

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

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**Fuel Adjustment Factor Tariff Filing  
of the Narragansett Electric Company  
d/b/a National Grid**

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Docket No. 3969

**INTERVENOR CONSTELLATION’S OBJECTIONS AND RESPONSES TO  
NARRAGANSETT ELECTRIC COMPANY’S FIRST SET OF DATA REQUESTS**

Pursuant to Rules 1.18(c)(3) and 1.15 of the Commission’s Rules of Practice and Procedure, Constellation Energy Commodities Group, Inc. (“Constellation”) objects to Narragansett Electric Company d/b/a National Grid’s (“NEC”) first set of data requests as beyond the scope of this proceeding.<sup>1</sup>

On June 30, 2008, NEC filed for conditional approval of a fuel adjustment factor mechanism. NEC’s alleged that its proposed design was based on wholesale market conditions and argued that only natural gas should be used as an index because of its affects on wholesale market prices:

The mechanism in 1998 was tied to both the market price of natural gas and the market price of oil. While prior to 1998 the wholesale prices for electricity were affected by both oil and gas prices, such is not the case today. In contrast, over ten years later, the *wholesale energy market price* for electricity is primarily determined by natural gas prices.

NEC Tariff Filing, June 30, 2008, at 3 (emphasis added). NEC stated that its proposed “fuel adjustment mechanism” was intended to reflect the “escalating natural gas prices that affect *the*

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<sup>1</sup> Constellation has sought and was denied NEC’s concurrence in its objection to the data requests.

*market price* of electricity.” *Id.* at 4 (emphasis added). The scope of the proceeding is limited to NEC’s tariff filing and, therefore, is limited to a fuel adjustment factor mechanism that would “conditionally” apply prospectively from August 1, 2008 and reasonably reflects the affect of fuel costs on wholesale market prices for electricity.

NEC admitted to the limited nature of this proceeding in its own filing with the Commission. Repeatedly, NEC reminds the Commission that it and Constellation are currently engaged in litigation in the United States District Court for the District of Massachusetts concerning NEC’s obligation under the parties’ contracts to file a tariff with the Commission requesting a fuel adjustment. *Constellation v. NEC*, No. 08-40068 (D. Mass); *see also* NEC Tariff Filing, at 1-2; Constellation Motion to Intervene, July 25, 2007, at ¶ 8-9. In its filing, NEC stated that “the Company is not asking the Commission to make a determination whether the WSOAs actually require fuel adjustment factor payments to be made after 2004. That is a matter that must be left to the court.” NEC Tariff Filing, at 4. Indeed, the pending district court litigation will determine the parties’ rights and obligations under the agreements, including (1) whether NEC was contractually obligated to file a fuel adjustment from 2004 forward, and (2) the form any such filing should have taken given the agreement of the parties. Resolved to leave questions of contract interpretation and application to the district court, NEC requested only a “conditional” tariff for the period from August 2008 forward—a tariff conditioned, of course, on the resolution of the case in the district court.

In light of the limited scope of the tariff filing pending before the Commission, Constellation responds to NEC’s data requests as follows:

NEC Request # 1. Please describe in reasonable detail how Constellation has procured all power supply, including all market projects required under ISO rules for loan serving entities (the “Power Supply”), for purposes of serving standard offer load in Rhode Island from 1998 until the present (the “Relevant Period”). Please also explain how Constellation manages that supply for purposes of serving standard offer load in Rhode Island.

**OBJECTION:** Constellation objects on the basis that this request is outside the scope of the tariff provision pending before the Commission. NEC requested that its conditional filing be effective prospectively from August 1, 2008, and its proposed mechanism was designed, albeit incorrectly in Constellation’s view, to reflect the affects of fuel costs on wholesale market prices for electricity. How Constellation procures power and manages its risks are not relevant or reasonably calculated to lead to the discovery of relevant information to NEC’s tariff filing, which addresses only whether wholesale electricity market prices are affected by high fuel costs. Further, this request asks for information since 1998, which is not relevant or reasonably calculated to lead to the discovery of relevant information to the Commission’s consideration of NEC’s “conditional” tariff to apply from August 1, 2008 and forward.

