

December 7, 2012

VIA HAND DELIVERY & ELECTRONIC MAIL

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

Re: Docket 4371 - Long-Term Contracting for Renewable Energy Recovery Factor Response to Division Data Requests – Set 2

Dear Ms. Massaro:

Enclosed is National Grid's¹ response to the Division's Second Set of Data Requests concerning the above-referenced proceeding.

Please be advised that the Company is seeking protective treatment of its response to Division 2-1 (c), as permitted by Commission Rule 1.2(g) and by R.I.G.L. § 38-2-2(4)(i)(B).

This filing also contains a Motion for Protective Treatment in accordance with Commission Rule 1.2(g) and R.I.G.L. § 38-2-2(4)(B).

In compliance with Rule 1.2(g), National Grid is providing one (1) complete unredacted copy of the confidential version of Division 2-1 (c) in a sealed envelope marked "**Contains Privileged and Confidential Materials – Do Not Release.**"

Thank you for your attention to this filing. Please feel free to contact me if you have any questions concerning this matter at (401) 784-7288.

Very truly yours,



Jennifer Brooks Hutchinson, Esq.

Enclosures

cc: Docket 4371 Service List
Steve Scialabba, Division
Leo Wold, Esq.

¹ The Narragansett Electric Company d/b/a National Grid.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

RHODE ISLAND PUBLIC UTILITIES COMMISSION

National Grid
Long-Term Contracting for Renewable Energy
Recovery Factor

Docket No. 4371

**MOTION OF THE NARRAGANSETT ELECTRIC COMPANY,
D/B/A NATIONAL GRID
FOR PROTECTIVE TREATMENT OF CONFIDENTIAL INFORMATION**

Now comes The Narragansett Electric Company, d/b/a National Grid (“Company”) and hereby requests that the Rhode Island Public Utilities Commission (“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 R.I.G.L. § 38-2-2(4)(i)(B).

I. BACKGROUND

On December 7, 2012, the Company filed with the Commission its responses to the Division of Public Utilities and Carriers (“Division”) Second Set of Data Requests. The Company’s response to Division 2-1(c) contains the bilateral terms under which Rhode Island LFG Genco (“RI Genco”) shed a portion of its capacity obligation, including price and the names of the counterparties. This information is competitively sensitive, proprietary information that the Company wishes to keep confidential. For the reasons stated below, the Company requests that this information be protected from public disclosure.

II. LEGAL STANDARD

Rule 1.2(g) of the Commission's Rules of Practice and Procedure 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

The bilateral contract terms under which RI Genco shed a portion of its capacity obligation, including the price and names of counterparties contained in the Company's response to Commission Data Request 2-1(c) was provided to the Company by RI Genco and is proprietary to them, and accordingly should be protected from public disclosure. Disclosure of this information would also put RI Genco at a competitive disadvantage with respect to future bilateral negotiations with respect to capacity.

V. CONCLUSION

In light of the foregoing, the Company respectfully requests that the Commission grant its Motion for Protective Treatment as stated herein.

Respectfully submitted,

**THE NARRAGANSETT ELECTRIC
COMPANY**

By its attorney,

A handwritten signature in black ink, appearing to read "Jennifer Brooks Hutchinson", written over a horizontal line.

Jennifer Brooks Hutchinson (RI #6176)
280 Melrose Street
Providence, RI 02907
(401) 784-7288

December 7, 2012

Division 2-1

Request:

Regarding the Company's response to Division 1-8, please provide the following information.

- (a) Please provide the amount of capacity that RI Genco was obligated to supply during the capacity year from June 1, 2012 through May 31, 2013 pursuant to ISO-NE's original forward capacity auction.
- (b) Please provide the price in \$ per KW-month that RI Genco will receive for the capacity in (a) above.
- (c) The response to Division 1-8 states that RI Genco informed NGRID that RI Genco shed its capacity obligation for the capacity year from June 1, 2012 through May 31, 2013.
 - (1) How did RI Genco "shed its capacity obligation" for this period? Did RI Genco participate in an ISO-NE annual reconfiguration auction? If so, please provide the results of that transaction, the amount of capacity obligation shed, and the price that paid to shed that obligation.
 - (2) If RI Genco did not shed this capacity obligation through an ISO-NE annual reconfiguration auction, was this obligation shed through a bilateral transaction? If so, please provide the name of the counterparty, the amount of the capacity obligation shed, and the price paid.
 - (3) If the RI Genco capacity obligation was shed by any means other than an ISO-NE annual reconfiguration auction or a bilateral transaction, please describe in detail the method used and provide transaction details similar to the above quantities, price, and counterparties.
- (d) If the capacity obligation for the capacity year from June 1, 2012 through May 31, 2013 was shed at a lower price than RI Genco received in the original ISO-NE's original forward capacity auction, would RI Genco achieve a financial gain?
- (e) If RI Genco did achieve a financial gain from originally receiving and subsequently shedding a capacity obligation during the capacity year from June 1, 2012 through May 31, 2013, should such a gain be provided to NGRID and ultimately to Rhode Island ratepayers. Please state and clearly explain NGRID's position on this issue.
- f) Please describe all efforts by NGRID to maximize RI Genco capacity revenues and minimize ratepayer costs associated with this PPA. Include copies of any emails, memos, or other supporting related documentation, and describe any verbal communications between RI Genco and NGRID.

Redacted
Division 2-1

Response:

Please note that the Company's response to Division 2-1 (c) contains confidential information.

(a) The following information was provided by RI Genco for this response:

Pursuant to ISO-NE's original forward capacity auction, RI Genco had a Capacity Supply Obligation ("CSO") of 37 MW. However, on January 12, 2012, ISO-NE submitted to the Federal Energy Regulatory Commission ("FERC") a Resource Termination Filing for 5 MW, based on RI Genco's notification of a change in plant configuration. FERC approved the termination on March 6, 2012, and ISO-NE terminated 5 MW on March 12, 2012. Therefore for the capacity year June 1, 2012 through May 31, 2013, RI Genco's CSO is 32 MW.

Please note that the RI Genco Power Purchase Agreement ("PPA") is based on the modified plant configuration of 32 MW.

(b) The following information was provided by RI Genco for this response:

RI Genco will be paid \$3.119/kW-month through May 31, 2016 with a yearly increase based on an inflation index. For the current capacity year from June 1, 2012 through May 31, 2013, RI Genco is being paid \$3.195/kw-month on its CSO of 32 MW.

(c) Please note that the information relating to the terms by which RI Genco shed its capacity obligation and the names of the counterparties is confidential. Accordingly, the Company provides the following response, subject to a Motion for Protective Treatment:

Parts (1), (2) and (3): National Grid was recently informed by RI Genco that, for the current capacity year, June 1, 2012 through May 31, 2013, RI Genco shed 29 MW of its CSO through an annual reconfiguration auction at a price of \$0.95/kW-month.

[REDACTED]

Division 2-1, page 2

During the negotiation of the RI Genco PPA, National Grid was informed that the project had received a 5-year commitment in the ISO-NE Forward Capacity Auction beginning with the 2011-12 capability period. Given the then current construction schedule for the project, it was recognized that RI Genco could not achieve commercial operation until the 2013-2014 capability period. Since the capacity could not be provided physically, RI Genco would have to “shed” this commitment, i.e., provide the capacity by alternative means. RI Genco did not inform National Grid of its specific plans for dealing with this Capacity Supply Obligation at that time, and is under no obligation to do so under the PPA before the Commercial Operation Date.

- (d) According to the forward capacity market transactions described in Responses 2-1 (a) through (c) above, RI Genco appears to have made and will make a financial gain for the applicable months leading up to the Commercial Operation Date, which is anticipated to occur before June 1, 2013. Prior to commercial operation, RI Genco, or the “Seller,” takes on the risks and benefits associated with the project during the development phase.

Pursuant to Section 4.8 and Section 3 of Exhibit E of the PPA between RI Genco and National Grid, during the services term, commencing on the Commercial Operation Date, the contract payment will be reduced by capacity payments from RI Genco. Since RI Genco must also pay the parties that assumed the Capacity Supply Obligations as described above in Response 2-1(c), the forward capacity transactions after the Commercial Operation Date should not result in a financial gain for RI Genco.

- (e) Prior to the Commercial Operation Date, any gains or losses received by RI Genco associated with participation in the Forward Capacity Market do not fall under the PPA and would not be provided to National Grid or Rhode Island customers.

In the Power Purchase Agreement between RI Genco and National Grid, Section 4.8 and Section 3 of Exhibit E describe that capacity settlement becomes effective with the start of the Services Term, i.e., after the Commercial Operation Date has been achieved. Regardless of how RI Genco dealt with the delay in construction and its impact on its original FCM obligation, these provisions require that the FCM revenue be deducted from the bundled price, i.e., capacity, energy and RECs, on and after the Commercial Operation Date. Specifically under Section 4.8(c) of the PPA, “Seller shall retain the ability to take such actions as are appropriate to manage Capacity Commitments through Internal Bilateral Transactions and participation in reconfiguration auctions; provided however, that such actions shall not affect the adjustment to the Bundled Price for Capacity set forth in Exhibit E hereto.” (emphasis added)

Division 2-1, page 3

- (f) Section 4.8 and Section 3 of Exhibit E to the Power Purchase Agreement between RI Genco and National Grid contain the results of the negotiations by National Grid to capture the capacity revenue available to RI Genco. As provided in those sections, RI Genco and National Grid are to agree on the amount of Capacity that RI Genco will bid into each Forward Capacity Auction for a Capacity Commitment Period during the Services Term. Once that amount is set, the bundled price paid by National Grid for the power is reduced by the payments received or that would have been received by RI Genco for a Capacity Supply Obligation in that Forward Capacity Auction. These provisions become effective with the start of the Services Term, i.e., once the Commercial Operation has been achieved.

Notably, while certain of the long-term contracts entered into by National Grid defer the obligation to bid capacity into a Forward Capacity Auction (which provides the generators with some flexibility on their final capacity and their commercial operation date), this Power Purchase Agreement requires RI Genco to bid capacity into the Forward Capacity Auction for the first Capacity Commitment Period occurring during the Services Term of the agreement. This requirement is satisfied by the five-year FCM commitment secured by RI Genco. All communications on this topic were handled in direct discussions between National Grid and RILFG Genco, and the subsequent exchanges of PPA drafts.

Prepared by or under the supervision of: Corinne M. Abrams and Margaret M. Janzen