

July 15, 2008

**VIA HAND DELIVERY & ELECTRONIC MAIL**

Luly E. Massaro, Commission Clerk  
Rhode Island Public Utilities Commission  
89 Jefferson Boulevard  
Warwick, RI 02888

**RE:   Docket 3943 – National Grid Request for Change of Gas Distribution Rates  
      Responses to TEC-RI and Wiley Center Data Requests – Set 1**

Dear Ms. Massaro:

Enclosed please find ten (10) copies of National Grid's<sup>1</sup> responses to the first set of data requests issued by The Energy Council of Rhode Island ("TEC-RI") and the Wiley Center in the above-captioned proceeding on June 24, 2008.

Please note that the Company's filing also includes responses to Data Requests DIV-5-13, DIV-5-15, DIV-5-16 and DIV-7-3, which the Company omitted from previous filings. Attached is a listing of the outstanding data requests for which the Company has not yet provided a response.

In addition, please be advised that the Company is seeking protective treatment of certain confidential contract terms provided in response to Data Request TEC-RI-1-23, as permitted by Commission Rule 1.2(g) and by R.I.G.L. § 38-2-2(4)(i)(B). The Company has submitted a Motion for Protective Treatment under separate cover along with a copy of the confidential contracts to the Commission pending a determination on the Company's Motion. The Company has submitted a redacted version of the response in this filing for the public record. In addition, the Company plans to provide a copy of the confidential attachment to the Division and the Attorney General's Office in accordance with an executed non-disclosure agreement.

Thank you for your attention to this transmittal. If you have any questions, please feel free to contact me at (401) 784-7667.

Very truly yours,



Thomas R. Teehan

Enclosures

cc:     Docket 3943 Service List

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<sup>1</sup> The Narragansett Electric Company d/b/a National Grid ("Company").

Outstanding Responses to Information Requests as of July 15, 2008

Data Request DIV 3-6  
Data Request DIV 5-2  
Data Request DIV 5-8  
Data Request DIV 5-35  
Data Request DIV 5-36  
Data Request DIV 5-41  
Data Request DIV 5-42  
Data Request DIV 5-43  
Data Request DIV 6-14  
Data Request DIV 6-22  
Data Request DIV 6-24  
Data Request DIV 6-25  
Data Request DIV 7-5  
Data Request DIV 7-6  
Data Request TEC-RI-1-7  
Data Request TEC-RI-1-11  
Data Request TEC-RI-1-18  
Data Request TEC-RI-1-19  
Data Request TEC-RI-1-34  
Data Request TEC-RI-1-38  
Data Request TEC-RI-1-50  
Data Request TEC-RI-1-51  
Data Request TEC-RI-1-60  
Data Request TEC-RI-1-61  
Data Request TEC-RI-1-71  
Data Request TEC-RI-1-72  
Data Request TEC-RI-1-73  
Data Request TEC-RI-1-75

July 15, 2008

**VIA HAND DELIVERY & ELECTRONIC MAIL**

Luly E. Massaro, Commission Clerk  
Rhode Island Public Utilities Commission  
89 Jefferson Boulevard  
Warwick, RI 02888

**RE: Docket 3943 – National Grid Request for Change of Gas Distribution Rates  
Motion for Protective Treatment**

Dear Ms. Massaro:

Enclosed please find one original and nine (9) copies of National Grid's<sup>1</sup> Motion for Protective Treatment concerning the Company's responses to TEC-RI's first set of data requests being filed under separate cover in the above-captioned proceeding.

Thank you for your attention to this transmittal. If you have any questions, please feel free to contact me at (401) 784-7667.

Very truly yours,



Thomas R. Teehan

Enclosures

cc: Docket 3943 Service List

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<sup>1</sup> The Narragansett Electric Company d/b/a National Grid ("Company").

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**

**RHODE ISLAND PUBLIC UTILITIES COMMISSION**

_____	)	
National Grid	)	
Application to Change Rate Schedules	)	Docket 3943
	)	
_____	)	

**MOTION OF NATIONAL GRID  
FOR PROTECTIVE TREATMENT OF CONFIDENTIAL INFORMATION**

Now comes The Narragansett Electric Company d/b/a National Grid (“National Grid” or the “Company”) and hereby requests that the Rhode Island Public Utilities Commission (the “Commission) grant protection from public disclosure of certain confidential, competitively sensitive and proprietary information submitted in this proceeding, as permitted by Commission Rule 1.2(g) and by R.I.G.L. § 38-2-2(4)(i)(B).

