

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
ENERGY FACILITY SITING BOARD

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PUBLIC UTILITIES COMMISSION

In re The Narragansett Electric Company :
d/b/a National Grid : Docket No. SB2018-06
(GrowthPoint - Southern Rhode Island :
Growth Reinforcement Project :
West Warwick, Warwick, East Greenwich) :

**Motion of The Narragansett Electric Company d/b/a National Grid
for Protective Treatment of Confidential Information**

Now comes The Narragansett Electric Company d/b/a National Grid (“TNEC” or the “Company”) and hereby moves that the Energy Facility Siting Board (“EFSB” or the “Board”) grant protection from the public disclosure of certain confidential information submitted in this proceeding, as permitted by R.I.G.L. §38-2-2(4)(F).

I. INTRODUCTION

The GrowthPoint - Southern Rhode Island Growth Reinforcement Project (the “Project”) is designed to address natural gas distribution capacity issues in the Company’s southern Rhode Island service territory by installing approximately five miles of new 20-inch steel distribution main parallel to the existing 12-inch distribution main located under Route 2 through West Warwick, Warwick, and East Greenwich.

Concurrently with this Motion, the Company is submitting a Petition for Declaratory Order (“Petition”) to the EFSB requesting a determination that the Project is not an alteration of a major energy facility. The Petition is being submitted with a Siting Report (the “Report”) and Siting Report figures (collectively with the Petition; the “Filing”). The redactions are found in limited sections of the Report (portions of Chapters 1 and 2) and are needed to avoid public

disclosure of critical energy infrastructure information (“CEII”). The CEII in the Report should not be treated as a public record under state law as the information is highly sensitive scientific and technological data about the existing distribution infrastructure, “the disclosure of which would endanger the public welfare and security.” R.I.G.L. §38-2-2(4)(F). This motion seeks protection for the unredacted confidential version of the Report and any other CEII which may be used during these proceedings (collectively, “CEII Materials”).

CEII is defined by the Federal Energy Regulatory Commission (“FERC”) as:

Specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure (physical or virtual) that:

1. Relates details about the production, generation, transmission, or distribution of energy;
2. Could be useful to a person planning an attack on critical infrastructure;
3. Is exempt from mandatory disclosure under the [Federal] Freedom of Information Act, 5 U.S.C. § 552; and
4. Does not simply give the general location of the critical information.

18 CFR § 388.113(c)(1). In turn, “critical infrastructure” is defined as:

Existing and proposed systems and assets, whether physical or virtual, the incapacity or destruction of which would negatively affect security, economic security, public health or safety, or any combination of those matters.

18 CFR § 388.113(c)(2).

Accordingly, the Company requests that a protective order be issued by the EFSB to protect from public disclosure the CEII Materials and that any such information which is used in these proceedings be made a part of a sealed record.

II. LEGAL STANDARD

Rhode Island’s Access to Public Records Act (“APRA”), R.I.G.L. §38-2-1 *et. seq.*, sets forth the parameters for public access to documents in the possession of state and local

government agencies. Under APRA, all documents and materials submitted in connection with the transaction of official business by an agency are deemed to be a “public record,” unless the information contained in such documents and materials falls within one of the exceptions specifically identified in R.I.G.L. §38-2-2(4). Therefore, to the extent that information provided to the Board falls within one of the designated exceptions to APRA, the Board has the authority under the terms of APRA to deem such information to be confidential and to protect that information from public disclosure.

In that regard, R.I.G.L. §38-2-2(4)(F) provides that the following records shall not be deemed public:

Scientific and technological secrets and the security plans of military and law enforcement agencies, the disclosure of which would endanger the public welfare and security.

The Rhode Island Supreme Court has held that the agencies making determinations as to the disclosure of information under APRA may apply the balancing test established by the Court in Providence Journal v. Kane, 577 A.2d 661 (R.I. 1990). Under this balancing test, the Board may protect information from public disclosure if the benefit of such protection outweighs the public interest inherent in disclosure of information pending before regulatory agencies.

III. BASIS FOR CONFIDENTIALITY

The Company seeks protection from public disclosure of CEII Materials not for its own internal purposes, but for the welfare and safety of the public. The general practice of the Company and its affiliates is to provide CEII Materials to select external audiences on a need-to-know basis after execution of Non-Disclosure Agreements. Because of national security

concerns as evidenced by FERC's CEII regulations, quoted above, the Company seeks a Protective Order for the CEII Materials in this proceeding.

The benefits of protecting this information from disclosure outweigh the public interest inherent in disclosure of information pending before regulatory agencies. Maintaining the confidentiality of the natural gas distribution infrastructure information in the CEII Materials is critical to the safe and reliable operation of the natural gas distribution system and the safety of the public in general. Disclosure of this information to the public could facilitate the ability of individuals to damage the Company's gas distribution infrastructure. Further, the CEII Materials are the technical details of the distribution system which should be of no interest to the public. The fundamentals of the Project, such as the summary of the Project components, the construction methods, and natural and social impacts, are not redacted from the Filing.

Public disclosure of this information would be contrary to the public interest and represent an undue risk to public safety. Extreme care must be exercised to protect sensitive information regarding the location of and operating information related to critical natural gas infrastructure from unnecessary public disclosure. For these reasons, the Board should determine that the CEII materials are "scientific and technological secrets ... the disclosure of which would endanger the public welfare and security" and provide protective treatment for the CEII Materials by granting this Motion for a Protective Order pursuant to R.I.G.L. §38-2-2(4).¹

¹ 18 CFR §§388.112 and .113 of the FERC regulations provide for protection of CEII material submitted to FERC. As such, CEII material is also exempt from public disclosure under §38-2-2(4)(S) which exempts from disclosure records "required to be kept confidential by federal law or regulation..."

IV. CONCLUSION

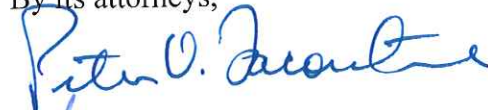

The Company respectfully requests that the CEII Materials identified herein (i) be kept confidential indefinitely, (ii) not be placed in the public docket, and (iii) be disclosed only to the Board and to other parties that sign non-disclosure agreements.

WHEREFORE, the Company respectfully requests that the Board grant its Motion for Protective Treatment as stated herein.

Respectfully submitted,

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National Grid

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