

DE 10-020

GRANITE STATE ELECTRIC COMPANY D/B/A NATIONAL GRID

Petition for Approval of Proposed Default Service Rates for the Large and Small Customer Groups for the Period beginning May 1, 2010

Order Approving Petition

O R D E R N O. 25,083

March 22, 2010

APPEARANCES: McLane, Graf, Raulerson& Middleton, Professional Association by Sarah B. Knowlton, Esq. on behalf of Granite State Electric Company d/b/a National Grid; Meredith Hatfield, Esq. of the Office of Consumer Advocate on behalf of residential ratepayers; and Suzanne G. Amidon, Esq. on behalf of Staff of the New Hampshire Public Utilities Commission.

I. PROCEDURAL HISTORY

On January 29, 2010, Granite State Electric Company d/b/a National Grid (National Grid or Company) filed a letter notifying the Commission of its intent to issue a Request for Proposals (RFP) to procure default service for the period May 1, 2010 through July 31, 2010 for its medium and large commercial and industrial customers (Large Customer Group) and for the period May 1, 2010 through October 31, 2010 for its residential and small commercial customers (Small Customer Group). According to National Grid, the filing was made pursuant to a Settlement Agreement approved by the Commission in Docket No. DE 05-126, *Granite State Electric Company, Petition for Approval of Post-Transition Default Service Proposal*, 91 NH PUC 6, Order No. 24,577 (January 13, 2006), modified by Order No. 24,922 (December 19, 2008).

On February 18, 2010, the Office of Consumer Advocate (OCA) filed notice with the Commission indicating that it would participate in this proceeding on behalf of residential

ratepayers consistent with RSA 363:28. On March 3, 2010, the Commission issued an Order of Notice scheduling a hearing on National Grid's default service filing for March 17, 2010.

On March 15, 2010, National Grid filed its petition for the provision of default service for all customers for the period beginning May 1, 2010. In support of its petition, National Grid filed the testimony of Margaret M. Janzen, Director of Electric Supply and Distributed Generation for National Grid USA Service Company, Inc., and Scott M. McCabe, Principal Analyst in the New England Electric Pricing group of the Regulation and Pricing – Electricity Distribution and Generation department of National Grid USA, Inc., with related exhibits and schedules. National Grid USA Service Company, Inc. is the service company for National Grid. The Company selected Constellation Energy Commodities Group, Inc. (Constellation) to provide default service power supply for both the Large Customer Group for the period May 1, 2010 through July 31, 2010, and the Small Customer Group for the period May 1, 2010 through October 31, 2010. The filing also included National Grid's quarterly customer migration report.

With the petition, National Grid filed a Motion for Confidential Treatment. In its Motion, National Grid requested confidential treatment by the Commission with respect to the indicative bid summary provided to Staff on March 5, 2010, the RFP bid evaluation, a comparison of changes in electric and gas futures costs to changes in procurement costs, the calculation of commodity costs at retail, the Resource Portfolio Standard (RPS) compliance summary provided to Staff on February 25, 2010, the calculation of the RPS compliance adders, and attachments to the report on the Company's loss factors filed with the Commission on March 15, 2010 and provided to Staff on March 11, 2010. In addition, National Grid requested confidential treatment for the transaction confirmation with Constellation. The Company

redacted the materials for which it seeks confidential treatment from its public filing with the Commission.

National Grid states that the information is confidential, commercial, or financial information that is exempt from public disclosure pursuant to RSA 91-A. National Grid also asserts that disclosure of such information could adversely affect the business position of the parties in the future. National Grid asserted that the Commission had previously recognized the confidentiality of such information in past orders related to default service procurement.

II. POSITIONS OF THE PARTIES AND STAFF

A. National Grid

National Grid testified that it conducted the default service solicitation process in accordance with applicable New Hampshire rules and regulations and the terms of a Settlement Agreement approved by the Commission in Docket No. DE 05-126, *Granite State Electric Company*, 91 NH PUC 6, Order No. 24,577, (January 13, 2006), and as modified by Order No. 24,922 (December 19, 2008). National Grid stated that, on February 12, 2010, it issued an RFP to over 25 potential suppliers soliciting default service power supplies for both the Large Customer Group for the period May 1, 2010 through July 31, 2010 and the Small Customer Group for the period May 1, 2010 through October 31, 2010.

