

**DE 05-195
DE 05-174**

GRANITE STATE ELECTRIC COMPANY

Petition for Approval of 2006 Retail Rate Adjustments

**Petition for Approval to File Settlement Agreement with Federal Energy Regulatory
Commission**

Order Approving Petitions

ORDER NO. 24,573

December 30, 2005

Appearances: Alexandra E. Blackmore, Esq. on behalf of Granite State Electric Company; F. Anne Ross, Esq. on behalf of the Office of Consumer Advocate; and Suzanne Amidon, Esq. on behalf of Commission Staff.

I. PROCEDURAL BACKGROUND

On December 1, 2005, Granite State Electric Company d/b/a National Grid (Granite State) filed with the New Hampshire Public Utilities Commission (Commission) a petition requesting adjustments to its unbundled retail rates as follows: Stranded Cost Charge; Transition Service Adjustment Factor; Default Service Adjustment Factor; and Transmission Service Charge and Adjustment Factor. Granite State filed the retail rate adjustments pursuant to its Amended Restructuring Settlement Agreement (Settlement Agreement) as approved by the Commission in Order No. 23,041 (October 7, 1998), its approved tariffs and subsequent Commission orders.¹ The proposed retail rate changes would decrease the total bill of a residential customer using 500 kilowatt-hours (kWh) per month by \$1.20, or 2.1 percent, from \$56.13 to \$54.93 per month. Granite State requests the retail rate changes become effective for service rendered on and after January 1, 2006.

¹ See Order No 23,966 (May 8, 2002) and Order No. 24,426 (December 29, 2004).

With its petition, Granite State filed the testimony of Scott M. McCabe, the Senior Analyst for Distribution Regulatory Services for National Grid USA Service Company (National Grid) and Susan L. Hodgson, Manager of Transition Rates in the Transmission Finance group for National Grid, Granite State's parent company.

On December 5, 2005, the Commission issued an Order of Notice scheduling a hearing for December 19, 2005. On December 7, 2005, the Office of Consumer Advocate (OCA) notified the Commission that it would be participating in the docket on behalf of residential ratepayers pursuant to RSA 363:28,II. The hearing was held as scheduled on December 19, 2005.

On December 19, 2005, Staff submitted a signed copy of a settlement agreement regarding mitigation of the Contract Termination Charge (CTC). On December 28, 2005, Granite State filed documents in response to record requests made by the Commission at the December 19, 2005 hearing.

II. POSITIONS OF THE PARTIES

A. Granite State

Granite State stated that the purpose of the Stranded Cost Charge is to collect the CTC billed to Granite State from a Granite State affiliate, New England Power Company (NEP) in connection with the termination of NEP's provision of wholesale electricity prior to the opening of Granite State's service territory to retail competition. Granite State pointed out that

the Commission approved the CTC recovery mechanism in *Granite State Electric Co.*, 85 NH PUC 532 (1998).²

Granite State indicated that the base Stranded Cost Charge would decrease from \$0.0060 per kWh in 2005 to \$0.0016 per kWh in 2006³. Granite State attributed this reduction to the reconciliation of NEP's CTC for the period from October 2004 to September 2005, as well as a reduction associated with its petition, filed on October 25, 2005, in Docket No. DE 05-174 that, if approved by the Commission, would authorize filing at the Federal Energy Regulatory Commission (FERC) a CTC Mitigation Plan Settlement (CTC Mitigation Settlement) among Granite State, NEP, the OCA and Commission Staff. The CTC Mitigation Settlement, according to Granite State, would provide for a return, through the CTC, of proceeds received by NEP resulting from a bankruptcy settlement agreement with USGen New England, Inc. (USGenNE).⁴ Granite State further stated that the CTC methodology is on file with the FERC and changes to the estimated base charges can only be made with FERC approval. Granite State noted that although Docket No. DE 05-174 remains pending, it assumes for purposes of calculating the applicable adjustment factors that its CTC adjustment will be approved by the Commission.

² Granite State filed its proposed CTC reconciliation for 2005 with the Commission on December 1, 2005. *See* Docket No. 05-174.

