



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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*Patrick C. Lynch, Attorney General*

June 9, 2010

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

**Re: Docket No. 4149**

Dear Ms. Massaro:

Enclosed please find an original and nine (9) copies of the Division's Motion for Protective Treatment of Confidential Information. The Division seeks preliminary and permanent protective treatment of the Confidential Information as set forth in its motion.

Also, with this motion, the Division is providing under seal one (1) copy of the Confidential Information identified as "Printouts of the model for the scenarios contained in the Direct Testimony of Richard S. Hahn in Docket No. 4149 (1 CD)" for the sole purpose of the Commission making an in camera inspection of the documents therein in aid of disposition of the Division's motion.

Thank you for your attention to this matter and if you should have any questions kindly contact me at your convenience.

Very truly yours,

Leo J. Wold  
Assistant Attorney General

cc: Service List

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
PUBLIC UTILITIES COMMISSION

NATIONAL GRID'S 2011 STANDARD OFFER : DOCKET NO. 4149  
PROCUREMENT PLAN AND RES PROCURE- :  
MENT PLAN :

DIVISION'S MOTION FOR PROTECTIVE TREATMENT  
OF CONFIDENTIAL INFORMATION

I. INTRODUCTION

The Division of Public Utilities and Carriers (the "Division") requests that the Public Utilities Commission (the "Commission") make: (i) a preliminary ruling that certain confidential information sought by The Narragansett Electric Company, d/b/a National Grid (the "Company") from the Division in the above-entitled matter is privileged pursuant to Rule 1.2(g), and (ii) pursuant to Rule 1.18 (e) and G.L. § 38-2-2(4)(i)(B), issue a Protective Order providing permanent protective treatment for the confidential information provided to the Company by the Division.

On or about May 13 and 20, 2010, the Division was served with the Company's First and Second Set of Data Requests, respectively. In accordance with the Commission's Rules of Practice and Procedure, the Division objected to Data Request No. 1-1 and certain data requests of the Company's second set on the grounds that through the requests, the Company sought information that was protected work product analysis, that the methods or models that were not discoverable since such information, *inter alia* was not publicly available and was otherwise commercially sensitive, commercially valued, and proprietary. The Division

further contended that its consultants would be at a competitive disadvantage within their industry if the requested work papers, related spreadsheets or formulae were disclosed to National Grid.

Without waiving its objections, the Division, however, indicated that it would produce detailed printouts of the model for each of the scenarios referenced in Mr. Hahn's Direct Testimony upon receipt by the Division of an executed and mutually acceptable Confidentiality Agreement. On June 8, 2010 the Division received such an Agreement from the Company. On June 9, 2010, the Division provided the requested information to the Company subject to the Agreement. Regardless of the same, should a party or person not bound by the Confidentiality Agreement request access to the information, or should the Company seek to utilize the information at hearing, protective treatment will be required in order to prevent disclosure of the confidential information and injury to the Division's consultants.

## II. DISCUSSION

Rule 1.2(g) provides the process for requesting a preliminary finding that confidential information is privileged and shall not be released to the public. Rule 1.18(e) authorizes the Commission to issue a Protective Order to prevent disclosure of confidential information on terms that are just and reasonable. APRA provides that documents and materials submitted in connection with the transaction of official business by an agency should be treated as confidential if the documents and materials fall within one of the enumerated exceptions identified in G.L. § 38-2-2(4). If in fact information is deemed to be of a nature that meets an exception to the public records act, the Commission has the power under the APRA to

protect such information from public disclosure. G.L. § 38-2-2(4)(i)(B) provides that the following records are not deemed to be public:

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

Indeed the Rhode Island Supreme Court in Providence Journal Company v. Convention Center Authority, 774 A.2d 40, 48 (R.I. 2001) adopted the definition set forth in federal case law which defined confidential information as “any financial or commercial information whose disclosure would be likely either: (i) to impair the governments ability to obtain necessary information in the future, or (ii) to cause substantial harm to the competitive position of the person from whom the information was obtained.” See National Parks and Conservation Association v. Morton, 498 F.2d 756, 770 (D.C. Cir. 1974). The Court in Providence Journal 774 A.2d at 47, further adopted the test enunciated in Critical Mass Energy Project v. Nuclear Regulatory Commission, 975 F.2d 871, 879 (D.C. Cir. 1992) which provides that “financial or commercial information provided to the government on a voluntary basis is confidential if it is of a kind that would customarily not be released to public by the person from whom it was obtained.” Similarly, the Rhode Island Supreme Court in Providence Journal v. Cane, 577 A.2d 661 (R.I. 1990) held that an agency called upon to dispose of a request to compel disclosure of information pursuant APRA has the discretion to apply a balancing test and may protect information from public disclosure if the benefit of such protection outweighs the public interest inherent in disclosure. This test however, is triggered only in situations where the records or information sought have been first determined to be public.

The Division asserts that the models utilized by its expert in preparation of his testimony are financial, commercial and proprietary in nature. This information is not of the type that is customarily available to the public and is provided to the Commission strictly for the purpose of aiding it in its fact-finding mission. If the confidential information is disclosed to the public and/or to parties not bound by the Confidentiality Agreement, then the information will be used by the competitors in Mr. Hahn's industry for intellectual and financial gain, to the detriment of Mr. Hahn and his firm. Finally, it would not be the custom or practice of Mr. Hahn to release the underlying work papers analytical models or other proprietary processes at issue here to the public.

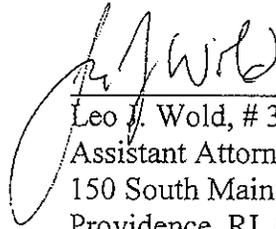
### **III. CONCLUSION**

For the foregoing reasons, the Division respectfully requests that the Commission: (i) make a preliminary finding that all confidential information provided to the Company by the Division is privileged pursuant to Rule 1.2(g), and (ii) enter a Protective Order providing permanent protective treatment for the confidential information provided to the Company by the Division.

DIVISION OF PUBLIC UTILITIES  
AND CARRIERS

By its attorneys,

PATRICK C. LYNCH  
ATTORNEY GENERAL



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**CERTIFICATE OF SERVICE**

I certify that a copy of the within motion was forwarded to the Service List in  
Docket No. 4149 on the 9<sup>th</sup> day of June, 2010.



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