NEC Request # 2. Please identify all power supply contracts that Constellation has with any party in the New England ISO region from which Constellation has purchased all or a portion of the Power Supply to serve standard offer load in Rhode Island for the last thirty months. In identifying the contracts, please identify the party, the term, the market products purchased by month, quantities purchased by month, and pricing by month.

**OBJECTION:** Constellation objects on the basis that this request is outside the scope of the tariff provision pending before the Commission. NEC requested that its conditional filing be effective prospectively from August 1, 2008, and its proposed mechanism was designed, albeit incorrectly in Constellation’s view, to reflect the affects of fuel costs on wholesale market prices for electricity. How Constellation procures power and manages its risks are not relevant or reasonably calculated to lead to the discovery of relevant information to NEC’s tariff filing, which addresses only whether wholesale electricity market prices are affected by high fuel costs.

Further, this request asks for power supply contracts for the last 30 months. Constellation's power supply contracts that do not extend into the period covered by NEC's "conditional" tariff filing, which NEC requested to apply starting August 1, 2008, are not within the scope of this proceeding.

NEC Request # 3. Please identify any financial instruments or agreements entered into by Constellation for the purposes of hedging or managing all or a portion of costs for providing the Power Supply to serve standard offer load in Rhode Island. In identifying the contracts, please identify the party, the term, the nature of the financial arrangement, total payments made or received by month, and pricing.

**OBJECTION:** Constellation objects on the basis that this request is outside the scope of the tariff provision pending before the Commission. NEC requested that its conditional filing be effective prospectively from August 1, 2008, and its proposed mechanism was designed, albeit incorrectly in Constellation's view, to reflect the affects of fuel costs on wholesale market prices for electricity. How Constellation procures power and manages its risks are not relevant or reasonably calculated to lead to the discovery of relevant information to NEC's tariff filing, which addresses only whether wholesale electricity market prices are affected by high fuel costs. Constellation objects to this request to the extent it seeks information prior to the period covered by NEC's "conditional" tariff filing, which NEC requested to apply starting August 1, 2008.

NEC Request # 4. How has Constellation tracked the actual costs and revenues associated with serving standard offer load in Rhode Island separately from its other power supply business. Please provide copies of internal financial analyses and memos reflecting such tracking. Please also state for each year during the Relevant Period the costs and revenues arising out of providing wholesale standard offer supply in Rhode Island. Please itemize the costs by component. To the extent any costs are a result of allocating a portion of costs to Rhode Island, please identify such allocated portion and the method of allocation.

**OBJECTION:** Constellation objects on the basis that this request is outside the scope of the tariff provision pending before the Commission. NEC requested that its conditional filing be effective prospectively from August 1, 2008, and its proposed mechanism was designed, albeit

incorrectly in Constellation's view, to reflect the affects of fuel costs on wholesale market prices for electricity. How Constellation procures power and manages its risks are not relevant or reasonably calculated to lead to the discovery of relevant information to NEC's tariff filing, which addresses only whether wholesale electricity market prices are affected by high fuel costs. Constellation objects to this request to the extent it seeks information prior to the period covered by NEC's "conditional" tariff filing, which NEC requested to apply starting August 1, 2008.

NEC Request # 5. Has Constellation made any projections of costs and revenues of its wholesale power supply contracts serving standard offer load in Rhode Island separately from its other power supply business? If so, please provide copies of any analyses performed during the Relevant Period, showing any monthly, quarterly, and annual projections.

**OBJECTION:** Constellation objects on the basis that this request is outside the scope of the tariff provision pending before the s Commission. NEC requested that its conditional filing be effective prospectively from August 1, 2008, and its proposed mechanism was designed, albeit incorrectly in Constellation's view, to reflect the affects of fuel costs on wholesale market prices for electricity. How Constellation procures power and manages its risks are not relevant or reasonably calculated to lead to the discovery of relevant information to NEC's tariff filing, which addresses only whether wholesale electricity market prices are affected by high fuel costs. Constellation objects to this request to the extent it seeks information prior to the period covered by NEC's "conditional" tariff filing, which NEC requested to apply starting August 1, 2008.