³ Each class is also assessed a stranded cost adjustment factor; rate class V is the only class whose over- or under-recovery in its beginning balance is great enough to result in a stranded cost adjustment factor, which for 2006 is a credit of \$0.00078 per kWh.

⁴ The Bankruptcy Court for the District of Maryland approved the settlement in an Order dated December 22, 2004. *See* District of Maryland, United States Bankruptcy Court, Case no. 03-30465 (PM) Chapter 11 Bankruptcy of USGen New England, Inc.

To put the CTC and the proposed mitigation of the CTC resulting from USGenNE's bankruptcy settlement in context, Granite State recited that, in 1998, NEP, Granite State and a number of other New Hampshire parties entered into an Amended Restructuring Settlement Agreement approved by the Commission in Docket No. DR 98-012, and a Wholesale Agreement approved by FERC in Docket Nos. ER98-2023-000 and, as amended, ER98-3925-00 (collectively the "1998 Agreements"). *See* Order No. 23,041 (October 7, 1998). Granite State testified that the 1998 Agreements, among other things, provided for the sale by NEP to USGenNE of its non-nuclear generation plants and assignment of power purchase agreements (PPAs). The 1998 Agreements also provided for a CTC for the recovery of stranded costs incurred in connection with the termination of the all-requirements contracts between NEP and Granite State.

Granite State further recited that the 1998 Agreements set forth a post-divestiture formula which includes all payments by NEP for Long-Term Power Supply Contracts, less the payments received from the buyer, USGenNE, or from resale of electricity purchased under the contracts into the wholesale market, plus economic buyout payments associated with those contracts, less credit for unit sales.⁵

According to Granite State, on July 8, 2003, USGenNE filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. As a consequence of the bankruptcy, USGenNE ceased performance under the following agreements with NEP: (1) the Asset Purchase Agreement (APA) for the sale by NEP and Narragansett Electric Company (an affiliate

⁵ *See* Appendix 2, Section 1.2.2(b) of the 1998 Agreements for the complete formula for power contract payments.

of NEP) to USGenNE of substantially all of NEP's non-nuclear generating assets with certain related liabilities and obligations; (2) the Amended and Restated Power Purchase Agreement Transfer Agreement (PPATA), relating to a portfolio of PPAs; (3) the Hydro Quebec Interconnection Transfer Agreement (HQITA), relating to support for and use of the high-voltage direct current interconnection facilities from Canada; and (4) the Amended and Restated Continuing Site/Interconnection Agreement (CSA), relating to the joint use and allocation of responsibilities for common or shared properties situated on the site of the generation properties.

Granite State averred that the obligations under the above-referenced contracts return to NEP. The principle obligations include the PPAs, and USGenNE's obligation to defend and indemnify NEP for any environmental costs that would arise from hazardous waste located on, or migrating from, the generating plant sites at the time USGenNE purchased the plants from NEP and for certain other claims associated with NEP's operation of the units, including personal injury claims such as asbestos claims.

Granite State explained that the obligations for the PPAs return to NEP and may be recovered through the CTC pursuant to the post-divestiture CTC formula approved by the Commission as set forth in Appendix 2, Section 1.2.2(b) of the 1998 Agreements which provides, in part, that "Power Contract Payments will be (i) all payments by NEP for Long-Term Power Supply Contracts less the payments received from the Buyer or from resale of electricity purchased under the contracts into the wholesale market." Granite State testified that any environmental costs that may be presented to NEP as a claim, if at all, are recoverable under the CTC formula as "Damages, Costs, or Net Recoveries from claims by or against third parties." Finally, Granite State asserted that any claims against NEP or Narragansett for personal injury

related to asbestos exposure are no longer the obligation of USGenNE since USGenNE rejected the APA. NEP states that the costs of these claims are also recoverable under the CTC formula.⁶

For these unsecured claims, Granite State testified that the bankruptcy court, on December 22, 2004, approved a settlement between NEP and USGenNE which resulted in a \$195 million payment to NEP. According to Granite State, NEP also received interest on \$17 million of the NEP Allowed Claim amount accruing from the period beginning April 1, 2004, and ending on the date that the claim was paid, June 8, 2005, which amounted to \$805,290. Granite State calculated its allocated share of the total to be approximately \$5.9 million.

