

May 19, 2008

**VIA HAND DELIVERY & ELECTRONIC MAIL**

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

**RE: Petition and Request for Expedited Review of The Narragansett Electric Company**

Dear Ms. Massaro:

Enclosed for filing is the proposed Settlement Agreement relative to the above-referenced filing by The Narragansett Electric Company d/b/a National Grid (“National Grid”). In compliance with Rule 1.2(g) of the Rhode Island Public Utilities Commission’s (“Commission”) Rules of Practice and Procedure, National Grid is providing one complete unredacted copy of the confidential document in a sealed envelope marked “**Contains Privileged and Confidential Materials –Do Not Release.**”

Also enclosed for filing is an original and nine (9) copies of National Grid’s Request for Protective Treatment of Confidential Information. Pursuant to Rules 1.2 and 1.5 of the Commission’s Rules of Practice and Procedure, National Grid requests that the Commission provide confidential treatment to the proposed Settlement Agreement as set forth therein and make a finding that it is exempt from the mandatory disclosure requirements of the Access to Public Records Act. RIGL § 38-2-1 et seq. National Grid also hereby requests that pending entry of that finding, the Commission preliminarily grant National Grid’s request for confidential treatment pursuant to Rule 1.2 (g)(2).

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

Very truly yours,



Thomas R. Teehan

Enclosures

cc:

Paul Roberti, Esq., Office of the Attorney General  
Steve Scialabba, RI Division of Public Utilities and Carriers

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**  
**RHODE ISLAND PUBLIC UTILITIES COMMISSION**

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**In Re:**  
**Petition and Request for Expedited Review**  
**of The Narragansett Electric Company**  
**d/b/a National Grid**

Docket \_\_\_\_\_

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**NATIONAL GRID'S REQUEST**  
**FOR PROTECTIVE TREATMENT OF CONFIDENTIAL INFORMATION**

Pursuant to Rules 1.2 and 1.5 of the PUC Rules of Practice and Procedure, National Grid requests that the Commission provide confidential treatment to the proposed Settlement Agreement, as set forth therein, which is submitted herewith, and make a finding that it is exempt from the mandatory disclosure requirements of the Access to Public Records Act. RIGL § 38-2-1 et seq. National Grid also hereby requests that, pending entry of that finding, the Commission preliminarily grant National Grid's request for confidential treatment pursuant to Rule 1.2 (g)(2).

**I. BACKGROUND**

The Narragansett Electric Company d/b/a National Grid (hereinafter "National Grid" or "Company") has submitted a Petition to the Rhode Island Public Utilities Commission ("Commission") requesting that the Commission approve a proposed Settlement Agreement in connection with litigation now pending in TransCanada Power Marketing Ltd. v. The Narragansett Electric Co., Civil Action No. 05-40076-FDS, in the U.S. District Court for the District of Massachusetts ("Litigation"). This Litigation

involves subject matter that is similar to that involved in ongoing litigation involving another supplier who very recently filed a claim against the Company seeking over \$100 million in additional standard offer costs from National Grid and, consequently, its standard offer customers. As an exhibit to its petition, National Grid has submitted to the Commission a copy of the proposed Settlement Agreement. National Grid seeks confidential treatment and a finding by the Commission that the Settlement Agreement is exempt from the disclosure provisions of the Rhode Island Access to Public Records Act RIGL § 38-2-1 et seq.

## **II. LEGAL STANDARD AND DISCUSSION**

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 types of 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 this confidential information exemption applies where disclosure of information would be likely either (1) to impair the Government's ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained. Providence Journal Company v. Convention Center Authority, 774 A.2d 40 (R.I.2001).

The first prong of the test is satisfied when information is voluntarily provided to the governmental agency and that information is "of a kind that would customarily not be released to the public by the person from whom it was obtained." Providence Journal, 774 A.2d at 47. In the instant case, it is clear that the Company is voluntarily producing the Settlement Agreement to the Commission. Additionally, a confidential settlement agreement such as this is the type of information that a party would not customarily release to the public. Thus, the Settlement Agreement is protected under the first prong of the test, and National Grid's request for confidential treatment should be granted.

With respect to the second prong of the confidential information test, it is clear that the proposed Settlement Agreement contains information the disclosure of which would substantially harm National Grid's competitive position in light of the fact that that it could affect similar ongoing litigation involving another supplier who very recently filed a claim against the Company seeking over \$100 million in additional standard offer costs from National Grid and, consequently, its standard offer customers. Thus, the Settlement Agreement is protected under both prongs of the analysis under §38-2-2(4)(i)(B), and the Commission should so find.

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 in Providence Journal v. Kane, 577 A.2d 661 (R.I.1990). Under that 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. In our case, for the reasons described above, any public interest in the settlement agreement's disclosure does not outweigh National Grid's interest, and the interest of its customers, in keeping the information confidential during the pendency of the other litigation matter.

Finally, the Settlement Agreement is also exempt from disclosure under §38-2-2(4)(i)(E) of the APRA, which protects from public disclosure “[a]ny records which would not be available by law or rule of court to an opposing party in litigation.”

In our case, the Settlement Agreement is an offer of compromise protected by Rule 408 of the Federal Rules of Evidence, which applies to compromises or attempts to compromise claims.

### **III. CONCLUSION**

The proposed Settlement Agreement is exempt from disclosure under the APRA and should be granted confidential treatment. Accordingly, National Grid respectfully requests that the Commission grant its Request for Protective Treatment.

Respectfully submitted,

NATIONAL GRID

By its attorney,



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Thomas R. Teehan, Esq. #4698  
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Dated: May 19, 2008