National Grid explained that it distributed the RFP to all members of the New England Power Pool Markets Committee and posted the RFP on its energy supply website. As a result, National Grid asserts that the RFP had wide distribution throughout the New England energy supply marketplace. The RFP requested fixed pricing for each month of service on an as-delivered energy basis, and allowed prices to vary from month to month across the service

period. Consistent with Order No. 24,922, National Grid solicited only for all-inclusive energy and capacity supply.

National Grid stated that it received indicative bid proposals on March 3, 2010, provided a confidential summary of the proposals to Commission Staff thereafter, and received final bid proposals on March 10, 2010. National Grid then evaluated the bids received and selected the suppliers that: (i) provided a bid that conformed to the RFP; (ii) had the lowest price; (iii) met the credit requirements described in the RFP; and (iv) passed National Grid's qualitative criteria.

On March 11, 2010, National Grid entered into a wholesale Transaction Confirmation with Constellation, the winning bidder for both the Large Customer Group and the Small Customer Group. National Grid explained that a copy of the Constellation Master Power Agreement was filed with the Commission on March 20, 2006 in Docket No. DE 06-115 in connection with a prior default service procurement filing. National Grid testified that Schedule MMJ-4 of its public filing is the Transaction Confirmation between National Grid and Constellation, with confidential sections redacted. The Company pointed out that although the Master Power Agreement and Transaction Confirmations are different in some ways from the sample power supply agreement in the Settlement Agreement approved by the Commission in Order No. 24,577, the executed documents do not shift any of the risks or obligations described in the sample power supply agreement.

For both the Small Customer and Large Customer Groups, National Grid said it calculated the base default service rate by multiplying the commodity cost at the wholesale level by the applicable loss factor and then dividing the result by ten to determine the price per kilowatt-hour (kWh). Pursuant to the settlement agreement approved by Order No. 24,577, National Grid sets a fixed default service rate for the Small Customer Group for the applicable

six-month period. National Grid testified the monthly base default service commodity costs for the Small Customer Group is as follows:

<u>Month</u>	<u>May</u>	<u>June</u>	<u>July</u>	<u>August</u>	<u>September</u>	<u>October</u>
\$ per kWh	\$0.06601	\$0.06551	\$0.06848	\$0.06924	\$0.06636	\$0.06648

According to the Company, the resulting weighted average of the base default service rates for the Small Customer Group for the period May through October 2010 is \$0.06711 per kWh.

The following adjustments to the weighted average base default service costs produce a total average default service rate for the Small Customer Group of \$0.07155 per kWh.

Base Default Service Rate	\$0.06711 per kWh
Default Service Adjustment Factor ¹	\$0.00123 per kWh
Cost Reclassification Adjustment Factor ²	\$0.00091 per kWh
<u>Renewable Portfolio Standard Adder</u>	<u>\$0.00230 per kWh</u>
Total Default Service Rate	\$0.07155 per kWh

National Grid testified that for residential customers using 500 kWh per month, total monthly bills will decrease from \$67.01 to \$66.39 or 0.9%. For residential customers using 640 kWh per month, which National Grid stated is the average monthly kWh usage for residential customers for the twelve-month period ending February 2010, the total bill would decrease from \$86.37 per month to \$85.57 per month, or 0.9%. For other customers in the Small Customer Group, decreases range from 0.9% to 1.2%.

For the Large Customer Group, the Company calculates a default service rate that varies from month to month for the applicable three-month period. For the three-month period

¹ The Default Service Adjustment Factor is the adjustment to rates reflecting any over- or under-recovery of energy costs from the prior period, in this case, calendar year 2010.

² The Cost Reclassification Adjustment Factor is the adjustment to rates reflecting any over- or under-recovery of administrative costs from the prior period, in this case, calendar year 2010.

beginning May 1, 2010, National Grid established the monthly base default service rates as follows:

<u>Month</u> \$ per kWh	<u>May</u> \$0.06734	<u>June</u> \$0.06524	<u>July</u> \$0.06901
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The following are adjustments to the base default service charge for the Large Customer Group:

	May	June	July
Base Retail Rate	\$0.06734	\$0.06524	\$0.06901
Default Service Adjustment Factor	\$0.00123	\$0.00123	\$0.00123
Cost Reclassification Factor	\$0.00037	\$0.00037	\$0.00037
<u>Renewable Portfolio Standard Adder</u>	<u>\$0.00226</u>	<u>\$0.00226</u>	<u>\$0.00226</u>
Total Default Service Rate	\$0.07120	\$0.06910	\$0.07287

National Grid stated that these default service charges produce total bill reductions for Large Customers ranging from 9.4% to 11.0% when comparing bills for the three-month period ending July 2010 to the three-month period ending April 2010.

