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Counsel

February 9, 2004

**VIA ELECTRONIC FILING**

The Honorable Magalie Roman Salas  
Secretary  
Federal Energy Regulatory Commission  
888 First Street, NE  
Washington, DC 20426

Re: Docket Nos. TS04-\_\_\_\_\_ ; RM01-10-000

Dear Secretary Salas:

Please find enclosed for electronic filing in Docket Nos. TS04-\_\_\_\_\_ ;  
RM01-10-000, the "Request for Limited Waiver of National Grid USA."

Please do not hesitate to contact me if you have any questions or concerns.

Respectfully submitted,

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**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

National Grid USA, on behalf of itself and its Affiliates	) ) )	Docket No. TS04-_____
Standards of Conduct for Transmission Providers	) ) )	Docket No. RM01-10-000

**REQUEST FOR LIMITED WAIVER OF  
NATIONAL GRID USA**

Pursuant to Section 358.1(d) of the Commission’s regulations,<sup>1</sup> as adopted in Order No. 2004,<sup>2</sup> National Grid USA (“National Grid”) hereby files this request for limited waiver of the requirements of Order No. 2004. Specifically, National Grid respectfully requests that the Commission waive the “Energy Affiliate”<sup>3</sup> status of National Grid’s subsidiary Granite State Electric Company (“Granite State”).

As explained in more detail below, Granite State would otherwise be exempt from Energy Affiliate status as a state-regulated local distribution company but for limited off-system sales it is compelled to make associated with a mandatory power purchase contract with a 0.068 MW qualifying facility (“QF”) under the Public Utility Regulatory Policies Act of 1978 (“PURPA”) and the New Hampshire Limited Electrical Energy Producers Act (“LEEPA”). Given that Granite State’s interest in such sales and the QF contract itself are both *de minimis*, and that significant reorganization and duplication would be required if National Grid were required to treat Granite State as an Energy

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<sup>1</sup> 18 C.F.R. § 358.1(d).

<sup>2</sup> *Standards of Conduct for Transmission Providers*, 105 FERC ¶ 61,248 (Nov. 25, 2003) (Order No. 2004).

<sup>3</sup> 18 C.F.R. § 358.3.

Affiliate, there is good cause to grant this limited waiver. National Grid respectfully requests that the Commission authorize the treatment of Granite State as an exempt state-regulated local distribution company under 18 C.F.R. § 358.3(d)(5)(v).

In support of this request, National Grid states as follows:

**I. BACKGROUND**

**a. Correspondence and Communications**

Correspondence and communications with respect to this proceeding should be addressed to the following individuals, whose names should be entered on the official service list maintained by the Secretary for this proceeding:

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**b. Order No. 2004**

On November 25, 2003, the Commission issued its Order No. 2004 concerning standards of conduct for transmission providers. As set forth in the General Principles to the new regulations,

- (a) A Transmission Provider's employees engaged in transmission system operations must function independently from . . . any employees of its Energy Affiliates.
- (b) A Transmission Provider must treat all transmission customers, affiliated and non-affiliated, on a non-discriminatory basis, and must not operate its transmission system to preferentially benefit an Energy Affiliate.<sup>4</sup>

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<sup>4</sup> 18 C.F.R. § 358.2.

The Commission's new regulations are designed to prevent the exercise of market power by Transmission Providers to the detriment of non-affiliated transmission customers and the market and to eliminate loopholes in the pre-existing regulations that do not cover certain relationships between the Transmission Provider and its Energy Affiliates.