Because the PPA obligations, the environmental claims and other third-party claims are recoverable under the CTC formula, NEP concluded that customers are entitled to the full bankruptcy settlement amount paid by USGenNE in resolution of NEP's unsecured claims, particularly as some of the proceeds represent "payments received from the Buyer" pursuant to Appendix II of the 1998 Agreements. As a result, Granite State indicated that NEP is willing to flow through the entire proceeds from the bankruptcy settlement in accordance with the CTC Mitigation Plan offered by NEP and Granite State.

Granite State testified that if the entire amount attributable to Granite State were applied according to the current CTC formula on file with the FERC, the result would be a dramatic decrease in the CTC charge for Granite State customers for 2006, followed by a substantial increase in 2007. To avoid this result, NEP and Granite State developed a CTC

⁶ "New England Power Company Amendment to Service Agreement with Granite State Electric Company under FERC Electric Tariff, Original Volume No. 1 Formula for Calculating Contract Termination Charges Following Divestiture", Appendix 2 (Post-divestiture), pages 18 through 22.

Mitigation Settlement and submitted it to the OCA and Staff for review. The CTC Mitigation Settlement, Granite State testified, would amend the CTC formula on file with the FERC to allow Granite State to apply the bankruptcy proceeds according to a plan which would provide less volatility to the CTC charge for Granite State customers, eliminate the trigger payments associated with the PPAs on which Granite State earns a return, and reduce the CTC charge beginning January 1, 2006. Granite State requested Commission approval of the Settlement Agreement to permit this change in CTC methodology to take effect on January 1, 2006.⁷

Granite State proposes a uniform Transition Service Adjustment Factor of \$0.00127 per kWh, which represents an increase of \$0.00087 per kWh from 2005. Granite State testified that the Transition Service Adjustment Factor is designed to recover the cost of providing Transition Service, including the cost of the power, administrative costs, and the costs of securing the supply, and interest on any deferral balance. Granite State testified that the Transition Service Adjustment Factor would apply to Transition Service customers only for the months of January through April 2006 to match the remaining term of Transition Service in New Hampshire. Granite State attested that by implementing a four-month adjustment factor, there is a better matching of the recovery of the Transition Service under-collection with the population of customers who have contributed to it.

Granite State averred that the Transition Service Adjustment Factor for 2006 will recover from customers an under-collection of \$124,134 from the 2004 recovery period along

⁷ Granite State testified that both Rhode Island and Massachusetts had agreed to NEP's plan for distribution of bankruptcy proceeds according to terms similar to those contained in the CTC Mitigation Settlement filed with the Commission. Granite State testified that the CTC Mitigation Plan with Rhode Island had been filed with FERC and Massachusetts had agreed in principle, subject to minor revisions to the settlement document.

with the interest on the balance.⁸ Granite State acknowledged that it will have one remaining reconciliation period for Transition Service after April 2006, but informed the Commission that it had not yet determined how to make recoveries resulting from the reconciliation. Granite State indicated that it will file a proposal for resolution of the final deferral balance in this reconciliation as part of its 2006 retail rate filing.

Granite State testified that its proposed Default Service Adjustment Factor, as contained in the currently effective tariff, provides for the full reconciliation of Default Service revenue and expense. As stated in last year's retail rate filing approved by the Commission in Order No. 24,416, Granite State did not implement a Default Service Adjustment Factor for 2005 because the under-recovery of Default Service expense as of September 2004 was not large enough to yield a Default Service Adjustment Factor. Consequently, Granite State carried forward the under-recovery as the beginning balance for the current October 2004 through September 2005 reconciliation period. Granite State testified that the current reconciliation reflects an over-recovery of \$128,309 and proposes a new Default Service Adjustment Factor credit of \$0.00014 per kWh applicable to all retail delivery service customers consistent with Commission Order No. DE 04-057 (April 30, 2004). Granite State testified that the Default Service Adjustment Factor would be in effect throughout calendar year 2006.

