

**DE 08-011
DE 05-126**

GRANITE STATE ELECTRIC COMPANY

**Petition for Approval of Proposed Default Service Rates for February 1, 2009 through
April 30, 2009 for Large and Medium Commercial and Industrial Customers**

Order Approving Petition and Motion to Amend Settlement Agreement

ORDER NO. 24,922

December 19, 2008

APPEARANCES: Gallagher, Callahan and Gartrell by Marla B. Matthews, Esq., on behalf of Granite State Electric Company d/b/a National Grid; Ken Traum of the Office of Consumer Advocate on behalf of residential ratepayers; and Suzanne G. Amidon, Esq. on behalf of the Staff of the Public Utilities Commission.

I. BACKGROUND

On December 15, 2008, Granite State Electric Company d/b/a National Grid (National Grid or Company) filed a petition requesting approval of monthly default service rates for its large and medium commercial and industrial customers (Large Customer Group) for the period from February 1, 2009 to April 30, 2009. National Grid selected PSEG Energy Resources & Trade LLC (PSEG-ERT) as the default service power supplier for the Large Customer Group. In support of its petition, National Grid filed the testimony of John D. Warshaw and related exhibits. Mr. Warshaw is the principal New England energy supply analyst for National Grid USA Service Company, the National Grid affiliate with responsibility for procurement of default service power for National Grid. National Grid stated that, when comparing the proposed February 2009 rate to the currently approved rate for January 2009, customers in the Large Customer Group will see overall bill reductions ranging from 15.3% to 17.5%.

National Grid made the filing pursuant to a settlement agreement approved by the Commission in *Granite State Electric Company*, Order No. 24,577, 91 NH PUC 6 (January 13, 2006). In Order No. 24,577, the Commission approved the process for solicitation, bid evaluation and procurement of default service supply by National Grid for its Large Customer Group. According to the terms of the settlement agreement, National Grid procures default service for its Large Customer Group under three-month contracts with fixed prices that vary month-to-month. National Grid charges the Large Customer Group retail default service rates consisting of monthly fixed energy charges, administrative costs and a reconciliation charge.

With its petition, National Grid filed a motion for confidential treatment of certain information pursuant to N.H. Code Admin. Rules Puc 203.08. The information for which National Grid seeks confidential treatment is redacted from its public filing and was submitted separately with the motion. In the motion, National Grid requested confidential treatment of: the master power agreement confirmation with PSEG-ERT whereby PSEG-ERT committed to provide service to National Grid's Large Customer Group from February 1, 2009 through April 30, 2009 (Schedule JDW-4 attached to Mr. Warshaw's testimony); the summary of the RFP bid evaluation (see Schedule JDW-2); an analysis comparing changes in electric and gas futures costs to changes in power procurement costs (Schedule JDW-3); and the calculation of the commodity costs at the retail meter. In addition, National Grid requested confidential treatment of indicative bid information provided by electronic mail to Staff on December 3, 2008.

In support of its motion, the Company stated that its contract with PSEG-ERT, the indicative bid summary, the RFP bid evaluation, the analysis comparing futures costs and the calculation of commodity costs at the retail meter contain commercially sensitive information, the disclosure of which could be harmful to the competitive positions of PSEG-ERT and the

participants in the RFP, and could chill the willingness of those suppliers to participate in providing future energy services in New Hampshire. In addition, National Grid represented that in negotiating power supply contracts in New Hampshire, competitive suppliers are sensitive to the protection of information they deem confidential or commercially sensitive. According to National Grid, the parties have taken steps to avoid disclosure of this information and disclosure of such information could adversely affect the business position of the parties in the future.

The Company noted that documents exempt from public disclosure under RSA 91-A:5, IV include records that comprise “confidential, commercial or financial” information and other documents whose disclosure would constitute an invasion of privacy. National Grid attested that the information for which it seeks protective order is confidential, commercial or financial information within the meaning of RSA 91-A:5, IV and should be exempt from disclosure.

On December 8, 2008, National Grid filed a settlement agreement executed by the Company, the Office of Consumer Advocate and Staff that contained a proposed a plan for compliance with the Renewable Portfolio Standards law, RSA ch. 362-F. On December 15, 2008, the Commission scheduled a hearing for December 17, 2008. Previously, on October 27, 2008, National Grid had filed a motion to amend the settlement agreement approved by the Commission in Order No. 24,577. The motion was made in Docket No. 05-126.