The definition of Energy Affiliate in the new regulations now encompasses several different types of relationships that were not implicated in the previous regulations. For example, the new definition includes any affiliate of the Transmission Provider that “[m]anages or controls transmission capacity of Transmission Provider in U.S. energy or transmission markets”<sup>5</sup> or “[e]ngages in financial transactions relating to the sale or transmission of natural gas or electric energy in U.S. energy or transmission markets.”<sup>6</sup>

The definition of Energy Affiliate also provides some exceptions. These exceptions recognize that a Transmission Provider's relationship to some categories of affiliates does not pose any significant danger to a properly functioning market and is unlikely to result in discrimination against non-affiliated transmission customers. The exceptions also recognize those relationships that are necessary for coordination of reliable operations. One such exception applies to state-regulated local distribution companies that do not make any off-system sales.<sup>7</sup> In Order No. 2004, the Commission appears to construe this particular exception very narrowly by stating that an affiliated local distribution company that “engages in any off-system sale is an Energy Affiliate, and is subject to the standards of conduct.”<sup>8</sup> Absent the requested waiver, Granite State

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<sup>5</sup> 18 C.F.R. § 358.3(d).

<sup>6</sup> Id.

<sup>7</sup> Id.

<sup>8</sup> Order No. 2004, p. 18, ¶ 44 (emphasis in original).

would be categorized as an Energy Affiliate because of the narrow construction of the exception.

**c. National Grid, Granite State, and Sales of QF Power**

National Grid is a registered public utility holding company system with electric utility subsidiaries operating in Massachusetts, New Hampshire, Rhode Island, and Vermont; a gas and electric utility in New York; and an independent transmission company subsidiary operating in the Midwest. These operating companies are primarily Transmission Providers within the meaning of 18 C.F.R. § 358.3(a).

Granite State is not one of those Transmission Providers. Granite State does not own, operate, or control any transmission facilities, nor does it provide transmission service. Rather, Granite State, a wholly owned subsidiary of National Grid, is an electric distribution company headquartered in Salem, New Hampshire. Granite State is regulated by the New Hampshire Public Utilities Commission as a public utility under New Hampshire law. Granite State provides electric distribution service to approximately 40,000 retail customers (residential, small commercial and industrial, and large commercial and industrial) in twenty-one New Hampshire communities.<sup>9</sup> In order to meet the energy needs of its retail customers, Granite State relies on the transmission facilities owned and/or operated by its sister company New England Power Company (also a wholly-owned subsidiary of National Grid) to transmit the electricity purchased from third-party power suppliers under power supply contracts.

Granite State meets all of its customers' power needs through all-requirements-service supply contracts with third-party power suppliers. These third-party power

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<sup>9</sup> Granite State's sales represent roughly 8% of the total kWh delivered in New Hampshire, as measured in kWh reported to the New Hampshire Public Utilities Commission.

suppliers assume Granite State's wholesale load serving obligations in connection with Granite State's provision of retail services, and these third-party power suppliers participate in the wholesale market to fulfill those load service obligations. In effect, Granite State has nearly completely outsourced its wholesale load serving functions to third parties.

Nevertheless, Granite State is required to purchase the output offered for sale to Granite State from qualifying facilities ("QFs") or limited electrical power producers in its service territory, pursuant to Section 210 of PURPA<sup>10</sup> and pursuant to New Hampshire's LEEPA.<sup>11</sup> This is true even though Granite State does not need QF power to meet the energy needs of its retail customers.

Currently, only one QF sells power to Granite State, and the amount of power sold is negligible compared to Granite State's total load. In 2003, the non-coincident peak load for Granite State was 177.428 MW. In comparison, the peak generation in 2003 for the single QF selling power to Granite State was 0.068 MW. The QF's peak generation thus represents only 0.00038% of Granite State's non-coincident peak load for 2003.

More fundamentally, because Granite State has outsourced its entire wholesale load serving obligation to third party suppliers, the mandatory purchases of QF power are in excess of the energy needed to serve its retail customers.<sup>12</sup> As a consequence, Granite State resells the QF power immediately upon purchase. Granite State, as a member in

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<sup>10</sup> 16 U.S.C. 824a-3.

<sup>11</sup> N.H. R.S.A. c. 362-A.