National Grid testified that the electric RPS statute, RSA 362-F requires the Company, for the calendar year 2010 to purchase Renewable Energy Certificates (RECs) in an amount equivalent to 7.54% of its total megawatt-hour (MWh) sales. Specifically, the Company must purchase Class I RECs (new renewable sources) in an amount equal to 1.0% of its total sales, Class II RECs (solar) in the amount of 0.04% of its total sales, Class III RECs (eligible biomass) in an amount equal to 5.5% of its total sales, and Class IV RECs (small hydro) in an amount equal to 1.0% of its total sales.

The Company said that it had entered into an amended settlement agreement with Staff and the OCA intended to resolve all issues associated with the process it would use to obtain compliance with the RPS law. The amended settlement agreement was approved by the Commission in Order No. 24,953 (March 23, 2009). Pursuant to the settlement agreement,

National Grid must first request bidders responding to its default service solicitation to provide a separate RPS compliance adder with their bids. This RPS compliance adder is the incremental charge by a bidder for agreeing to take on the RPS obligation with the default service supply commitment.

National Grid evaluated the RPS compliance adders by comparing them to its estimated market prices for New Hampshire RECs. Because the RPS compliance adder from the winning bidder for both the Large Customer and the Small Customer Groups was above National Grid's market estimate, the Company did not accept the winning bidder's RPS compliance adder. The Company said that it plans to issue an RFP in the future for the acquisition of RECs, and if it is unable to purchase a sufficient number to meet its NH RPS obligations, it will make an alternative compliance payment to the renewable energy fund.

For its 2010 default service filings, National Grid proposed a change to the RPS compliance adder to reflect the changes in estimated market prices of RECs. The Company said it is proposing separate RPS adders for the Large and Small Customer Groups. Based on National Grid's evaluation of recent market prices for all 2010 REC classes, the Company calculated an adder of \$0.00230 per kWh for the Small Customer Group, a reduction from the 2009 adder of \$0.00262 per kWh. For the Large Customer Group, National Grid calculated an RPS adder of \$0.00226 per kWh, a reduction from \$0.00232 per kWh.

The Company said that it would reconcile its RPS compliance costs with the revenue received from customers if the costs are different from the proposed compliance adder. The Company testified that it had issued RFPs to procure NH RECs and that it contracted for all REC classes for its 2009 and 2010 RPS obligations.

With its filing, National Grid included its report on the New Hampshire Load Zone Loss Factor Decline. By way of background, the Company testified that the issue of the declining loss factor was first raised at the September 2008 hearing in DE 08-011, the Company's 2008 default service docket. At that hearing, National Grid agreed to report back to the Commission with its evaluation of the problem, and further agreed to use the 2007 loss factor for its New Hampshire load until further assessment of the problem. In March 2009, the Company reported to the Commission that one cause for the decline was that National Grid had failed to take into account the losses between the North Litchfield and Tewksbury meters when Tewksbury became the zonal tie point. To correct this "modeling" problem, National Grid reverted to using the Tewksbury meter point as the measure beginning February 18, 2009. The Company said that it believed this change would correct the declining loss factor problem.

According to the report filed in the instant proceeding, the measurements from the Tewksbury meter continue to be "unpredictable and varied" and, as a result, National Grid decided to replace the meter. Until the meter is replaced, the Company said that it will be required to re-settle its wholesale power costs with the ISO-NE.

National Grid concluded by requesting that the Commission approve its petition, its selection of Constellation as the default service power supplier for both the Large and Small Customer Groups for the period beginning May 1, 2010, the resulting retail rates, and its Motion for Confidential Treatment. The Company also said that it would review the data included in its report on the New Hampshire Load Zone Loss Factor Decline to determine if some of the information could be included in the public filing.

B. The Office of Consumer Advocate

The OCA stated that it had no objections to National Grid's petition and was pleased that the lower market rates would result in lower monthly bills for residential customers.

C. Staff

Staff questioned the Company extensively on its loss factor report and determined that the modeling correction did not in fact solve the problem of the declining loss factor. Instead, the Company now believes the Tewksbury meter is faulty and has committed to its replacement. Further, the Company indicated that because of the flawed Tewksbury measurements it has been allocated power costs by ISO-NE that were lower than it would have been had the meter functioned accurately. As a result, the Company stated that until the meter is replaced there will be a need to resettle its power bills.