II. POSITIONS OF THE PARTIES AND STAFF

A. National Grid

National Grid testified that it conducted its solicitation process consistent with the terms of the settlement agreement approved by the Commission in Order No. 24,577. As with prior solicitations, National Grid and its retail distribution affiliates in Massachusetts prepared a joint RFP (request for proposals) for certain power supplies, including a default service supply for

National Grid's Large Customer Group for the period February 1, 2009 through April 30, 2009. The RFP requested fixed pricing for each month of service on (i) an as-delivered energy basis that included all market products and (ii) an as-delivered energy basis excluding capacity costs that would be paid as an additional cost on a pass-through basis. Prices were not required to be uniform across the entire service period and could vary by month.

According to National Grid, the RFP was issued on October 31, 2008 to more than 25 potential suppliers. The RFP was also distributed to all members of the New England Power Pool (NEPOOL) Markets Committee and was posted on National Grid's energy supply website. According to National Grid, the RFP had wide distribution through the New England energy supply marketplace.

The Company testified that suppliers filed indicative bids on December 3, 2008 and final proposals on December 10, 2008. According to the Company, none of the bidders made their provision of National Grid's Large Customer Group default service contingent upon the provision of any other service. The Company testified that consistent with the settlement agreement, it evaluated the received bids and selected PSEG-ERT because its bid conformed to the RFP, had the lowest price, met the credit requirements described in the RFP, and passed National Grid's qualitative evaluation. National Grid attested that it complied with the solicitation and bid evaluation process approved by the Commission and that its choice of supplier is reasonable.

Also on December 10, National Grid entered into an agreement confirmation with PSEG-ERT. The agreement confirmation, together with a master power agreement between National Grid and PSEG-ERT, provide the terms for the purchase of default service from a supplier. A copy of the master power agreement was filed with the Commission on September 22, 2008 in

this docket. The agreement confirmation between Granite State and PSEG-ERT, with certain confidential sections redacted, is attached to the filing as Schedule JDW-4.

National Grid explained that for 2009 its Renewable Portfolio Standard (RPS) obligation pursuant to RSA 374-F is a minimum of 6% of its default service load. The Company testified that to meet its RPS requirement, it must purchase Renewable Energy Credits (RECs) as follows: 0.5% of its load must be represented by Class I RECs, 4.5% must be represented by Class III RECs, and 1.0% must be represented by Class IV RECs. National Grid testified that to ensure compliance with its RPS requirements, it entered into a settlement agreement with Commission Staff and the OCA (RPS Settlement) and filed the RPS Settlement in this docket on December 8, 2008.

According to the Company, the RPS Settlement provides that National Grid will request in its solicitation for default service supply bids for compliance with the RPS law. Under the settlement, National Grid would evaluate the bids for compliance by comparing them to REC market prices. Pursuant to the terms of the RPS Settlement, National Grid will estimate the market price for RECs based on the cost of RECs bid in the default service RFP, the average cost of RECs purchased in the most recent separate REC solicitation, or the market price for RECs based on broker sheets or other available market information. If National Grid accepts the RPS compliance bid submitted by the winning power supply bidder, the winning power supplier would be required to provide the Company with sufficient RECs to meet the RPS requirements associated with the load it would be serving. If the winning default service supplier's bid for RPS compliance is higher than National Grid's estimate of the market price for RECs, the Company would seek to purchase RECs at a lower cost through a separate solicitation using a process similar to the one used for procuring default service, as set forth in the RPS Settlement.

At hearing, the Company said that it uses a similar RFP process to solicit RECs for its affiliates in Massachusetts and Rhode Island. National Grid asserted that based on its experience in these jurisdictions, the RFP process is an efficient and cost effective way of complying with the requirements of New Hampshire's RPS law. Under the settlement, the Company will calculate an RPS adder based on either the winning default service supplier's price for compliance with the RPS law or a proxy developed by the Company. The proxy RPS law costs in turn will be based on either the results of the Company's most recent RFP for RECs or the Company's estimate of the market price for RECs.

