

DE 06-115

GRANITE STATE ELECTRIC COMPANY D/B/A NATIONAL GRID

**Default Service Request for Proposals for the Period November 1, 2006 through
April 30, 2007 and November 1, 2006 through January 1, 2007**

Order Approving Petition

ORDER NO. 24,675

September 29, 2006

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

I. BACKGROUND

On September 25, 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 November 1, 2006, through January 31, 2007, and for its Small Commercial and Residential Customers (Small Customer Group for the period from November 1, 2006, through April 30, 2007). In support of its Petition, Granite State filed the testimony of John D. Warshaw with accompanying schedules.

Granite State 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 Granite State is to use for solicitation and procurement of DS supply for its Large Customer and Small Customer Groups, including the bid evaluation process.

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 Granite State's summary of the company's evaluation of indicative and final bids and the executed Power Supply Agreements (PSA) with Sempra Energy Trading Corporation and TransCanada Power Marketing, Limited (TCPM). Granite State attested that the redacted portions of the PSAs and the RFP bid evaluation contain competitive energy pricing and contract terms which are commercially sensitive, the disclosure of which could be harmful to the competitive position of the winning suppliers and the other respondents to the RFP. Granite State further argued the disclosure of this information could chill the willingness of the suppliers responding to its RFP 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 with respect to the information regarding indicative bids that it provided the Commission Staff (Staff) on that day. Granite State had filed a separate Motion for Confidential Treatment regarding information shared with the Commission Staff (Staff) and the Office of Consumer Advocate (OCA) regarding the indicative bid responses to the RFP.

The Commission announced at its meeting on September 6, 2006 that a hearing on this matter would take place on September 27, 2006 at 1:30 p.m. The hearing was held as scheduled.

II. POSITIONS OF THE PARTIES

A. Granite State

Granite State indicated that it conducted the procurement of DS supply in accordance with applicable New Hampshire rules and regulations and the terms of the Settlement Agreement approved by the Commission in Order No 24,577 (January 13, 2006). Granite State issued the Request for Proposal (RFP) on August 14, 2006, to approximately twenty-five potential suppliers soliciting DS power supply for its Large Customer Group and its Small Customer Group for the period beginning November 1, 2006. Granite State offered that the company also distributed the RFP to all members of the NEPOOL Markets Committee and posted the RFP on its energy supply website. As a result, Granite State maintains that the RFP had wide distribution throughout the New England energy supply marketplace.

According to the company, it initially proposed to receive final bids on September 13, 2006. However, Granite State stated that Connecticut Light and Power Company (CL&P) had issued an RFP for a large load of standard supply service requesting final bids on September 13 and 14, 2006. Granite State testified that it was concerned that requiring suppliers to provide final bids to both CL&P and Granite State on virtually the same day would limit participation in the Granite State RFP. Granite State indicates that it requested Commission approval to change the final bid receipt date to September 20, 2006, and the Commission approved the change by a secretarial letter dated September 7, 2006.

Granite State stated that it reviewed the bids and selected the two suppliers that (i) provided a bid that was conforming to the RFP, (ii) had the lowest price, (iii) passed the company's qualitative and quantitative criteria, and (iv) met the credit requirements described in

the RFP. On September 21, 2006, Granite State stated that it entered into wholesale power supply contracts with Sempra, the winning bidder for the Large Customer Group block, to provide DS to the Large Customer Group for the three-month period from November 1, 2006 through January 31, 2007, and with TCPM, the winning bidder for the Small Customer Group block, to provide Default Service to the Small Customer Group for the six-month period November 1, 2006, through April 30, 2007.

Granite State testified that it entered into energy-only pricing with both TCPM and Sempra. Granite State indicated that National Grid decided to enter into energy-only fixed price contracts for all of its affiliates because it believed there was a “greater than zero” chance that the Forward Capacity Market (FCM) would not start on December 1, 2006, as provided for in the settlement agreement approved by the Federal Energy Regulatory Commission (FERC). If the FCM is delayed beyond December, 2006, Granite State believes that with energy-only contracts customers will benefit from capacity prices that are lower than the transition payments in the FCM settlement agreement and the corresponding implied cost of capacity in the energy-and-capacity bids. Accordingly, Granite State requested approval to pass through to customers the actual market cost of capacity. For retail ratemaking purposes, Granite State calculated a proxy capacity cost which it added to the fixed energy rates and testified that the proxy would be reconciled with actual capacity costs on an annual basis at the same time Granite State reconciles other expenses.

Granite State acknowledged that there is a small risk that, in choosing to pass through the market price of capacity, customers could end up paying more than the FCM transition payments if the FCM is not implemented as scheduled. Based on historical capacity prices, however,

Granite State asserted that it is much more likely that customers will pay less for capacity. For these reasons, Granite State believes that energy-only fixed price contracts are in the best interests of customers.

Granite State testified that DS retail rates for the Large Customer Group will be 7.207 cents per kilowatt hour (kWh) for November 2006, 9.593 cents per kWh for December 2006, and 12.223 cents per kWh for January 2007. The simple average of these monthly rates is 9.674 cents per kWh. This compares to 8.756 cents per kWh, the average of the currently effective monthly rates for the period August 2006 through October 2006.

