

**DE 05-126**

**GRANITE STATE ELECTRIC COMPANY d/b/a NATIONAL GRID**

**Petition for Approval of Proposed Default Service Rates for the Periods August 1, 2006 through October 31, 2006 for Large Commercial and Industrial Customers**

**Order Approving Petition**

**ORDER NO. 24,637**

**June 22, 2006**

**APPEARANCES:** Alexandra E. Blackmore, Esq. on behalf of Granite State Electric Company d/b/a National Grid; and Suzanne Amidon, Esq. on behalf of the Staff of the New Hampshire Public Utilities Commission.

**I. BACKGROUND**

On June 16, 2006, Granite State Electric Company d/b/a National Grid (Granite State) filed with the New Hampshire Public Utilities Commission (Commission) a Petition requesting approval of Default Service (DS) rates resulting from Granite State's recent procurement of DS power supply for its Large and Medium Commercial and Industrial Customers (Large Customer Group) for the period from August 1, 2006 to October 31, 2006. In support of its Petition, Granite State filed the testimony of John D. Warshaw with accompanying schedules.

Granite State asserts that it filed the Petition pursuant to the terms of a Settlement Agreement approved by the Commission in Order No. 24,577 (January 13, 2006). Order No. 24,577 approved the process for solicitation bid evaluation and procurement of DS supply by Granite State for its Large Customer Group.

Granite State averred that in Order No. 24,577 the Commission approved Granite State's proposal to procure DS for its Large Customer Group under three-month contracts with fixed prices that vary monthly. According to the Settlement Agreement, the retail rates charged to the

Large Customer Group would reflect the monthly prices in the three-month contracts plus associated administrative costs.

Granite State indicated that the Request for Proposal (RFP) for Granite State's DS supply was issued on May 12, 2006, and that indicative bids were received on June 7, 2006. Final bids were received on June 14, 2006, and from those bids Granite State selected, Consolidated Edison Energy, Inc. (Con Ed) to supply the Large Customer Group. Granite State avers that it followed the solicitation and bid evaluation process approved by the Commission, and that its analysis of the bids and choice of suppliers is reasonable.

With its Petition, Granite State filed a Motion for Confidential Treatment (Motion) for certain information, consistent with RSA 91-A:5, IV and prior Commission orders. The information for which Granite State seeks confidential treatment is redacted from its public filing and was submitted separately with the Motion. The information which Granite State asserts is confidential includes certain parts of the RFP, Granite State's summary of the evaluation of indicative and final bids and the executed Power Supply Agreement (PSA) with Con Ed. Granite State attested that the redacted portions of the PSA and the RFP bid evaluation contain competitive energy pricing and contract terms that are commercially sensitive, the disclosure of which could be harmful to the competitive position of Con Ed and the other respondents to the RFP. Granite State further argued that disclosure of this information could chill the willingness of the suppliers to participate in providing energy services in New Hampshire in the future. Granite State also averred that the parties had taken steps to avoid disclosure of this information. Granite State argued that this information qualifies for exemption from public disclosure under the RSA 91-A:5, IV, the New Hampshire Right-to-Know law. Finally, Granite State filed a

separate Motion for Confidential Treatment on June 8, 2006, with respect to the information regarding the indicative bids that it provided the Commission Staff (Staff) on June 7, 2006.

On June 16, 2006, the Commission scheduled a hearing for June 19, 2006. At hearing, Granite State filed as exhibits a redacted copy of the Default Service Procurement Summary (Schedule JDW-2) and the PSA (Schedule JDW-4) with Con Ed.

## **II. POSITIONS OF THE PARTIES**

### **A. Granite State**

Granite State averred that, consistent with Order No. 24,577, it conducted an open solicitation process, actively sought interest among potential suppliers and provided access to sufficient information to enable them to assess the risks and obligations associated with providing the services sought. Granite State testified that it issued the RFP to approximately twenty-five potential suppliers soliciting power supplies for the period August 1, 2006 through October 31, 2006. Granite State stated that it also distributed the RFP to all members of the New England Power Pool (NEPOOL) Markets Committee and posted the RFP on its energy supply website. Granite State contended that, as a result, the RFP had wide distribution throughout the New England energy supply marketplace.

Granite State indicated that the RFP requested fixed pricing for each month of service on an as-delivered energy basis. Granite State also stated that the RFP provided that prices could vary by month and by service, and include all market and ancillary costs, including capacity market costs.

Granite State indicated that, at the time it issued the RFP, the Independent System Operator for New England (ISO-NE) had filed a settlement agreement regarding capacity costs

with the Federal Energy Regulatory Commission (FERC) which was accepted by FERC on June 15, 2006. Because the time period for this RFP was prior to the implementation date of the ISO-NE settlement agreement, Granite State indicated that it requested only all inclusive energy-and-capacity fixed bid prices.