NEC Request # 6. Does Constellation support the approval of the FAF Tariff by the Commission, as proposed by Narragansett Electric in this docket? Whatever the answer, please fully explain the basis for the answer and provide all supporting documentation.

**OBJECTION:** Constellation objects on the basis that this request is a premature request for testimony. Without waiving any objection, Constellation does not support the approval of the

FAF Tariff by the Commission as proposed by NEC. Constellation will support its position on this issue in its testimony and provide appropriate documentation at that time.

NEC Request # 7. When is the first time that Constellation notified Narragansett Electric that Constellation claimed entitlement to an additional payment for a Fuel Adjustment Factor for the period commencing on January 1, 2005. Please set forth the details re this notice, including the date, form, and substance of the notice. If the notice was written please provide a copy and any proof of delivery.

**OBJECTION:** Constellation objects on the basis that this request is outside the scope of the Commission's inquiry. Constellation's notice to NEC regarding NEC's past failure to file a fuel adjustment is not relevant or reasonably calculated to lead to the discovery of relevant information to the Commission's consideration of the fuel adjustment for 2008 and forward. Further, this request improperly seeks to elicit documents and data relevant to the pending litigation in the United States District Court for the District of Massachusetts and that have no bearing on the Commission's consideration of NEC's tariff filing.

NEC Request # 8. When did Constellation learn that TransCanada claimed an entitlement to an additional payment from Narragansett Electric for a Fuel Adjustment Factor for power supply to serve the standard offer load in Rhode Island? When did Constellation first assert a similar claim and why did it do so at that particular time? Please explain completely and specifically the basis for all answers and provide supporting documentation.

**OBJECTION:** Constellation objects on the basis that this request is outside the scope of the Commission's inquiry. Constellation's knowledge of TransCanada's lawsuit regard fuel adjustments is not relevant or reasonably calculated to lead to the discovery of relevant information to the Commission's consideration of NEC's tariff filing in this proceeding. Further, this request improperly seeks to elicit documents and data relevant to the pending litigation in the United States District Court for the District of Massachusetts and that have no bearing on the Commission's consideration of NEC's tariff filing.

NEC Request # 9. For the period from January 2005 through March 2008, is it Constellation's position that it is owed any payments in addition to those already made by Narragansett Electric for standard offer service provided to Narragansett Electric's customers in Rhode Island? If yes, please state the basis and method for calculating any such additional payments and explain fully why Constellation did not invoice Narragansett Electric for any such additional payments during that time period. Please also explain why Constellation chose not to notify Narragansett Electric prior to April of 2008 that Constellation claimed an entitlement to such additional payments for the period from January 2005 through April of 2008.

**OBJECTION:** Constellation objects to this request because it is not relevant or reasonably calculated to lead to the discovery of relevant information to NEC's tariff filing, which addresses only whether wholesale electricity market prices are affected by high fuel costs. NEC argued in its tariff filing that whether the parties' agreements require additional fuel adjustment factor payments after 2004 "is a matter that must be left to the court":

With this filing, the Company is not asking the Commission to make a determination whether the WSOSAs actually require fuel adjustment factor payments to be made after 2004. That is a matter that must be left to the court.

NEC Tariff Filing, at 4. Constellation's rights and obligations under the parties' agreements are not relevant or reasonably calculated to lead to the discovery of relevant information to the Commission's consideration of NEC's tariff filing in this proceeding. Further, this request improperly seeks to elicit documents and data relevant to the pending litigation in the United States District Court for the District of Massachusetts and that have no bearing on the Commission's inquiry. Constellation also objects to this request because it seeks information prior to the period covered by NEC's "conditional" tariff filing, which NEC requested to apply starting August 1, 2008.

Respectfully submitted,

CONSTELLATION ENERGY COMMODITIES  
GROUP, INC.

By its attorneys,



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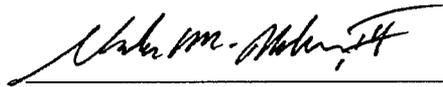
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Dated: August 12, 2008

**CERTIFICATE OF SERVICE**

I hereby certify that on August 12, 2008, I delivered a true copy of the foregoing document either by first class mail and/or by electronic mail to the Docket 3969 Service List as of August 12, 2008.

  
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Charles M. Henderson, III