<sup>12</sup> Furthermore, because Granite State has no control over when the QF will operate its facilities or how much power it will produce, it is impossible for Granite State to rely on this QF for a fixed portion of its energy needs.

good standing of the New England Power Pool, does this by selling the power purchased from the QF into the real-time markets administered by ISO New England. In such transactions, Granite State is a market price taker, accepting the prevailing market price for the QF power, and does not schedule or solicit bids for the QF power. From October 2002 to September 2003, the most recent one-year period for which such figures are available, Granite State received \$20,443.02 for its sales of QF power into the real-time markets. The limited proceeds, if any, available to Granite State after paying the QF for its purchase obligation (in this case, \$5,477.04 from October 2002 to September 2003) are *de minimis*.<sup>13</sup>

Aside from these *de minimis* sales of QF power into the real-time markets, Granite State does not otherwise participate in the wholesale power markets. In essence, Granite State would not participate in the wholesale power markets and would not engage in off-system sales but for the PURPA and LEEPA mandates to purchase QF power.

## **II. REQUEST FOR WAIVER**

Granite State's limited sales of QF power into the real-time markets should not disqualify it from the state-regulated local distribution company exception to the definition of Energy Affiliate in Order No. 2004, and a grant of waiver in this instance is appropriate. National Grid believes that strong public policy and operational reasons weigh in favor of granting the waiver of the Energy Affiliate status of Granite State.

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<sup>13</sup> For the same one-year period, Granite State paid the QF \$14,965.98, representing a net profit of \$5,477.04. The QF power purchase agreement is a fixed-priced contract. During some months, Granite State pays more for the QF power than it correspondingly receives for the same QF power in the real-time market, and during other months, it is the reverse.

As the Commission stated in Order No. 2004 at P.1, the purpose of the new standards of conduct regulations is to “ensure that Transmission Providers [do not] extend their market power over transmission to wholesale energy markets by giving their Energy Affiliates undue preferential treatment.” Presumably, the Commission provided an exception to the Energy Affiliate definition for state-regulated local distribution companies that do not make off-system sales because the Commission believed that the risk of extending market power to such entities was limited and outweighed by clear operational needs to allow Transmission Providers to coordinate with local distribution companies. Granite State’s limited sales of power under a single QF contract do not present any greater risk of extending the market power of National Grid’s Transmission Providers, and there remains a legitimate operational need to allow National Grid’s Transmission Providers to coordinate their operations with their affiliated distribution companies, including Granite State. Consequently, classifying Granite State as an Energy Affiliate does not further the Commission’s objectives.

The relationship between National Grid’s Transmission Provider subsidiaries and Granite State as the state-regulated local distribution company does not result in either entity’s ability to exercise market power or place non-affiliated transmission customers at a competitive disadvantage. Granite State’s *de minimis* QF power sales would not and could not cause National Grid’s Transmission Providers to operate their transmission systems to benefit Granite State preferentially to the detriment of non-affiliated transmission customers. First, local and regional transmission services in New England are offered pursuant to open access tariffs on the same terms and conditions to all customers, irrespective of a given customer’s relationship to National Grid. Moreover,



because regional transmission services are administered and controlled by ISO New England, no National Grid entity possesses the ability to discriminate against non-affiliated transmission customers.

Second, Granite State is required by federal and state law to purchase the output of any QFs in its service territory that offer to sell it power. Granite State has no discretion in this matter. As explained above in Section I(c), Granite State's financial interest in the purchase of QF power is *de minimis* because the proceeds from the sale of QF power into the wholesale markets over and above those that offset the energy costs of Granite State's retail customers are negligible. Granite State would not participate in the wholesale markets but for the statutory mandates to purchase QF power. Furthermore, the *de minimis* QF power sales that Granite State makes into the wholesale markets, as described in Section I(c) above, have virtually no impact on wholesale energy markets.

Subjecting Granite State to Energy Affiliate status would be unduly burdensome. It would be based entirely upon an unfounded concern that the National Grid Transmission Providers will operate their transmission systems to the preferential benefit of Granite State and the *de minimis* QF power purchases and sales that Granite State makes pursuant to statutory mandates.