Staff also questioned the Company on why the proposed decrease in the default service retail rate for the Small Customer Group (1.7%) is much smaller than the proposed decrease in the average wholesale rate for that same group (6.5%). The Company stated that it would provide an explanation that would account for this difference.

Staff stated its position that the Company had followed the bid solicitation and evaluation process approved by the Commission and that the resulting rates are market based. Staff said it took no position on National Grid's motion for confidential treatment except for the historical data noted on the Figures attached to the Company's report on the New Hampshire Load Zone Loss Factor Decline.

III. COMMISSION ANALYSIS

A. Confidentiality

First, we address National Grid's motion for confidential treatment. 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 requests confidential treatment of: the Transaction Confirmation with Constellation (Schedule MMJ-4 attached to Ms. Janzen's testimony); the summary of the RFP bid evaluation (Schedule MMJ-2); the analysis comparing changes in electric and gas futures costs to changes in power procurement costs (Schedule MMJ-3); the calculation of commodity costs at the retail customer meter (SMM-1 and SMM-2); and calculation of the RPS compliance adders (MMJ-5).

In support of its motion, the Company stated that these materials contain commercially sensitive information, the disclosure of which could be harmful to the competitive positions of Constellation and the other participants in the RFP, and could stifle the willingness of those suppliers to participate in future energy service solicitations in New Hampshire. In addition, National Grid said that competitive suppliers protect information they deem confidential or commercially sensitive. According to National Grid, the parties have taken steps to avoid disclosure of this information and believe that 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 stated that the information for which it seeks a protective order is confidential, commercial, or financial information within the meaning of RSA 91-A:5, IV and should be exempt from disclosure.

We note that similar requests for confidential treatment have been made in past default service solicitations and have been consistently granted by the Commission. *See e.g.*, Order No. 23,953 (March 23, 2009), Order No. 24,981 (June 19, 2009) and Order No. 25,013 (September 21, 2009) in Docket No. DE 09-010.

The Right-to-Know Law provides each citizen with the right to inspect public information in the possession of the Commission. RSA 91-A:4, I. We recently had occasion to rule on motions for confidential treatment in the context of confidential, commercial and financial information regarding utilities and their affiliates. *See, Unil Corporation and Northern Utilities, Inc.*, Order No. 25,014 (September 22, 2009) and *Public Service Co. of New Hampshire*, Order No. 25,037 (October 30, 3009). Following the approach in these cases, we consider the three-step analysis applied by the New Hampshire Supreme Court in *Lambert v. Belknap County Convention*, 157 N.H. 375, 382 (2008), in determining whether the information identified by National Grid should be deemed confidential and private. First, the analysis requires an evaluation of whether there is a privacy interest at stake that would be invaded by the disclosure. If no such interest is at stake, the Right-to-Know law requires disclosure. *Id.* at 382-83. Second, when a privacy interest is at stake, the public's interest in disclosure is assessed. *Id.* at 383. Disclosure should inform the public of the conduct and activities of its government; if the information does not serve that purpose, disclosure is not warranted. *Id.* Finally, when there is a public interest in disclosure, that interest is balanced against any privacy interests in non-disclosure. *Id.*

In furtherance of the Right-to-Know law, the Commission's rule on requests for confidential treatment, Puc 203.08, is designed to facilitate the balancing test required by the relevant case law. The rule requires petitioners to: (1) provide the material for which

confidential treatment is sought or a detailed description of the types of information for which confidentiality is sought; (2) reference specific statutory or common law authority favoring confidentiality; and (3) provide a detailed statement of the harm that would result from disclosure to be weighted against the benefits of disclosure to the public. Puc 203.08 (b).

We have conducted an *in camera* review of the materials for which National Grid seeks confidential treatment. We agree that the transaction confirmation and master power agreement between National Grid and Constellation is proprietary and confidential information. In addition, we also find the indicative bid summary provided to Staff on March 11, 2010, the REC procurement summary provided to Staff on February 25, 2010 and the Company's analysis comparing changes in electric and gas futures costs to changes in procurement costs to be confidential. Finally, we also find calculation of commodity costs at the retail customer meter to be confidential as well.

We note that the Company also requested confidential treatment of the three figures attached to its report on the New Hampshire Load Zone Loss Factor Report. To the extent that the figures contain information of a vintage that it is outside of the current time-frames applicable to the re-settlement of the wholesale market prices at the ISO-NE, we find that the information is not confidential. We find the information for time frames within which National Grid may still re-settle wholesale market prices to be confidential and subject to this analysis.