In order to recoup unrecovered transmission expenses of \$665,807, Granite State indicated it proposed a uniform Transmission Service Adjustment Factor of \$0.00073 per kWh

⁸ Any over- or under-collection resulting from the current transition service adjustment factor will be included in the next retail rate filing.

as well as a revision to the underlying Transmission Service charge. Granite State testified that under the Transmission Service Charge, Granite State collects from customers taking transmission service through the company any transmission costs that Granite State incurs in providing such transmission service. Granite State averred that transmission service rates are implemented through separate transmission factors for each rate class. Granite State indicated that transmission expenses for 2006 are forecasted to produce an average transmission rate of approximately \$0.00757 per kWh, an increase from the currently effective average transmission rate of \$0.00665 per kWh. Granite State offered that the charge varies for each class. For example, Granite State stated that it proposes to increase the Transmission Service Adjustment Factor from \$0.00729 per kWh to \$0.00843 per kWh for residential customers taking service under Rate D. Granite State offered that almost all other classes would see slight increases, and that rate class V (limited commercial space heating) would see a slight decrease.

Granite State attributed the increases in Transmission Service Charges to higher costs assessed by the FERC-authorized entities that provide transmission service to Granite State. Granite State testified that prior to February 2005 these entities were NEP, the New England Power Pool, and the Independent System Operator-New England (ISO-NE). Granite State explained that, as of February 1, 2005, the ISO-NE was replaced by the Regional Transmission Operator (RTO). Consequently, Granite State averred that it is now charged by NEP and the ISO under a single omnibus tariff maintained by the RTO. Granite State stated that the costs in the tariff include NEP local charges, ISO regional charges, and ISO/RTO administrative charges. Granite State attributed the increases in large part to the transmission plant investment forecast for 2006 for all of New England. Granite State's share of the ISO Pool

Transmission Facilities charge for 2006 is \$2,983,152, which represents an increase of \$376,315 from 2005. Granite State's share of the ISO reactive power charge for 2006 is \$812,322, which represents an increase of \$461,609 from 2005. Granite State explained that the increase in reactive power costs resulted from the fact that Boston area generators were under obligation to the ISO to supply volt-ampere reactive capability to Boston. Granite State affirmed that the charges under the tariff are reconciled on an annual basis with FERC, and that future retail rate filings will reconcile the forecast transmission costs with those costs actually incurred.

Granite State concluded its testimony by requesting that the adjustments contained in the retail rate filing become effective for service rendered on and after January 1, 2006, and that the CTC Mitigation Settlement be approved.

B. The Office of Consumer Advocate

The OCA questioned Granite State's witnesses as to the impact of the proposed increases on residential customers. In response, Granite State testified that the aggregate impact of the rates proposed for January 1, 2006, on a total bill basis, as compared to rates in effect currently, is a bill decrease of \$1.20 or 2.1 percent, from \$56.13 to \$54.93. The OCA asked whether the entire reduction in the CTC charge was attributable to the USGenNE bankruptcy, and Granite State indicated that of the \$3.7 million reduction, \$300,000 resulted from the normal reconciliation process.

The OCA also questioned Granite State as to whether the forecasted transmission costs had been filed and approved by the FERC. Granite State testified that the FERC does review the forecast but that the charges are reconciled by the FERC to reflect actual expense.

The OCA expressed its support for the CTC Mitigation Settlement because it provided for more stable rates by distributing the proceeds from the USGenNE bankruptcy over a longer period of time than allowed by the existing CTC methodology on file with the FERC.

C. Commission Staff

Staff asked Granite State witnesses a series of questions regarding the CTC Mitigation Settlement and made record requests regarding the position of Massachusetts and Rhode Island with respect to NEP's proposed changes to the CTC methodology. Staff also asked a series of questions regarding the extent to which NEP conducted due diligence in determining the extent of any environmental liabilities that would return to the CTC charge as a result of the USGenNE rejection of those liabilities. Michael D. LaFlamme, Regulatory Support Manager for National Grid, indicated that he had no personal knowledge of the matter. Nonetheless, based on Granite State's response to Staff's Second Set of Data Requests No. 11 regarding the extent of costs associated with environmental cleanup, he indicated that, while attaching a probability to any environmental costs would be highly speculative, Granite State examined the sites, reviewed remediation plans and undertook a review of all applicable regulatory proceedings, orders and complaints before agreeing to accept such liabilities in the bankruptcy settlement.