Granite State testified that it received indicative proposals on June 7, 2006, and, consistent with the Settlement Agreement approved by Order No. 24,577, shared the results with the Staff on the same day. Granite State received final, binding bids on June 14, 2006. Granite State averred that none of the bidders made their provision of Granite State's DS contingent upon the provision of any other service.

Granite State testified that it evaluated the bids and selected the supplier that (i) had the lowest price, (ii) met the credit requirements described in the RFP and (iii) passed Granite State's qualitative evaluation. Granite State indicated that it selected Con Ed as the DS provider based on both quantitative and qualitative criteria. Granite State testified that on June 15, 2006, it entered into a wholesale PSA with Con Ed to provide service to the Large Customer Group for the three-month period from August 1, 2006 through October 31, 2006. Granite State claimed that although the PSA contains differences from the sample power supply agreement in the Settlement Agreement approved in Order No. 24,577, the executed PSA does not contain any provision that shifts any of the risks or obligations described in the sample power supply agreement.

Granite State stated that it will charge its DS customers rates that are based upon its costs to procure DS adjusted to reflect sales at the retail meter, further adjusted by the recovery of

administrative costs associated with DS as provided for in the Settlement Agreement. Granite State described the resulting base retail rates for the Large Customer Group as follows:

Base Retail Rate August, 2006	Base Retail Rate September, 2006	Base Retail Rate October, 2006
\$0.09534 per kWh	\$0.08331 per kWh	\$0.08348 per kWh

Granite State explained that these base rates do not include administrative costs. When the Large Customer Group Default Service Administrative Cost of \$0.00018 is added to the base retail rates, the resulting Large Customer Group rates are as follows:

August, 2006 Retail Rate	September, 2006 Retail Rate	October, 2006 Retail Rate
\$0.09552	\$0.08349	\$0.08366

Those rates average 8.738 cents per kWh, which compares to 8.676 cents per kWh for the May 2006 through July 2006 period.

At hearing, Granite State provided a summary of its evaluation of the bids, subject to the confidential treatment of certain details in the evaluation. Granite State explained that it used two methods to evaluate the bids. According to Granite State, one method estimates expected bid prices based on current electric futures market prices for the August through October 2006 period multiplied by a factor that reflects the historic difference between the monthly bid prices for the Large Customer Group and monthly electric futures prices. The other method estimates expected bid prices assuming a direct relationship between bid prices and natural gas prices. Granite State concluded that after adjusting the expected prices from these two methods for recent increases in the market cost of capacity, the lowest cost bid was within its expected range and therefore market-based.

Also at hearing, Granite State explained that one submitted an energy-only bid and proposed a pass-through of capacity costs. Because the bid did not conform to the RFP, which required a fixed price bid for energy and capacity, Granite State rejected the bid. Granite State explained that the supplier was not willing to make an all inclusive bid because of the recent uncertainty in the capacity market. According to Granite State, the market for capacity costs had experienced a steep increase which may or may not be an indicator of further uncertainty in future markets. However, the Company noted that the other bidders had complied with the fixed capacity price requirement. Accordingly, Granite State selected the lowest bidder which included capacity at a fixed cost.

In conclusion, Granite State requested that the Commission approve the PSA with Con Ed and the resulting rates based on Granite State's adherence to the RFP process, its evaluation of the bids, and its determination that the resulting rates are market based.

#### **B. Commission Staff**

At hearing, Staff noted that the Settlement Agreement approved by the Commission in Order No. 24,577 required Granite State to seek both all inclusive bids and bids that pass through capacity costs to customers, until the FERC has issued final, non-appealable (locational or regional) capacity market rules. Despite the fact that the FERC has yet to issue final capacity market rules, the RFP issued by Granite State for its Large Customer Group requested only an all inclusive bid.

Had Granite State complied with the terms of the Settlement Agreement, the Staff contends that the Commission would have be able to evaluate pros and cons of approving a pass through bid at a time when the capacity market is experiencing significant price volatility. Staff

pointed out that capacity prices in the deficiency auction had risen sharply for June 2006, but the capacity prices in the supply auction for July, 2006 were significantly lower than what arguably might have been expected, which might prove to be the case during the August through October period as well. Consequently, Staff opined that the Large Customer Group might have obtained a better DS rate had Granite State requested pass through bid prices. Staff, however, did not recommend that the Commission direct Granite State to re-bid the DS supply because it would run the risk of receiving higher energy bids if market conditions worsened. Staff noted that other than failing to seek pass through bid prices Granite State had complied with the bid solicitation and evaluation process. Staff concluded by expressing its support for the Petition.