At hearing, National Grid testified that it would use the alternative compliance payments (ACPs) for the various renewable resource classes as a proxy for market prices if no comparable market price is available. National Grid testified that for this solicitation, although the winning bidder's RPS compliance adder was slightly lower than the ACPs, it believed it could purchase RECs in the wholesale market at a lower cost and, as a result, decided to reject the RPS compliance bid submitted by the winning bidder. At hearing, the Company said that it expected to issue an RFP for RECs within the next 2 months to purchase up to 100% of its 2008 RPS obligation and up to 50% of its 2009 obligation. The Company added that if it is unable to purchase sufficient RECs to meet its New Hampshire RPS obligations, the Company plans to make ACPs to the Renewable Energy Fund for those obligations not satisfied by the purchase of RECs.

For 2009, National Grid calculated an RPS retail adder of 0.199 cents per kWh. To calculate the retail adder, the Company first calculated the wholesale RPS costs on a per megawatt-hour (MWh) basis, converted the wholesale cost to a retail cost by multiplying by the

average Company loss factor, and then divided by ten to convert \$/MWh to ¢/kWh as set forth in an attachment to the filing identified as JDW-5.

National Grid proposed rates for the Large Customer Group for the period February 1, 2009 through April 30, 2009, including the various components included in the retail rates, as follows:

Month	February 2009	March 2009	April 2009
Base Default Service (DS) Rate (/kWh)	\$0.08885	\$0.07774	\$0.07703
DS Cost Reclassification ¹ (/kWh)	\$0.00032	\$0.00032	\$0.00032
DS Adjustment Reconciliation Factor ² (/kWh)	\$0.00009	\$0.00009	\$0.00009
RPS Adder (/kWh)	\$0.00199	\$0.00199	\$0.00199
Total Default Service Rate (/kWh)	\$0.09125	\$0.08014	\$0.07943

The simple average of the base default service rate for the Large Customer Group for the period November 2008 through January 2009 is \$0.10251 per kWh, which compares to the simple average rate of \$0.08121 for the period February through April 2009. As a result of this solicitation, the 824 G1 and G2 customers in the Large Customer Group that remain on default service will see overall bill reductions ranging from 15.3% to 17.5% when comparing the proposed February 2009 rate to the currently approved rate for January 2009.

National Grid reported that, consistent with the settlement agreement approved in Order No. 24,577, it had solicited both energy-only and energy-and-capacity bids in its RFP. Because

¹ The filing states that the DS Cost Reclassification Factor (for use on and after May 1, 2007) recovers costs associated with the unbundling of DS-related administrative costs.

² This factor is approved by the Commission for reconciling costs and revenues for default service. See National Grid Second Revised Page 87 in the National Grid Tariff.

the implied cost of capacity in the indicative bids was lower than the Company's internal estimate of the cost of capacity for the months of February, March and April 2009, National Grid entered into an all inclusive fixed price energy-and-capacity contract with PSEG-ERT.

On October 27, 2008, National Grid filed a motion to amend the settlement agreement approved by the Commission in Order No. 24,577 in Docket No. DE 05-126. Pursuant to that settlement agreement, National Grid is required to solicit both energy-only and energy-and-capacity bids until the Federal Energy Regulatory Commission issued a final, non-appealable (locational or regional) capacity market rule.

According to National Grid, this requirement was intended as an interim measure to protect customers from excessive capacity prices due to the regulatory and market uncertainty in the New England capacity market. National Grid asserted that it is appropriate at this time to discontinue requesting pass-through capacity pricing from default service suppliers because the uncertainty associated with the operation of the forward capacity market that existed at the time the Company entered into the settlement agreement has been removed. The Company stated that the forward capacity market has been operating as intended by ISO-NE since December 2006 and challenges to the operation of the market have been removed by the District of Columbia Court of Appeals. The Company further stated that the market is sufficiently competitive so as to ensure that all-inclusive bids reflect competitive market prices for energy and capacity and requested that the Commission authorize National Grid to begin soliciting energy and capacity only bids with its next solicitation.