For the Small Customer Group, Granite State testified that the six-month weighted average DS rate for the period November 1, 2006, through April 30, 2007, is 9.984 cents per kWh. The average compares to the currently effective rate of 8.595 cents per kWh for the period May 2006 through October 2006. According to Granite State, the typical bill impact for a 500 kWh residential default service customer is an increase of \$6.94 or 9.8%, from \$70.96 to \$77.90. Granite State estimates that, for the other customers in the Small Customer Group, increases will range from 9% to 13% for the six-month period, and for the customers in the Large Customer Group, who are charges monthly DS rates bills will decrease by 9% to 11% from the October rate to the proposed November rate.

Granite State testified that the proposed DS rates resulting from this most recent solicitation are consistent with RSA 374-F:3,(V)(c), Commission precedent and are in the public interest as reflective of competitive market prices. Granite State requested the Commission approve the PSAs and the proposed rates to become effective for usage on and after November 1, 2006, no later than September 29, 2006, so that Granite State can provide customers with

sufficient notice of the approved rates to allow them to make alternative supply arrangements if they wish to purchase their electricity from competitive energy suppliers.

B. The Office of Consumer Advocate

The OCA queried Granite State regarding its calculation of the proxy value for the cost of capacity. Granite State explained that it had calculated the implied cost of capacity by comparing the energy-and-capacity bids with the energy-only bids overall, although not on a bidder-specific basis. Granite State compared the average implied costs of capacity with the average over the previous twelve months to test the integrity of the calculated implied capacity cost and concluded that the proxy value was within reasonable limits of expected capacity costs and that significant savings were not anticipated from energy-and-capacity bids compared with energy-only bids with a pass through of actual capacity costs. The OCA concluded by stating that that they had no objection to Granite State's Petition.

C. Commission Staff

Staff questioned whether Granite State could estimate the probability that the FCM market would not be implemented as scheduled, and, in the event FCM was not implemented as scheduled on December 1, 2006, whether there was any risk that consumers would pay more for the cost of capacity on a pass-through basis than on a fixed energy-and capacity basis. Granite State acknowledged that it could not calculate the probability that the FCM would be delayed, but nonetheless believes that if the FCM slipped by a couple of months capacity prices would likely be below \$3.05 per kilowatt-month, which is the transition payment scheduled to take effect December 1, 2006. Staff did not object to Granite State's selection of energy-only fixed price contracts for Large and Small Customer Group DS supplies.

Staff opined that Granite State had complied with the bid solicitation and evaluation process, and had appropriately selected the winning bidders. Staff recommended that the Commission approve the Petition.

III. COMMISSION ANALYSIS

A. Confidentiality

First, we address Granite State's Motion for Confidential Treatment. The materials which Granite State seeks to protect contain: a brief discussion of the selection of the winning bidder; a bidder key that identifies the suppliers who participated in the RFP; the comparative energy and capacity prices received from the bidders, including the estimated total cost according to the evaluation loads provided with the RFP and a ranking of the transactions offered by each bidder in terms of financial security, including consideration of reasonable extension of credit to Granite State and the creditworthiness of the supplier and the credit assurance offered; the information provided by each bidder in the proposal submission forms; and, a redlined version of the negotiated PSA.

Granite State asserts that this information should 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 PSAs 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

indicative bids shared with Staff and the OCA by email on or about September 8, 2006, are confidential.

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." In order to rule on the Motion, we have made an *in camera* review of the material which Granite State asserts is confidential.

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,¹ and we accord confidential treatment of the information exchanged with Staff and the OCA which occurred on or about September 8, 2006, and any subsequent discussion of information for which protection is requested by the company's Motion.

B. Default Service

Regarding Granite State's analysis of the bids and its selection of the winning bidders for DS supply for its Large Customer and Small Customer Groups beginning November 1, 2006, we find that Granite State complied with the procedures approved by Order No. 24,577. 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 Sempra as its DS supplier for the Large Customer Group and TCPM as its DS supplier for the Small Customer Group is reasonable. However, for future RFP evaluations, as uncertainty concerning possible legal challenges and delays to the FCM settlement are likely to be resolved or at least more settled, we would expect that Granite State will do a bid specific analysis of the implied cost of capacity in capacity-and-energy bids, at least for the lowest bidders, compared with energy-only bids plus projections of expected capacity costs if procured and passed through separately. We approve this Petition and we will allow the power supply costs to be included in the company's rates beginning November 1, 2006.

Based upon the foregoing, it is hereby

ORDERED, that the Power Supply Agreement with Sempra Energy Trading Corporation to provide Default Service supply to Granite State's Large Customer Group for the period from November 1, 2006 through January 31, 2007 is hereby APPROVED; and it is

FURTHER ORDERED, that the Power Supply Agreement with TransCanada Power

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

Marketing, Limited to provide Default Service supply to Granite State's Small Customer Group for the period from November 1, 2006 through April 30, 2007 is hereby APPROVED; and it is

FURTHER ORDERED, that that the Motions for Confidential Treatment filed September 11, 2006 and September 25, 2006 are hereby GRANTED; and it is

FURTHER ORDERED, that Granite State shall file conforming tariffs within 30 days of the date of this Order, consistent with N.H. Admin. Rule Puc 1606.02.

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of September, 2006.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Clifton C. Below
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary