

February 22, 2012

VIA HAND DELIVERY & ELECTRONIC MAIL

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

RE: Docket 4308 - Tariff Advice Filing for Approval of Long-Term Contracting For Renewable Energy Recovery Provision and to Amend R.I.P.U.C. No. 2036, Transmission Service Cost Adjustment Provision; and Application for Approval of Long-Term Contracting for Renewable Energy Recovery Factor
Request for Protective Treatment of Confidential Information

Dear Ms. Massaro:

Enclosed are one original and ten (10) copies of National Grid's¹ Request for Protective Treatment of Confidential Information in the above-captioned proceeding.

Thank you for your attention to this matter. If you have any questions regarding this filing, please feel free to contact me at (401) 784-7288.

Very truly yours,



Jennifer Brooks Hutchinson

Enclosures

Cc: Docket 4308 Service List
Steve Scialabba, Division
Jon Hagopian, Esq.

¹ The Narragansett Electric Company d/b/a National Grid ("National Grid" or the "Company").

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

Tariff Advice Filing for Approval of Long-Term Contracting For Renewable Energy Recovery Provisions and to Amend R.I.P.U.C. No. 2036, Transmission Service Cost Adjustment Provision; And Application for Approval of Long-Term Contracting for Renewable Energy Recovery Factor

Docket No. 4308

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

National Grid¹ hereby requests that the Rhode Island Public Utilities Commission (“Commission”) provide confidential treatment and 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 R.I.G.L. § 38-2-2(4)(i)(B). 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

On February 2, 2012, National Grid filed with the Commission and the Division of Public Utilities and Carriers (the “Division”) its responses to the Division’s First Set

¹ The Narragansett Electric Company d/b/a National Grid (“National Grid” or the “Company”).

of Data Requests. Requests 1-5, 1-6, 1-7 and 1-9 each sought copies of legal bills for legal expenses the Company seeks to recover in this docket. The invoices contain confidential and proprietary information, including the billing rates paid by the Company for the work. Accordingly the Company provided charts identifying the names of the firms providing the legal services, the dates of the invoices and the amount of each invoice in lieu of providing the actual invoices. The Division filed a Motion to Compel More Responsive Answers (“Motion to Compel”) to Data Requests 1-5, 1-6, 1-7 and 1-9, seeking production of the invoices.

In response to the Division’s Motion to Compel, National Grid is attaching redacted and un-redacted versions of the legal invoices showing the dates when legal services were performed, the personnel (i.e. partner, associate and/or paralegal) performing the legal service and a limited description of the service performed.² The un-redacted version of the legal invoices reveals the relevant hourly billing rates for the personnel performing the legal service and the number of hours spent performing such service. Under National Grid’s fee agreements with its law firms, the hourly billing rates are deemed proprietary to each firm. Therefore, National Grid requests that the Commission give the hourly billing rates identified in each of the legal invoices and the corresponding number of hours spent on the legal services, which if revealed along with the total dollars spent would enable a third party to determine the hourly billing rate, confidential treatment.

² The Company is also filing simultaneously with this Request for Protective Treatment of Confidential Information an Objection to the Division’s Motion to Compel (“Objection”) on grounds that the invoices contain, in part, detailed descriptions of legal advice provided by the Company’s attorneys and the mental impressions of those attorneys in anticipation of and during litigation, which is protected by the attorney-client privilege and work product doctrine. These portions of the invoices have also been redacted and the Company explains the reasons for and nature of those redactions more fully in the Objection.

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 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 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 inherent public interest in disclosure of information pending before regulatory agencies.

II. BASIS FOR CONFIDENTIALITY

The relevant hourly billing rates and the corresponding number of hours spent are proprietary to the law firm providing legal representation to National Grid, and are exactly the types of commercial or financial information that is properly excluded as a public record under APRA. The hourly billing rates are the subject of negotiated fee agreements that are specific to National Grid's representation. These negotiated rates are generally lower than the inventory rates and would not otherwise be publicly available. National Grid is providing the un-redacted portions of the invoices to the Commission on a voluntary basis to assist the Commission with its decision-making in this proceeding. Disclosure of the relevant billing information could adversely affect the law firms' competitive position and would tend to make it less likely that National Grid could obtain such negotiated rates in the future. Moreover, customers benefit from these negotiated billing rates and such disclosure would impede National Grid's future ability to negotiate its billing rates with other law firms.

III. CONCLUSION

Accordingly, the Company requests that the Commission grant protective treatment to the un-redacted portions of the legal invoices attached to Data Requests 1-5, 1-6, 1-7 and 1-9.

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

Respectfully submitted,

NATIONAL GRID

By its attorney,

A handwritten signature in blue ink, appearing to read "Jennifer Brooks Hutchinson", with a long horizontal line extending to the right.

Jennifer Brooks Hutchinson (RI Bar #6176)
National Grid
280 Melrose Street
Providence, RI 02907

Dated: February 22, 2012