In response to questions from Staff, National Grid testified that its meter service division continues to investigate the cause(s) of the decline in Large Customer and Small Customer loss factors first raised in the September default service proceeding in this docket. Despite the fact

that National Grid's other affiliate companies have not experienced similar declines, the Company stated that the meter services division has thus far found nothing that would call into question the accuracy of the loss factor used by National Grid in the current default service filing.

Responding to a question regarding whether National Grid's process for acquiring RECs in Massachusetts and Rhode Island is the same as proposed in the RPS Settlement, National Grid replied that, unlike the proposed RPS Settlement, the Massachusetts Department of Public Utilities allowed National Grid to conduct the RFP without consulting with the staff. National Grid responded in the affirmative to a question whether the RPS Settlement precluded National Grid from obtaining RECs through bilateral contracts or auctions and for multiple years. National Grid noted that from time to time it has purchased RECs in other jurisdictions on a bilateral basis from brokers and individual suppliers and through auctions of RECs held in Massachusetts, at prices they believed to be advantageous to ratepayers, though such purchases tended to be relatively small in volume and their overall impact on the cost of RPS compliance.

With respect to the purchase of RECs under multi-year contracts, the Company said that such an option was not consistent with its strategy of purchasing power on a short-term basis through regular default service solicitations. The Company also stated its belief that it is too early in the development of the New Hampshire REC market to enter into a multi-year REC contracts. Finally, the Company said that it preferred the process in the RPS Settlement because it matched the REC obligation to the months for which it procured power in any given period.

B. The Office of Consumer Advocate

The Office of Consumer Advocate (OCA) participated at hearing to offer comment with respect to the RPS Settlement and the motion to allow National Grid to solicit only energy-and-

capacity bids for subsequent solicitations. The OCA expressed support for both proposals. The OCA also agreed to participate in discussions related to the amendment of the RPS Settlement as suggested at hearing. The OCA took no position with respect to the solicitation of default service supply and the resulting rates.

C. Staff

Staff agreed with National Grid's proposal filed in Docket No. DE 05-126 to modify the settlement agreement to allow the Company to discontinue soliciting energy-only bids. Staff stated that it supported the RPS Settlement Agreement and added that Staff is willing to work with the OCA and the Company to determine whether the Settlement Agreement should be modified to allow for REC procurements to be accomplished other than by RFPs if alternatives produced lower prices for customers. Staff also expressed a strong interest in receiving at the earliest possible date a report on the Company's investigation of the causes of the steady decline in loss factors. Staff concluded by stating that, based on its review of the petition, National Grid had complied with the terms of the settlement agreement approved in Order No. 24,577 in its solicitation and bid evaluation process and recommended that the Commission approve the petition.

III. COMMISSION ANALYSIS

A. Confidentiality

First, we address National Grid's motion for confidential treatment. The Right-to-Know law provides each citizen the right to inspect public records in the possession of the Commission. RSA 91-A:4, I. RSA 91-A:5, IV, however, exempts from disclosure certain "confidential, commercial, or financial information."

In order to rule on the motions, we have made an *in camera* review of the material which National Grid asserts is confidential. The materials which National Grid seeks to protect contain: a power supply agreements between National Grid and PSEG-ERT; an indicative bid summary provided to Staff on December 3, 2008; the RFP bid evaluation and its analysis comparing changes in electric and gas futures costs to changes in procurement costs; and National Grid's calculation of commodity costs at the retail customer meter. National Grid asserted that this information is confidential, commercial, or financial information and should be protected from public disclosure for the reasons described above. National Grid contends that the information provided by bidders was offered with the understanding that such information would be maintained as confidential, and states that suppliers would be reluctant to participate in future solicitations by National Grid if their confidential bid information is disclosed. National Grid asserted that the disclosure of the fully negotiated power supply agreements will reveal its negotiating posture to other potential power suppliers and claimed that its customers would be harmed by National Grid's diminished negotiating position.