Staff stated its support for the retail rate adjustments proposed by Granite State and also indicated support for the CTC Mitigation Settlement. Staff requested that the Commission approve the CTC Mitigation Settlement with its order in the instant case to permit NEP and Granite State to file the revised CTC methodology with the FERC.

III. COMMISSION ANALYSIS

RSA 378:7 vests the Commission with the responsibility of determining whether rates to be charged retail customers in New Hampshire are just, reasonable and lawful. RSA 374-F:4,VIII(a) further authorizes us to “order such charges and other service provisions and to take such other actions that are necessary to implement [electric industry] restructuring and that are substantially consistent with the principles” as set forth in RSA 374-F:3. Among the RSA 374-F:3 principles that are relevant to this proceeding are the objectives of minimizing customer confusion arising out of restructuring, providing “clear price information on the cost components of generation, transmission, distribution and any other ancillary charges” (RSA 374-F:3,II); pricing Transition Service to encourage customers to choose a competitive energy supplier (RSA 374-F:3,III); maintaining Transition Service as separate and distinct from Default Service and allocating administrative costs of Default Service to Default Service customers (RSA 374-F:3,V(b)); and recovery of stranded costs through “a nonbypassable, nondiscriminatory, appropriately structured charge that is fair to all customer classes, lawful, constitutional, limited in duration, consistent with the promotion of fully competitive markets” and the principles of RSA 374-F:3. RSA 374-F:3,XII(d)

We note that most of the relevant policy determinations were made in 2002 when the Commission approved the adjustment mechanisms contained in Granite State’s proposal as well as the extension of Transition Service through April 30, 2006. We agree with Granite State, the OCA and Staff that it is appropriate in the instant docket to consider as well the impact of the USGenNE bankruptcy on the FERC-approved CTC methodology.

While we are concerned that there is a possibility that additional costs may fall back on Granite State customers as a result of the USGenNE bankruptcy and the obligations returned to NEP, we believe that the bankruptcy settlement agreement between NEP and USGenNE, and the CTC Mitigation Settlement, appropriately awards the proceeds of the bankruptcy settlement to retail customers. Based on testimony offered at hearing, it appears that unknown environmental liabilities could add to the CTC charge. However, we conclude that NEP conducted a reasonably prudent review of environmental liabilities before accepting the bankruptcy settlement. Upon review, we have decided to approve the CTC Mitigation Settlement filed in DE 05-174 as part of our order today. We find that the proposed methodology to allocate the proceeds of the USGenNE bankruptcy is an appropriate solution to avoid what could otherwise be extreme volatility in the CTC charge for Granite State's customers.

Furthermore, we note that the changes in the Stranded Cost Charge, the Transition Service Adjustment Factor, the Default Service Adjustment Factor, and Transmission Service Charge and Adjustment Factor were thoroughly reviewed at hearing. The resulting rate changes are modest overall and will actually decrease rates slightly. The record supports a determination that the proposed rates and adjustment factors are just, reasonable and lawful and we therefore approve them.

For purposes of Docket No. DE 05-174, we point out that we do not, by this order, adopt the Reconciliation Report filed by Granite State on December 1, 2005. The docket will remain open until such time as we have considered the Reconciliation Report.

Based upon the foregoing, it is hereby

ORDERED, that the proposed retail rate adjustments and adjustment factors proposed by Granite State Electric Company are hereby **APPROVED** for service rendered on or after January 1, 2006; and it is

FURTHER ORDERED, that the CTC Mitigation Settlement filed on December 19, 2005 in Docket No. DE 05-174 is **APPROVED**.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of December, 2005.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Attested by:

Kimberly Nolin Smith
Assistant Secretary