

May 21, 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's¹ Motion for Protective Treatment concerning the Company's responses to the Division's second 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

¹ 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 Department of Public Utilities (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 Wednesday, May 21, 2008, the Company filed responses to data requests issued by the Rhode Island Division of Public Utilities and Carriers (the “Division”) in the above-referenced proceeding concerning the Company’s application for a change in base rates. In those data requests, the Division requested the electronic spreadsheets supporting the Company’s initial filing. In response to Data Request DIV 2-8, the Company is submitting the proprietary rate design model developed for the Company by Concentric Energy Advisors (“CEA”) for Exhibit NG-DAH-2. For the reasons stated below, the Company requests that this electronic model be protected from public disclosure. For the public record, the Company has filed the non-electronic version of

Exhibit NG-DAH-2, which sets forth all pertinent information necessary to evaluate the Company's filing. The Company is requesting protective treatment only of the formulas and numerical operations contained in the electronic files.

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 confidential electronic model used to establish the Company’s rate-design proposal. The electronic model was developed by CEA for the purpose of serving its clients and represents proprietary intellectual property for CEA. If this information was disclosed on the public record, both CEA’s ability to protect its work product and the Company’s ability to contract for consulting services at a competitive price would be harmed. Public disclosure of the electronic model would be commercially harmful to National Grid and its customers because potential consultants providing other services to the Company would refrain from providing use of their work product to National Grid. This would have the effect of increasing costs to the Company in the future. Also, if the electronic model is disclosed, competitors of CEA would gain important, competitively sensitive information regarding the CEA’s work product, which would unfairly disadvantage CEA in the market place. As a result, disclosure of the electronic model 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 proprietary electronic model is 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 proprietary work product, 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 has already released the information derived from the model for the public record and 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 electronic model is protected outweighs the general public interest inherent in disclosure of information pending before regulatory agencies.

V. CONCLUSION

The electronic rate-design model is confidential, commercially sensitive and proprietary. Disclosure of the electronic model 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 electronic model submitted in response to Data Requests DIV 2-8.

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

Respectfully submitted,

NATIONAL GRID

By its attorneys,



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



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

Dated: May 21, 2008