Finally, Staff expressed concern that Granite State's Motion for Confidential Treatment included the bid analysis which supports the reasonableness of the PSA and resulting rates. Noting that Granite State had filed a redacted copy of the Default Service Procurement Summary, Staff maintained that certain redacted portions regarding the analysis of capacity costs should be public information.

### **III. COMMISSION ANALYSIS**

#### **A. Confidentiality**

First, we address Granite State's Motions for Confidential Treatment. The materials which Granite State seeks to protect are the PSA with Con Ed, Granite State's RFP bid evaluation, and the Company's analysis comparing futures costs. As previously noted, Granite State provided a redacted copy of the PSA and the bid evaluation summary at hearing. The information redacted from the bid evaluation summary include the number and ranking of bidders, Granite State's criteria for ranking bids and the Company's analysis of the capacity

market and capacity market trends.

Granite State asserts that this information must be protected from public disclosure because it is confidential commercial and financial information. Granite State contends that the information provided by bidders was offered under the express understanding that such information would be maintained as confidential and that suppliers would be reluctant to participate in future solicitations by Granite State if their confidential bid information is disclosed. Granite State argues that the disclosure of the fully negotiated PSA will reveal its negotiating posture to other potential power suppliers and claims that its customers would be harmed by Granite State's diminished negotiating position. Granite State also points out that the information concerning the indicative bids shared with Staff was accompanied by a separate Motion for Confidential Treatment.

Granite State filed redacted copies of the PSA and the bid evaluation at hearing. However, due to the breadth of the material for which confidential treatment was requested, the bid evaluation and capacity market information required by the Commission to make a decision as to the reasonableness of Granite State's selection of supplier was presented in confidential session at hearing.

The New Hampshire Right to Know law provides each citizen the right to inspect public records in the possession of the Commission. RSA 91-A:4, I. Section IV, however, exempts from disclosure certain "confidential, commercial or financial information." While we agree that Granite State's specific calculations regarding the two methodologies used to evaluate the bids, and the Company's own projections regarding the capacity market are confidential, we find that the general discussion of the operation of the methodologies and the capacity market are public

information. The record of the hearing will be amended to comport with this finding.

We have examined the redacted information *in camera*. Inasmuch as disclosure in this instance could negatively affect customers, we do not find the public's interest in review of the financial, commercially sensitive information sufficient to outweigh the need for Granite State and its bidders to maintain confidentiality of such information. *Union Leader Corp. v. New Hampshire Housing Finance Authority*, 142 N.H. 540 (1997). We will, therefore, grant protective treatment to the information redacted from Granite State's public filing. Consistent with past practice, the protective 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 in light of RSA 91-A, should circumstances so warrant. In granting the Motion, we note that the Settlement Agreement approved by Commission Order No. 24,577 contemplated that any discussion of the indicative bid evaluation would be confidential,<sup>1</sup> and we accord confidential treatment of the indicative bid information exchanged and the discussion with Staff which occurred on June 7, 2006.

### **B. Default Service**

Regarding Granite State's analysis of the bids and its selection of the winning bidder for DS supply for its Large Customer for the three-month period from August 1, 2006 through October 31, 2006, we find that Granite State substantially complied with the procedures approved by Order No. 24,577. We note, however, that Granite State sought only an all-inclusive bid price when the Settlement Agreement calls for both all-inclusive bid prices and pass through bid prices. We direct Granite State to conform its future RFPs to the requirements of the Settlement Agreement.

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<sup>1</sup> See Order No. 24,577 (January 13, 2006) slip op. at 9.

We are satisfied that Granite State 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 also find that Granite State’s evaluation of the bids and its selection of Con Ed as its DS supplier was reasonable. The testimony of Granite State, together with its Bid Evaluation Report, indicates that the bid prices reflect current market conditions and therefore are reasonable. *See also*, Order No. 24,539 (October 31, 2005) approving Granite State Electric Company’s DS rates for commercial customers, noting the impact of market conditions on rates and the intent of the legislature that DS rates reflect the market. In light of the circumstances, we grant the Petition.

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

**ORDERED**, that the Power Supply Agreement between Granite State Electric Company and Consolidated Edison Energy, Inc. is 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 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 PSA beginning August 1, 2006 are APPROVED; and it is

**FURTHER ORDERED**, that Granite State’s Motion for Confidential Treatment is GRANTED; and it is

**FURTHER ORDERED**, that Granite State shall file conforming tariffs within 30 days of the date of this Order, consistent with NH. Admin. Rule Puc 1603.02.

By order of the Public Utilities Commission of New Hampshire this twenty-second day of June 2006.

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Thomas B. Getz  
Chairman

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Graham J. Morrison  
Commissioner

Attested by:

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ChristiAne G. Mason  
Assistant Executive Director & Secretary