Next we assess the public's interest in the disclosure of the information. The information, including that contained in the negotiated transaction confirmation and master power supply agreement and the comparison of procurement costs to electric and gas futures, pertains to the wholesale costs of National Grid's Large Customer Group default service supply for the period May 1 through July 31, 2010 and the Small Customer Group default service

supply for the period May 1 through October 31, 2010. These costs are used by the Company to develop the default service retail rates. Public disclosure of these costs would allow for a detailed understanding of the various cost components in the Large and Small Customer Groups default service rates and would therefore assist the public in understanding the basis for the Commission's approval of these default service rates. Thus the public has an interest in disclosure. However, as the Company states in its motion, disclosure of this information would allow competitors to see the wholesale costs of National Grid's Large and Small Customer Group default service supply which could negatively impact the ability of National Grid to secure a competitive price in future solicitations. Similarly, if the information contained in MMJ-5 were disclosed, the Company would find itself disadvantaged in being able to procure RECs at competitive prices.

We find that the interest in public disclosure of such financial, commercially sensitive information is outweighed by the benefit derived from maintaining the confidentiality of such information, given that confidentiality helps produce lower rates. *See Union Leader Corp. v. New Hampshire Housing Fin. Auth.*, 142 N.H. 540 (1997) (requiring application of balancing test to RSA 91-A:5, IV determinations, weighing the public interest in disclosure against privacy interest). We therefore grant the motion for confidential treatment.

Pursuant to Federal Energy Regulatory Commission (FERC) requirements, each wholesale supplier is obligated to report to FERC the price and volume of its wholesale contractual sales during each quarter and to identify the party to whom the sale has been made, within 30 days of the end of that quarter. *See Revised Public Utility Filing Requirements*, 99 FERC ¶ 61,107 (April 25, 2002) and 18 CFR Parts 2, 35. The FERC makes this information available to the public through electronic quarterly reports. Therefore, insofar as protection is requested for

wholesale contractual sales, we grant such information protective treatment until such time as the information is published by the FERC.

Consistent with N.H. Code Admin. Rules Puc 203.08(k), the confidential treatment provisions of this Order are 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 this protective order.

B. Default Service

Regarding National Grid's analysis of the bids and its selection of the winning bidders for default service supply for the Large and Small Customer Groups beginning May 1, 2010, we find that National Grid complied with the procedures approved by Order No. 24,577. We are satisfied that National Grid met all procedural requirements consistent with prior orders of this Commission. 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."

We find that National Grid's evaluation of the bids and its selection of Constellation as its default service supplier for the Large and Small Customer Groups is reasonable. We approve this petition and we will allow the power supply costs to be included in the Company's rates beginning May 1, 2010.

With respect to the report on the New Hampshire Load Zone Loss Factor Decline, we will require the Company to keep us informed on the replacement of the Tewksbury meter and its impact on the default service loss factor. In addition, we will require the Company to report the details of all power cost re-settlements with ISO-NE relating to measurement or modeling

problems linked to the Tewksbury meter. The report should also explain how such re-settlements were determined absent accurate metering data. The Company shall no file later than March 31, 2010 any information on re-settlements related to the Tewksbury meter and update that information every quarter thereafter until the meter is replaced.

Based upon the foregoing, it is hereby

ORDERED, that the Transaction Confirmation between Constellation Energy Group Commodities, Inc and Granite State Electric Company d/b/a National Grid for the three month default service power supply beginning May 1, 2010 and for the Small Customer Group for the six month period beginning May 1, 2010 is hereby APPROVED; and it is

FURTHER ORDERED, that National Grid shall file no later than March 31, 2010 the above-described information on all re-settlements related to the Tewksbury meter and thereafter on a quarterly basis.

FURTHER ORDERED, that National Grid file conforming tariffs within 30 days of the date of this Order pursuant to N.H. Admin. Rules Puc 1606.02.

By order of the Public Utilities Commission of New Hampshire this twenty-second day of March, 2010.

Thomas B. Getz
Thomas B. Getz
Chairman

Clifton C. Below
Clifton C. Below (KNS)
Commissioner

Amy L. Ignatius
Amy L. Ignatius (KNS)
Commissioner

Attested by:

Debra A. Howland
Debra A. Howland
Executive Director