Inasmuch as disclosure in this instance could negatively affect customers, we do not find the public's interest in disclosure of the financial, commercially sensitive information sufficient to outweigh the interest of National Grid, its customers, and bidders in maintaining the confidentiality of such information. *See Union Leader Corp. v. New Hampshire Housing Finance Authority*, 142 N.H. 540 (1997) (describing applicable balancing test). The materials for which National Grid is seeking confidential treatment in this docket are similar in nature to the materials previously approved in past default service dockets, *See, e.g., Granite State Electric Company d/b/a National Grid*, Order No. 24,736 (March 26, 2007) in Docket No. DE 07-012 and *Granite State Electric Company d/b/a National Grid*, Order No.s 24,862 (June 20, 2008) and

24,902 (September 29, 2008) in the instant docket. We will therefore grant confidential treatment of the information redacted from National Grid's public filing. Consistent with our applicable rule, N.H. Code Admin. Rule 203.08(k), this determination is 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 in light of RSA 91-A, should circumstances warrant.

B. Default Service and Related Matters

We first address the RPS Settlement. Based on the hearing testimony and our desire to establish a process that minimizes the amount of REC adders, we direct the Office of Consumer Advocate, Staff and National Grid to discuss the possibility of amending the RPS Settlement Agreement in order to allow for some REC procurements to be obtained by means other than an RFP process if such procurements might produce lower default service rates for customers and to report back to us by no later than March 31, 2009. Pending our review of this report, we will defer ruling on the RPS Settlement until the Company, OCA and Staff file their report. Having said that, we find no reason why National Grid should not proceed with its plan to issue an RFP for RECs in the next few months.

We next consider the motion to amend the settlement agreement to allow National Grid to solicit only all-inclusive energy-and-capacity bids beginning with its next solicitation scheduled for February 2009. We agree with National Grid that the forward capacity market is operating in a predictable manner. When we approved the settlement agreement in Order No. 24,577, the capacity market was nascent and price forecasts varied over a broad range. As a result, we required National Grid to solicit energy-only and energy-and-capacity bids so that we could evaluate the cost of capacity contained in the all inclusive bids and avoid a situation where customers over-paid for capacity. Now that the rules governing the forward capacity market are

well established and price expectations less uncertain, we believe it is reasonable for National Grid to forego soliciting energy-only bids in subsequent default service RFPs.

Regarding the merits of the petition, we find that National Grid's evaluation of the bids and its selection of PSEG-ERT as its default service supplier for the Large Customer Group for the period February 1, 2009 through April 30, 2009 is reasonable and in compliance with the procedures approved by Order No. 24,577. The testimony of National Grid, together with its bid evaluation report, indicates that the bid prices reflect current market conditions and, therefore, are reasonable. We are likewise satisfied that the participation of multiple bidders in the process is indicative of a competitive bid and, consequently, that the result is consistent with the requirement of RSA 374-F:3, V(c) that default service be procured through the competitive market. In light of the circumstances, we will grant the petition.

Finally, we will direct National Grid to file a report with Staff no later than March 16, 2009, the date it makes its next default service filing with the Commission, that describes the investigation undertaken by the meter division and the causes of the declining loss factors, if discernable. This directive supersedes the directive contained in Order No. 24,902 (September 29, 2008) issued in this docket.

Based upon the foregoing, it is hereby

ORDERED, that the default service power supply agreement, including the master power agreement confirmation, between Granite State Electric Company d/b/a National Grid and PSEG Energy Resources & Trade LLC and resulting proposed rates for the Large Customer Group for the period February 1, 2009 through April 30, 2009 are APPROVED; and it is

FURTHER ORDERED, that the power supply costs resulting from the solicitation are reasonable and, subject to the ongoing obligation of Granite State Electric Company d/b/a

National Grid to act prudently, according to law and in conformity with Commission orders, the amounts payable to the seller for power supply costs under the three-month transaction confirmation for the period February 1, 2009 through April 30, 2009 are APPROVED; and it is

FURTHER ORDERED, that National Grid's motion for confidential treatment is GRANTED, as set forth above; and it is

FURTHER ORDERED, that National Grid shall file conforming tariffs within 30 days of the date of this Order, consistent with N.H. Code Admin. Rule Puc 1603.02; and it is

FURTHER ORDERED, that National Grid's motion to amend settlement agreement in Docket No. DE 05-126, filed on October 27, 2008, is GRANTED.

By order of the Public Utilities Commission of New Hampshire this nineteenth day of December, 2008.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Clifton C. Below
Commissioner

Attested by:

Debra A. Howland
Executive Director