**I. BACKGROUND**

On Tuesday, July 15, 2008, the Company filed responses to data requests issued by The Energy Council of Rhode Island (“TEC-RI”) in the above-referenced proceeding concerning the Company’s application for a change in base rates. In those data requests, TEC-RI requested the confidential contracts executed by National Grid with Concentric Energy Advisors (“CEA”) for professional consulting services rendered in this docket. The Company is submitting those contracts in response to Data Request TEC-RI 1-23. For the reasons stated below, the Company requests that certain contract terms be protected from public disclosure. For the public record, the Company has filed a redacted version of the contracts disclosing their terms with the exception of confidential

pricing data contained therein. The Company is requesting protective treatment only of the competitively sensitive pricing terms contained in those contracts.

## **II. LEGAL STANDARD**

The Commission's Rule 1.2(g) provides that access to public records shall be granted in accordance with the Access to Public Records Act ("APRA"), R.I.G.L. §38-2-1, *et seq.* Under APRA, all documents and materials submitted in connection with the transaction of official business by an agency is 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 Commission falls within one of the designated exceptions to the public records law, the Commission 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)(i)(B) provides that the following records shall not be deemed public:

Trade secrets and commercial or financial information obtained from a person, firm, or corporation which is of a privileged or confidential nature.

The Rhode Island Supreme Court has held that the determination as to whether this exemption applies requires the application of a two-pronged test set forth in Providence Journal Company v. Convention Center Authority, 774 A.2d 40 (R.I.2001). The first prong of the test assesses whether the information was provided voluntarily to the governmental agency. Providence Journal, 774 A.2d at 47. If the answer to the first question is affirmative, then the question becomes whether the information is "of a kind

that would customarily not be released to the public by the person from whom it was obtained.” Id.

In addition, the 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 Commission 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**

National Grid seeks protection from public disclosure for the competitively sensitive pricing terms set forth in the CEA contracts for professional consulting services. The pricing terms represent proprietary and competitively sensitive data for CEA in relation to its various clients and in relation to its competitors in the marketplace. If this information was disclosed on the public record, both CEA’s ability to protect its competitive pricing information from disclosure to current and potential clients and competitor, as well as the Company’s ability to contract for consulting services at a competitive price would be harmed. Public disclosure of the competitively sensitive pricing terms would be commercially harmful to National Grid and its customers because consultants providing other services to the Company could be motivated to refrain from providing services to National Grid or to provide those services at non-competitive prices. This would have the effect of increasing costs to the Company in the future. Also, if the confidential price terms are disclosed, competitors of CEA would gain important, competitively sensitive information regarding the CEA’s rate structure, which

would unfairly disadvantage CEA in the market place. As a result, disclosure of the competitively sensitive price terms would potentially impede the Company's ability to obtain the best possible price and access to consulting services in the future.

Consistent with the standard for confidentiality established under Rhode Island law, the confidential price terms are information "of a kind that would customarily not be released to the public by the person from whom it was obtained." The Company is under no obligation in any other forum to disclose the information and, as is customary in relation to any type of service provided by an outside vendor, the Company would not ordinarily release the information in a public forum because of the detrimental impact that such a release would have on the business interests of its contractual partners. In addition, the Company is releasing all other information contained in the professional services contract for the public record to assist in the Commission's evaluation of the Company's proposals in this case. Accordingly, in this case, the need to ensure that the competitively sensitive price terms are protected outweighs the general public interest inherent in disclosure of information pending before regulatory agencies.

## **V. CONCLUSION**

The competitively sensitive price terms contained in the CEA contracts for professional consulting services are confidential, commercially sensitive and proprietary. Disclosure of this information on the public record would be detrimental to the public interest in that it would negatively affect the Company's bargaining position in negotiating a contract for consulting services in the future and the Company's ability to minimize the cost of those services. Accordingly, the Company requests that the

Commission protect the confidential information submitted in response to Data Request TEC-RI-1-23.

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

Respectfully submitted,

**NATIONAL GRID**

By its attorneys,



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Thomas R. Teehan, Esq.  
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280 Melrose Street  
Providence, RI 02907  
(401) 784-7667



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Cheryl M. Kimball, Esq. (RI #6458)  
Keegan Werlin LLP  
265 Franklin Street  
Boston, Massachusetts 02110  
(617) 951-1400

Dated: July 15, 2008



### Certificate of Service

I hereby certify that a copy of the cover letter and/or any materials accompanying this certificate were electronically submitted, hand delivered and mailed to the individuals listed below.

/S/  
Linda Samuelian

July 15, 2008  
Date

**National Grid (NGrid) – Request for Change in Gas Distribution Rates  
Docket No. 3943 - Service List as of 7/7/08**

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