In the absence of the requested waiver, Energy Affiliate status for Granite State would require significant reorganization and duplication, ultimately jeopardizing the integrated nature of the National Grid companies' transmission and distribution systems. As National Grid's operations currently stand, all of its distribution operations are coordinated by a single distribution dispatch group that also handles transmission operations. Absent the requested waiver, Granite State would be National Grid's only

electric utility subsidiary in New England to be deemed an Energy Affiliate. Thus, under the independent functioning requirement of Order No. 2004,<sup>14</sup> if Granite State were to be classified as an Energy Affiliate, Granite State's distribution system would be restricted from being part of National Grid's coordinated distribution and transmission operations. Essentially, National Grid would then have to create a stand-alone distribution dispatch function, with separate staff and separate control rooms, just for Granite State's distribution system. This substantial cost and reorganization is unnecessary and wholly out of proportion to the roughly \$20,000 in unavoidable and statutorily mandated QF power Granite State sells into the real-time markets per year. Additionally, because Granite State's operations would have to be distinct from the remainder of National Grid's local distribution company operations, National Grid would not obtain the efficiencies flowing from coordinated and unified transmission and distribution operations as contemplated in 18 C.F.R. § 358.3(d)(5). This state of affairs could likely lead to potential reliability issues.

Finally, it should be noted that, notwithstanding the requested limited waiver of Energy Affiliate status for Granite State, National Grid intends to ensure that all of its operating subsidiaries and employees will abide by the various requirements of Order No. 2004. As reflected in the Informational Filing that National Grid is submitting concurrently herewith, National Grid is undertaking substantial efforts to identify Transmission Function Employees; employees engaged in Marketing, Sales or Brokering activities; and shared service employees. National Grid will be adopting a revised Affiliate Standards of Conduct that will cover all of its operating companies, including Granite State. All employees, including those of Granite State, will be prohibited from

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<sup>14</sup> 18 C.F.R. §358.4.

acting as a conduit for sharing unauthorized transmission system information to employees engaged in Marketing, Sales or Brokering activities or any actual Energy Affiliates of National Grid.

Thus, granting the requested limited waiver of Energy Affiliate status for Granite State is consistent with the public interest and will not erode the underlying policies of Order No. 2004.

#### **IV. CONCLUSION**

For the foregoing reasons, National Grid respectfully requests that the Commission grant a limited waiver of Energy Affiliate status for Granite State.

If the waiver request is denied, National Grid respectfully requests that the Commission grant National Grid: (i) sixty (60) days from the date its order becomes final and non-appealable to comply with any provision that is not waived, or (ii) such other relief as may be necessary for National Grid to comply with the Commission's requirements under Order No. 2004.

Respectfully submitted,

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Attorneys for National Grid USA and  
Granite State Electric Company

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**UNITED STATES OF AMERICA  
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National Grid USA, on behalf of itself and its Affiliates	) ) ) )	Docket No. TS04-_____
Standards of Conduct for Transmission Providers	) ) )	Docket No. RM01-10-000

**NOTICE OF FILING**

Take notice that on February 9, 2004, National Grid USA filed on behalf of itself and its affiliates a request for limited waiver related to the Commission's Order No. 2004.

A copy of this filing is posted on the OASIS sites under which the National Grid USA companies operate and was served upon the New Hampshire Public Utilities Commission.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at <http://www.ferc.gov>, using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll-free at (866)208-3676, or for TTY, contact (202)502-8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "eFiling" link. The Commission strongly encourages electronic filings.

Comment Date:

Magalie R. Salas, Esq.  
Secretary

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon the New Hampshire Public Utilities Commission at the following address:

Honorable Debra A. Howland  
Executive Director and Secretary  
New Hampshire Public Utilities Commission  
8 Old Suncook Road  
Concord, NH 03301-7319

Dated at Westborough, MA, this 9<sup>th</sup> day of February, 2004.

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Susan Costa